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# INTERNATIONAL FISHERIES: MANAGEMENT AND ENFORCEMENT

## HEARING

BEFORE THE

## COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

APRIL 3, 2008

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ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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# INTERNATIONAL FISHERIES: MANAGEMENT AND ENFORCEMENT

**THURSDAY, APRIL 3, 2008**

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
*Washington, DC.*

The Committee met, pursuant to notice, at 9:58 a.m. in room SR–253, Russell Senate Office Building, Hon. Ted Stevens, presiding.

## OPENING STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

Senator STEVENS. Good morning. Just over a year ago, President Bush signed into law the Magnuson-Stevens Reauthorization Act, which mandates science-based catch limits and an end to overfishing in U.S. territories. Now the primary threat to sustainable fisheries are the foreign fleets that pillage the world's oceans by practicing illegal, unreported, and unregulated fishing or what we call IUU fishing. We simply cannot allow this high seas piracy.

I want you to note, Mr. Secretary, I understand your situation. I will put my statement full in the record and be happy to turn to you for your comments for the record. Thank you very much for coming.

[The prepared statement of Senator Stevens follows:]

PREPARED STATEMENT OF HON. TED STEVENS, U.S. SENATOR FROM ALASKA

Just over a year ago, President Bush signed into law the Magnuson-Stevens Reauthorization Act which mandates science-based catch limits and an end to overfishing in the U.S. Now the primary threat to sustainable fisheries are the foreign fleets that pillage the worlds oceans by practicing Illegal, Unreported, and Unregulated fishing or IUU fishing. We simply cannot allow this high seas piracy.

I am committed to making sure that the U.S. has every authority, resource, and tool we need to bring an end to IUU fishing. The Magnuson-Stevens Reauthorization Act contains international fisheries compliance and monitoring provisions, but there is much more to do.

In December, the President signed into law my legislation requiring NOAA to maintain a list of IUU fishing vessels around the world, so that the U.S. can take action against them in our waters. I have also drafted a Senate resolution calling for an end to harmful foreign fishing subsidies that lead to IUU fishing, as well as a resolution urging U.S. leadership on efforts to prepare for future management of Arctic Ocean fisheries. Additionally, I am committed to closing the gaps in international agreements that still leave large areas of the high seas in the North Pacific unregulated.

Despite all these efforts, there are still loopholes that allow IUU fish to come into the U.S., and this must stop. I am currently preparing a bill that would strengthen the laws that make it illegal to trade in fish or fish products harvested from IUU fishing. This bill would strengthen civil and criminal penalties and establish a strong and effective inter-agency International Fisheries Enforcement Program. I urge my colleagues to join me in this effort.

I thank Ambassador Negroponte for his statement today and his ongoing support for ratifying the Law of the Sea Convention. Ratifying this Convention would further strengthen our presence in the global effort to sustain our international fisheries.

I look forward to hearing from our witnesses today. I would especially like to thank Coast Guard District 17 Commander Rear Admiral Gene Brooks and Dave Benton, Executive Director of the Marine Conservation Alliance, for making the long trip from Alaska to be with us. I would also like to thank Jim Balsiger who was recently appointed as Acting Administrator of the National Marine Fisheries Service following many years of service as Alaska's Regional Director.

## STATEMENT OF HON. JOHN D. NEGROPONTE, DEPUTY SECRETARY, U.S. DEPARTMENT OF STATE

Mr. NEGROPONTE. Thank you, Mr. Chairman. I have submitted a slightly longer statement for the record, but if I could make some summary remarks? I appreciate your invitation and Senator Inouye's to address the Committee this morning on ways the United States can strengthen the management and enforcement of fisheries around the globe.

Today, the State Department witness, Ambassador David Balton, who is the Deputy Assistant Secretary for Oceans and Fisheries, will testify in much greater detail about our efforts to formulate and enforce better management measures for international fisheries. For my part, I would like to focus on how the challenges we face in this endeavor are compelling reasons for the United States to become party to the Law of the Sea Convention as soon as possible.

With 155 parties, including the major fishing nations, the Law of the Sea Convention is widely accepted as the legal framework under which all international fisheries must operate. The United States accepts the fisheries provisions of this Convention. Indeed, those provisions form the basis of a related treaty that the United States has already ratified, the 1995 U.N. Fish Stocks Agreement, which deals with the management of key stocks within and outside of the exclusive economic zone.

Senator Stevens, you will recall that you went to the United Nations when the U.N. Fish Stocks Agreement was adopted to deliver the United States' intervention supporting that agreement. The United States was the third country to ratify the Fish Stocks Agreement, and we also chaired the seven meetings of the parties to the Agreement, as well as the 2004 review conference held to consider its implementation.

Despite our leadership on this issue, some nations still question our intentions and our right to press for improvements in the management and enforcement of international fisheries rules because we have not yet joined the Law of the Sea Convention. Acceding to the Convention will give us greater leverage in negotiating on these matters, particularly in our efforts to eliminate illegal, unreported, and unregulated fishing.

American fishermen already follow these standards, and they support our accession to the Law of the Sea Convention. By doing so, we will be in a stronger position to encourage other governments to hold their fishermen accountable to the same standards that ours now uphold.

Other important industries support the Convention as well. Oil and gas companies want international recognition and greater legal clarity regarding the outer limits of our continental shelf beyond 200 miles. This will facilitate access to the vast energy resources residing there, particularly in the Arctic. American companies can recover valuable minerals from the deep sea bed only if we join the Convention because a permit issued under domestic legislation would not provide a U.S. entity with the certainty of tenure that it would require.

The telecommunications and shipping industries also want the Convention's protection of submarine cables and navigational freedoms. An equally important reason to join is to put our vital navigational rights on the firmest legal footing. The United States military establishment continues to express its urgent need for our accession to the Convention in order to promote international cooperation on issues—on initiatives of national security importance, such as the Proliferation Security Initiative.

Last, I want to note that no additional legislation on fisheries or on any other topic is required before acceding to the Convention. Indeed, the drafters of the 1976 Fishery Conservation and Management Act intended it to be consistent with the Convention's provisions on fisheries, and subsequent amendments to what is now known as the Magnuson-Stevens Act have preserved that consistency.

Mr. Chairman, I would be pleased to provide for the record my testimony on the substance of the Convention before the Senate Foreign Relations Committee in a hearing last fall for any members who might be interested. I know that you are a strong supporter of the Law of the Sea Convention and as I understand is Chairman Inouye. And I thank you for your leadership and for this opportunity to make the case for U.S. accession to the Convention in the context of international fisheries management and enforcement.

And that concludes my summary remarks.

[The prepared statement of Mr. Negroponte follows:]

PREPARED STATEMENT OF HON. JOHN D. NEGROPONTE, DEPUTY SECRETARY, U.S. DEPARTMENT OF STATE

Chairman Inouye, Vice Chairman Stevens, Members of the Committee, I appreciate your invitation to address the Committee this morning on ways the United States can strengthen the management and enforcement of fisheries around the globe. Today, the State Department witness, Ambassador David Balton, will testify in much greater detail about our efforts to formulate and enforce better management measures for international fisheries. For my part, I would like to focus on how the challenges we face in this endeavor are compelling reasons for the United States to become party to the Law of the Sea Convention as soon as possible.

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Vice Chairman Stevens will recall that he went to the United Nations when the U.N. Fish Stocks Agreement was adopted to deliver the U.S. intervention supporting that Agreement. The United States was the third country to ratify the Fish Stocks Agreement, and we also chaired the 7 meetings of the parties in the Agreement, as well as the 2004 Review Conference held to consider its implementation.

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Mr. Chairman, Mr. Vice Chairman, I would be pleased to provide for the record my testimony on the substance of the Convention before the Senate Foreign Relations Committee in a hearing last fall for any members who might be interested.

Chairman Inouye, Vice Chairman Stevens, I know that you are both strong supporters of the Law of the Sea Convention. I thank you for your leadership and for this opportunity to make the case for U.S. accession to the Convention in the context of international fisheries management and enforcement.

Senator STEVENS. Thank you very much, Secretary Negroponte. Glad to see you are here and willing to make a statement. And I appreciate the fact that you are once again back in the State Department, where we need you.

So we will put your full statement in the record, and I would appreciate it if you would provide the Committee with a copy of your statements that you made before the other Committee.

Mr. NEGROPONTE. I shall do that.

Senator STEVENS. It would be helpful.

[The information referred to follows:]

WRITTEN TESTIMONY OF HON. JOHN D. NEGROPONTE, DEPUTY SECRETARY, U.S. DEPARTMENT OF STATE, BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE ON SEPTEMBER 27, 2007

**Hearing on Accession to the 1982 Law of the Sea Convention and Ratification of the 1994 Agreement Amending Part XI of the Law of the Sea Convention**

*[Senate Treaty Document 103–39]*

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify on the 1982 United Nations Convention on the Law of the Sea ("the Convention") and the 1994 Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 ("the 1994 Agreement").

At my confirmation hearing earlier this year, I reminded the Committee that the Senate confirmed me 20 years ago as Assistant Secretary for Oceans and International Environmental and Scientific Affairs. Shortly thereafter, under the first President Bush, we began to work on revising the deep seabed mining section of

the Convention to address the flaws President Reagan had correctly identified, so that we could join the Convention. That effort succeeded, resulting in the 1994 Agreement overhauling the deep seabed mining regime, as I will explain in greater detail.

Since my first involvement with the Law of the Sea Convention, I have had the privilege to serve the United States in other assignments that have only strengthened my support for this treaty. As Ambassador to the United Nations, I learned that other countries look to the United States for leadership on oceans issues such as maritime security—a role that is lessened without U.S. accession to the Convention. As Ambassador to Iraq, I saw first-hand the importance of navigational freedoms for deploying and sustaining our forces in combat zones, and how the Convention serves as a foundation for our partnerships in the Proliferation Security Initiative. Most recently, as Director of National Intelligence, I was reminded how the Convention strengthens our ability to carry out intelligence activities that other countries might seek to restrain.

Mr. Chairman, these experiences compel me to endorse—most enthusiastically and emphatically—the President's urgent request that the Senate approve the Convention, as modified by the 1994 Agreement. As the President said in his May 15 statement, joining will serve the national security interests of the United States, secure U.S. sovereign rights over extensive marine areas, promote U.S. interests in the environmental health of the oceans, and give the United States a seat at the table when the rights essential to our interests are debated and interpreted.

**History**

From the earliest days of its history, the United States has relied on the bounty and the opportunity of the seas for sustenance, for trade and economic development, for defense, for communication, and for interaction with the rest of the world. Today, as the world's strongest maritime power and a leader in global maritime trade and commerce, the United States has a compelling national interest in a stable international legal regime for the oceans. We have consistently sought balance between the interests of countries in controlling activities off their coasts and the interests of all countries in protecting freedom of navigation. The United States joined a group of law of the sea treaties in 1958, by which it is still bound. But those treaties left open some important issues. For example, they did not set forth the maximum breadth of the territorial sea, an issue of critical importance to U.S. freedom of navigation, and they did not set forth a procedure for providing legal certainty regarding the continental shelf. We therefore continued to pursue completion of a single, integrated law of the sea treaty that would attract near-universal acceptance; the U.S. delegation played a very prominent role in the negotiating session that began under the Nixon Administration and culminated in the 1982 Convention.

The resulting treaty was a victory for U.S. navigational, economic, and other interests except for one important issue—deep seabed mining. Due to flaws in the deep seabed mining chapter—Part XI of the Convention—President Reagan decided not to sign the 1982 Convention. However, the other aspects of the treaty were so favorable that President Reagan, in his Ocean Policy Statement in 1983, announced that the United States accepted, and would act in accordance with, the Convention's balance of interests relating to traditional uses of the oceans—everything but deep seabed mining. He instructed the Government to abide by, or as the case may be, to enjoy the rights accorded by, the other provisions, and to encourage other countries to do likewise.

As I mentioned earlier, the first Bush Administration agreed to participate in negotiations that modified Part XI—in a legally binding manner—overcoming each of the objections that President Reagan had identified. The United States signed that Agreement in 1994. The Convention came into force that same year, and has since been joined by industrialized countries that shared the U.S. objections to the initial deep seabed mining chapter. There are now 155 parties to the Convention, including almost all of our traditional allies.

This Administration expressed its strong support for the Convention in testimony before this Committee in the fall of 2003. Thereafter we worked closely with the Committee to develop a proposed Resolution of Advice and Consent, which we continue to support, that addressed a number of issues, including those relating to U.S. military interests. Since then, our conviction has only grown: we must join the Law of the Sea Convention, and join it now, to take full advantage of the many benefits it offers the United States and to avoid the increasing costs of being a non-party.

**Joining Is a Win-Win**

Joining is a win/win proposition. We will not have to change U.S. laws or practices, or give up rights, and we will benefit in a variety of ways. The United States already acts in accordance with the Convention for a number of reasons:

- First, as noted, we are party to a group of 1958 treaties that contain many of the same provisions as the Convention.
- Second, the United States heavily influenced the content of the 1982 Convention, based on U.S. law, policy, and practice.
- Finally, the treaty has been the cornerstone of U.S. oceans policy since 1983, when President Reagan instructed the Executive Branch to act in accordance with the Convention's provisions with the exception of deep seabed mining.

Thus, we are in the advantageous position in the case of this treaty that U.S. adherence to its terms is already time-tested and works well.

At the same time, the United States would gain substantial benefits from joining the Convention—these can be summarized in terms of security, sovereignty, and sustainability.

*Security.* As the world's foremost maritime power, our security interests are intrinsically linked to freedom of navigation. We have more to gain from legal certainty and public order in the world's oceans than any other country. Our forces are deployed throughout the world, and we are engaged in combat operations in Central and Southwest Asia. The U.S. Armed Forces rely on the navigational rights and freedoms reflected in the Convention for worldwide access to get to the fight, sustain our forces during the fight, and return home safely, without permission from other countries.

In this regard, the Convention secures the rights we need for U.S. military ships and the commercial ships that support our forces to meet national security requirements in four ways:

- by limiting coastal States' territorial seas—within which they exercise the most sovereignty—to 12 nautical miles;
- by affording our military and commercial vessels and aircraft necessary passage rights through other countries' territorial seas and archipelagoes, as well as through straits used for international navigation (such as the critical right of submarines to transit submerged through such straits);
- by setting forth maximum navigational rights and freedoms for our vessels and aircraft in the exclusive economic zones of other countries and in the high seas; and
- by affirming the authority of U.S. warships and government ships to board stateless vessels on the high seas, which is a critically important element of maritime security operations, counter-narcotic operations, and anti-proliferation efforts, including the Proliferation Security Initiative.

The United States has had a certain amount of success in promoting these provisions internationally as reflective of customary international law, as well as in enforcing them through operational challenges. However, these tools alone are not adequate to ensure the continued vitality of these rights. Customary law is not universally accepted and, in any event, changes over time—in this case, potentially to the detriment of our interests. There are increasing pressures from coastal States around the world to evolve the law of the sea in ways that would unacceptably alter the balance of interests struck in the Convention. Operational challenges are inherently risky and resource-intensive. Joining the Convention would put the navigational rights reflected in the Convention on the firmest legal footing. We would have treaty rights rather than have to rely solely upon the acceptance of customary international law rights by other states or upon the threat or use of force. Securing these treaty rights, and obtaining a seat at the table in treaty-based institutions, would provide a safeguard against changes in State practice that could cause customary law to drift in an unfavorable direction. Moreover, joining would promote the willingness of other countries to cooperate with us on initiatives of great security importance, such as the Proliferation Security Initiative.

*Sovereignty.* Joining the Convention would advance U.S. economic and resource interests. Recent Russian expeditions to the Arctic have focused attention on the resource-related benefits of being a party to the Convention. Because so much is at stake in vast areas of continental shelf beyond 200 nautical miles, I will explain in some detail the Convention's provisions that govern these areas and why being a party would put the United States in a far better position in terms of maximizing its sovereign rights.

The Convention recognizes the sovereign rights of a coastal State over its continental shelf, which extends out to 200 nautical miles—and beyond, if it meets specific criteria. These rights include sovereign rights for the purpose of exploring the continental shelf and exploiting its natural resources, including oil, gas, and other energy resources. U.S. interests are well served not only by the Convention's detailed definition of the shelf (in contrast to the 1958 Convention's vague standard), but also by its procedures for gaining certainty regarding the shelf's outer limits. Parties enjoy access to the expert body whose technical recommendations provide the needed international recognition and legal certainty to the establishment of continental shelf beyond 200 nautical miles.

Following such procedures, Russia made the first submission (in 2001) to that expert body, the Commission on the Limits of the Continental Shelf. The Commission found that Russia needed to collect additional data to substantiate its submission. Russia has announced that the data it collected this year support the claim that its continental shelf extends as far as the North Pole. Setting aside its recent flag planting, which has only symbolic value, Russia's continuing data collection in the Arctic reflects its commitment to maximizing its sovereign rights under the Convention over energy resources in that region.

Currently, as a non-party, the United States is not in a position to maximize its sovereign rights in the Arctic or elsewhere. We do not have access to the Commission's procedures for according international recognition and legal certainty to our extended shelf. And we have not been able to nominate an expert for election to the Commission. Thus, there is no U.S. Commissioner to review the detailed data submitted by other countries on their shelves.

Norway has also made a submission to support its extended continental shelf in the Arctic, and Canada and Denmark are conducting surveys there to collect data for their submissions. The Commission has already made recommendations on submissions by Brazil and Ireland and is considering several other submissions. Many more are expected in the coming months.

The United States has one of the largest continental shelves in the world; in the Arctic, for example, our shelf could run as far as 600 miles from the coastline. However, as noted, we have no access to the Commission, whose recommendations would facilitate the full exercise of our sovereign rights—whether we use them to explore and exploit natural resources, prevent other countries from doing so, or otherwise. In the absence of the international recognition and legal certainty that the Convention provides, U.S. companies are unlikely to secure the necessary financing and insurance to exploit energy resources on the extended shelf, and we will be less able to keep other countries from exploiting them.

Joining the Convention provides other economic benefits: it also gives coastal States the right to claim an exclusive economic zone ("EEZ") out to 200 nautical miles. That gives the United States, with its extensive coastline, the largest EEZ of any country in the world. In this vast area, we have sovereign rights for the purpose of exploring, exploiting, conserving, and managing living and non-living natural resources.

*Sustainability.* The Convention also supports U.S. interests in the health of the world's oceans and the living resources they contain. It addresses marine pollution from a variety of sources, including ocean dumping and operational discharges from vessels. The framework appropriately balances the interests of the coastal State in protection of the marine environment and its natural resources with the navigational rights and freedoms of all States. This framework, among other things, supports vital economic activities off the coast of the United States. Further, the United States has stringent laws regulating protection of the marine environment, and we would be in a stronger position as a party to the Convention as we encourage other countries to follow suit.

The Convention also promotes the conservation of various marine resources. Indeed, U.S. ocean resource-related industries strongly support U.S. accession to the Convention. U.S. fishermen, for example, want their government to be in the strongest possible position to encourage other governments to hold their fishermen to the same standards we are already following, under the Convention and under the Fish Stocks Agreement that elaborates the Convention's provisions on straddling fish stocks and highly migratory fish stocks.

Joining the Convention provides other important benefits that straddle the security, sovereignty, and sustainability categories. For example, its provisions protect laying and maintaining the fiber optic cables through which the modern world communicates, for both military and commercial purposes; for that reason, the U.S. telecommunications industry is a strong supporter of the Convention.

**We Need to Join Now**

Some may ask why, after the Convention has been in force for thirteen years, there is an urgent need to join. There are compelling reasons why we need to accede to the Convention now.

Although the first several years of the Convention's life were fairly quiet, its provisions are now being actively applied, interpreted, and developed. The Convention's institutions are up and running, and we—the country with the most to gain and lose on law of the sea issues—are sitting on the sidelines. For example, the Commission on the Limits of the Continental Shelf (which is the technical body charged with addressing the continental shelf beyond 200 nautical miles) has received nine submissions and has made recommendations on two of them, without the participation of a U.S. commissioner. Recommendations made in that body could well create precedents, positive and negative, on the future outer limit of the U.S. shelf. We need to be on the inside to protect our interests. Moreover, in fora outside the Convention, the provisions of the Convention are also being actively applied. Our position as a non-Party puts us in a far weaker position to advance U.S. interests than should be the case for our country.

We also need to join now to lock in, as a matter of treaty law, the very favorable provisions we achieved in negotiating the Convention. It would be risky to assume that we can preserve *ad infinitum* the situation upon which the United States currently relies. As noted, there is increasing pressure from coastal States to augment their authority in a manner that would alter the balance of interests struck in the Convention. We should secure these favorable treaty rights while we have the chance.

**Deep Seabed Mining**

One part of the Convention deserves special attention, because, in its original version, it kept the United States and other industrialized countries from joining. Part XI of the Convention, now modified by the 1994 Implementing Agreement, establishes a system for facilitating potential mining activities on the seabed beyond the limits of national jurisdiction—specifically, the deep seabed beyond the continental shelf of any nation. The Convention, as modified, meets our goal of guaranteed access by U.S. industry to deep seabed minerals under reasonable terms and conditions.

Specifically, the Convention sets forth the process by which mining firms can apply for and obtain access and exclusive legal rights to deep seabed mineral resources. The International Seabed Authority is responsible for overseeing such mining; it includes an Assembly, open to all Parties, and a 36-member Council. The Authority's role is limited to administering deep seabed mining of mineral resources in areas beyond national jurisdiction; it has no other authority over uses of the oceans or over other resources in the oceans. The Council is the primary decision-making body, with responsibility for giving practical effect to the requirement for non-discriminatory access to deep seabed minerals and for adopting rules for exploration and development.

The 1994 Agreement, which contains legally binding changes to the 1982 Convention, fundamentally overhauls the deep seabed mining provisions in a way that satisfies each of the objections of the United States, as stated by President Reagan, and of other industrialized countries. President Reagan considered that those provisions would deter future development of deep seabed mining; establish a decision-making process that would not give the United States a role that reflected or protected its interests; allow amendments to enter into force without the approval of the United States; provide for mandatory transfer of technology; allow national liberation movements to share in the benefits of deep seabed mining; and not assure access of future qualified miners.

The 1994 Agreement overcomes these objections and ensures that the administration of deep seabed mining is based on free-market principles. Specifically, the Agreement:

- deletes the objectionable provisions on mandatory technology transfer;
- ensures that market-oriented approaches are taken to the management of deep seabed minerals (*e.g.,* by eliminating production controls), replacing the original Part XI's centralized economic planning approach;
- scales back the deep seabed mining institutions and links their activation and operation to actual development of interest in deep seabed mining;
- guarantees the United States a permanent seat on the Council, where substantive decisions are made by consensus—the effect of which is that any decision that would result in a substantive obligation on the United States, or that would have financial or budgetary implications, would require U.S. consent;

- ensures that the United States would need to approve the adoption of any amendment to the Part XI provisions and any distribution of deep seabed mining revenues accumulated under the Convention; and
- recognizes the seabed mine claims established on the basis of the exploration already conducted by U.S. companies and provides assured equality of access for any future qualified U.S. miners.

The deep seabed is an area that the United States has never claimed and has consistently recognized as being beyond the sovereignty and jurisdiction of any nation. As reflected in U.S. law (the Deep Seabed Hard Mineral Resources Act of 1980), it has long viewed deep seabed mining as an activity appropriate for international administration. The United States asked for changes to the 1982 Convention's deep seabed mining provisions and got them. As George P. Shultz, Secretary of State to President Reagan, said recently in a letter to Senator Lugar: "The treaty has been changed in such a way with respect to the deep sea-beds that it is now acceptable, in my judgment. Under these circumstances, and given the many desirable aspects of the treaty on other grounds, I believe it is time to proceed with ratification."

**Why Stay Out?**

Given all the valuable benefits of joining and the substantial costs of not joining, is there a persuasive argument why the United States should remain a non-party? I do not think there is one.

Certain arguments distort the risks of joining and/or paint an unrealistic picture of our situation as a non-party. In this regard, opponents do not offer viable alternatives to the Convention. Some say we should rely on the 1958 conventions; however, those are less favorable in many respects, such as navigational rights, the outer limits of the continental shelf, and authority to conduct boardings on the high seas. Some say we should continue to rely on customary law; however, as noted, customary law is not universally accepted, evolves based on State practice, and does not provide access to the Convention's procedural mechanisms, such as the continental shelf commission. Finally, some say we should rely on the threat or use of force; however, it is implausible and unwise to think that the United States can rely on military power alone to enforce its rights, particularly economic rights.

Certain arguments against U.S. accession are simply inaccurate. And other arguments are outdated, in the sense that they may have been true before the deep seabed mining provisions were fixed and thus are no longer true. I would like to address some of these "myths" surrounding the Convention:

*Myth:* Joining the Convention would surrender U.S. sovereignty.

*Reality:* On the contrary. Some have called the Convention a "U.S. land grab." It expands U.S. sovereignty and sovereign rights over extensive maritime territory and natural resources off its coast, as described earlier in my testimony. It is rare that a treaty actually increases the area over which a country exercises sovereign rights, but this treaty does. The Convention does not harm U.S. sovereignty in any respect. As sought by the United States, the dispute resolution mechanisms provide appropriate flexibility in terms of both the forum and the exclusion of sensitive subject matter. The deep seabed mining provisions do not apply to any areas in which the United States has sovereignty or sovereign rights; further, these rules will facilitate mining activities by U.S. companies. And the navigational provisions affirm the freedoms that are important to the worldwide mobility of U.S. military and commercial vessels.

*Myth:* The Convention is a "UN" treaty and therefore does not serve our interests.

*Reality:* The Convention is not the United Nations—it was merely negotiated there, as are many agreements, and negotiated by States, not by U.N. bureaucrats. Further, just because a treaty was drawn up at the U.N. does not mean it does not serve our interests. For example, the United States benefits from U.N. treaties such as the Convention Against Corruption and the Convention for the Suppression of Terrorist Bombings. The Law of the Sea Convention is another such treaty that serves U.S. interests.

*Myth:* The International Seabed Authority (ISA) has the power to regulate seven-tenths of the Earth's surface.

*Reality:* The Convention addresses seven-tenths of the earth's surface; the ISA does not. First, the ISA does not address activities in the water column, such as navigation. Second, the ISA has nothing to do with the ocean floor that is subject to the sovereignty or sovereign rights of any country, including that of the United States. Third, the ISA only addresses deep seabed mining. Thus, its

role is limited to mining activities in areas of the ocean floor beyond national jurisdiction. It has no other role and no general authority over the uses of the oceans, including freedom of navigation and overflight.

*Myth:* The Convention gives the U.N. its first opportunity to levy taxes.

*Reality:* Although the Convention was negotiated under U.N. auspices, it is separate from the U.N. and its institutions are not U.N. bodies. Further, there are no taxes of any kind on individuals or corporations or others. Concerning oil/gas production within 200 nautical miles of shore, the United States gets exclusive sovereign rights to seabed resources within the largest such area in the world. There are no finance-related requirements in the EEZ. Concerning oil/gas production beyond 200 nautical miles of shore, the United States is one of a group of countries potentially entitled to extensive continental shelf beyond its EEZ. Countries that benefit from an Extended Continental Shelf have no requirements for the first 5 years of production at a site; in the sixth year of production, they are to make payments equal to 1 percent of production, increasing by 1 percent a year until capped at 7 percent in the twelfth year of production. If the United States were to pay royalties, it would be because U.S. oil and gas companies are engaged in successful production beyond 200 nautical miles. But if the United States does not become a party, U.S. companies will likely not be willing or able to engage in oil/gas activities in such areas, as I explained earlier.

Concerning mineral activities in the deep seabed, which is beyond U.S. jurisdiction, an interested company would pay an application fee for the administrative expenses of processing the application. Any amount that did not get used for processing the application would be returned to the applicant. The Convention does not set forth any royalty requirements for production; the United States would need to agree to establish any such requirements.

In no event would any payments go to the United Nations, but rather would be distributed to countries in accordance with a formula to which the United States would have to agree.

*Myth:* The Convention would permit an international tribunal to second-guess the U.S. Navy.

*Reality:* No international tribunal would have jurisdiction over the U.S. Navy. U.S. military activities, including those of the U.S. Navy, would not be subject to any form of dispute resolution. The Convention expressly permits a party to exclude from dispute settlement those disputes that concern "military activities." The United States will have the exclusive right to determine what constitutes a military activity.

*Myth:* The International Tribunal for the Law of the Sea could order the release of a vessel apprehended by the U.S. military.

*Reality:* The Tribunal has no jurisdiction to order release in such a case. Its authority to address the prompt release of vessels applies only to two types of cases: fishing and protection of the marine environment. Further, even if its mandate did extend further—which it does not—the United States will be taking advantage of the optional exclusion of military activities from dispute settlement. As such, in no event would the Tribunal have any authority to direct the release of a vessel apprehended by the U.S. military.

*Myth:* The Convention was drafted before—and without regard to—the war on terror and what the United States must do to wage it successfully.

*Reality:* The Convention enhances, rather than undermines, our ability to wage the war on terror. Maximum maritime naval and air mobility is essential for our military forces to operate effectively. The Convention provides the necessary stability and framework for our forces, weapons, and materiel to get to the fight without hindrance. It is essential that key sea and air lanes remain open as a matter of international legal right and not be contingent upon approval from nations along those routes. The senior U.S. military leadership—the Joint Chiefs of Staff—has recently confirmed the continuing importance of U.S. accession to the Convention in a letter to the Committee.

*Myth:* The Convention would prohibit or impair U.S. intelligence and submarine activities.

*Reality:* The Convention does not prohibit or impair intelligence or submarine activities. Joining the Convention would not affect the conduct of intelligence activities in any way. This issue was the subject of extensive hearings in 2004 before the Senate Select Committee on Intelligence. Witnesses from Defense,

CIA, and State all confirmed that U.S. intelligence and submarine activities are not adversely affected by the Convention.

We follow the navigational provisions of the Convention today and are not adversely affected; similarly, we would not be adversely affected by joining.

*Myth:* The United States can rely on use or threat of force to protect its navigational interests fully.

*Reality:* The United States has utilized diplomatic and operational challenges to resist the excessive maritime claims of other countries that interfere with U.S. navigational rights. But these operations entail a certain degree of risk, as well as resources. Being a party to the Convention would significantly enhance our efforts to roll back these claims by, among other things, putting the United States in a stronger position to assert our rights.

*Myth:* Joining the Convention would hurt U.S. maritime interdiction efforts under the Proliferation Security Initiative (PSI).

*Reality:* Joining the Convention would not affect applicable maritime law or policy regarding the interdiction of weapons of mass destruction. PSI specifically requires participating countries to act consistent with international law, which includes the law reflected in the Convention. Almost all PSI partners are parties to the Convention. Further, joining the Convention is likely to strengthen PSI by attracting new cooperative partners.

*Myth:* President Reagan thought the treaty was irremediably defective.

*Reality:* As explained above, President Reagan identified only certain deep seabed mining provisions of the Convention as flawed. His 1983 Ocean Policy Statement demonstrates that he embraced the non-deep-seabed provisions and established them as official U.S. policy. The 1994 Agreement overcomes each of the objections to the deep seabed mining provisions identified by President Reagan. As President Reagan's Secretary of State, George P. Shultz, noted in his recent letter to Senator Lugar, "It surprises me to learn that opponents of the treaty are invoking President Reagan's name, arguing that he would have opposed ratification despite having succeeded on the deep sea-bed issue. During his administration, with full clearance and support from President Reagan, we made it very clear that we would support ratification if our position on the seabed issue were accepted."

*Myth:* The Convention provides for mandatory technology transfer.

*Reality:* Mandatory technology transfer was eliminated by the 1994 Agreement that modified the original Convention.

*Myth:* The United States could and should renegotiate a new law of the sea agreement, confined to the provisions on navigational freedoms.

*Reality:* Assuming, for the sake of argument, that this were a desirable outcome, other countries would have no reason or incentive to enter into such a negotiation. The Convention is widely accepted, having been joined by over 150 parties including all other major maritime powers and most other industrialized nations. Those parties are generally satisfied with the entirety of the treaty and would be unwilling to sacrifice other provisions of the Convention, such as benefits associated with exclusive economic zones and sovereign rights over the resources they contain, as well as continental shelves out to 200 nautical miles and in some cases far beyond. And parties that would like to impose new constraints on our navigational freedoms certainly would not accept the 1982 version of those freedoms.

**Conclusion**

Mr. Chairman, I am confident that the Committee will agree that U.S. accession to the Convention is the best way to secure navigational and economic rights related to the law of the sea. I hope I have convinced the Committee that arguments against joining the Convention are completely unfounded, that there are not viable alternatives to joining, and that we cannot just go out and negotiate another treaty, much less one that is more favorable. And we certainly cannot have much influence over development of the law of the sea in the 21st Century from outside the Convention.

The safest, most secure, and most cost-effective way to lock in these significant benefits to our ocean-related interests is to join the Convention. President Bush, Secretary Rice, and I urge the Committee—once again—to give its swift approval for U.S. accession to the Law of the Sea Convention and ratification of the 1994 Agreement, and we urge the Senate to give its advice and consent before the end of this session of Congress.

Senator STEVENS. But we do thank you for coming, and I know you have another appointment. So there will be no questions.

Mr. NEGROPONTE. I thank you very much for this opportunity and look forward to continuing to work with you on this issue.

Thank you.

Senator STEVENS. Thank you very much, Mr. Secretary.

Now, our first panel is Dr. James Balsiger, Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, NOAA; Mr. David Balton, Deputy Assistant Secretary for Oceans and Fisheries, Department of State; and Rear Admiral Gene Brooks, Commander of the 17th Coast Guard District and the force's Maritime Component Commander for Alaska.

Gentlemen, your statements will appear in full on the record. Appreciate your comments. There is no limit on what comments you want to make. But let us proceed in the order that I indicated.

Dr. Balsiger, you would be first, please.

**STATEMENT OF JAMES W. BALSIGER, PH.D., ACTING ASSISTANT ADMINISTRATOR, NATIONAL MARINE FISHERIES SERVICE, NOAA, U.S. DEPARTMENT OF COMMERCE**

Dr. BALSIGER. Thank you. Good morning. I am Jim Balsiger, the Acting Assistant Administrator for Fisheries within the National Oceanic and Atmospheric Administration.

Senator STEVENS. Can you pull that mike toward you, please, Doctor?

Dr. BALSIGER. Of course.

Senator STEVENS. Thank you.

Dr. BALSIGER. With the U.S. Department of Commerce. Thank you, Senator Stevens, and my thanks to Chairman Inouye for the invitation to this hearing. Thanks to the Members of the Senate Commerce Committee for the opportunity to describe some of the challenges of international fisheries management.

I am pleased to see Congress has increased attention on these issues. Thanks to the efforts of this Committee, Congress adopted and the President signed the Magnuson-Stevens Fisheries Conservation and Management Reauthorization Act in January 2007. This act contains several new provisions that will significantly shape the focus of our international fisheries management efforts.

Fulfilling this mandate is a high priority for my agency, and I will illustrate this with some of the examples from our work with the regional fishery management organizations, or the RFMOs. Many of our target fish stocks and protected species range into waters of other countries. So our management strategies require a multilateral, regional approach.

RFMOs provide a forum for collaboration, data sharing, regional management, and enforcement, and NOAA has a leadership role in a number of these RFMOs. One of these RFMOs, the International Convention for the Conservation of Atlantic Tunas, or ICCAT, has adopted catch and trade tracking programs for bluefin tuna in response to declining stocks and high levels of IUU fishing.

These programs help us verify where bluefin tuna are caught and allow us to track product from capture through its final market. This information can lead to trade restrictions against countries, which are a major deterrent to illegal trade—illegal fishing.

The Northwest Atlantic Fisheries Organization, or NAFO, has also taken proactive steps to combat IUU fishing. With U.S. leadership, this RFMO developed a compliance scheme that prevents a vessel from landing its catch in the port of any NAFO member if the vessel has been cited engaging in IUU fishing. Programs based on this scheme have been adopted by other RFMOs.

NOAA also plays a leadership role in developing international measures to reduce bycatch of sea birds, sea turtles, and sharks. The U.S. promotes the development of national sea bird bycatch reduction plans by RFMO members and stresses the need for scientific assessments.

On sea turtles, the U.S. led negotiations resulting in FAO guidelines to reduce sea turtle mortality in fishing operations. These guidelines have now been adopted by several RFMOs. Additionally, the U.S. negotiated the binding Inter-American Convention for the Protection and Conservation of Sea Turtles and were hosting international workshops to train fishermen to use circle hooks as turtle bycatch reduction devices.

On sharks, we have the Shark Finning Prohibition Act enacted and has drastically reduced the number of sharks finned with the carcasses discarded at sea. In accordance with this mandate, the U.S. has promoted the adoption of shark finning bans in many RFMOs.

Through the Magnuson-Stevens Act, Congress recognized a significant lack of data for international fisheries management, particularly from developing countries. Good data is the cornerstone for sound fisheries management, and to address this data scarcity, NOAA has provided funding to improve data collection in other countries.

The Magnuson-Stevens Act also calls for a biennial report to Congress on IUU fishing, and NOAA is currently soliciting information from the public that can be used to identify nations whose vessels are engaged in IUU fishing. With regard to enforcement efforts to combat IUU fishing, NOAA's Office of Law Enforcement works closely with the international, Federal, and State law enforcement partners to detect, apprehend, and prosecute those involved in illegal importation of IUU product. These efforts include NOAA's coordination with Coast Guard patrols in the North Pacific Ocean to detect large-scale high seas driftnet fishing.

NOAA currently serves as the chair of the International Monitoring, Control, and Surveillance Network, which works with countries around the globe to exchange enforcement information, including information on IUU fishing. The network provides a mechanism for fisheries law enforcement professionals to share experiences as they monitor increasingly complex global fisheries.

Another important development that will improve NOAA's ability to detect IUU fish imports is the International Trade Data System currently under development by the Department of Homeland Security. This system is a Government-wide platform for the electronic collection, use, and dissemination of trade data. NOAA has taken steps to become a participating agency, and I believe our participation will significantly improve our ability to enforce RFMO trade measures and documentation requirements.

In closing, we have a lot to be proud of in the international fisheries management realm, but much work remains. With the tools that this Committee has supplied, NOAA is well positioned to improve our fisheries management efforts to benefit the world's marine ecosystems.

Senator Stevens, please give my thanks again to Chairman Inouye for the invitation, to the Members of the Committee. I look forward to working with you, with the public, with the fishing industry, and our international counterparts on this important issue. I would be happy to answer questions when the time is right.

[The prepared statement of Dr. Balsiger follows:]

PREPARED STATEMENT OF JAMES W. BALSIGER, PH.D., ACTING ASSISTANT ADMINISTRATOR, NATIONAL MARINE FISHERIES SERVICE, NOAA, U.S. DEPARTMENT OF COMMERCE

**Introduction**

Good morning, I am Jim Balsiger, the Acting Assistant Administrator for Fisheries within the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce. Thank you, Chairman Inouye, and Members of the Senate Commerce Committee for the opportunity to discuss the many challenges of international fisheries management. In my years working on fisheries issues in the Alaska region, I have been directly engaged in addressing our international goals for fishery management and the conservation of protected species. As the U.S. Federal Commissioner for the North Pacific Anadromous Fish Commission and other international management bodies, I am pleased to see the increased attention focused on this critical aspect of NOAA's National Marine Fisheries Service's (NMFS) mission.

Thanks to the efforts of this Committee, Congress adopted and the President signed the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Magnuson-Stevens Act) into law in January 2007. This Act contains several new provisions that will significantly shape the focus of fisheries management including reinforcing NOAA's mandate for international activities. Congress has tasked the Department of Commerce, working with our partners at the State Department, Coast Guard, and other agencies, to work multilaterally to address multiple aspects in international stewardship of living marine resources. Fulfilling this mandate has been a high priority for the agency.

My testimony will cover a number of topics, with a particular focus on illegal, unreported and unregulated (IUU) fishing. IUU fishing is estimated to generate some $4–$9 billion in landings gross revenues each year. This illegal fishing can undermine our domestic fishery management practices and has implications for sustainable international fisheries management which benefit the world's marine ecosystems, the U.S. fishing industry, and the American seafood consumer. As a major consumer of seafood, the United States has an obligation to avoid the importation of illegal seafood product. With a multi-agency approach and with new technologies, the United States continues to work with our country partners bilaterally and multilaterally to address the challenges of IUU fishing.

**Global IUU-related Activities**

In the global context, the United Nations General Assembly has drawn attention to the negative impacts of IUU fishing and called for its elimination in every annual resolution on fisheries since 1998. This created the impetus for the Food and Agriculture Organization of the United Nations (FAO) to begin its program on IUU fishing, starting in 2001 with the development of its International Plan of Action to Prevent, Deter, and Eliminate IUU Fishing. This Plan called on FAO members to develop corresponding national plans of action in the following 2 years, a task completed by the United States in 2004. FAO is the premiere international organization addressing global fishing issues. While the State Department typically has the lead in these issues, NOAA provides technical expertise for issues addressed by FAO.

The FAO has continued its work on IUU fishing by developing tools to eliminate this destructive fishing practice. Beginning in 2002, the FAO began to develop a voluntary model scheme on Port State measures to combat IUU fishing. This project was completed and adopted in 2004. At the 2007 meeting of the FAO Committee on Fisheries (COFI), there was agreement to organize and negotiate a binding agreement which would set minimum standards for the in-port inspection of fishing

vessels, and the denial of certain port services to vessels suspected or confirmed to have engaged in IUU fishing. This is an exciting new development. Up to now, the focus has been on developing rules and applying pressure to flag states to eliminate IUU fishing. This initiative strikes directly at IUU fishing vessels by making it more difficult and costly for them to land their illicit catches. Also launched by COFI in 2007 was the development of a global record of all fishing vessels which includes information on the vessels' past activities and beneficial owners. The development of this database is essential because currently there is no comprehensive fishing vessel data base.

The FAO is working with the International Maritime Organization to promote the entry into force of the Torremolinos Protocol of 1993, an instrument that would set international safety standards for fishing vessels. This protocol would address some of the crew safety concerns associated with IUU fishing. NMFS will continue to work to combat IUU fishing in the global forums.

**Regional Fishery Management Organization (RFMO) Actions**

Many of our target fish stocks and protected species also occupy waters under the jurisdiction of other countries and on the high seas. By their very nature, these resources require an international approach to science and management in order to be effective. In most cases, it is necessary to collaboratively manage these species. This collaboration ranges from a simple bilateral agreement (such as the International Pacific Halibut Commission) to the most complex, multinational Regional Fishery Management Organization (RFMO), such as the 3 tuna RFMOs of which the United States is a member. NMFS is taking a leadership role in a number of RFMOs, which are key to combating IUU fishing in the multilateral context. Next I will highlight the type of measures taken by RFMOs.

*Catch/Trade Documentation Schemes*

Catch and trade documentation schemes in the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR) and the International Convention for the Conservation of Atlantic Tunas (ICCAT) illustrate multilateral efforts to combat IUU fishing. CCAMLR adopted a Catch Documentation Scheme in 1999 designed to prevent illegal harvests of Patagonian and Antarctic toothfish from entering markets in CCAMLR member countries. The Scheme monitors international trade, identifies the origin of imports, determines if imports caught in the Convention Area are consistent with CCAMLR conservation measures, and provides catch data for stock assessments. NMFS has fully implemented the Catch Documentation Scheme in the United States and recently went a step further by implementing an electronic reporting system that will greatly enhance the integrity of the Scheme. This electronic reporting system serves as a model for other RFMO catch and trade tracking programs.

In the early 1990s, ICCAT adopted a trade tracking program for both fresh and frozen bluefin tuna in response to concerns about the status of the resource and suspected high levels of IUU fishing. Subsequently, statistical document programs were adopted for swordfish (fresh and frozen) and bigeye tuna (frozen). The programs track the trade of product and provide information on the flag state and name of the harvesting vessel, the location of harvest, the point of export, a description of the fish in the shipment and a variety of other identification information. Information from these programs assists with catch data verification for both ICCAT members and non-members and is used as important input into ICCAT's process for evaluating fishery activities under its Trade Measures Recommendation, which can lead to the adoption of restrictive trade measures against countries.

ICCAT also overhauled its bluefin tuna statistical document program in 2007 to create a Bluefin Tuna Catch Documentation Scheme. Like the CCAMLR Catch Documentation Scheme, this program tracks product from the point of capture through its final market. This Scheme, which requires documentation when harvest occurs rather than only at export, will capture the large portion of bluefin tuna product that stays within a country and never enters international trade. The program was specifically developed to provide more direct control of the eastern Atlantic and Mediterranean bluefin tuna fishery given pervasive quota compliance and data reporting problems. A United States proposal to implement ICCAT's catch and trade documentation programs electronically was adopted by ICCAT in 2006, and the United States is working toward electronic implementation with a view to improving the efficiency and effectiveness of these programs.

*Compliance Committees/Sanctions*

ICCAT was the first RFMO to adopt a trade-related instrument to promote compliance with conservation measures. The organization's Bluefin Tuna Action Plan, agreed upon in 1994, established a multilateral process for evaluating fishing activi-

ties and recommending restrictions on trade against countries that diminished the effectiveness of ICCAT's bluefin tuna measures. The approach taken to help reduce IUU fishing and protect overfished bluefin tuna was expanded to address the swordfish fishery and, more generally, all unregulated and unreported catches in the mid- and late 1990s.

By 2003, ICCAT had identified and adopted a comprehensive trade measure instrument which applied equally to all ICCAT fisheries and all parties (both member and non-member). This made the process for the application of trade restrictive measures more transparent, employed comparable standards for evaluating fishery related activities, and allowed for swift re-imposition of trade sanctions. This comprehensive approach has bolstered ICCAT's already significant efforts to eliminate IUU fishing in the Atlantic Ocean. This has led to a number of countries to take action to rectify non-compliant activity. Additionally, this has provided the incentive for countries to join the Commission in order to directly assist in conservation programs.

In addition to trade related approaches, ICCAT has adopted a suite of monitoring, control, surveillance and quota compliance measures. The latter approach requires parties to repay quota overharvests, including a penalty for repeated incidences. With respect to the swordfish and bluefin tuna fisheries, extreme cases of quota non-compliance can lead to trade penalties. Full implementation of ICCAT's quota compliance regime by the organization has been slow and the United States continues to work toward improving this situation.

Another notable example of improved compliance is the Northwest Atlantic Fisheries Organization's (NAFO) adoption in 1997 of its "Scheme to Promote Compliance by Non Contracting Party Vessels with the Conservation and Enforcement Measures Established by NAFO." The development of this Scheme was led by the United States. In brief, the Scheme presumes that any non-Contracting Party vessel sighted engaging in fishing activities in the NAFO Regulatory Area is undermining NAFO conservation and enforcement measures and, unless this presumption is rebutted, the vessel may not land its catch in the port of any NAFO member. The NAFO Scheme marked a significant achievement in RFMO efforts to deal with non-Contracting party fishing activities and facilitated the adoption of similar programs by other regional fishery conservation and management organizations throughout the world.

*IUU Vessel Lists*

As a tool to combat IUU fishing activities, an increasing number of RFMOs have adopted procedures for listing vessels that have engaged in IUU fishing. These lists have been created to attach certain penalties to vessels, including restriction on port access, unloading prohibitions, and product marketing. The United States has played a leading role in ensuring that such lists are compiled in a transparent manner and provide due process to listed vessels. NMFS is designing a system that will implement U.S. obligations to apply these RFMO decisions in our ports to vessels that have been included on IUU vessel lists. The United States is also developing a robust outreach program to enhance IUU awareness among the public and private sectors. NMFS has posted links on its webpage to RFMO IUU vessel lists in order to provide the public with a single source where IUU lists can be found. NMFS intends to further enhance our IUU outreach activities to create further economic disincentives for IUU fishing, including limits on access of IUU product into the significant United States market.

*Bycatch Reduction*

The United States plays a leadership role in the adoption of RFMO measures designed to reduce bycatch of seabirds, sea turtles, and sharks.

*Seabirds:* The United States has taken a leadership role in addressing seabird bycatch in a number of RFMOs by promoting the development of individual National Plans of Action by RFMO members and by stressing the need for RFMOs to scientifically assess seabird/fisheries interactions and take appropriate steps to mitigate them. Due in part to United States leadership, seabird bycatch mitigation measures have been adopted in ICCAT, CCAMLR and the Western and Central Pacific Fisheries Commission (WCPFC). Additional efforts are currently underway to address seabird bycatch in the Inter-American Tropical Tuna Commission (IATTC). Many of the measures adopted by these RFMOs are comparable to those already required in U.S. fisheries. Additionally, the United States is promoting international seabird conservation by participating in the activities of the Agreement on the Conservation of Albatrosses and Petrels (ACAP). ACAP entered into force in 2004, and its objective is to achieve and maintain a favorable conservation status for albatrosses and

petrels. The Administration is currently reviewing ACAP for possible submission to the Senate.

*Sea turtles:* The United States led negotiations resulting in the FAO Guidelines to Reduce Sea Turtle Mortality in Fishing Operations in 2005. The United States has subsequently led successful efforts to adopt the FAO Guidelines in the IATTC, WCPFC, and NAFO. Additionally, the United States took a leadership role in negotiating the Inter-American Convention for the Protection and Conservation of Sea Turtles (the only binding international sea turtle treaty) and participates in Indian Ocean-Southeast Asia Marine Turtle Memorandum of Understanding, and the Memorandum of Understanding Concerning Conservation Measures for Marine Turtles of the Atlantic Coast of Africa. All three measures have provisions requiring or urging participant countries to use bycatch reduction devices such as Turtle Excluder Devices and circle hooks. The United States continues to work bilaterally and multilaterally to urge countries to implement measures comparable to the United States to reduce sea turtle bycatch and injury. The United States has also worked successfully with nations that export shrimp to the United States to help them develop Turtle Excluder Device programs comparable to the United States program. Finally, the United States has hosted one international workshop on circle hooks for the longline fisheries, and will host another in 2008. The workshops, when coupled with a coordinated strategy among the U.S. delegations to RFMOs, have increased U.S. effectiveness in pushing for binding RFMO measures to reduce sea turtle bycatch and mortality.

*Sharks:* The United States has been a leader in calling on the international community to improve the conservation and management and reduce bycatch of shark populations. The Shark Finning Prohibition Act was enacted in 2000 with the intent of drastically reducing the number of sharks finned and carcasses discarded at sea. The Shark Finning Prohibition Act directed the United States to seek agreement on international bans on shark finning and other fishing practices adversely affecting these species through the United Nations, FAO and RFMOs. The adoption of shark finning bans and 5 percent fin to carcass ratio requirements by many of the world's RFMOs is due in part to U.S. leadership internationally, pursuant to Congressional direction in the Shark Finning Prohibition Act. The Shark Finning Prohibition Act also directs the United States to urge other governments to prepare and submit National Plan of Actions for sharks under the FAO's International Plan of Action for the Conservation and Management of Sharks. The United States worked to ensure that the December 2007 United Nations General Assembly Fisheries Resolution contains a strong mandate for improved global efforts relating to shark conservation and management.

**NOAA Activities and Initiatives**

*Fisheries Enforcement Activities*

NOAA's Office of Law Enforcement includes 148 sworn Federal agents. The officers work closely with international, Federal and state law enforcement partners in an effort to detect, apprehend and prosecute those involved in the illegal importation of IUU products into the United States and its territories and to stop the global trade of IUU fisheries products. These efforts include NOAA's coordination with the U.S. Coast Guard sea and air patrols in the North Pacific Ocean to detect illegal large-scale high seas driftnet fishing. The Office of Law Enforcement also works closely with Customs and Border Protection to detect illegal fisheries products being imported into the United States.

NOAA's Office of Law Enforcement is routinely engaged in international investigations that involve efforts to terminate unscrupulous business operations that are multi-national in scope. Such efforts typically involve the application of the Lacey Act and have resulted in blocking importation of illegally harvested and processed marine products trafficked on a worldwide scale. In recent years the Office of Law Enforcement has been able to identify a number of multi-million dollar IUU operations engaged in the trafficking of IUU fish and fish products through investigative operations that have resulted in successful prosecution and ultimately the termination of these operations. Such cases have resulted in the elimination of activities that have caused or that are causing harm to marine resources throughout the world.

The Office of Law Enforcement has also initiated an effort to enhance our ability to investigate and respond to IUU fishing activity as well as other growing international responsibilities. Creation of an intelligence analysis capability within the Office of Law Enforcement is one critical need being addressed which will require further expansion in the future. Developing a capability to access, evaluate, and analyze fisheries-related intelligence and then to create intelligence-driven products to assist in focusing limited enforcement resources is critical to meet our obligations

to respond to IUU fishing issues and to the flow of IUU product around the globe and into the United States.

*Leadership of the International Monitoring, Control and Surveillance Network*

In 2001, the United States joined other countries to establish the International Monitoring, Control and Surveillance Network (Network), which works multilaterally to exchange fisheries and enforcement information, including information related to IUU fishing. The Network was established to provide a mechanism for fisheries law enforcement professionals to share information and experiences as they monitor the increasingly complex harvesting and marketing of fish around the world. The rise in illegal activities that has accompanied globalization underscores the need for cooperative law enforcement across national borders.

In 2006, the High Seas Task Force project on global IUU fishing recommended enhancement of the Network as a key initiative to combat IUU fishing. NOAA has taken the lead to improve the Network through implementation of an enhancement project and by serving as Chair of the Network. Funding for the enhancement has been provided by several partners, including Australia, Canada, New Zealand, and the United Kingdom.

*International Trade Data System Project*

One important development that will improve NOAA's ability to detect IUU fish being imported into the United States is the International Trade Data System currently under development by the Department of Homeland Security. International Trade Data System is an integrated, government-wide system for the electronic collection, use, and dissemination of trade data. The Safe Ports Act of 2006 made International Trade Data System mandatory for all Federal agencies that have a role in determining the admissibility of imports to the United States market and NMFS has taken steps to become a participating government agency in this system. International Trade Data System will significantly improve the capability of NMFS to enforce trade measures and documentation requirements of these programs. Currently, the Office of Law Enforcement is informed of permitting, documentation and reporting violations long after they occur, which makes investigation and forfeiture of product difficult or impossible. This system will allow screening and targeting of inbound shipments, potentially on a pre-arrival basis. Such capability will place NOAA staff in a position to approve entries or to place holds on shipments when permits/documentation are missing. Close interagency coordination will ensure effective and consistent application of import regulations as well as detection of potential IUU shipments of fish and fish products.

**Newly Reauthorized Magnuson-Stevens Act**

The newly reauthorized Magnuson-Stevens Act contains several new provisions that will significantly shape the focus of fisheries management in the coming years. Importantly, the Magnuson-Stevens Act pays an unprecedented level of attention to international fisheries, and the overarching approach of this legislation is a call for the Secretary of Commerce to work multilaterally, through RFMOs and other forums, to combat IUU fishing.

The Magnuson-Stevens Act amends the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act) to require the Secretary of Commerce to produce a biennial report to Congress that lists countries which the United States has identified as having vessels engaged in IUU fishing or bycatch of protected living marine resources. Under the Act, the United States is directed to consult with and encourage identified nations to take appropriate corrective action to address the IUU fishing and bycatch activity outlined in the biennial report.

The Magnuson-Stevens Act also requires the Secretary of Commerce to develop rulemaking to implement certification procedures for nations that have been identified in the biennial report. If these nations do not take steps to address the problems of IUU fishing or bycatch, the United States is authorized to prohibit the importation of certain fish and fish products from such nations into the United States and take other measures.

NMFS has been actively working to implement the international provisions of the Magnuson-Stevens Act to help combat IUU fishing. In January of this year, NMFS produced a report on the status of progress toward implementation of the international provisions of the Magnuson-Stevens Act, which highlights the work that has been undertaken to date. I will briefly describe for the Committee where we are with respect to implementation and outreach on the international provisions of the Magnuson-Stevens Act.

*Magnuson-Stevens Act Implementation and Outreach*

The first step that NMFS took to implement the international requirements in the newly reauthorized Magnuson-Stevens Act was to promulgate a final rule to define IUU fishing. This definition mirrors the definition of IUU fishing that was included in the reauthorized Magnuson-Stevens Act.

In fulfillment of its obligations under Magnuson-Stevens Act, the United States is seeking to strengthen international fishery management agreements to address IUU fishing through negotiation of their underlying agreements or negotiation of new protocols. With substantial United States involvement, international fishery management organizations have taken action toward the adoption and sharing of IUU vessel lists, use of observers and technologies to monitor compliance, and promotion and use of centralized vessel monitoring systems. As previously noted, the United States has also worked with these organizations to adopt trade tracking and documentation schemes, prevent trade or import of IUU-caught fish, and protect vulnerable marine ecosystems.

Most RFMOs operate on the basis of catch data that are far less complete than necessary. Systems that would improve data shortcomings and serve as a basis for improved management, such as observer programs and vessel monitoring systems, are not universal. There are clear cases of RFMO members who are capable of providing complete data but fail to do so. Some developing country RFMO members lack the capability and resources to collect and share this information, and the world has been slow to realize that assistance to these countries for the purpose of improving international fisheries management is in everyone's interest.

This Committee and the Congress as a whole have recognized this gap and provided authorization through the Magnuson-Stevens Act and initial funding to allow us to reach out and assist other countries to improve their contributions to international fisheries management. We are enthusiastic about this new authority and the prospects that, with it, we can help improve the situation in ways that were not available to us previously. In cooperation with its Federal partners, NMFS has assisted other nations in addressing IUU fishing and bycatch of protected resources. We have hosted and supported workshops on techniques and tools to strengthen enforcement; methods to prevent and mitigate the incidental take of marine turtles, mammals, seabirds, and other resources; and response to marine mammal strandings. NMFS has also provided technical and other assistance to developing countries to improve their monitoring, control, and surveillance capabilities and has sought to promote the development of effective fisheries observer programs in other countries.

Although not funded with Magnuson-Stevens Act funding, a similar initiative called the Coral Triangle Initiative is going forward with support from NOAA and the Department of State. The Initiative is bringing together Indonesia, Malaysia, Philippines, Papua New Guinea, Solomon Islands, and Timor-Leste, who are cooperating in a wide range of marine projects, including sustainable fisheries, IUU fishing, fishing overcapacity, and destructive fishing practices.

In addition, NMFS is developing a proposed rule to establish procedures for the identification and certification of nations whose vessels are engaged in IUU fishing or bycatch of protected living marine resources. In preparation for development of these procedures, NMFS held three public meetings to solicit comments from the public on an advance notice of proposed rulemaking.

Finally, in preparation for the first biennial report, which is due to Congress in January 2009, NMFS is soliciting information from the public, including other nations, as well as from appropriate Federal agencies that can be used in the identification of nations whose vessels are engaged in IUU fishing or bycatch of protected living marine resources. NMFS has also developed an internal process for the compilation, review, and analysis of all appropriate information and NMFS will be collaborating with our Federal partners, such as the Coast Guard and the State Department, in the verification of such information. The United States plans to conduct consultations with nations that have been identified as having vessels engaged in IUU fishing activity to promote corrective action. NMFS will keep the Committee apprised of progress implementing the international portions of the Magnuson-Stevens Act.

**Conclusion**

While the United States takes pride in what has been accomplished through RFMOs and other fora, much work remains to be done. NMFS is actively working to implement the international provisions of the Magnuson-Stevens Act and is vigorously engaged through various RFMOs to combat IUU Fishing. We strive to work in a cooperative and transparent manner toward achieving these goals. With the tools and support this Committee has supplied to this complex endeavor, NOAA will

create the incentives for sustainable international fisheries management to benefit the world's marine ecosystems, the U.S. fishing industry, and the American seafood consumer.

As a matter of outstanding business, the Inter-American Tropical Tuna Commission adopted a new treaty, known as the Antigua Convention, to provide it with a comprehensive mandate that incorporates modern standards for international fisheries management. Let me state our agreement with Ambassador Balton's urging quick Congressional action on implementing legislation for the Antigua Convention.

Chairman Inouye and Members of the Committee, that concludes my statement. The Department of Commerce and NOAA look forward to working with you, the public, the fishing industry, and our international counterparts on these important fisheries issues. I will be happy to answer any questions.

Senator STEVENS. Thank you. Thank you, Mr. Secretary, and we will proceed with all of the statements. Then I will have some questions.

Mr. Balton, Deputy Assistant Secretary of Oceans and Fisheries, I would be happy to have your statement.

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

Mr. BALTON. Thank you, Senator Stevens. It is a pleasure to appear before you again this morning.

We seek sustainable fisheries, but three daunting challenges stand in the way—first, overcapacity of fishing fleets, which leads to overfishing; second, illegal, unreported, and unregulated fishing; and third, adverse environmental effects of certain fishing practices.

We cannot successfully address these challenges separately, nor can we succeed without the cooperation of other nations and stakeholders. Congress and the Administration also need to continue to work together. The overall picture is worrisome. FAO estimates that almost three quarters of commercially exploited fish stocks for which good data exist are either overexploited, fully exploited, or recovering from a depleted state. Problems of overfishing, IUU fishing, and other environmental factors have certainly contributed.

We have two reasons for hope, however. First, international fisheries issues now occupy a much more prominent position on the policy agenda. And second, as we have already heard, we have a robust framework for international fisheries governance that rests on the 1982 Convention on the Law of the Sea. For the United States to maximize its influence over international fisheries, however, we must join all other major fishing nations as a party to this Convention.

Of the three challenges, overcapacity and overfishing are the hardest to address. We have achieved only limited success in establishing capacity caps for some fisheries. To be sustainable, many fisheries need actual reductions in fishing capacity and effort. We also need stronger disciplines on subsidies to the fisheries sector. At the WTO, the United States has proposed new subsidies rules, but negotiations continue.

The second challenge, IUU fishing, continues to plague virtually all fisheries, but we are making progress here. Through the FAO, we have created a toolbox for this—flag State measures, coastal State measures, port State measures, market-related measures. Governments have been using these tools, individually and through

the RFMOs. We have seen improvements in the monitoring, control, and surveillance of fishing vessels, restrictions on transshipment at sea, catch and trade documentation schemes, lists of authorized vessels and of IUU vessels, import restrictions, and port State controls.

We have seen an increase in cooperation among the RFMOs. We are supporting the creation of a global record on fishing vessels to include unique vessel identifiers and comprehensive ownership information. We are leading efforts to negotiate a new agreement on port State measures for IUU fishing. I was pleased to chair an initial meeting to develop a first draft of this treaty. Negotiations will begin in earnest in June, with the goal of producing a final treaty next year.

We understand that Congress shares our desire to crack down on IUU fishing, and we look forward to further collaboration. We know that Congress also shares our concern over the third challenge, the impact of certain fishing practices on the marine environment. I can report reasonable progress here as well, but again, more needs to be done.

We brokered a U.N. resolution that calls for identification of vulnerable marine ecosystems, for assessment of whether specific fishing practices significantly harm them, and for the development of measures to prevent such harm. In the absence of such measures, governments have agreed to stop destructive fishing in the high seas areas in question by the end of this year.

We have secured interim rules for the South Pacific and for the Northwest Pacific to give effect to the U.N. mandate as negotiations on longer-term arrangements proceed. Worldwide, as we have heard, we are pressing to reduce bycatch of species of concern, including sea turtles, seabirds, and sharks. With respect to sharks, many RFMOs have followed the lead in banning shark finning, but they have done little else for these species. And this has led other international bodies to act, including the U.N. and the Convention on Migratory Species.

Despite their shortcomings, the RFMOs remain the only feasible means for managing international fisheries. But they are only as effective as their member governments allow them to be. One way to make RFMOs more effective is to review their performance using common criteria, a process that is now underway. And one RFMO, the Inter-American Tropical Tuna Commission, has adopted a new treaty, the Antigua Convention, to strengthen its role. The Senate provided advice and consent to this treaty, and we now urge Congress to pass the necessary implementing legislation.

Let me conclude with a call for greater assistance to developing countries to help them with fisheries management. To achieve sustainability in international fisheries, all nations must have the capacity to implement agreed rules. Such assistance, therefore, will ultimately benefit the United States as well.

Thank you very much, Senator Stevens. I would be happy to take any questions when the time is right.

[The prepared statement of Mr. Balton follows:]

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

Mr. Chairman and Members of the Committee:

I am pleased to have the opportunity to appear before you to outline both the challenges we face in working toward sustainable international fisheries, as well as the recent progress we have made.

**Introduction and Overview**

Managing the world's fisheries on a sustainable basis is a goal we all share, but it is also one that still proves elusive. Three challenges in particular stand in the way of achieving this goal:

1. Overcapacity of fishing fleets, which leads to overfishing;
2. Illegal, unreported and unregulated (IUU) fishing; and
3. Adverse environmental effects of certain fishing practices.

We cannot successfully address these challenges by dealing with them in isolation from each other. Nor can we successfully address them without the cooperation of other nations, international organizations and key stakeholders. Flag States, coastal States, market States and port States each play a vital role in managing the conduct of fisheries and the progress of fisheries products through the marketplace. To achieve sustainable fisheries, we need to work with the governments of these States bilaterally and through Regional Fisheries Management Organizations (RFMOs) and other international organizations such as the United Nations and the U.N. Food and Agriculture Organization (FAO). At the international level and here at home, we also need to continue to engage industry groups, conservation organizations, scientists, consumers and the media on these issues. Last, but certainly not least, Congress and the Administration also need to continue to work together.

The overall picture is worrisome. The FAO, in its most recent survey of the state of the world's fisheries, estimates that almost three quarters of commercially exploited fish stocks for which adequate data exist are either fully exploited, overexploited, or rebuilding from a depleted state. This situation has not changed appreciably over the past two decades. But even as global capture fisheries production has leveled off, the demand for seafood has continued to increase. Much of this increased demand is driven by developing countries whose citizens depend on fish and seafood as a critical source of low-cost protein.

Two things have changed over the past two decades or so, however, which give us a basis for hope. First, international fisheries issues, and the challenges noted above, have taken a much more prominent position on the policy agenda. Thanks in part to more extensive media coverage of these issues, we see much greater awareness of the problems at hand and more insistent calls for solutions to those problems. At both the international and domestic levels, we also see fisheries issues merging more and more with broader environmental issues.

Second, we have created an international governance structure for fisheries that is strong and growing stronger. The international community has forged a robust international law framework at both the global and regional levels and has developed a broad range of new tools for managing shared fisheries. The entirety of this framework rests on the 1982 Convention on the Law of the Sea, which established the overall structure for international fisheries management. I must note, however, that the status of the United States as a non-party to this vital treaty undermines our credibility with other major fishing nations, virtually all of which are parties to the Convention. As discussed by Deputy Secretary Negroponte's testimony, the Administration once again urges the Senate to provide its advice and consent to U.S. accession to this treaty.

Building on the Law of the Sea framework, we have a series of other treaties for the management of international fisheries to which the United States is party, including the 1993 FAO Compliance Agreement and the 1995 U.N. Fish Stocks Agreement. The United States is also a key member of more than 10 RFMOs and is leading international efforts to strengthen these organizations and to create new ones. Complementing these binding mechanisms are a number of voluntary instruments, including a the FAO Code of Conduct for Responsible Fisheries, international plans of action that address bycatch of sharks and seabirds, capacity management, and IUU fishing, and a number of other technical guidelines and model instruments to guide further cooperation, including one for improved data collection and sharing.

**Overcapacity and Overfishing**

Overcapacity and overfishing are proving the hardest problems to solve. Overcapacity in particular contributes to poor stock productivity, unsatisfactory economic

performance, increased impacts on bycatch species and excessively contentious management debates. We are working with some success to establish capacity caps for some key fisheries. But it is clear that sustainable fisheries require in many instances a reduction in capacity and effort. There are simply too many fishing vessels operating with too much ability to catch fish. Through the RFMOs, we must keep pressing for effective capacity management—including monitoring and controlling both the level and use of fishing capacity—as part of their overall conservation and management regimes.

A key challenge is that many developing States are looking to *increase* their capacity to harvest fish within areas under their jurisdiction, as well as on the high seas. They argue, with some merit, that the developed States bear the lion's share of responsibility for the overcapacity problem. But we cannot accommodate the desires of developing States to increase their capacity to participate in fisheries that are already fully subscribed (or oversubscribed) unless the developed States with large fleets are willing to reduce their capacity concomitantly.

Reforms to World Trade Organization (WTO) disciplines on fisheries subsidies currently under negotiation as part of the Doha Round are a vital component of rationalizing fishing capacity. The goal is to eliminate subsidies that lead to overfishing and overcapacity, but allow the continuation of some subsidies that support sustainable fisheries management (such as properly designed buy-out programs). The United States presented a proposal for new subsidies rules in March 2007 that was very well-received. While the negotiations are far from complete, we are making substantial process. The United States is also working through other organizations, such as Organization for Economic Cooperation and Development, to find new ways to tackle these problems, particularly by identifying the economic drivers that lead to overfishing and IUU fishing.

**IUU Fishing**

IUU fishing continues to plague virtually all fisheries, in areas under national jurisdiction and on the high seas. The international community has recognized this, and has created a set of new tools to deal with this phenomenon, some of which seem to be helping. But more needs to be done.

The 2001 FAO International Plan of Action (IPOA) to Prevent, Deter, and Eliminate IUU Fishing lays out a suite of measures that individual States—whether acting as flag States, coastal States, port States or market States—and RFMOs can implement to reduce the incidence of IUU fishing.

In 2004, the United States became one of the first States to adopt a national plan of action to give operational effect to this IPOA. An increasing number of States have by now adopted their own National Plans of Action on IUU fishing. RFMOs have also adopted measures to address IUU fishing, including requirements to improve monitoring, control and surveillance (MCS) of vessels, restrictions on transshipment of fish at sea, catch and trade documentation schemes, lists of both authorized vessels and vessels identified as having engaged in IUU fishing, market-related measures and port State controls, to name some. We have also seen increasing cooperation between and among RFMOs, particularly those in adjacent areas (such as the Northwest Atlantic Fisheries Organization and the Northeast Atlantic Fisheries Commission) and those that deal with fisheries for similar species (such as the five RFMOs that manage tuna fisheries around the world).

For example, the five tuna RFMOs met jointly for the first time in Kobe, Japan in January 2007. The meeting agreed to four immediate areas of coordinated work: harmonizing and improving trade tracking programs, creating a global IUU vessel list, harmonizing transshipment control measures, and standardizing the presentation of stock assessment results. Work on the first is well underway, the United States has also supported efforts among RFMOs to work toward a global IUU vessel list by contributing to a process that provides for inclusion of vessels identified by one RFMO on the lists of others, while taking into account any due process concerns that may arise.

We are also pursuing stronger port controls. Because fish must be landed before they can get to the market, controlling the landing point often presents the best and most effective chance to combat IUU fishing. Stronger agreed standards for port States to regulate the landing and transshipment of fish in port can complement the market-related measures already in place through several RFMOs. The United States strongly supported the development through the FAO of a voluntary model scheme to facilitate coordination and cooperation among port States to address IUU fishing. Last year, the FAO Committee on Fisheries agreed to create a new, binding agreement based on the Model Scheme. I was pleased to chair the initial expert consultation that developed a first draft of this agreement. This draft will form the basis of negotiations that will begin in earnest this coming June. Our goal is to com-

plete the negotiations in time for the next meeting of the Committee on Fisheries to adopt an agreement in March 2009.

The United States continues to advocate for other measures to combat IUU fishing. Through FAO, we are pressing for the development of a global record of fishing vessels—including transport and support vessels—that would include unique vessel identifiers and comprehensive ownership information. At the RFMO level, we are seeking stronger MCS measures, including broader access to data from vessel monitoring systems, increased vessel observer programs, stronger documentation schemes, etc.

Cooperative mechanisms such as the International MCS Network, which facilitates cooperation and information-sharing between monitoring, control, and surveillance officials in different countries, are increasingly important. Recognizing the connections among vessels involved in or supporting IUU fishing, we have also strongly supported the FAO and the International Maritime Organization's joint working group on IUU fishing, and in particular efforts to create a global record of all fishing vessels.

The Administration understands very well that Congress shares our desire to crack down on IUU fishing. The 2006 Magnuson-Stevens Reauthorization Act has provided new tools in this regard. We also see other major markets moving toward stricter controls. The European Union, for example, is considering a sweeping set of new policies intended to prevent access of IUU-caught fish to its market and to strengthen internal information collection and enforcement within its member States.

**Environmental Impacts**

The United States and our international partners have become increasingly concerned by the impacts of certain fishing activities on the marine environment, including excessive bycatch and harm to vulnerable marine ecosystems. In 2006, the President charged the Secretaries of State and Commerce to work multilaterally to end unregulated destructive fishing practices on the high seas and to work to create effective, science-based conservation and management regimes for high seas fisheries more generally. The United States subsequently chaired negotiations on the 2006 U.N. General Assembly fisheries resolution (UNGA Resolution 61/105) that calls for specific actions by States, RFMOs, and the FAO to identify vulnerable marine ecosystems, assess whether certain fishing practices may significantly harm them, and to develop effective conservation and management measures for these fisheries to prevent such harm, or halt fishing in these areas.

The United States has been in the forefront of efforts to apply the provisions of UNGA Resolution 61/105 within existing RFMOs, and to develop interim management regimes for the Northwest Pacific and the South Pacific, where longer-term arrangements are still under negotiation. In addition, the United States is taking a leadership role at the FAO in the negotiations on technical guidelines for the management of deep sea fisheries. In these negotiations, the United States recently secured clear criteria and standards for identifying vulnerable marine ecosystems and assessing and determining significant adverse impacts to such ecosystems. We are now working within those RFMOs that have not yet adopted measures to implement Resolution 61/105 to ensure these criteria and standards are put into operation.

In addition, ensuring effective conservation and management of sharks is a high priority for the United States. Sharks are particularly susceptible to overexploitation because they are typically long-lived, slow-growing, and produce few young. Many shark species are apex predators and are vital to the health of the ecosystems they inhabit, so their conservation is an integral part of ecosystem-based fisheries management. Sharks are currently taken in fisheries directed for sharks, and are also caught incidentally in fisheries targeting other species. Sharks are also subject to the practice of "finning," which is the removal and retention of shark fins and the discard of shark carcasses at sea. The United States has led efforts within RFMOs to adopt consistent shark finning bans and to reduce shark bycatch, but States and RFMOs now need to take stronger action to manage directed shark fisheries.

Once again, the United States led efforts at the U.N. General Assembly to adopt language in the 2007 fisheries Resolution that calls on States and RFMOs to take immediate and concerted actions to improve shark conservation and management and to better enforce existing rules on shark fishing. The Resolution calls for improved compliance with current bans on shark finning, which could include requirements that sharks be landed with fins attached. Perhaps more importantly, the Resolution calls for improved management of directed fisheries through establishing limits on shark catches, improving assessment of the health of shark stocks, and limiting shark fisheries until management measures are adopted. We are now work-

ing within RFMOs to implement these provisions. The United States also participated in a first-ever meeting under the auspices of the Convention on Migratory Species (CMS) in December 2007 to identify and elaborate an option for international cooperation on migratory sharks under CMS.

The United States is continuing to press for stronger actions to mitigate the bycatch of other vulnerable marine species as well. We continue to enforce the prohibition on the importation of shrimp harvested in ways that harm endangered sea turtles and the importation of certain tuna that is caught in a manner that is inconsistent with agreed standards relating to dolphin safety. Through NOAA, we are working to reduce the bycatch of sea turtles in longline fisheries. We are also reviewing the Agreement on the Conservation of Albatrosses and Petrels for possible submission to the Senate.

**Strengthening RFMOs**

Though RFMOs are imperfect, they are currently the most practical way to manage shared international fisheries. As active participants in many RFMOs, we are committed to multilateral efforts to strengthen fisheries governance in order to ensure the sustainability of target stocks while also conserving associated and dependent species and the habitats on which they depend.

In many ways, we are at a crossroads. Many national and multilateral fora responsible for fishery management are under heavy criticism for failing to take decisions that the science tells us is necessary to ensure sustainability of fishery resources, or to take steps (many of which are widely acknowledged to be effective) to mitigate the impacts of fishing activities on non-target species and habitats. If RFMOs fail to fulfill their obligations, we can expect calls to continue for other organizations to step in and fill that void.

A key outcome of the joint tuna RFMO meeting in Kobe was a commitment among these organizations to undertake performance reviews to assess how each was meeting its mandate and to identify how each could strengthen its functioning. The first three of these reviews are under way, using a common approach and criteria developed through U.S. leadership. Other RFMOs have recently strengthened their mandates and charters to reflect the changes in international fisheries governance and better allow them to manage the full ecosystems under their purview. With new regimes coming on line to fill the gaps in international management, it is vital the United States gives these organizations its full support and participation.

In this regard, I should mention that the Inter-American Tropical Tuna Commission adopted a new treaty, known as the Antigua Convention, to provide it with a comprehensive mandate that incorporates modern standards for international fisheries management. In 2005, the Senate provided its advice and consent to U.S. ratification of the Antigua Convention. However, because Congress has yet to pass legislation to implement the Convention, we have not deposited our instrument of ratification. We therefore urge Congress, and this Committee in particular, to take up this legislation at the earliest opportunity.

**Capacity Building**

While the United States has been a leader in managing its own fisheries and in pressing for stronger international fisheries governance, success depends upon our building strong international partnerships. Effective international governance can only work if all parties have the will and the capacity to implement agreed rules. In some parts of the world, the problems facing fisheries—especially IUU fishing—are inextricably linked to other concerns such as transboundary crime, smuggling, human trafficking, human rights, and environmental degradation. Developing countries need help to build their capacities to effectively address these myriad and interlinked issues. The United States has strongly supported mechanisms like the U.N. Fish Stocks Agreement Part VII Fund, which provides assistance to developing States for implementing the Agreement, and other similar funds within RFMOs. Building capacity for sustainable fisheries management is important in the big picture, but it sometimes also has a very direct affect on U.S. fisheries. Small tunas born in the Gulf of Guinea, which are subject to tremendous fishing pressure there, form the backbone of U.S. fisheries for yellowfin and bigeye tuna off the East Coast and in the Gulf of Mexico.

Working with developing States to assist their efforts to build strong fisheries management and enforcement capabilities benefits all of us. Moreover, assistance to build capacity for ecosystem-based management in developing countries can also benefit valuable fish stocks and fisheries. The Coral Triangle region of the Indo-Pacific is another important tuna spawning and nursery ground that is under intense fishing pressure. Juvenile fish from this region eventually replenish adult yellowfin

and bigeye stocks of the Pacific that are fished by vessels from many countries, including the United States. Recently, the United States committed $4.35 million to the development of the Coral Triangle Initiative, a new cooperative framework to protect the world's richest area of marine biodiversity from overexploitation. By promoting regional cooperation (among the countries of Indonesia, Malaysia, Philippines, Papua New Guinea, Solomon Islands, and Timor Lest), the Initiative will develop mutual conservation and management solutions that ensure the sustainability of these commercially important tunas in their early life before they disperse across the Western Pacific, where they support large and important regional fisheries.

Thank you very much. I would be happy to take any questions.

Senator STEVENS. Thank you very much, Mr. Balton.

Rear Admiral Brooks, I would be happy to have your statement, sir.

**STATEMENT OF REAR ADMIRAL ARTHUR E. BROOKS, COMMANDER, COAST GUARD DISTRICT 17, U.S. COAST GUARD, DEPARTMENT OF HOMELAND SECURITY**

Admiral BROOKS. Good morning, Mr. Chairman. It is a pleasure to appear before you today to discuss the Coast Guard's role in international fisheries management and deterring illegal, unreported, and unregulated or IUU fishing. It is also a pleasure to represent the Alaskan law enforcement community today.

The Coast Guard has been the leading Federal law enforcement presence on the high seas since the days of the Revenue Cutter Service in the 18th century. Our role in defending living marine resources dates back to the great Alaskan fur seal and sea otter hunts of the 19th century. In the 21st century, Coast Guard law enforcement is primarily focused on protecting the 3.4 million square miles of the U.S. exclusive economic zone and key areas of the high seas.

The Coast Guard aims to provide effective and professional at-sea enforcement to advance national goals for living marine resource conservation and management. IUU fishing describes activities that are a direct affront to such conservation and management measures.

The U.S. Coast Guard strategy for maritime safety, security, and stewardship is driven by national policy, such as Presidential Decision Directive 36, Protecting the Ocean Environment, and legislation such as the Magnuson-Stevens Fisheries Conservation and Management Act. Coast Guard efforts to deter IUU fishing span across domestic and international fisheries, and they bridge our maritime security and maritime stewardship goals.

IUU activity is global. It is conducted by fishing vessels of all sizes and descriptions. As discussed, the U.N. Food and Agricultural Organization estimates that as much as 75 percent of the world's fish stocks are fully exploited, overexploited, or depleted. There are tremendous economic incentives at play in IUU fishing for both the coastal States and the IUU fishers.

The FAO estimates annual global revenues lost to IUU fishing to be as much as $9 billion per year. This activity damages marine ecosystems, distorts competition, and jeopardizes the economic survival of coastal communities that rely on fishing for their livelihoods. Many coastal States lack the enforcement capability to effectively manage and protect their living marine resources and are left exposed to poaching and overfishing. Recent press reports from

West Africa, for example, link depleted fish stocks to regional instabilities and dangerous illegal large-scale immigration from devastated fishing communities.

NOAA and the State Department are our key partners in implementing the U.S. national plan of action to combat IUU fishing. The Coast Guard applauds NOAA and the State Department's efforts to establish port State control measures, catch documentation schemes, and international trade data systems to deter IUU importation. These tools will help restrict market access for IUU products. Nevertheless, at-sea enforcement, which applies significant legal and economic consequences to those who engage in illegal fishing activity, remains a critical element in combating the IUU threat.

The Coast Guard is the only Federal agency with the capability and legal authority to project a law enforcement presence on the high seas and throughout the U.S. exclusive economic zone. The Coast Guard plan for fisheries law enforcement is known as Ocean Guardian and is based on principles of sound regulations, meaning enforceable legal regimes or systems of rules that define acceptable activities, productive partnerships, cooperative resource management law enforcement and case prosecution efforts, use of technology to enhance enforcement efforts through maritime domain awareness, and effective presence, meaning professional law enforcement personnel onboard, capable surface and air assets.

The concepts of sound regulations and productive partnerships are inextricably linked. The Coast Guard serves as an enforcement advisor to a number of U.S. delegations to regional fisheries management organizations, or the RFMOs, that establish the foundations of legal regimes for maritime governance to combat IUU fishing. One such RFMO is the North Pacific Anadromous Fish Commission. My staff in the 17th Coast Guard District serves as the head of the U.S. delegation to the enforcement committee for that commission.

The Coast Guard is also highly engaged in maintaining a productive bilateral agreement with the People's Republic of China to enforce the U.N. moratorium on large-scale high seas driftnet fishing. The Chinese fisheries enforcement officers have served as ship riders on U.S. Coast Guard cutters under this agreement, staged and operated out of the Coast Guard's North Pacific Regional Fisheries Training Center in Kodiak, Alaska.

These forums further overlap with the international coordination efforts of the North Pacific Coast Guard Forum Fisheries Working Group, which met last week in Seattle. This year, Pacific Rim partners will conduct harmonized surface and air patrols in the North Pacific high threat area for IUU driftnet fishing. In addition to the United States, Canada, Japan, Korea, the Russian Federation, and the People's Republic of China will all contribute operational resources to this effort. Similar efforts paid great dividends last year when the U.S. Coast Guard cutter BOUTWELL intercepted and facilitated the seizure of six Chinese-flagged high seas driftnet vessels.

The Coast Guard's operational efforts are guided by an organizational sense of maritime domain awareness or knowledge of what is happening at sea. We enhance this awareness with satellite-

based ship tracking systems, such as the vessel monitoring system, which allows us to see the movement of many U.S. and foreign-flagged vessels in the noncontiguous EEZ, especially in the western and central Pacific.

VMS is also an extremely valuable tool in many domestic fisheries within the U.S. exclusive economic zone. However, awareness alone is of little use without a robust at-sea presence to detect and intercept potential perpetrators. The first component of effective Coast Guard presence is a professional corps of knowledgeable boarding officers. The five U.S. Coast Guard regional fisheries training centers, including the North Pacific Regional Training Center in Kodiak and the Maritime Law Enforcement Academy, continue to be vital to training our maritime law enforcement personnel.

Our cutters, boats, aircraft, and the facilities and personnel to support them must be up to the task of sustaining our efforts on scene over vast distances for days, weeks, or months on end. In the 14th Coast Guard District, for example, in Honolulu, Hawaii, a patrol cutter must transit for over a week from the nearest Coast Guard base to reach many of the eight noncontiguous exclusive economic zones most susceptible to illegal foreign fishing.

Similar distances figure into the 17th District operations, where the U.S.-Russian maritime boundary line is at least 3 days transit from the nearest viable logistics stop or port, and emerging operational areas in the Arctic are even more remote.

The centerpiece of the Coast Guard's future capabilities to meet projected increases in the IUU threat and to secure our maritime borders is the Integrated Deepwater System. Deepwater will maintain our ability to enforce international and domestic living marine resource regulations in the distant reaches of the U.S. exclusive economic zone and the high seas.

The Coast Guard addresses the IUU threat to living marine resources through our framework of concerted international efforts to develop legal regimes, foster partnerships inside and outside of our own Government, expanding maritime domain awareness, and maintaining effective at-sea enforcement. We will continue to work closely with NOAA, the State Department, and our international partners to achieve national and international objectives for fisheries conservation and management.

One thing is clear. More people throughout the world are going to greater lengths to harvest limited living marine resources. This impacts economies and the stability and well-being of entire societies across the globe. In the face of increasing resource scarcity, IUU fishing is a threat that the Coast Guard stands ready to confront.

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

[The prepared statement of Admiral Brooks follows:]

PREPARED STATEMENT OF REAR ADMIRAL ARTHUR E. BROOKS, COMMANDER, COAST GUARD DISTRICT 17, U.S. COAST GUARD, DEPARTMENT OF HOMELAND SECURITY

Good morning Chairman and distinguished Members of the Subcommittee. It is a pleasure to appear before you today to discuss the Coast Guard's role in international fisheries management and deterring Illegal, Unregulated, and Unre-

ported—or IUU—fishing both within areas of national jurisdiction and on the high seas.

Protecting living marine resources—through active patrolling to detect, deter, and interdict vessels engaged in illegal fishing activity—is a longstanding Coast Guard mission. Beginning with 19th Century protection of the Bering Sea fur seal and sea otter herds, and continuing through the post-WWII expansion in the size and efficiency of global fishing fleets, the Coast Guard has embraced its role as the lead Federal maritime law enforcement presence at sea. Coast Guard enforcement presence has a particular focus within the 3.4 million square mile U.S. Exclusive Economic Zone (EEZ), the largest in the world, as well as in key areas of the high seas.

The term "IUU fishing" is commonly understood to refer to fishing activities that are inconsistent with, or in contravention of, fishery management and conservation measures. The Coast Guard aims to provide effective and professional at-sea enforcement to advance national goals for the conservation and management of living marine resources and their environments. The *U.S. Coast Guard Strategy for Maritime Safety, Security, and Stewardship* is driven by national policy such as Presidential Decision Directive 36—Protecting the Ocean Environment, and legislation such as the Magnuson-Stevens Fishery Conservation and Management Act. Coast Guard efforts to deter IUU fishing span across domestic and international fisheries, and they bridge our maritime security and maritime stewardship goals.

IUU activity is global in reach. It affects both domestic waters and the high seas, and is conducted by all types of fishing vessels. Controlling IUU fishing is a requirement to optimally manage and protect vital living marine resources that are under pressure from increasingly sophisticated and capable fishing fleets that travel the world's oceans in search of new fish stocks. According to the United Nations (U.N.) Food and Agriculture Organization (FAO), seventy-five percent of the world's fish stocks are fully exploited, over-exploited, or depleted. FAO studies indicate that in some fisheries, IUU fishing is estimated to account for 30 percent of total catches. In many other fisheries, IUU catches may even exceed legal and reported harvesting. IUU activity has adverse effects on marine ecosystems, distorts competition, and jeopardizes the economic survival of coastal communities that are reliant on local fisheries for their livelihood.

Many coastal states do not have the maritime governmental regimes or enforcement capability necessary to effectively manage and protect their living marine resources and are left exposed to poaching and over-fishing. Recent press reporting from West Africa, for example, suggests a link between depleted fish stocks and regional instabilities and dangerous and illegal large-scale migration from devastated fishing communities. There are tremendous economic incentives at play in IUU fishing, for both the coastal states and the IUU fishers. Revenues generated by coastal states through responsible and sustainable management lead to a healthier economy, increased societal stability, and enhanced maritime security. The FAO estimates annual global revenue lost to IUU fishing to be $9 billion (U.S.). This revenue is a direct theft from maritime communities, including many of the world's most vulnerable coastal states.

Given that living marine resources do not recognize national boundaries, the Coast Guard works alongside key partners at home and abroad to protect them. We enforce U.S. domestic fisheries laws in conjunction with National Oceanic and Atmospheric Administration (NOAA) Fisheries' Office of Law Enforcement (OLE) and General Council for Enforcement and Litigation (GCEL), and the Department of Justice, supporting conservation and management of domestic resources in the estimated $60 billion domestic fishing industry. Additionally, the Coast Guard enforces laws at sea to protect marine mammals, endangered species, and marine sanctuaries.

We applaud and support NOAA and the State Department in their efforts to bring additional tools to bear on combating IUU, such as the application of Port State Measures to deter IUU importation, implementation of Catch Documentation Schemes, and development of an International Trade Data System. These tools will help restrict market access for IUU product, thereby making IUU activity less profitable. However, at-sea enforcement and the ability to deliver consequences to those found directly engaged in illegal fishing activity remains a critical element of the overall U.S. Government effort to address the IUU threat, as outlined in the *U.S. National Plan of Action to Prevent, Deter, and Eliminate IUU Fishing.*

As the only agency with the infrastructure and authority to project a law enforcement presence throughout the U.S. EEZ and in key areas of the high seas, the Coast Guard implements *Ocean Guardian,* our strategic plan for fisheries law enforcement. This strategy incorporates the four principles of: (1) sound regulations based on effective and enforceable legal regimes which act as a system of "rules" that shape acceptable activities; (2) productive partnerships that facilitate law enforce-

ment cooperation; (3) use of technology to advance Maritime Domain Awareness; and (4) effective presence on the ocean. We believe these four principles offer a useful framework for addressing the threat posed by IUU fishing. The rest of my statement will focus on how the Coast Guard implements *Ocean Guardian.*

The Coast Guard is dedicated to supporting multilateral efforts to bolster legal regimes that deter IUU and deliver *consequences* to violators. Considering maritime initiatives and policies as part of a larger system enables a better understanding of their inter-relationships and effectiveness. A well designed system of regimes creates the opportunity for mutually supporting domestic and international regulations. Together, they provide a comprehensive system of maritime governance.

We fully support modernization of Regional Fishery Management Organizations (RFMOs) to include comprehensive boarding and inspection regimes as called for by the *1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*—more commonly referred to as the U.N. Fish Stocks Agreement. The Western and Central Pacific Fisheries Commission's recent incorporation of these enforcement principles into its management regime is a particularly relevant example. This Commission is one of the first in the world to employ a fully-developed boarding and inspection protocol for high seas enforcement based on the U.N. Fish Stocks Agreement. The Coast Guard is proud to have been involved in its development.

One of the fundamental building blocks of this system is the 1982 U.N. Convention on the Law of the Sea. While this Convention, along with its 1994 Protocol relating to Deep Seabed Mining, was referred to the Senate for advice and consent in 1994, we remain a "non-party." Joining the Convention with the declaration and understandings reflected in Senate Executive Report 110–9 (Senate Foreign Relations Committee) is an important step to ensure that we can exercise the necessary leadership in international regime development across the full spectrum of concerns including international fisheries management and conservation.

The Coast Guard continues to develop active international partnerships through the development of bilateral enforcement agreements and participation in multilateral groups like Regional Fishery Management Organizations (RFMOs) and the North Pacific Coast Guard Forum. Applying the principle of productive partnerships to combating IUU in an international context requires that the Coast Guard work closely with NOAA and the U.S. Department of State to develop and advance cooperative enforcement agreements and improve communications with industry and environmental groups. A non-inclusive list of RFMOs in which the Coast Guard participates includes: the Western and Central Pacific Fisheries Commission, the North Pacific Anadromous Fish Commission, and the International Commission for the Conservation of Atlantic Tuna. The Coast Guard also maintains a liaison officer with 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 provide a liaison officer to the NOAA Fisheries Office for Enforcement.

Additionally, the Coast Guard engages directly with our international enforcement counterpart. For example, over the past year the Coast Guard harmonized efforts with North Pacific Anadromous Fish Commission and North Pacific Coast Guard Forum partners including Canadian, Chinese, Japanese, and Russian surface and air patrols to cooperatively deter IUU in the North Pacific. Much of the operational planning for the 2008 North Pacific high seas driftnet (HSDN) enforcement season recently took place at the North Pacific Coast Guard Forum Fisheries Working Group meeting in Seattle, Washington. There, we coordinated multilateral operational plans for upcoming North Pacific surface and air patrols. North Pacific Coast Guard Forum planning efforts overlap, and are coordinated with, meetings of the North Pacific Anadromous Fish Commission. These two forums further supplement the Coast Guard's implementation of a bilateral U.S.-China Memorandum of Understanding to enforce the U.N. moratorium on large-scale high seas driftnet fishing. Similar HSDN coordination with partner agencies from Canada, Japan, Korea, the Russian Federation, and the Peoples Republic of China took place in 2007 and resulted in the interdiction and seizure of six Chinese-flagged driftnet vessels by the Coast Guard Cutter *BOUTWELL.*

Beyond our work in the North Pacific, the Coast Guard is increasingly involved with West Africa and Pacific Island nations striving to develop their own maritime safety, security, and stewardship forces. As another example of global maritime partnerships, I would like to share with you a recent success story in international cooperation and effective enforcement. The Coast Guard currently makes use of bilateral "ship-rider" agreements with a number of Pacific Island Nations. These agreements allow foreign enforcement personnel to embark U.S. Coast Guard assets to exercise their authority and jurisdiction from the deck of a Coast Guard cutter.

In mid-February of this year, Coast Guard Cutters *ASSATEAGUE* and *SEQUOIA,* with embarked Federated States of Micronesia ship-riders, interdicted two Japanese-flagged fishing vessels in the Micronesian EEZ, 160 nautical miles south of Guam. Both Japanese fishing vessels were found to be fishing in violation of Micronesian law. The Coast Guard cutters, acting under authority of their embarked Micronesian fisheries enforcement officers, escorted these suspected IUU fishing vessels toward Pohnpei, Micronesia for further investigation and prosecution. The enforcement action that I just described would not have been possible without sound regulations and productive partnerships such as developed regimes for maritime governance including South Pacific Forum Fisheries Agency management measures, Micronesian fisheries regulations, and a U.S.-Micronesian bilateral agreement allowing ship-rider operations.

In June, the high endurance Coast Guard cutter *DALLAS* will deploy to West Africa under the operational control of the Department of Defense. Planning efforts are underway to conduct maritime law enforcement operations with Cape Verde, which include using Cape Verde maritime law enforcement officer "ship-riders" as a proof-of-concept test. If successful, the Coast Guard and Navy may consider expanding such operations to other West African nations with the interest and capacity to participate.

The Coast Guard also continues to establish ever more comprehensive Maritime Domain Awareness (MDA) to inform decisions on how best to employ finite resources to deter the threat of IUU fishing. MDA is enhanced through application of technologies such as Vessel Monitoring Systems, or "VMS." VMS is a general term that applies to ship tracking systems used as part of a living marine resources regulatory regime. VMS is a component of many domestic fishery management plans and international fishery agreements alike. For example, the Pacific Forum Fishery Agency requires that that foreign fishing vessels seeking access to fish within member EEZs must carry operable VMS. In the Fourteenth Coast Guard District, we have executed agreements with Pacific Forum Fishery Agency countries to gain near-real time access to this VMS position data. We can see the movement of many U.S. and foreign-flagged vessels operating in the non-contiguous U.S. EEZs of the Pacific, which provides the Coast Guard with improved visibility on what is happening in this geographically expansive area. VMS is also a provision of other RFMO management schemes, including the Central Bering Sea "Donut Hole" Convention and the Western and Central Pacific Fisheries Commission. VMS alone, however, is not enough to maintain MDA. It is not infallible, it is not part of every management measure, and it is not on board every potential IUU vessel. The Coast Guard is able to close this gap in some key areas by utilizing national resources to monitor foreign fishing vessel activity.

The Coast Guard also continues to examine potential surveillance contributions of Unmanned Aircraft Systems (UAS). The Coast Guard Research and Development Center is actively evaluating contributions of UAS to perform all Coast Guard missions, including fisheries. The Coast Guard is currently conducting a Gulf Coast Maritime Demonstration to assess the use of UAS in conducting maritime surveillance. However, awareness is often only half of the picture. Effective enforcement of the regulations necessary to combat IUU fishing ultimately requires that we put "steel on target" and "boots on deck."

This leads me to the fourth *Ocean Guardian* principal, effective presence, which has two main components.

First, the Coast Guard requires a high level of knowledge and professionalism from all of our Boarding Officers who conduct the fisheries enforcement mission at sea. The five U.S. Coast Guard Regional Fisheries Training Centers and the Maritime Law Enforcement Academy are our primary means of maintaining this competency.

Second, we must sustain the ability to place capable resources on scene when and where they are needed. The U.S. EEZ is not only the largest in the world; it is also vulnerable because it is one of the most productive. The U.S. EEZ contains an estimated 20 percent of the world's fishery resources. Foreign fishers operating illegally in this area are, effectively, stealing U.S. resources. These vast patrol areas, coupled with the long distance from U.S. shores, provide a compelling requirement for a Deepwater fleet capable of providing persistent surveillance and presence in the open ocean expanses far from U.S. shores. As fish stocks throughout the world dwindle and the fleets of distant water fishing nations voyage far from home in search of lucrative catches, the U.S. EEZs, along with those of coastal states everywhere, will become more attractive targets. Preventing illegal encroachment of the U.S. EEZ by foreign fishing vessels is vital to protecting the integrity of our maritime borders.

Enforcement of international fisheries management schemes is a mission largely conducted by Coast Guard deepwater assets our cutters, boats, and aircraft must be up to this task. Most of the eight non-contiguous U.S. EEZs in the Western and Central Pacific require several days to over a week in transit time for a cutter from the nearest Coast Guard base. The centerpiece of the Coast Guard's future capabilities to address a projected increase in IUU threat and secure our Nation's maritime borders is the Integrated Deepwater System. The capability that the Deepwater acquisitions are designed to deliver will maintain our ability to enforce international and domestic living marine resources regulations in distant reaches of the U.S. EEZ, and on the high seas beyond.

The Coast Guard needs to replace aging vessels, aircraft, and shore infrastructure, and sustain these assets during recapitalization. The cost of maintaining and operating out-dated assets is continually increasing, as are major unplanned maintenance evolutions and reductions in readiness. Lost cutter days within the legacy deepwater cutter fleet continue to mount. During the last 2 years, an average of 400 scheduled deployment days were lost in Pacific Area due to unplanned maintenance and engineering casualties. In December 2007, the aging Medium Endurance Coast Guard Cutter *ACUSHNET* suffered a catastrophic mechanical casualty resulting in the loss of a significant portion of the propulsion shaft and the attached propeller. The *ACUSHNET* is a World War II veteran, originally commissioned as a U.S. naval salvage vessel in 1944. Despite her 64 years of valiant service, the *ACUSHNET* is a preeminent example of the Coast Guard's need to recapitalize. Ultimately, the future operational success of the Coast Guard to help combat the global threat of IUU fishing is dependent upon a comprehensive recapitalization of front line assets and shore and support infrastructure.

In conclusion, the Coast Guard addresses the IUU threat to living marine resources by participating in a concerted international effort to develop necessary legal regimes, foster partnerships, expand our Maritime Domain Awareness, and maintain an effective enforcement presence. The Coast Guard will continue to work closely with NOAA, the State Department, and our international partners to achieve national and international objectives affecting fisheries worldwide. The world's oceans are truly a global commons, requiring a global approach toward their conservation and management. In the face of increasing resource scarcity, IUU fishing is a growing threat to the long-term viability of fish stocks around the globe that the U.S. Coast Guard stands ready to confront.

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

Senator STEVENS. Well, thank you very much, Admiral. Let me start with questions with you.

I have just returned from Alaska, where I had some briefings by the International Arctic Research Center at the University of Alaska in Fairbanks. And they inform me that it is true that the Arctic ice will continue to thin in the near period ahead.

Now in order to enter the Arctic Ocean, a vessel has to go through some Nation's economic zone. It is the one area of the world that could be completely controlled if we had an agreement from all nations that no vessel could proceed through their economic zone without specific controls, such as having a beacon that can be traced by satellite and such as examination of the gear that would be involved and such as examination of the catch as they exited that Arctic Ocean.

I think it is time that we really worked on, through the entities that all three of you represent, an aggressive approach to protecting the Arctic. If we are informed correctly, the thinning is taking place because of warm water that is coming from the Atlantic into the Arctic Ocean and that our ice is thinning from the bottom, not from the top.

Under those circumstances, it is very acute to the time before the ice will be thin enough for operation in the Arctic by just regular fishing vessels without any ice protection available to them. I would say from what I understand, we have 2 to 3 years at most

before it would be possible to operate fishing vessels without any protection, any ice capability in their construction.

Do you think that it is a possibility that the law enforcement mechanisms of the various States that have entry into the Arctic Ocean could get together and initiate this kind of an agreement?

Admiral BROOKS. Yes, Senator, I think they could. I think the Arctic nations all understand the opportunities and risks of the Arctic. I can—I was in Kotzebue and Barrow just last week and was surprised to see clear water within visual range offshore. Of course, the shore ice is still there, but the ice is already retreating, and that means ships can come. Access is coming, the whale season accelerating.

The issue for us, I have talked with my Russian counterpart locally, General Lebedev in Kamchatka, about the need for a vessel traffic management scheme through the Bering Strait. Because from the Pacific side, all vessels entering the Arctic must transit that narrow pass between Alaska and Russia where—between Little and Big Diomede Island. And it is a shallow place, relatively shallow, and we are—I am concerned about navigational safety, whether we need a way to control these ships to ensure that they don't run aground or break down and drift ashore in Alaska and give us a Selendang Ayu type of problem.

And the Russians understand that whatever we did in the Bering Strait would have to be a joint U.S.-Russian venture, and we would have to pursue that through the international maritime organization based on the needs that we would have to control vessels.

Beyond that, I had not considered the idea of a fishing regulatory scheme among the nations, but it makes perfect sense. It is something that could and probably should be pursued because for no one benefits from IUU fishing, and I think the nations of the world could come together on this issue.

Senator STEVENS. Well, I think the interests of Congress and what is going on in the Arctic Ocean is demonstrated by the number of people at this Committee table.

[Laughter.]

Senator STEVENS. We are the only ones that have the direct knowledge of the threat and only ones that have the direct impact on our people. Our indigenous people harvest ocean mammals for their sustenance or their subsistence. There are not too many people of the world that still do that, but ours do and under their own regimes, which we helped them create, which regulate their taking of those mammals.

We know that the oil industry now is proceeding to have a great interest to try to keep up with Russia in terms of what is going on on the ocean floor of the Arctic Ocean. And by the way, the Russians will be here next week over at the Library of Congress en masse, and I think we ought to find somebody to have a meeting with them while they are here to start talking about this.

We showed what the U.N. could do with regard to driftnets. It hasn't been completely effective, but it has been an enormous impact on their use. I think we ought to try to think about how to get the U.N. into aiding us to protect the Arctic Ocean now before it is raped by these IUU fisheries. I do appreciate your concern and your being here.

Mr. Balton, I have really no problem with what the State Department is doing. I do think that you are really very much aware of it, of the threat.

I am interested in some of the things that you mentioned about the tools that are available now. I believe that was your statement, the tools that are available now. Can you describe that to us a little bit more? What really can we do under existing arrangements to initiate some firmer control over IUU fisheries in the Arctic Ocean?

Mr. BALTON. Let me say a word about existing fisheries in the Arctic Ocean, Senator. The Arctic is not actually a single region when it comes to fisheries. In the area of the Arctic farthest from Alaska, namely the part off of Norway, there already are major commercial fisheries underway in the Barents Sea and the Greenland Sea.

Senator STEVENS. Are they regulated by Norway at all?

Mr. BALTON. Yes, not only by Norway within its exclusive economic zone, but through bilateral and multilateral agreements among the countries in that area. We are not party to those.

Senator STEVENS. Have they been effective agreements?

Mr. BALTON. I would say the record is mixed.

Senator STEVENS. Do they document their activities? Is there a record some way to show what they actually have done in pursuing those agreements?

Mr. BALTON. Yes, I could provide that to the Committee if you are interested.

[The information referred to follows:]

The North East Atlantic Fisheries Commission (NEAFC) regulates fishing activities in the NEAFC regulatory area, which includes portions of the Arctic Ocean, in order to combat IUU fishing. The NEAFC website contains records of its efforts in this respect. The website also contains facts, answers and questions that aid in summarizing regulatory actions NEAFC has taken to combat IUU fishing.

NEAFC utilizes a wide range of strategies to combat IUU fishing activities, including at-sea monitoring and surveillance of fishing vessels, as well as a recently enacted suite of port State controls that will prevent vessels on IUU blacklists from, inter alia, using port services and landing or transshipping fish in port. The complete scheme for enforcement and control of fishing activities in the NEAFC regulatory area is described on NEAFC's website. NEAFC also maintains a Permanent Committee on Control and Enforcement (PECCOE) that regulates activities in the Convention regulatory area. Recent reports from PECCOE shed additional light on the regulatory efforts at combating IUU fishing activities in the NEAFC regulatory area.

The nations of Russia and Norway have also undertaken efforts to combat IUU fishing activities in the Barents Sea. They have established a Joint Fisheries Commission, intended to work in conjunction with the regulatory schemes employed by NEAFC. Their efforts are not as well documented in English as are the efforts of NEAFC, but some documentation exists. For example, I can refer you to comments by John Erik Pedersen, political adviser at the Norwegian Ministry of Fisheries and Coastal Affairs, in "Fisheries cooperation in the North: a Norwegian perspective," is available on the website of the Norwegian Ministry of Fisheries and Coastal Affairs. Also see Russian/Norwegian fisheries collaboration, including efforts to combat IUU activities, which is located on the Norwegian Fisheries website. In addition, there are news reports that Russian and Norwegian coast guards have agreed to share information on IUU activities and vessels, and to make that information available on an online data base.

Here are links to information on the North East Atlantic Fisheries Commission and the Joint Russian/Norwegian activities to combat IUU activities in Barents Sea:

1. *http://www.neafc.org/index.htm*
2. *http://www.neafc.org/measures/iuu_faq.htm*
3. *http://www.neafc.org/news/docs/30–april–07_pressrelease_psc_iuu.pdf*

4. *http://www.neafc.org/rneasures/docs/scheme 2008.pdf*

5. *http://www.neafc.org/reports/peccoe/index.htm*

6. *http://www.neafc.org/reports/peccoe/docs/peccoe1_april 2008.pdf*

7. *http://www.neafc.org/reports/peccoe/docs/peccoe_oct 2007.pdf*

8. *http://www.neafc.org/reports/peccoe/docs/peccoe_april–2007.pdf*

9. *http://www.regjeringen.no/nb/dep/fkd/dep/politisk_ledelse/John-Erik-Pedersen/taler-og-artikler/2008/fisheries-cooperation-in-the-north-a-nor.html?id=503822*

10. *http://www.fisheries.no/management_control/Norwegian_fisheries_colla boration/Russia.htm*

11. *http://www.barentsobserver.com/joint-norwegian-russian-data base-on-illegal-fishing.4481078.html*

Yes, they have very good documentation. They have had problems with IUU fishing, particularly in the Barents Sea and in a high-seas pocket in that area known as "the loophole" in years past. But they have made major strides in cutting down on IUU fishing, including through port State measures.

Now in the area of the Arctic closest to Alaska, there are not yet major commercial fisheries. But you are right to say that as the climate changes, the ice recedes, the water warms, we should be expecting and anticipating that there could be major commercial fisheries north of the Bering Strait sometime in the future. We are aware that the Senate has passed a resolution calling on us to work with the other Arctic countries to regulate our future Arctic fisheries to prevent IUU fishing.

Senator STEVENS. Ours is a virgin area, and my worry is not the entrance through the Bering Straits as much as it is this entrance from the fishing fleets of foreign countries that are dealing with the other part of the Arctic already. Ours is a virgin area. The ice has been thicker in the past than it will be in the near future, although I have been told to expect that it will come back eventually, and this is not a permanent problem. But it will be a problem for the next couple of decades, that will be sure.

But I am really interested to try and find out to what extent the vessels that are out there now, from particularly above Norway, would have easy access to the waters off Alaska and Canada.

Mr. BALTON. I don't see any significant threat in the immediate future of vessels fishing in the North Atlantic area adjacent to the Arctic coming all the way through the Arctic to reach Alaskan waters. And we have regulatory controls already in place for our own EEZ. The North Pacific Council, for example, has proposed an Arctic fisheries management plan that I expect will be finalized sometime soon. There are other——

Senator STEVENS. That would only apply to the area above Alaska?

Mr. BALTON. That is correct.

Senator STEVENS. That does not apply above Russia yet?

Mr. BALTON. Not yet. I have, however, in a meeting with Russia just last September, presented to them the North Pacific Council decisions and urged that they adopt something comparable for their area adjacent to ours and that we work with them for any stocks that could straddle our zone and theirs.

I similarly presented to Canada the Senate resolution calling for cooperative work on Arctic fisheries and urged that we meet with

Canada to talk specifically about the area in the Arctic that the U.S. and Canada both border. And it is my hope and expectation that in the near future we will be able to make progress with our neighbors in that way.

Senator STEVENS. I think you mentioned and I believe that ratification of the Law of the Sea treaty would enable us to have greater control of the areas above our country. But some of the areas—the nations that have boundaries that touch in the Arctic Ocean already have ratified the Law of the Sea.

Are there any mechanisms that they have used, pursuant to the Law of the Sea treaty, to enhance their ability to regulate fisheries in the Arctic Ocean, where they have already ratified the Law of the Sea treaty?

Mr. BALTON. You are right that all of the major fishing countries other than the United States are party to the Law of the Sea Convention already, including all of the other Arctic nations, and that gives them a strong framework on which to build fisheries laws. It also gives them a clear path forward for defining where the outer limit of their continental shelves in the Arctic and elsewhere may exist. As a non-party, we are at a disadvantage in those ways.

Senator STEVENS. I know we are at a disadvantage now, but I wonder if they have been effective at all in using the powers of the Law of the Sea treaty to enhance their ability to manage the fisheries in an area of which those nations already have control?

Mr. BALTON. Senator, I wouldn't want to overstate it, but I would say that at least indirectly their being party to the Law of the Sea Convention has aided them in these endeavors. The Law of the Sea Convention creates a general framework for fisheries, and these countries, using that framework, have built fisheries rules for both their EEZ and in cooperation with each other for areas beyond national jurisdiction to deal with fisheries in their parts of the Arctic.

Senator STEVENS. I am one who believes that our control over our economic zone has enabled us to lead the world in terms of the scientific management of fisheries, and I don't think that many areas of the world have been as aggressive as ours. I think our regional council has been more aggressive than any area of the world in management on a scientific basis.

Our area, which has half the coastline of the United States, has no endangered species that are harvested by any fishery and has no threatened species that are harvested by any fishery. That was on my latest report, and I hope it is still the case.

Mr. BALTON. I certainly agree that the North Pacific Council has a very well-deserved reputation for effective fisheries management.

Senator STEVENS. Well, if we can spread that throughout the Arctic as quickly as possible, it may enhance the future of the fisheries of the Arctic Ocean. Otherwise, I think they are liable to be really harmed.

Mr. Balsiger, there may be some seafood products that we do want to harvest in the Arctic Ocean in time. Do you think we have the capability through NOAA to have any influence on what fishing does take place in this area now?

Dr. BALSIGER. Well, Senator, yes. Certainly in the U.S. EEZ just above Alaska that any regulations that would allow fishing there would be recommended by the North Pacific Fishery Management

Council through their Arctic FMP, and it would be approved or disapproved by NOAA.

So we have a strong role in that regard, and I think that you are correct that the North Pacific Council, in developing their Arctic FMP, has a very conservative outlook. I don't think that there will be fishing regulations recommended that would put any of the fish stocks in jeopardy or the environment in jeopardy. So there is good control there.

Senator STEVENS. Well, let me be bad and just ask you, and Mr. Balton, are State and NOAA ready to accept the jurisdiction of our regional council over the EEZ north of Alaska, as they have in the North Pacific?

Dr. BALSIGER. Senator, I believe so. I think that is——

Senator STEVENS. We have assumed that is our authority, but I was just wondering, are you going to challenge the authority of the regional council in the Arctic Ocean that might be available to be fished by anybody?

Dr. BALSIGER. No, sir.

Senator STEVENS. Well, if you have any hesitancy, I would appreciate if you would report back to us if there is any indication at all that State and NOAA will challenge the jurisdiction of the North Pacific Regional Fisheries Council to manage the resources within the U.S. EEZ north of Alaska.

Dr. BALSIGER. Senator, my hesitancy was only because such an idea never occurred to me that we would challenge that, but I take your point that we certainly would get back.

Senator STEVENS. I appreciate your hesitancy, and I agree with it.

[Laughter.]

Dr. BALSIGER. And I——

Senator STEVENS. Thank you very much, gentlemen. There may be some questions that my colleagues wish to submit. I would appreciate it if you would answer them within a 2-week period. Thank you very much. Thank you, Admiral.

And now we will turn to the second panel, which is Mr. Dave Benton, Executive Director of the Marine Conservation Alliance; Mr. James Cook, the President of North Pacific Ocean Producers LLC; and Ms. Lisa Speer of the Natural Resources Defense Council.

If it is agreeable, we will just proceed with the witnesses as they were listed on my list and proceed with you first, Dave, if you will. Mr. Benton?

## STATEMENT OF DAVID BENTON, EXECUTIVE DIRECTOR, MARINE CONSERVATION ALLIANCE

Mr. BENTON. Thank you, Mr. Chairman.

For the record, my name is David Benton. I am the Executive Director of the Marine Conservation Alliance. The Marine Conservation Alliance is a coalition of seafood industry participants in Alaska—harvesters, processors, coastal communities, CDQ groups. Collectively, the membership of MCA represents probably between 70 to 80 percent of the seafood production off the coast of Alaska.

And Mr. Chairman, I appreciate the opportunity to come before you today on international fisheries issues. It has been quite a

while since we have had a discussion about international issues in a Committee like this. My history goes back with the State of Alaska and the initiatives that you generated back in the 1980s and the 1990s to deal with the threats like the high seas, large-scale high seas driftnets, overfishing in the "Donut Hole" by the fleets from Japan and Poland and China and Korea, the need to get a U.N. fish stocks agreement to deal with straddling stocks and highly migratory fish stocks.

All of those—all of those initiatives, Senator, sort of originated in this room, and I noted your comment a little while ago that the interest in the Arctic is reflected by how many Committee members are here in the room. And it seems to me that I recall that the time when we had to deal with high seas driftnets, we had just about this many members in the room at the time when we first started that, and I think the result turned out pretty good at the end of the day. And I think——

Senator STEVENS.—comments, but I understand what you are saying.

Mr. BENTON. Yes, it has really been quite an interesting process from my perspective and from the perspective of the seafood industry. When you looked at what was going on in the 1980s and early 1990s in the North Pacific, there was a high seas driftnet fleet of about 1,500 vessels to 2,000 vessels fishing there. They were fishing between 35,000 miles in net a night. Estimates were a million miles in net a year.

During the summer, when they fished up there, those fleets then moved down to the south, into the southern Pacific Ocean, and were hammering tuna stocks and migratory species down there. Literally, tens of thousands of sea turtles, hundreds of thousands of marine mammals, estimates of up to maybe a million some-odd sea birds were being decimated by those fleets. At the same time that that fleet was operating, we had several hundred vessels operating in the central Bering Sea Donut Hole that were overfishing the pollock stocks in the Aleutian Basin, and we had some real problems.

But this Committee took charge of those issues. The seafood industry worked very closely with you. We created the Bering Sea Fisheries Advisory Body, which then advised State Department on U.S.-Russian matters. We initiated bilaterally with Russia joint initiatives to address those kinds of problems, including, I failed to mention, high seas salmon fishery that Japan was conducting as well.

And within a very short space of time, we banned high seas driftnet fishing. We eliminated the INPFC, the International North Pacific Fisheries Commission, which authorized the high seas salmon fleet, eliminated the high seas salmon fishery of Japan, closed the Donut Hole, and established pretty much an entirely new order in the North Pacific.

And it was in a very short period of time, and there were large conservation benefits that have come about because from that. And I think it is important for us to remember that, that bit of history, because we are facing very similar challenges, I think, today. And some ways, we really need to make a renewed commitment to dealing with problems of IUU fishing and the prospects of the Arctic

opening to new fisheries, whether they are IUU fisheries or fisheries that are sponsored by nations that may be regulated, but not be—but may not be acceptable to us and our interests.

So I want to talk a little bit about that, and I want to talk about it in the context of both the North Pacific and the Arctic. And I want to start with the Arctic, Senator, because, as you know, obviously that is very close to our home. It has always been a place that has been very important to our coastal communities and native peoples that live along our shoreline. They live off the sea. The sea is fundamental to their way of life.

The rapid pace of change up there that may bring industrialization and commercial fishing into those waters is going to have a very significant impact on the resources up there and also on those people. And I think that the United States has an obligation to take charge of that matter, not let it happen in a happenstance way, and take a very proactive approach to dealing with the Arctic.

The resolution that came out of the Senate last year, I think, was a very, very important piece of work. You laid out a chart—you charted a course and laid out a way for the United States to proceed, and you keyed off the actions that the North Pacific Fishery Management Council has been pursuing.

Our organization and the seafood industry in Alaska fully supported and, in fact, initiated the action at the North Pacific Council to close the waters of the U.S. EEZ north of the Bering Straits to all commercial fishing until we understood better the effects of climate change and had a fishery management plan in place so that we would go up there if fisheries opened up in an orderly, biologically sustainable manner and a way that was respectful to the people and the resources of the Arctic Ocean.

We believe that same policy needs to carry forward and that the United States needs to go and push very aggressively with our—at least our two closest Arctic neighbors, Canada and Russia, bilaterally—initially bilaterally and get those two countries to support a similar kind of policy within their own waters and then to work with us and with yourself to close the major part of the Arctic Basin.

Ambassador Balton referred to what is going on in the Atlantic and that there are fisheries there that are technically in the Arctic. They are above the Arctic Circle, but it is a very different world over there, very different than what it is off of Alaska and Russia and Canada and very different than the world that is in the major part of the Arctic Basin in the international waters.

If those waters open up or there are ways for vessels from the Atlantic or from other countries to come into the Arctic Basin because of sea ice retreat, then that is going to have a dramatic effect. And if we don't have controls on that ahead of time, we are going to be facing a situation that is going to be just like what we had in the Bering Sea Donut Hole with fleets of Japan and China and Korea and Poland were fishing. They were authorized. They weren't IUU fishing. They were authorized by their countries, but they overfished those stocks very much to the detriment of Alaskans, to the United States, and to the resources of that region. So I think we really need to pursue that, Mr. Chairman.

With regard to the North Pacific, there are initiatives to deal with bottom fisheries on the seamounts in the northwest North Pacific. We think that that is appropriate, but we don't think it goes far enough. And frankly, it is somewhat disappointing the approach that the United States has taken in that regard.

The—if you look back at some of the history that I was mentioning just a moment ago, we, working with you and working with State, made major changes in North Pacific waters, and the idea actually was that we should have a comprehensive single international organization and series of institutions that were all coordinated, from Asia to North America. And choose your southern boundary, but at the time, we were looking at 33 degrees north and anything north of there. And that such an institutional arrangement should deal with all species and all fisheries.

The North Pacific Anadromous Fish Convention and the Commission that it spawned was intended to, at least for a while, fill that role, and it has provisions in that convention to do that. The United States has chosen to go down a different path and deal with just the northwestern Pacific Ocean for the time being.

We believe—and I note that you sent a letter to Secretary Rice last fall stating that there should be a comprehensive treaty, and we agree with that. We think that such a comprehensive treaty needs to be simple in structure. We don't want something complicated. We don't need to create a new organization. We can use—to the extent possible, we can use existing international instruments to achieve that goal.

A good example is the enforcement arrangements that Admiral Brooks was referring to. It is one of the models for the world on how international enforcement cooperation can proceed. We don't want to disrupt that. We want to maximize the benefits we get from that and use it better.

We believe that such a new international instrument should prohibit new fisheries in the North Pacific—not just bottom fisheries, all fisheries—until such time as there is a management plan in place to manage those fisheries and that they develop again in an orderly manner.

And finally, Mr. Chairman, and this is perhaps a bit of a touchy subject. But we really believe that such a new international instrument needs to avoid the use of big, ill-defined terms and principles—the over application of principles that perhaps we would not apply inside our own waters. We should be promoting sound management practices like we do in the North Pacific, but we should not try and impose on the high seas a lot of rhetorical principles that aren't necessarily going to get us there. And problems with some of the language that is in some of the instruments that have been discussed these days has actually driven wedges between interests that should be natural allies.

Those successes that we had in the North Pacific in the 1980s and 1990s came about because the seafood industry, this Committee, NOAA, and the Department of State worked together very well. The environmental interests that Ms. Speer represents got involved as well, and we were all able to work together because there was a good working relationship.

Adherence to rhetorical stances on some of the principles is going to get in the way of that unless we figure out how to work together. NOAA and Department of State need to forge the kinds of working relationships with the seafood industry, environmental interests so that we can all have a good, strong U.S. presence and make the success work that you are trying to achieve and we see that we need.

Thank you, Mr. Chairman. This concludes my statement.

[The prepared statement of Mr. Benton follows:]

PREPARED STATEMENT OF DAVID BENTON, EXECUTIVE DIRECTOR, MARINE CONSERVATION ALLIANCE

**Introduction**

Thank you, Mr. Chairman, for this opportunity to testify before you today regarding management of international fisheries, including the problem of illegal, unreported, and unregulated (IUU) fisheries, and the need to improve conservation and management of marine resources on the high seas.

My name is David Benton. I am the Executive Director for the Marine Conservation Alliance, based in Juneau Alaska. The MCA is a coalition of seafood harvesters, processors, coastal communities, Community Development Quota organizations, and others interested in and dependent upon the groundfish and shellfish fisheries off Alaska. Taken together, the membership of the MCA represents about 70 percent of the harvesting and processing of groundfish and shellfish off Alaska.

Mr. Chairman, Alaska has high stakes in the successful implementation of practical, effective management regimes on the high seas of the North Pacific.

Alaska produces roughly half of the Nation's commercial fisheries landings by volume and almost one third of the total value. The value of Alaska's seafood products ranges between $3–4 billion annually, and the industry employs roughly 50,000 workers. If Alaska were an independent nation, it would rank 9th among seafood producing countries.

Most importantly, the majority of our coastal communities are built around a fisheries based economy, and without a stable fishery resource base many of these communities would not exist. It is because of this dependence upon the sea and its resources that Alaskans work hard to ensure that conservation comes first, and that fishery resources are managed for their long term sustainability.

The record speaks for itself. There are no overfished stocks of groundfish in Alaska. Fisheries are managed under hard caps and close when harvest limits are reached. Federal observers and Vessel Monitoring Systems (VMS) monitor the catch to ensure compliance with closures. Ecosystem considerations are taken into account in fishery management plans. For example, fishing on forage fish species is prohibited, and measures are in place to protect marine mammals and seabirds. Close to 500,000 square nautical miles are closed to bottom trawling or other fishing to protect marine habitat. The North Pacific Fishery Management Council is also working on measures to close the U.S. Arctic EEZ to commercial fishing until the effects of climate change are better understood and appropriate fishery management plans are developed. Taken together, the total for existing closures plus the Arctic waters off Alaska would be approximately 650,000 square nautical miles, an area roughly 5 times the size of the entire U.S. National Park system.

It is this record that caused the U.S. Commission on Ocean Policy to cite Alaska as a potential model for the rest of the Nation.

But the success of Alaska has not only been a result of how we manage fisheries within our own waters, but has also required diligent action in the international arena to ensure that marine resources are protected throughout the North Pacific. Alaska has no common border with the rest of the United States. Rather, Alaska is bounded on one side by the U.S. Canada international boundary, and on the other side with one of the world's longest contiguous maritime boundaries, the U.S. Russia maritime boundary. However, most of the waters off Alaska are bounded by international waters of the North Pacific and Arctic oceans, and the international waters of the Bering Sea known as the donut hole. Living marine resources do not respect political boundaries, and the fish, marine mammals, seabirds and other resources important to Alaska range across all of these boundaries.

This fact of geography has dictated that Alaska needs to be deeply involved in international fisheries issues to protect its resources and its interests.

**A Brief Historical Overview**

For Alaska, foreign fleets have long played a major role in the fisheries off our shores. Following the end of WWII and up to 1976, foreign fishing vessels dominated the waters of the North Pacific and Bering Sea. Fleets from Japan, Korea, China, Poland and the Soviet Union came here for salmon, crab, and groundfish. For the most part, the only check on these fleets was the 12 mile limit, and for some countries the International North Pacific Fisheries Convention (INPFC) which attempted to control some of these fisheries.

In 1976, Congress passed the law we now know as the Magnuson Stevens Act (MSA). The MSA was part of a worldwide shift toward coastal state management of fishery resources. A lot has been written about the period immediately following passage of the MSA. It was one of dynamic change, with the elimination of the foreign fleets operating within 200 miles of our coast, and the subsequent development of the U.S. domestic fishing fleet.

But, as these dramatic changes were taking place within the U.S. 200 mile zone, dramatic changes were also taking place on the high seas. Alaska watched with increasing alarm the unregulated growth of international fleets, and their impact on the conservation of a wide range of living marine resources.

To put this into perspective, we have to look at what was going on in North Pacific on the high seas in the mid 1980s. Despite efforts throughout the 1960s and 1970s to control and eliminate high seas fishing for salmon, Japan still had a fleet of around 300 vessels using large scale driftnets fishing for salmon on the high seas beyond our EEZ as well as within the U.S. 200 mile zone. This fishery was authorized by the INPFC, a treaty between Canada, Japan, and the U.S. At the same time, Japan's high seas salmon fleets were also fishing for salmon in waters adjacent to, and inside the Soviet Union's 200 mile zone under a separate agreement.

Meanwhile, another fleet of high seas driftnet vessels was taking shape, with no international controls whatsoever. Originating from Japan, Korea, and Taiwan these fleets totaled roughly 1500 vessels fishing in the North Pacific between Hawaii and the Aleutians. These vessels fished for squid and other species in the north during our summer, and moved to the southern hemisphere in the winter to fish for tuna. In the North Pacific these vessels were fishing an estimated 30,000 miles of net a night, with attendant high bycatches of non-target fish as well as hundreds of thousands of marine mammals and seabirds, and thousands of sea turtles.

At the same time, a little further north, in the international waters of the Bering Sea, fleets of large factory trawlers from Japan, Poland, China and Korea began fishing hard for pollock. These vessels were hugging the line off both the Soviet Union and the U.S. maritime boundary. The pace of fishing in the so called "donut hole" caused great concern among both U.S. and Soviet scientists, who were predicting that these stocks would be drastically overfished in a short timeframe.

So, Mr. Chairman, while the fisheries inside the U.S. 200 mile zone were undergoing dramatic changes with attendant conservation benefits, fisheries in international waters were growing dramatically and most of them were totally unregulated or governed by the weak rules of the INPFC. The high seas driftnet fisheries were intercepting large numbers of salmon and decimating seabirds and marine mammals. The donut hole fisheries were overfishing Aleutian Basin pollock and posing a major enforcement problem for the U.S., and the INPFC provided no effective monitoring and enforcement mechanism. By all appearances, there was little or no chance to get control of these fisheries or mitigating the damages they were inflicting on our fisheries or the resources of the North Pacific.

But, through the leadership of this Committee, and especially Senator Stevens of Alaska and yourself Mr. Chairman, we began to make progress.

Through your hard work, Congress passed several important pieces of legislation, including the Driftnet Act, the Anti-Reflagging Act, and legislation establishing the Bering Sea Fisheries Advisory Body (BSFAB) which is charged with providing advice to the Department of State on U.S./Russian fisheries issues. Establishing the BSFAB proved pivotal. President Gorbachev had come into power in the USSR, and relations began to thaw. The two rivals were searching for common ground, and one thing the two super powers had in common was one of the world's longest continuous maritime boundaries, and important fisheries in the North Pacific and Bering Sea that were being decimated by foreign fleets that were operating off their shores. The doors were open for effective cooperation. Through the BSFAB and the joint U.S./Russian fisheries agreement, the United States and Russia initiated several actions to address fishery conservation issues of mutual concern. This joint effort coordinated negotiations at bi-lateral and multi-lateral treaty talks including at the U.N.

The result was impressive. Over a period of just a few years several new international treaties were put in place. Through the urging of this Committee the

United States engaged in a major initiative to eliminate high seas driftnets. The result was the U.N. moratorium banning high seas driftnet fishing worldwide, thus prohibiting the most destructive fishing practice employed on the high seas. The INPFC was disbanded, and the new North Pacific Anadromous Fish Convention (NPAFC) was put in place. The NPAFC prohibited fishing for salmon on the high seas of the North Pacific, included provisions to conserve ecologically related species, and established a comprehensive international research program. The NPAFC also charted new ground on international fisheries enforcement. For the first time, major ocean powers moved from strict flag state enforcement to a cooperative enforcement regime. The original parties to the NPAFC are Japan, Canada, Russia, and the U.S. The cooperative enforcement agreements facilitate joint enforcement actions between the four original parties, and provide an effective shield for marine resource protection. China and the Republic of Korea are now participants as well, further strengthening these enforcement arrangements.

In addition, the Central Bering Sea "donut hole" was closed and a new treaty adopted by Russia, the U.S., Japan, Korea, China, and Poland. This treaty mirrors many of the provisions of the NPAFC, including most importantly the enforcement provisions. The U.N. also adopted the Fish Stocks Agreement to implement certain provisions of the U.N. Law of the Sea; and the U.S. and Russia adopted several bilateral agreements including an agreement to protect each nation's salmon within their respective 200 mile zones. To strengthen international cooperation for marine science, PICES was adopted, establishing a major new international science organization devoted to addressing marine science in the North Pacific.

Taken together, the entire international fishery management regime in the North Pacific was rewritten during this timeframe. Every treaty now in place, with the exception of the halibut treaty between the U.S. and Canada, was written during this period. This includes the Pacific Salmon Treaty between the U.S. and Canada, the U.S. Russia bilateral agreement on fisheries cooperation, the United Nation's moratorium on High Seas Driftnets, the U.N. Fish Stocks Agreement, the Central Bering Sea Pollock Convention (aka the Donut Hole Convention), the PICES convention, and the North Pacific Anadromous Fish Convention (NPAFC).

These successes could not have come about except for the very good working relationship between the seafood industry, the Department of State, and the leadership of the Congress. They are the result of forward thinking leaders, applying practical solutions to real world problems. With the exception of rogue vessels fishing illegally, the high seas driftnet fleets are now gone from North Pacific waters. The high seas directed salmon fishery is terminated, and the donut hole trawl fleets are no more. Joint enforcement by the major ocean powers of the region are a model for international cooperation. A new multi-national science program is providing sound scientific advice to fishery managers including important new insights into the challenges facing the marine environment. These new institutions, and their actions, are in turn providing major conservation benefits for the fish, seabirds, marine mammals and other components of the North Pacific and Bering Sea ecosystems.

Mr. Chairman, this Committee, and especially you and Senator Stevens, should take pride in what has been accomplished. But this is not to say that all is well on the high seas, and that there are no problems facing us in our quest to ensure that North Pacific resources are protected and conserved. We all know that serious challenges exist, and once again we need your help and leadership to chart a course for effective action.

**The Challenges Ahead**

Mr. Chairman, there is a need to renew our commitment to taking action to address real world problems on the high seas. For example, despite the U.N. moratorium on high seas driftnets and the multi-lateral enforcement shield that exists in the North Pacific, there is a significant resurgence of high seas driftnet fisheries. These are the ultimate IUU operations. They are outlawed by the U.N. moratorium, the NPAFC, and the national laws and regulations of most of the major nations around the North Pacific rim. The treaties and laws are already in place prohibiting these operations, but the resources are not there to effectively police such a vast area of the ocean.

Similarly, while the Central Bering Sea is now closed to pollock fishing, maintaining our enforcement presence along the U.S./Russian maritime boundary is taxing our enforcement capability. The distribution of Bering Sea fishery resources appears to be changing, and our scientific, monitoring, and enforcement programs will all need to adapt to these new realities The prospect of loss of sea ice due to global climate change is forcing the United States to reassess its Arctic policies and management capabilities in light emerging new international challenges.

There are also problems with new and emerging fisheries further south. Fisheries on the seamounts north and west of the Hawaiian Islands raise conservation concerns. Application of measures inside our zone to protect sea turtles and seabirds are placing U.S. fishermen at a disadvantage because similar measures are not applied to foreign fisheries operating on the high seas. The growth of the Chinese economy and the economies of Southeast Asia are placing new pressures on North Pacific resources as demand for seafood increases in those regions.

All of these problems argue for a comprehensive solution. But to be successful, that solution needs to be simple, practical and focused. We believe that this could be accomplished using existing international institutions and arrangements. The U.S. Government would need to take the lead on such an initiative, with additional resources to ensure adequate funding for the science, monitoring, and enforcement programs that will be needed to ensure success.

Another option would be a new Regional Fishery Management Organization (RFMO) for the North Pacific. Ongoing talks regarding the northwest Pacific Ocean could provide a valuable opportunity to develop a long term agreement for such an RFMO. But to be successful, the U.S. needs to set out a proposal that is simple in structure, clear in its intent, and cost effective. It needs to focus on the problems of clearly identifying what constitutes IUU fishing, and will need to seek coordination or integration with existing international institutions.

The U.S. Government may wish to pursue such a course of action. If that is the case, then there are certain principles which we believe should guide U.S. policy, and our support for such an approach is conditioned on U.S. application of these principles. If the U.S. adheres to these concepts, then we believe that several U.S. interests, including both the seafood industry and the environmental lobby, could come together in support of a new agreement covering the high seas of the entire North Pacific from Asia to North America.

We believe it important that the new agreement be simple in structure, and not result in creation of yet another international bureaucracy. There are several models for such an agreement, and they have proven cost effective, efficient, and successful at achieving their conservation and management objectives.

The new agreement should provide a mechanism to develop a registry of existing fisheries, fishing vessels and their owners, and the management measures currently in place that govern those fisheries. This would include fisheries under existing international agreements including any interim measures where formal agreements are not yet in place.

The new agreement should then prohibit any new fisheries in the North Pacific unless a management plan has been developed and approved by the parties. New fisheries would be authorized, and placed on the registry, once a management plan is reviewed and approved. Management plans should include provisions for observers, VMS, harvest limits, bycatch controls, or other management measures as appropriate to the fishery.

The new agreement should recognize existing international agreements and management regimes, and minimize disruption to those arrangements. Existing fisheries operating under current agreements would continue to be regulated by such arrangements. Where there are existing international agreements that might authorize a fishery in the future (*i.e.* Central Bering Sea Pollock convention) that treaty would control how such a fishery might occur.

The new agreement should also have clear rules for new entrants into a fishery. In some instances, U.S. vessels have refrained from fishing on the high seas in compliance with U.S. policy while foreign fleets have continued to fish. In such instances, opportunity should be provided for U.S. fishermen to participate in high seas fisheries, with appropriate conservation and management measures in place. This is necessary in order to level the playing field.

Fisheries not on the registry or not governed by an existing international agreement would be defined as IUU. This would greatly simplify enforcement and allow for efficient use of monitoring and enforcement assets for such a wide area. Enforcement regimes under the new agreement should build upon and compliment existing international cooperative enforcement arrangements.

And finally, the new agreement should, as a general matter, encompass management requirements similar to those we would employ in our own waters. The agreement must avoid the use of ill defined terms, or the over-application of vague principles such as the precautionary principle. It should be clear at the outset about the conservation goals for habitat protection. In our view, the new agreement should mirror the recently revised MSA, and identify the bottom habitats that need protection as seamounts, hydrothermal vents, and unique or rare concentrations of corals. We also believe that the United States needs to make a clear statement that the

intent is for an agreement that recognizes the need for sustainable fisheries to meet the growing need for seafood products worldwide.

Many of these principles were outlined last fall by Senator Stevens in a letter dated October 19, 2007, to Secretary Rice, and we wish to go on record in support of the framework he proposed for a new RFMO in the North Pacific.

A related matter centers around the work of the U.N. Food and Agriculture Organization (FAO) on guidelines for management of deep sea fisheries in the high seas. The draft guidelines are intended identify characteristics of appropriate management tools, reporting requirements, enforcement protocols, and other proposed measures for the management of these fisheries. However, these guidelines spend a lot of time trying to identify what constitutes "vulnerable marine ecosystems" (VMEs) and how to determine "significant adverse impacts" to these VMEs.

To date, the United States has focused most of its efforts on the question of defining VMEs and criteria for determining significant adverse impacts, and less time on the other fundamentals necessary for management of these high seas fisheries. Unfortunately, the draft guidelines stray far from some of the principles identified above, employing vague references to the need to protect biodiversity, or the overly broad application of the precautionary principle. The guidelines also go far beyond the guidance found in the MSA that identifies seamounts, hydrothermal vents and concentrations of cold water corals as the bottom habitats to be protected. We believe that these guidelines will serve a more practical and useful purpose if the language is focused more on managing deep sea fisheries on the high seas, and less on the use of vague principles that are subject to wildly differing interpretations.

Effective management of these deep sea fisheries is a critical issue that needs careful attention. Much work remains to tighten these guidelines, to make them practical and concise, and thereby produce a useful product. As such, we recommend that the United States support provisions in these guidelines that mirror language in the MSA, and work to craft practical and effective guidelines for managing these fisheries. The United States should also ensure that the guidelines do not include any provisions that suggest that these measures should be enforced or applied with the 200 mile zone. Language still remains in the draft that cause concerns in this regard.

An additional area of interest to Alaska is the fate of the high Arctic, and how to address and adapt to the rapidly changing conditions there due to climate impacts.

In recognition of the challenges posed by the projected loss of sea ice in the waters north of Bering Strait, the North Pacific Fishery Management Council, at the urging of the seafood industry, began a process to close U.S. Federal waters to commercial fishing. The closure would be in place until we better understand the effects of climate change on the marine environment of the Arctic, and appropriate fishery management plans have been developed. We believe that such action is warranted in order to protect the marine resources of our Arctic waters as well as the way of life of the small villages and communities along Alaska's Arctic shores.

Last year, Senate Joint Resolution 17 was introduced, calling for the United States to seek international agreements mirroring the action being taken in the Arctic by the North Pacific Fishery Management Council. MCA supports the action you have taken with the resolution, and hopes that the U.S. Government will actively pursue such agreements with our Arctic neighbors. Marine resources in the Arctic, as in the waters of the North Pacific, do not respect political boundaries. Effective conservation and management needs to be coordinated throughout the Arctic basin. To this end, we urge the Committee to continue in your efforts to get the U.S. Government to take a lead in such an initiative.

As a final matter, Mr. Chairman, I would like to enter a note of caution as we pursue initiatives to address international fisheries issues, recognizing that sometimes the law of unintended consequences comes into play. For example, the United States is involved in work at the World Trade Organization to use WTO authorities to prohibit certain fishery subsidies to control IUU fishing and to reduce the unsustainable level of fishing capacity in worldwide fleets. There should be no question that such subsidies are causing significant problems in many parts of the world, and action needs to be taken to address these problems. However, while these are laudable goals, some provisions in the current draft proposals could be interpreted to prohibit U.S. investment in ports and harbors upgrades, or improvements in fish landing or processing facilities, or the reconstruction or new construction to replace aging vessels in the U.S. fleet. None of these have anything to do with either IUU fishing or overcapitalization of international fisheries, and the U.S. should exercise careful judgment when negotiating such provisions to ensure that the measures are specific to the problem to be addressed.

Application of port state measures to address IUU fisheries, including service vessels, can also have unintended consequences for the U.S. seafood industry. Use of service vessels to transport seafood products legally caught in U.S. waters can have dire economic consequences if, unbeknownst to the U.S. companies who employ these vessels, the vessels are blacklisted by other nations for being associated with IUU fishing. Shipments of legal product can be seized while in transit, costing time and money if not the loss of the product itself. Similarly, the European Union is developing port state measures that may raise "equal treatment" questions under world trade rules as well as resulting in a cumbersome and expensive chain of custody process. This could negatively affect U.S. trade with the EU, and we need to work closely with our trading partners to ensure that such unintended consequences are avoided. We appreciate that NOAA and the Dept. of State are working to resolve these issues, but meanwhile U.S. seafood companies are in a state of limbo regarding the rules and how they may be enforced.

Again, Mr. Chairman, thank you for this opportunity to testify before you today. I will be happy to answer any questions.

Senator STEVENS. Thank you very much.

Next up, Mr. Cook. James Cook, President, Pacific Ocean Producers.

**STATEMENT OF JAMES COOK, VICE PRESIDENT, PACIFIC OCEAN PRODUCERS, LLC**

Mr. COOK. Good morning, Senator Stevens. Aloha from Hawaii.

My name is Jim Cook. I was born and raised in Hawaii and have participated in various aspects of commercial fishing for the past 40 years. My testimony today will focus on the management and enforcement of tuna fisheries in the Pacific.

The major tuna species are considered highly migratory, and for that reason, tuna is managed by RFMOs. The ability of the RFMOs in the Pacific to manage these resources is far from reality. In the western and central Pacific, tuna and billfish are managed through the Western and Central Pacific Fisheries Commission and in the eastern Pacific by the Inter-American Tropical Tuna Commission.

Bigeye tuna have been determined to be experiencing overfishing in both the western, central Pacific and the eastern Pacific. Fishery scientists have recommended a 25 percent reduction in fishing. To date, neither the WCPFC or the IATTC have been able to reach consensus on measures to end bigeye overfishing. Competing economic interests between distant water fishing fleets of Asian, U.S., and European nations versus the independent Pacific island countries that grant access rights to fish in their EEZs has precluded any meaningful conservation for bigeye.

Longliners for fishing for bigeye target large adult fish. They are valuable in sushi and sashimi markets around the world. Purse seiners do not target bigeye, but incidentally catch them when targeting skipjack and yellowfin for the canned tuna market. Bigeye catches from purse seiners have risen dramatically over the past decade due to increased purse seine sets using deeper nets on fish aggregation devices, which attract juvenile bigeye, yellowfin, skipjack as well as other marine bycatch species.

In order to properly manage the resource, there needs to be accurate and timely catch reports by member nations, a cap on the number of longliners authorized to fish in the western and central Pacific, and effective FAD management programs for purse seine fisheries.

In 2006, the western and central Pacific fisheries requirement—excuse me, organization required all members to develop management plans for the use of fish aggregation devices on the high seas. To date, only Papua New Guinea has a plan, and the U.S. should comply with this measure as soon as possible.

To address capacity issues in the western and central Pacific, vessels authorized to fish in the convention area need to be strictly regulated within the economic zones of member nations as well as on the high seas. Conservation and management measures require that total levels of fishing effort for bigeye and yellowfin tuna shall not be increased beyond current levels. However, there are already too many fishing vessels, and new vessels are being built that are larger and more efficient.

Another management issue involves the bycatch of marine mammals, sea turtles, and sea birds. Since 1996 reauthorization of Magnuson, the Western Pacific Fisheries Management Council has implemented an effective bycatch reduction program. Key bird mitigations have reduced sea bird bycatch in the Hawaii longline fishery from thousands of sea birds annually to less than 100 per year. Reduction in sea turtle bycatch have also been realized, 90 percent reduction in loggerhead and 87 percent in leatherback sea turtle interactions.

Based on these successes, the council has been working actively to promote these measures in the international arena, sponsoring a series of international fisheries forums and sea turtle workshops. Hawaii's longline fishermen have been active participants in these efforts and have worked to engage foreign fishermen.

Our bycatch measures in the RFMOs have made little progress during this time. Enforcement issues in the western and central Pacific involve a lack of adequate monitoring, flag of convenience, at-sea transshipment, inadequate port State measure, catch documentation, and loopholes for vessels having access agreements with island nations.

While effort has been made to resolve these issues, implementation is still far from a reality. A major problem facing small island nations is the lack of enforcement assets to patrol their economic zones. The U.S. Coast Guard faces similar challenges as effective monitoring of the U.S. economic zone in the region, especially the Pacific island remote areas, requires significant resources.

The U.S. economic zone around the remote areas is subject to illegal fishing by foreign vessels. Recent cases involve two Ecuadorian-flagged purse seine vessels caught fishing illegally in the U.S. EEZ around Howland, Baker, and Jarvis Islands. The U.S. Coast Guard needs more resources and assets to effectively monitor the U.S. economic zone in the western and central Pacific.

The reauthorization added a provision that requires all fishing vessels without vessel monitoring systems transiting the U.S. EEZ seaward of Hawaii and the Northern Marianas, American Samoa, Guam, and the remote island areas to notify the Coast Guard with name of the vessel, flag State, location, and destination. Congress intended this provision to require notification because effective monitoring of the economic zone around the remote U.S. territories takes nearly daily flyovers. Unfortunately, this provision has not been enacted because of conflict with international law.

Fisheries observers are a major component of effective monitoring. At the last WCPFC meeting, it was agreed that the observer program would be initiated in 2008, starting with national observer programs with 5 percent coverage. There has been major resistance on this measure.

Vessel monitoring systems are another important enforcement tool. Although the WCPFC conservation and management measure require VMS on all vessels that are authorized to fish in the area, the VMS program and implementing details have yet to be agreed on, and significant work needs to be done before VMS is applied evenly throughout the region. The Western Pacific Council mandated the use of this equipment in 1991.

At-sea transshipment is a major concern because it can avoid port State monitoring, and catch documentation is often lacking. At-sea transshipment is prohibitive for purse seiners. However, at-sea transshipment remains a practice for large-scale longline vessels.

The Hawaiian-American Samoa longline fleets combine the largest domestic industrial fleet in the western and central Pacific. These are model fisheries, employing high observer coverage, vessel monitoring system, limited entry programs, spatial management to minimize fisheries interactions, and innovative turtle and sea catch bycatch reduction methods. The Hawaii fishery was recently evaluated and found to be 94 percent complaint with the United Nations Code for the Conduct of Responsible Fisheries.

Responsible, well-managed fisheries can also be profitable. Honolulu was ranked fourth nationally in 2006 with $54 million worth of landed value, and in 2007, the value of landed fish in Hawaii exceeded $71 million.

Overall, I believe the Department of State, the National Marine Fisheries Service, and the Coast Guard are working well on implementing the international provisions of the Magnuson-Stevens Reauthorization Act. For these agencies, it is often a tiring and frustrating experience. They deserve our appreciation and financial support. The focus on IUU fishing is important but pales in comparison to the challenges faced by the U.S. in attempting to get the Pacific RFMOs to adopt monitoring and compliance along with adequate conservation measures.

In the western and central Pacific, the Hawaii longline fleet represents less than 2.5 percent of total bigeye catch. Yet it provides 87 percent of the total observer-monitored fishing in the region. As previously mentioned, we have had VMS for nearly 20 years in our fishery. However, such measures essential to the monitoring and compliance have a long way to go before being fully implemented in the Western and Central Pacific Fisheries Commission.

As a small, well-managed fishery, there is little overall impact in the larger picture of fishing in the western and central Pacific. We stand ready to adopt conservation measures recommended by science. We ask only that when the U.S. Government acts to restrict us within the context of international agreements that it results in lower fishing mortality, which benefits the resource, and not simply a shift to imports from countries without proper monitoring and compliance.

While the Hawaii longline fishery maintains a solid working relationship with the Western Pacific Fisheries Management Council, Department of State, National Marine Fisheries Service, and the Coast Guard, we recognize that further coordination and dialogue amongst these groups is required in order to formulate or consider appropriate management and enforcement measures for international fisheries in which we participate.

Senator Stevens, thank you. It has been my honor to testify today.

[The prepared statement of Mr. Cook follows:]

PREPARED STATEMENT OF JAMES COOK, VICE PRESIDENT, PACIFIC OCEAN PRODUCERS, LLC

Chairman Inouye, Committee Members, aloha from Hawaii and the Western Pacific. My name is Jim Cook . I was born and raised in Hawaii and have participated in various aspects of commercial fishing for the past forty years. I own and operate five vessels in the Hawaii longline fishery and for the last twenty-five years I have been involved in the design, sales, and installation of the high-tech tuna longline systems throughout the Pacific. We currently have projects in Korea, China, Mexico, Fiji, French Polynesia, and the Maldive Islands. I served 9 years on the Western Pacific Fishery Management Council, with three of those years as chair. My testimony today will focus on the management and enforcement of tuna fisheries in the Pacific.

The major tuna species bigeye, albacore, yellowfin, and skipjack are considered highly migratory and their populations are assessed on large geographic scales. For that reason these fisheries should be managed within international arrangements such as Regional Fishery Management Organizations (RFMOs); however, the ability of these RFMOs to effectively manage the resource is far from reality. In the Western and Central Pacific Ocean (WCPO), tuna and billfish are managed through the Western and Central Pacific Fisheries Commission (WCPFC), and in the Eastern Pacific Ocean (EPO), by the Inter American Tropical Tuna Commission (IATTC). I believe the U.S. Department of State, National Marine Fisheries Service, and the U.S. Coast Guard (USCG) are doing their best to implement the international provisions of the Magnuson-Stevens Reauthorization Act of 2006 (MSRA) within the context of these RFMOs.

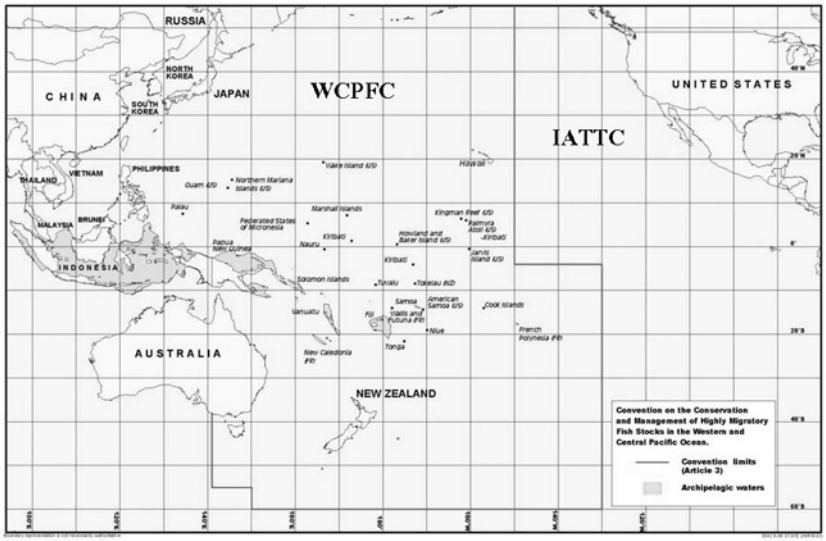


Figure 1: International management of highly migratory fish stocks in the Pacific Ocean

**Management Issues**

Bigeye tuna (*Thunnus obesus*) has been determined to be experiencing overfishing in both WCPO and EPO, and fishery scientists have recommended a 25 percent reduction in fishing mortality of this species. To date, neither the WCPFC nor IATTC have been able to reach consensus on conservation and management measures to end bigeye overfishing. In the WCPO, the competing economic interests between distant water fishing fleets of Asian, U.S. and European nations versus the independent Pacific Island countries that grant access rights to fish resources in their Exclusive Economic Zones (EEZs) has precluded any meaningful conservation for bigeye tuna. The issue is complicated in that two very different types of industrial-scale fishing, longline and purse seine, are harvesting the same resource, with neither type wanting to yield in reducing harvests. Longliners fishing for bigeye target large, adult fish that are valuable in sushi and sashimi markets around the world. Purse seiners do not target bigeye tuna, but catch juvenile bigeye incidentally when targeting skipjack and yellowfin tuna for the global, canned tuna market.

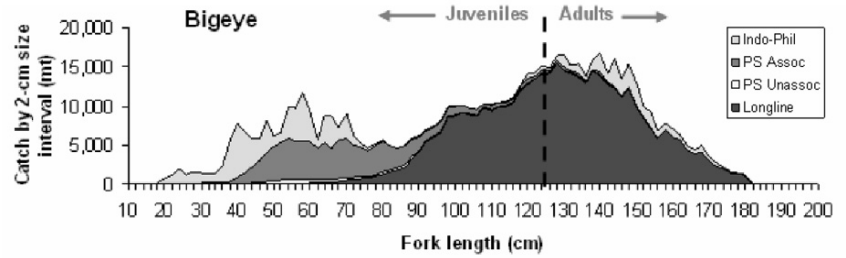


Figure 2: Size distribution of bigeye tuna catch, longline vs purse seine
Source: Secretariat of the Pacific Community-Oceanic Fisheries Program

Bigeye catches from purse seiners have risen dramatically over the past decade due to increased purse seine sets using deeper nets on Fish Aggregation Devices (FADs), which attract juvenile bigeye, yellowfin, and skipjack tuna, as wells as other marine bycatch species.

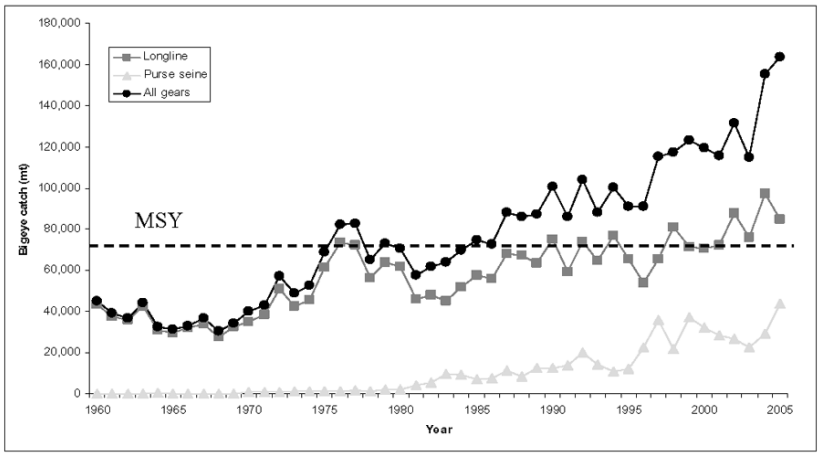


Figure 3: WCPO Bigeye Tuna Catch by Longline and Purse Seine Fisheries
Source: Secretariat of the Pacific Community-Oceanic Fisheries Program

In order to properly manage the bigeye tuna resource, there needs to be: (1) accurate and timely submissions of catch reporting by all member nations, (2) a cap on the number of longliners authorized to fish in the WCPO, and (3) effective FAD management programs for purse fisheries. In 2005 (and for years 2006–2008), the WCPFC agreed on bigeye longline catch limits for nations not exceed their average

annual catch between 2001–2004. In 2006, the WCPFC required all members to development FAD management plans for the use of FADs by member nations on the high seas. To date only Papua New Guinea has a plan, whereas the U.S. has not developed a FAD management plan and therefore not in compliance with the above mentioned measure. The U.S. needs to address purse seine fishing on FADs, especially since in 69 percent of the U.S. purse seine fishing effort in 2006 was in association with FADs. Furthermore, the U.S. purse seine fleet is undergoing expansion, with 8–12 Taiwanese-built, U.S. flagged seiners to be fishing within the next few years, bringing the total number of U.S. purse seiners to around 30. The Western Pacific Fishery Management Council recently recommended to prohibit purse seine fishing in association with FADs in the entire U.S. EEZ around American Samoa, CNMI, Guam, Hawaii, and the U.S. Pacific Remote Island Areas (PRIA), which include Johnston Atoll, Howland Island, Baker Island, Jarvis Island, and Palmyra Atoll, Wake Island, and Kingman Reef.

To address capacity issues in the WCPO, the vessels authorized to fish in the convention area need to be strictly regulated within the EEZs of member nations as well as on the high seas. WPCPFC Conservation and Management Measures require that total levels of fishing effort for bigeye and yellowfin tuna in shall not be increased beyond currently levels. However, as indicated in Figures 2 and 3 below, there may be too many fishing vessels to begin with, so even if no more effort is expended, there is already likely excessive capacity in the WCPO. Moreover, new fishing vessels being built are bigger, more efficient, and able to stay out fishing much longer than older vessels.

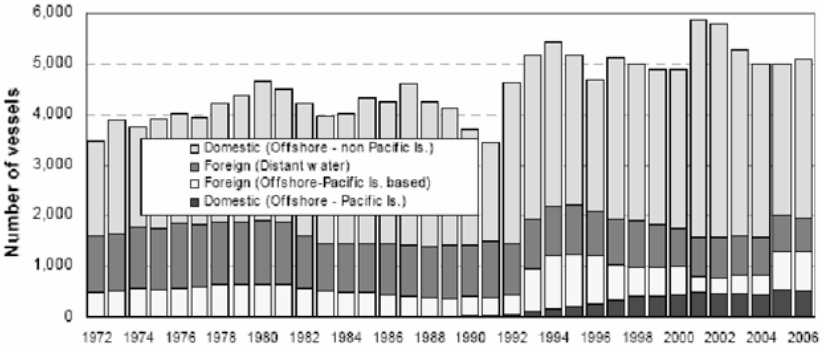


Figure 4: Number of longline vessels operating in the WCPFC area.
(Source: WCPFC SC3–2007/GN WP–1)

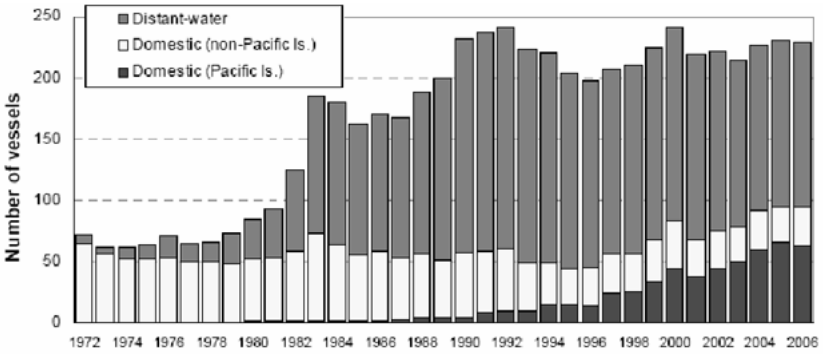


Figure 4: Number of purse seine vessels operating in the WCPFC area.
(Source: WCPFC SC3–2007/GN WP–1)

Currently, each member nation is required to annually provide the WCPFC with a list of fishing vessels authorized to fish in the convention area. However, most member countries have provided only general lists of vessels that may or may not be actively fishing in the WCPFC area, therefore the list needs further refinement

and categories such as "active/inactive" which would serve to indicate a clearer picture of overall capacity in the region.

Another management issue involves bycatch of marine mammals, sea turtles, and seabirds. Since the 1996 reauthorization of the MSA, the Western Pacific Fishery Management Council has implemented an effective bycatch reduction program. Sea bird mitigation measures (*e.g.,* night-setting, side-setting, blue-dyed bait, line shooters, etc.) have reduced seabird bycatch in the Hawaii longline fishery from thousands of seabirds annually to less than 100 per year. Reductions in sea turtle bycatch have also been realized from the required use of circle hooks and mackerel bait in the Hawaii longline swordfish fishery—90 percent reduction in loggerhead sea turtles and 87 percent reduction in leatherback sea turtle interactions. Based on these successes, the Western Pacific Fishery Management Council has been working actively to promote these measures in the international arena, sponsoring international meetings such as the series of International Fishers Forums and sea turtle workshops. Hawaii's longline fisherman have been active participants in these efforts and have worked to engage foreign fisherman in promoting bycach reduction, examples being the Tri National Exchange bringing fishermen from Hawaii, Japan, and Mexico together to reduce loggerhead sea turtle interactions. Bycatch measures in the WCPFC have taken a back seat as member states struggle over the design and implementation of basic monitoring and compliance and accurate catch documentation issues.

**Enforcement Issues**

Enforcement issues in the WCPO involve lack of adequate monitoring, flags of convenience, at-sea transshipment, inadequate port state measures, catch documentation, and apparent loop holes for vessels with access agreements with island nations. While effort has been made to resolve these issues, such as requiring VMS and observers in the WCPFC, full implementation of these measures is still far off in the future.

A major problem facing small island nations is the lack of enforcement assets to patrol their EEZs. The U.S. Coast Guard faces similar challenges in the WCPO as effectively monitoring the U.S. EEZ in the region, especially the PRIA, requires significant resources. The U.S. EEZ around the PRIA, for example, is subject to illegal fishing by foreign vessels. Recent cases involve two Ecuadorian flagged purse seine vessels caught fishing in the U.S. EEZ around Howland/Baker Islands and Jarvis Island. Although the USCG was able to detect this illegal activity by air and were able to pursue one of these vessels with a cutter at sea, the USCG was unable control and board this vessel while in the U.S. EEZ. The cases were recently settled for $117,000 each; however, there are suspicions that these vessels were illegally fishing in the U.S. EEZ for 2 weeks, instead of for making one set as the penalties were assessed. The USCG needs more resources and assets to effectively monitor the U.S. EEZ in the WCPO.

The Ecuadorian vessels were fishing within the WCPFC convention area without authorization as Ecuador is not a member of the WCPFC. Ecuador, in 2007, sought cooperating non-member status within the WCPFC, but their application was rejection by the member nations. This issue highlights a loophole for foreign fishing vessels—potential IUU vessels—that fish in the WCPO as they are not subject to WCPFC conservation and management measures because the state flag under which the vessel operates is not a member of the Commission.

The MSRA added a provision (Sec. 510) that requires all foreign fishing vessels transiting the U.S. EEZ seaward of Hawaii, CNMI, American Samoa, Guam, and the PRIA without VMS capable of communicating with USCG or NMFS Office of Law Enforcement (OLE) to notify the USCG or OLE the name of the vessel, flag state, location, and destination of the vessel. Section 510 also requires that all fishing gear on the board the foreign fishing vessel be stowed below deck or removed from the place where it is normally used for fishing. Congress intended this provision to require notification of foreign vessels because the USCG and NMFS Office of Law Enforcement do not have access to VMS data of foreign fishing vessels, and that effective monitoring of the EEZ around the PRIA and other remote U.S. territories takes nearly daily fly-overs by USCG air assets. The Bush Administration in signing the MSRA indicated that they would implement section 510 of the MSRA only as appropriate under international law, and to date, the USCG nor OLE have not pursued this enforcement tool. It seems the Bush Administration interprets section 510 to be inconsistent with existing international treaties or agreements relating to freedom of navigation. While this may or may not be true, the Administration should push this approach in international fora as a means to deter illegal foreign fishing.

Fisheries observers are a major component of effective monitoring of tuna fisheries in the WCPO. At the last WCPFC meeting it was agreed that the WCPFC observer program would be initiated in 2008, starting with national observer programs and with a goal of 5 percent coverage. There has been major resistance in the WCPFC from several member nations on determine what vessels will be subject to observers and when and who is going to pay for the implementation and administration of the observer programs. To put this in context, our local, Hawaii-based longline fishery targeting swordfish is subject to 100 percent coverage and the Hawaii longline deep-set tuna fishery is at 20 percent observer coverage, costing over $6 million per year—we hope to utilize video monitoring technology in the near future to reduce these costs in our fishery.

VMS is another important enforcement tool for effective conservation and management. Although WCPFC conservation and management measures require VMS on all vessels that are authorized to fish in the WCPFC area, the VMS program and implementing details have yet to be agreed on and significant work needs to be done before VMS is applied evenly throughout the region. Through management regulations recommended by the Western Pacific Fishery Management Council in 1991, the Hawaii-based longline fishery was the first fishery in the Nation to be required to use VMS, and thereby pioneering it use as an effective enforcement tool.

At-sea transshipment is a major IUU and management concern because it can avoid port-state monitoring and catch documentation is often lacking. At-sea transshipment is prohibited for purse seiners by the WCPFC; however, at-sea transshipment remains a practice for large-scale longline vessels (mostly freezer vessels fishing for albacore).

Consistent port-state measures are important and require rigorous procedures to verify catch and catch locations. Measures to deny port-entry by vessels suspected of IUU fishing can be problematic as it would then eliminate port-state control of an IUU vessel that if denied port-entry, would likely offload at another, less strictly controlled port.

An important point is that U.S. fisheries operating in the WCPFC are the most tightly managed, closely monitored fisheries in the world. What is troublesome from a U.S. fishing prospective, is that what the U.S. agrees to in the WCPFC and carries out through domestic regulations, the same will likely not be replicated by other member nations. In effect, the U.S. could over-regulate its fisheries while other member nations do little in terms of accountability, thereby setting U.S. vessels at a competitive disadvantage. In this respect, if member nations do not adequately monitor and enforce their own vessels to comply with agreed to conservation and management measure, the U.S. has little option other than to impose trade sanctions.

**Fisheries Development in the U.S. Pacific Island Territories and Commonwealth**

The U.S. Pacific Island Territories of American Samoa and Guam and the U.S. Commonwealth of Northern Mariana Islands need support to develop their fisheries, and existing law such as the Central, Western, and South Pacific Fisheries Development Act of 1972 is an appropriate vehicle to render such support. The U.S., under the South Pacific Tuna Treaty (SPTT), provides $18 million annually to members nations of the Forum Fisheries Agency (FFA) including the Republic of the Marshalls Islands, Federated States of Micronesia, Republic of Palau (which are all Former Trust Territories of the Pacific Islands) for 40 U.S. purse seine access permits to fish within the EEZs of FFA member nations. Because around 25–30 permits have gone largely unused by the U.S. purse seine fleet in recent years, the FFA has sold the latent amount of permits to other nations, thereby receiving double revenues as the U.S. fleet is rebuilding. Guam and the Northern Mariana Islands do not receive any benefit from the SPTT to develop their fisheries.

Given the strategic location of Guam and the Northern Mariana Islands in the Western Pacific, both have great potential to provide needed infrastructure to the WCPFC (its Secretariat is located in Pohnpei, FSM) as well as be international transportation hubs for fishing fleets air-freighting fish to the U.S. and Asia. Guam used to be a major transshipment location for both purse seine and longline vessels, however, over the last 5 years there has been a major reduction in port calls by these vessels. A possible reason for this decline is linked to a suggestion that the Federated States of Micronesia (FSM) is requiring all their foreign fishing access agreements to land their fish in the FSM. Nonetheless, Guam and the Northern Mariana Islands are working to establish small-scale longline fleets and the U.S. should support fisheries development efforts in these areas.

The American Samoa tuna canneries are vital to the territory's economy. In 2004, according to the U.S. Department of Labor, the canneries directly employed 4,738

workers (38.6 percent of all surveyed workers in the territory), paid an average hourly wage rate of $3.60, and accounted for 24.5 percent of the territory's total wage bill for all workers. However, the influence of the canneries goes well beyond purely domestic impacts. Ready access to the canneries by countries surrounding American Samoa (Cook Islands, Niue, Tonga, Samoa) has supported the growth of domestic longline fishing in these countries. Further, as revealed at a recent Western Pacific Fishery Management Council workshop on albacore longline fisheries, most countries across the entire South Pacific, including those with canneries such as Australia, New Zealand, Papua New Guinea, Solomon Islands and Fiji, ship albacore to Pago Pago for canning. The development of the albacore longline fisheries in the central South Pacific have also provided benefits to those Pacific Island nations that have the majority of the skipjack resource but do not receive the lion's share of the SPTT funds. Thus, the SPTT is a key component for the U.S. in the Pacific Islands through this mosaic of inter-connections to other fisheries, and for this reason, it does not simply represent U.S. purse seine access to skipjack in the equatorial Pacific.

The Hawaii and American Samoa longline fleet comprise the largest U.S. domestic industrial fishing fleet in the WCPO. The Hawaii and American Samoa fisheries are model fisheries in terms of ecologically sustainable longline fishing, employing high observer coverage, vessel monitoring systems, limited entry programs, spatial management to minimize fishery interactions, and innovative turtle and seabird bycatch reduction methods. Indeed, the Hawaii fishery was recently evaluated and found to be overall 93 percent compliant with the United Nations Food and Agriculture Organization's Code of Conduct for Responsible Fisheries. Responsible, well-managed fisheries can also be profitable. This is evident from Honolulu being ranked 4th ($54,600,000) nationally in terms of landed fish value for 2006, and in 2007, the value of landed fish in Honolulu is in excess of $71 million.

Our longline fisheries, therefore, serve as the model for other nations within the WCPO. Countries neighboring American Samoa, such as the Cook Islands, Samoa and Niue, have taken a serious interest in U.S. longline fisheries management and seek to emulate our successes. Moreover, longline fishing seems poised to begin developing in the Guam and the Northern Mariana Islands, where if successful, will provide an additional role model for neighboring Micronesian countries, such as the Federated States of Micronesia and Palau.

**Closing**

Overall, I believe the Department of State, National Marine Fisheries Service, and the USCG are working well on implementing the international provisions of the MSRA. For these agencies it is often a tiring and frustrating experience and they deserve our appreciation and financial support. The focus on IUU fishing is important, but pales in comparison to the challenges faced by the U.S. in attempting to get the Pacific RFMOs to adopt monitoring and compliance along with adequate conservation measures. In the WCPO, the Hawaii longline fleet represents less than 2.5 percent of the total bigeye catch, but provides 87 percent of the total observed (use of fishery observers) fishing effort in the region. As previously mentioned, we have VMS for nearly twenty years in our fishery; however, such measures essential to monitoring and compliance have a long way to go before fully implemented in the WCPFC. As a small, well-managed fishery that has little overall impact in the larger arena of fishing in the WCPO, we stand ready to adopt whatever conservation measures are recommended by science.

We ask only that when the U.S. Government acts to restrict us within the context of international agreements, that it results in lower fishing mortality which benefits the resource and not a simple shift to imports from countries without proper monitoring and compliance. While the Hawaii longine fishery maintains a solid working relationship with the Western Pacific Fishery Management Council, DOS, NMFS, and the USCG, we recognize that further coordination and dialogue amongst these groups is required in order to formulate or consider appropriate management and enforcement measures for international fisheries for which we participate in.

Chairman Inouye and Members of the Committee, it has been my honor to testify today and I will gladly accept and questions.

Senator STEVENS. Thank you very much. I will have some questions.

Ms. Speer, thank you for being here.

**STATEMENT OF LISA SPEER, DIRECTOR, WATER AND OCEANS PROGRAM, NATURAL RESOURCES DEFENSE COUNCIL**

Ms. SPEER. Thank you very much, Senator Stevens.

Senator STEVENS. Can you pull that mike up toward you, please?

Ms. SPEER. Yes, sure. I want to, first of all, echo Mr. Benton's sentiments, thanking you for your extraordinary leadership over the last two decades in terms of the Fish Stocks Agreement, the Driftnet Moratorium, the recent U.N. General Assembly resolution calling for regulation of currently unregulated bottom fisheries throughout the world. All of those and many more major international instruments to govern high seas fishing have resulted directly from your leadership, and the world owes you a big thanks.

My written testimony focuses on a lot of different issues. I would like to address my comments today on the North Pacific and the Arctic.

As you know, as a direct result of the resolution you sponsored, Senate Resolution 610, the U.N. General Assembly passed a resolution in October of 2006 calling on States to establish regional fishery management organizations to govern fisheries that are currently unregulated throughout the world. And there has been good progress since 2006 in implementing that resolution in many places. But unfortunately, one of those places is not the North Pacific.

There are a couple of problems here. The first is in the current Northwest Pacific negotiations that are ongoing right now between the United States, Korea, Russia, and Japan. There have been a number of different meetings. Interim measures have been adopted for the Northwest Pacific. But unfortunately, a lot of those interim measures are not being implemented.

For example, one of the key interim measures that was agreed to was to "freeze the footprint," to have no new fishing in this region until a management regime can be established. But the parties have not yet submitted the information needed to determine where that footprint is. So it is pretty hard to, in fact, implement a "freeze the footprint" agreement if you don't know where that footprint is.

And second, with respect to the other measures that have been adopted, in the absence of 100 percent observer coverage as we have in the North Pacific within the U.S., there are always going to be questions about whether, in fact, the other parties are complying with whatever measures, no matter how good they are, that have been adopted.

Of even greater concern is the draft treaty text that has been prepared by Japan that would govern fisheries in the future. This treaty, in our view, falls way short of what U.S. fishermen have to comply with under the Magnuson-Stevens Act, as well as the Fish Stocks Agreement and other international agreements.

Our view is that the Northwest Pacific agreement has to undergo a complete overhaul, and if that is not possible, we would recommend that the United States withdraw from the negotiations, because for us to sign on to a treaty that is that deficient would send a terrible message to the world about our commitment to modern fisheries management and promoting the ideas that are in the Magnuson-Stevens Act beyond U.S. borders.

So why does the North Pacific agreement matter to the United States? There is a chain of volcanoes under the sea that stretches from the northern part of Hawaii up to the Aleutians. It is sort of a string of pearls, if you will, that connects Hawaii and Alaska. And those volcanoes are stopping points for a number of different migratory species.

They are also covered with corals. The Chinese fishery in that region for many years was exclusively for corals, and there are still very large aggregations remaining in many places.

Unfortunately, the Japanese and the Russians fished out most of those seamounts for pelagic armorhead and alfonsin in the 1960s and 1970s. And one thing we learned in Hawaii at the most recent meeting of the northwest fishery negotiations is that overfishing is continuing on those seamounts, and it is having an impact within the zone, within our zone, on the Hancock seamounts, which are the northern-most seamounts within the U.S. zone. Before 1976, they used to be in the high seas. They were overfished. The U.S. claimed jurisdiction, and shut the fishery down in 1984. There has been a moratorium on all bottom fishing on the Hancock seamounts since 1984, and the fish have not come back.

And NOAA's Hawaii office thinks the reason they are not coming back is because overfishing is continuing on the high seas in the northern seamounts that are providing the feed stock for bringing those fish back again. So overfishing on the high seas is having an impact within our zone, and that is a really important element to address.

The Northeast Pacific, turning to that for a moment, as you probably know, is completely unregulated. There are no efforts right now to establish an RFMO, and we are very concerned that as the noose tightens around unregulated fishing in other parts of the world, that we are going to start attracting all kinds of people who seek to evade regulated fishing to the Northeast Pacific.

We recommend that the United States initiate something to get into place a management plan for the Northeast Pacific as soon as possible. We would prefer to see one regime cover the entire North Pacific. But given the drawbacks that I mentioned with respect to the Northwest Pacific, that may not be possible.

I wanted to turn to the Arctic for a moment and to say that the actions that the North Pacific Fishery Management Council has taken have been extraordinarily foresighted, and we strongly support what they have done and agree that they ought to be exported beyond our zone. And time is not on our side on this. If, in fact, as you mentioned earlier, we have 2 or 3 years, we really need to get cracking.

I have spoken to a number of people in the State Department. As was noted earlier, there have been overtures both to Russia and to Canada to see whether there is interest in moving this forward. And frankly, I understand the response has been from tepid to lukewarm, and I think that is going to continue to happen unless we start elevating the level of diplomatic engagement by a bunch of rungs up the ladder. In fact, we may want to just ditch the ladder and get in the elevator and raise this at a much higher level.

And I would encourage you, sir, to consider doing what you have done in the past so successfully, which is start talking about this

in international fora. Come to the United Nations. Start talking about the need to protect the Arctic, the need to come together and develop an agreement that will regulate commercial fishing before those commercial fisheries get established. If we wait until they get established, it will be much more difficult.

Thank you for the opportunity.

[The prepared statement of Ms. Speer follows:]

PREPARED STATEMENT OF LISA SPEER, DIRECTOR, WATER AND OCEANS PROGRAM, NATURAL RESOURCES DEFENSE COUNCIL

Mr. Chairman, Members of the Committee:

My name is Lisa Speer. I am Director of the Water and Oceans Program at the Natural Resources Defense Council (NRDC), a national conservation organization dedicated to protecting natural resources and public health. My work over the last 10 years at NRDC has focused on the conservation and management of fisheries and the marine environment in areas beyond national jurisdiction.[1] We welcome the opportunity to testify today on issues related to international fisheries management and enforcement.

I would like first to thank Senators Inouye and Stevens for their outstanding leadership on fisheries issues. For more than two decades, Senators Stevens and Inouye have led the way in promoting sound fisheries management both here in the United States and beyond our borders. Their decades-long bipartisan cooperation has yielded extraordinary results, including the 1991 U.N. moratorium on large scale driftnets on the high seas, the groundbreaking, legally binding conservation provisions of the U.N. Agreement on Straddling and Highly Migratory Fish Stocks ("Fish Stocks Agreement"), the FAO International Plan of Action (IPOA) on illegal, unreported and unregulated (IUU) fishing, the 2006 U.N. General Assembly Resolution 61/105 on unregulated fishing, and a host of other key agreements, instruments and resolutions. The oceans, and the planet, owe them an enormous debt.

**Overview of International Fisheries**

There is no longer any doubt that we are rapidly reaching, and in many cases have exceeded, the limits of ocean ecosystems and the fisheries they support. According to the U.N. Food and Agriculture Organization (FAO), roughly seventy-five percent of the world's marine fish populations are fully fished, overfished, or depleted. Sea turtles, marine mammals and seabirds are threatened by incidental catch in fishing gear, as are many species of commercial and non-commercially important fish. Destructive fishing practices such as unregulated bottom fishing damages the habitat on which marine life, including important commercial fish species, depend. Overcapacity and subsidies—on the order of $10–15 billion annually—continue to propel short term overexploitation at the expense of long term sustainability.

The depletion of the seas has enormous implications for the human environment as well as the natural one. Globally, over a billion people get a major portion of their protein from the sea. Marine fisheries employ roughly 20 million people worldwide, many from developing countries where fishing provides a critical source of income as well as food.

Climate change and acidification of the oceans lends new urgency to these pervasive problems. Scientists believe that healthy, diverse marine ecosystems are the best insurance against the profound changes in store as the planet warms and the oceans acidify. Like people, the healthier our oceans and fisheries are, the better able they will be to cope with potentially devastating changes.

**Increasing Pressure on the High Seas**

Faced with declining stocks in nearshore coastal waters, fishermen now venture far out into previously untouched areas of the deep sea, home to exceptionally vulnerable species and habitats. According to FAO, the catch of oceanic species typically found on the high seas has tripled since the mid–1970s. And the pressure is growing. Just last week the chief of the Russian State Committee for Fisheries announced a plan to expand the Russian open ocean fish catch by *50 times* current

[1] This testimony uses the terms "high seas" and "areas beyond national jurisdiction" interchangeably, recognizing that they are not completely congruent in aerial coverage.

levels, from 30,000 tons to 1.5 million tons by the end of next year.[2] While the amount may represent wishful thinking, the direction is unmistakable and is shared by other high seas fishing nations.

Conservation and management of high seas fisheries is important to the United States for several reasons. Many high seas fish stocks, such as tuna, swordfish and squid, are important to U.S. fishermen and consumers. Mismanagement, illegal fishing, unregulated fishing and the use of damaging fishing practices harms those stocks, damages marine wildlife and destroys important ocean habitat. In addition, poor or absent management of high seas fishing puts U.S. fishermen, who must comply with the requirements of the Magnuson-Stevens Act and other statutes, at a serious competitive disadvantage against unregulated or poorly regulated foreign fleets.

For these and other reasons, the U.S. has an important interest in the governance of high seas fishing. Unfortunately, the international regime governing such fishing has not kept pace with the expansion of fleets and technology, as discussed below.

**Gaps in International Fisheries Governance**

Gaps in fisheries governance include geographical, implementation and enforcement gaps.

a. Geographical gaps

RFMO/As with authority to manage highly migratory species such as tuna and swordfish cover most of the world's oceans. This is not the case for other high seas fisheries, including those for sharks, many non-tuna or tuna-like pelagic species, and non-straddling deep sea fish. The remainder of this testimony focuses on the latter category.

Prompted by Senate Resolution 610, introduced by Senators Stevens and Inouye in September, 2006, and a following directive by President Bush, the United Nations General Assembly passed a resolution in December 2006 to address the gaps in bottom fisheries governance. UNGA Resolution 61/105 calls on States to establish new RFMOs and to adopt interim measures to regulate bottom fisheries and protect vulnerable marine ecosystems on the high seas by December 31, 2008.

Important progress in implementing Resolution 61/105 has been made in South Pacific, where parties negotiating a new South Pacific RFMO have adopted strong interim measures and have made steady headway in negotiating treaty text. We are grateful for the leadership role played by the United States in the development of interim measures.

The South Pacific, along with CCAMLR, stands out among RFMO/As with competence to regulate bottom fisheries. Most other RFMOs lag far behind these two regions in implementing Resolution 61/105. Of particular concern is the direction of negotiations in the Northwest Pacific, and the lack of any meaningful progress toward establishing a management regime in the Northeast Pacific.

*The Northwest Pacific*

Negotiations to establish a new RFMO/A in the North West Pacific began in 2006 and involve the U.S., Korea, Japan and Russia. The parties agreed on interim measures for the management of bottom fisheries on the high seas of the region in February 2007, and agreed to a further set of measures to implement the February 2007 agreement in October 2007. While good progress has been made on interim measures, a key issue with regard to observer coverage was not resolved, and several important issues were left open pending the development of the FAO Guidelines on implementing key elements of UNGA Resolution 61/105. These include the definition of vulnerable marine ecosystems and significant adverse effects.

Of much greater concern is the draft convention text prepared by Japan. In our view, the current draft of the convention text does not meet the most basic requirements of modern international fisheries agreements, including the U.N. Fish Stocks Agreement, the FAO Code of Conduct, the FAO Compliance Agreement, and other international instruments. Nor does it impose requirements anywhere close to those required here in the United States under the Magnuson-Stevens Act.[3]

U.S. approval of this draft in anything like its current form would send a very negative message to the rest of the world about our commitment to improving im-

[2] Kazinform, March 22, 2008.

[3] The major areas in which the draft convention text falls short in our view include its weak or absent provisions on transparency, new fishing in the absence of a management plan, registry of vessels and vessel owners, port state duties, capacity controls, flag state obligations, transshipment, boarding and inspection procedures, decisionmaking, performance reviews, conservation and management measures for target and non-target species, implementation of the precautionary approach, observer coverage, and data sharing.

plementation of high seas fisheries management principles and instruments, in particular the commitment to the effective implementation of the 1995 U.N. Fish Stocks Agreement. We trust the U.S. will do everything necessary to strengthen the draft so that foreign vessels operating on the high seas in the Pacific are subject to standards at least as stringent as those in place in the U.S. under the Magnuson-Stevens Fishery Conservation and Management Act. If the other participants to the negotiations do not agree to dramatically strengthen the draft text, we recommend the U.S. withdraw from the negotiations.

*The Northeast Pacific*

As the noose tightens around unregulated fishing across the globe, the Northeast Pacific is one of a dwindling number of places left where high seas bottom fishing can proceed unregulated, unmanaged, and unreported. At the moment, there does not appear to be much high seas bottom fishing taking place in the Northeast Pacific. But there is no doubt that will change as fisheries become depleted or subject to tighter regulation elsewhere. The Northeast Pacific should not be permitted to become a haven for foreign fleets seeking to prosecute fisheries without controls, oversight or enforcement.

For many reasons, we believe a single RFMO covering bottom fishing on the high seas of the entire North Pacific would be an ideal outcome. One possibility is to extend the Northwest Pacific agreement to the east and south so that it covers the entire North Pacific. Unfortunately however, as discussed above the draft Northwest Pacific agreement does not come close to meeting the standards set in either the Magnuson Stevens Act or the Fish Stocks Agreement. Unless that agreement is fundamentally revised and improved, we do not support expanding its coverage to include the Northeast Pacific.

If strengthening the NW Pacific agreement is not possible, we believe the U.S. should pursue a new agreement for the Northeast Pacific without delay. It is far easier to negotiate strong conservation, management and enforcement measures before foreign fisheries become entrenched and stocks are depleted. Deep sea fish stocks are typically slow growing and easily overfished, and the history of overfishing and depletion in high seas seamount fisheries throughout the Pacific is sobering. Therefore, recognizing that negotiating a new agreement is a large and costly undertaking, we nevertheless recommend the U.S. move quickly to close this gap.

*The Arctic*

Fish distribution and abundance in the Arctic is changing as the ocean warms, and fishing conditions are becoming more favorable. But our scientific understanding of evolving fish population dynamics in the region, and the impact of fishing on the broader ecosystem, remains extremely limited. The North Pacific Fishery Management Council recently adopted precautionary restrictions on Arctic commercial fishing to allow scientists to better understand the changing dynamics of the region, and to permit managers to develop an informed fishery management plan to ensure sustainability of any future fishery.

We applaud this precautionary approach, and support a similar approach for transboundary, migratory and straddling fish stocks that may be subject to fishing by other Arctic nations. The Arctic fisheries resolution (S.J. Res 17), introduced by Senator Stevens and passed by the Senate last summer, promotes the idea of a new international fisheries management organization/s for the region to manage shared Arctic stocks. We urge the U.S. to promote restrictions on commercial fishing of shared stocks along the lines of what the North Pacific Council adopted for domestic Arctic fisheries.

Finally, negotiating an agreement for the Arctic should be a top priority for the United States. We cannot afford delay given the very rapid changes taking place in the Arctic marine environment and the clear intent of some Arctic nations to increase fishing capacity.

*Other regions*

Deep sea fisheries remain unregulated in a number of other high seas areas, including the northern Indian Ocean, central Atlantic (south of the NAFO and NEAFC areas), and the south west Atlantic. In at least some of these areas unregulated bottom fishing targeting seamounts is occurring. In addition, some RFMOs have yet to make satisfactory progress toward meeting the mandates of U.N. Resolution 61/105. The U.S. can play a helpful role within NAFO, which is holding an extraordinary meeting in May to discuss needed measures in this regard.

In 2009, the U.N. General Assembly will review progress toward meeting the requirements of Resolution 61/105. The results of the review will lay the groundwork for further international action to fill the holes in high seas fisheries governance.

We strongly urge the United States to play an active role in organizing the review with the goal of ensuring that it is conducted in a timely and meaningful manner.

b. Performance gaps

The performance of RFMOs in meeting the mandates of the Fish Stocks Agreement and other relevant instruments varies tremendously. Without accountability or oversight, there is little incentive for RFMOs to improve their performance. We have therefore supported efforts by the United States and others to initiate regular reviews of RFMO performance.

The United States has been a leader in developing and beginning to apply criteria for such reviews. However to date these reviews have largely been self-audits. While those audits have yielded helpful information, we believe it is important for RFMOs to be reviewed by an independent body without a stake in the outcome. Just as few corporations permit employees to review themselves, or schools allow students to grade themselves, we believe RFMOs would benefit from regular outside review. Such reviews would help improve performance, harmonize approaches to fisheries conservation and management and provide for greater exchange of strategies, methodologies and regulatory approaches among RFMOs.

c. Enforcement Gaps: Illegal, Unreported and Unregulated (IUU) Fishing

FAO reports that IUU fishing activities are increasing, and now accounts for some 30 percent of the catch in some important fisheries. IUU fishing contributes to overfishing, habitat destruction, harmful bycatch, and deprives legitimate fishermen of harvest opportunities. Some estimates put the worldwide value of illicit catches at least as high as $10 billion per year.[4]

There are a host of important initiatives under way to address IUU fishing, including those mandated by the 2006 reauthorization of the Magnuson-Stevens Act, and Section 113 of the 2007 Omnibus Appropriations Bill (H.R. 2764), both of which came about as the result of leadership by this Committee.

Four international initiatives stand out as important elements of an international solution to IUU fishing.

1. A global record of fishing vessels

One of the greatest obstacles faced by fisheries enforcement authorities is the ability of IUU fishing vessels to rapidly change names, ownership, and flag to evade enforcement.

Work is now underway under the auspices of FAO to develop a global record of fishing vessels with unique identifiers that stay with the vessel forever, regardless of changes in ownership, flag, or type of fishing. Such identifiers would greatly facilitate MCS, and go a long way to prevent and deter IUU.[5] Combined with other measures, such as those envisioned in the draft Port State Agreement and an expanded MCS network, have the potential to foil efforts to avoid enforcement through renaming, reflagging and changing ownership of vessels. The estimated cost is $2.5m for the development phase of the global record and $600,000 per year for maintenance; an option for the U.S. to consider is contributing to this effort financially.

2. Centralized, tamper-proof VMS

The 2006 UNGA Fisheries Resolution (para 49) urges flag states to require VMS on all vessels fishing on the high seas as soon as practicable and in the case of large-scale fishing vessels no later than December 2008. One option the U.S. could consider is to either prohibit importation of fish caught by such large scale vessels without VMS after December 2008. Another option would be to subject all such vessels to inspection once they enter U.S. ports.

3. Port State Agreement

Port state measures are aimed at vessels engaged in IUU fishing that seek to avoid applicable conservation and management measures by landing catches outside the region in which the fish was caught and where officials have little or no knowledge about the fish landed or applicable management measures. The U.S. is leading negotiations to develop a binding Port State agreement. The current draft Agreement, which will be finalized next year, would require parties to deny use of their ports for landing, transshipping or processing of fish if a foreign vessel:

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[4] Closing the Net: Stopping Illegal Fishing on the High Seas, HSTF March 2006 at 3.

[5] Report of the Expert Consultation on the Development of a Comprehensive GloblRecord of Fishing Vessels, Rome, Italy, 25–28 February, 2008.

—has been fishing in an RFMO area when that vessel's flag state is not a member of that RFMO (note the port state does not need to be a member of the relevant RFMO);

—has been sighted engaged in or supporting IUU fishing activities

—is included in an RFMO IUU vessel list, or

—has not been authorized to fish in the area by the competent RFMO or coastal state.

The Agreement relies on advance notification of detailed information by vessels seeking to land fish, including the vessel's authorization to fish, its transshipment records, relevant regional RFMO, and other information. It is up to the Port State to verify this information. One option for the U.S. to consider is pressing for mandatory flag State verification of a vessels' information (as drafted the agreement allows verification through the flag State but does not require it). Repeated failures by a flag State to provide verification could provide grounds for action against that State, which may in turn provide an effective tool against flag of convenience States and thus have a broader impact on IUU fishing.

4. EU-type Catch Documentation

The European Commission has proposed a new catch certification scheme that focuses on the fish rather than on the vessel as in the Port State Agreement. The proposal, which will be considered for approval by the European Council this June, aims to track fish "from the net to the plate." Under this proposal, all fisheries products imported into the EU, whether fresh, frozen or processed, would be required to have validated catch certificates provided by the flag state that certifies the products are legal and that the vessel concerned holds the necessary licenses and quotas. This would facilitate verification that fish have been caught legally, even if they pass through a number of territories or processing before arriving in the EU market.

One area worth considering is whether such an approach could work in the U.S.. Attacking IUU from both ends—the vessel and the catch—may be more effective at blocking IUU products from entering the U.S. market. Considering that the EU and the U.S. represent two of the three largest seafood markets in the world, this approach has the potential to make a major dent in IUU fishing.

**Conclusions and Recommendations**

The magnitude of the problems facing high seas fisheries calls for a major initiative to chart a new course. As a major fishing nation, as a leader on these issues, and as one of the world's largest consumers of seafood, the U.S. is in an important position to lead such an effort. We recommend such an initiative include the following elements.

1. The U.S. should accede to the United Nations Convention on the Law of the Sea;

2. Continued vigorous advocacy at the WTO to reduce and eventually eliminate the estimated $10–12 billion annual subsidies for fishing that fuel overcapacity and overfishing;

3. Fill governance gaps for species and areas that are currently unregulated, with a particular focus on the north Pacific and the Arctic;

4. Address performance gaps through institution of regular independent review of RFMO performance against internationally accepted criteria;

5. Play an active role in the UNGA 2009 review of the implementation of UNGA Resolution 61/105 regarding unregulated bottom fisheries with the goal of ensuring that it is conducted in a timely and meaningful manner;

6. Provide financial and political support for the establishment of a global record of fishing vessels with unique identifiers;

7. Consider import or other restrictions on large scale vessels without VMS after December 31, 2008;

8. Consider an EU-type catch documentation scheme;

9. Consider pressing for mandatory flag state verification of information provided by foreign vessels under the draft Port State agreement;

10. Lead by example: encourage NMFS to (a) promptly issue proposed revisions to the current National Standard 1 guidelines to ensure that overfishing does not occur and that overfished stocks are rebuilt as required by the MSRA, and (b) effectively implement the MSRA's provisions on rebuilding, which if properly implemented would create tens of thousands of additional jobs, increase catch levels by 64 percent, and add more than $1 billion to the U.S. economy.

In closing, we again thank you and your staffs for your leadership on both domestic and international fisheries. We look forward to working with you to address the challenges ahead. Thank you for the opportunity to testify.

Senator STEVENS. Thank you very much. I look forward to discussing your latest comment. There is just a scarce amount of time to deal with this issue, and I hope that we can get together.

To the great credit of Secretary Albright, she saw the problem and went with us when we went to the U.N. before. I hope that Secretary Rice will similarly see the problem with regard to the Arctic, and I have not had a chance to really discuss that with her yet. But you are right. We can't wait on that subject at all.

Let me turn to Mr. Cook, though. Mr. Cook, Senator Inouye wanted to ask a couple of questions. You have already discussed part of his question; the effectiveness of the Western and Central Pacific Fisheries Commission to establish conservation and management efforts. Do you think they have been successful so far in their efforts?

Mr. COOK. Senator, I am sorry to say I don't. This is a relatively new organization. It has been in the formative stages for several years, but it still is relatively new. As you know, the island nations of the Pacific, the fisheries there, the tuna fisheries are really the only natural resource that they have. They want to sell that resource to the highest bidder. It makes that a very, very difficult situation to operate in.

I think that the U.S. brings the conservation ethic to the WCPFC, and I think that it will take a long time because other members do not necessarily share that same ethic, and it will take a long time and a lot of convincing on our behalf to make these organizations work. It is simply a battle that we have to fight, and it will be a while getting it won.

Senator STEVENS. He said he wanted to know whether the WCPFC has cooperated with and consulted with the Inter-American Tropical Tuna Commission. Do you see such cooperation taking place now?

Mr. COOK. I believe there is some cooperation there. I am not an expert in that area, and I really can't comment on it extensively.

Senator STEVENS. You mentioned the council. Does the council interact with both the Inter-American Tropical Tuna Commission and the WCPFC?

Mr. COOK. Yes, they do. I think they do a very effective job working with both of those commissions. We have people from the council that attend meetings at both of those commissions, and we keep constantly up with them. As you may be aware, we operate under quotas for certain species under both of those, and so we are very, very actively engaged. And I think the council does a terrific job representing the interests of the U.S. on both of those organizations.

Senator STEVENS. Would you submit to us, if you would, any comments you might have on what might be done to increase the effectiveness of the WCPFC and whether or not we might be in position to bring about a better relationship with the council?

Mr. COOK. I will. Thank you.

Senator STEVENS. Thank you very much.

Let me go back to you, Mr. Benton. Based also on what Ms. Speer has said, I think we have acted quickly enough to put down some roadblocks to really entering into the zone directly north of our own State. But I don't think we have been very effective with looking at the whole Arctic Ocean as it might impede on that area once we take down the barriers. Now am I right?

Mr. BENTON. Thank you, Senator Stevens. Yes, I think you are absolutely dead-on. I think that the fishery management council took a very bold step. There was some trepidation there for a bit on their part when they first did it. But they stepped up to the plate, as they have often done for conservation, and that is a good step.

But when you look at the Arctic Basin, sort of look at the map looking down from the top, we have got a real challenge ahead of us here. As Ambassador Balton pointed out, there are fisheries occurring on the Atlantic side now, and a lot of players over there, those arrangements over there, even though they have arrangements, aren't working all that well. It is my understanding.

Our relationship with our Russian neighbor is not what it was a decade or so ago, to be quite honest. And I have also heard, as Ms. Speer mentioned, that overtures had been made to both Canada and to Russia and that Russia and Canada both were lukewarm. And it seems to me that we do need to up the ante here. But I don't think that we can do it just from a top-down approach. I like the idea of you taking—taking charge of this Arctic issue and giving it the profile it needs because it does need it.

We also, though, need to find the right people to talk with the people on the ground on the Russian side to get some support in Russia for that kind of action as well. That is how we did it before. We worked both from the top and the bottom, and we got industry-to-industry discussions going on. We had—you know, the State of Alaska took a real role in working with folks in Vladivostok and Petropavlovsk to get support in the region for some of the initiatives we took in the past.

I think that if we explained it correctly and if we had an initiative such as Ms. Speer mentioned and you have hinted at of maybe you taking charge of this and taking it to the United Nations and taking it to the Secretary of State, I think we could be very successful, and I think we could turn it around. I don't see that kind of aggressive, coordinated strategy developing yet, and it needs to do that very quickly because you are right. Time is not on our side.

Senator STEVENS. Well, we are planning to do just that. But one of the problems we have is the oil and gas development is coming at us, too, with the Chukchi Sea sale and the interests of Shell now in the Arctic Ocean. I don't know if you realize it, but the revenue-sharing provisions of the bill that passed in the last Congress excluded Alaska from participating in any of the revenues from the outer continental shelf off our State.

Strangely enough, the revenues from any development off our State will go into this fund that was created by that legislation that is shared by Florida and Louisiana and Texas and parts of California. I think that is, right now, an impediment, and I have had meetings with the oil industry. They agree. They think there should be a portion of the revenues that go to the Federal Govern-

ment dedicated to the basic resource protection that comes from a revenue-sharing concept.

We are going to try to deal with that, but the representatives of the oil industry also recognize the fisheries issues are acute and want to be involved in approaching the people to make sure that the protection measures are in place. So if there is any damage that comes about from an initiation of harvesting of the fisheries, that they won't be blamed for that, frankly. And I understand their fear because that is a totally virgin area for any kind of fishing. And if the IUU people get in there, it is going to be an overwhelming damage immediately. It would harm the future of the oil and gas prospects, I think.

Ms. Speer, do you have any knowledge of what happened in the Norwegian area? There has been oil and gas development there, as I understand it. In the same areas there has been some of the intrusion of the IUU fisheries. Ms. Speer, are you familiar at all with that area?

Ms. SPEER. I am not. Unfortunately, not with respect to the oil and gas interests there. But I think you are raising a really important issue. The thing that worries us most is the oil and gas development that is conducted on the Russian side.

It is not subject to the same kind of controls we have here, and a devastating event on the Russian side could have implications for the entire Arctic, including our zone, including our fisheries. And I think having a larger engagement with the Russians over the future of the Arctic is going to be very important.

I don't know how to make that happen other than to have a much higher-level engagement than we have right now. The President, you know—I know your friend Sylvia Earle was at the Easter Egg Roll with the President a few weeks ago, and she mentioned this. And she is very interested in trying to pursue this.

Maybe there is a way to get interest in engagement at the White House for moving forward with this, linked to the Law of the Sea and other related issues.

Senator STEVENS. You are right. She has a very great approach to all these issues, and I enjoy working with her.

You have mentioned overfishing on the high seas, and I assume you are speaking of the Gulf of Alaska. Where are you talking about, your comments about overfishing in the high seas?

Ms. SPEER. I was talking about overfishing on the seamounts of the Northwest Pacific, which is the subject of the current negotiation going on between Japan and the United States, Russia, and Korea to negotiate a fisheries agreement as a result of the U.N. General Assembly's resolution. This is a chain of seamounts that extends from the northwest Hawaiian Islands up to the Aleutians, and it is really an extraordinary area. And it has been overfished for a long, long time.

And it is continuing, and we are now learning that the effects of that are——

Senator STEVENS. What vessels are involved? Are these IUU vessels, or are these tuna fleets?

Ms. SPEER. Well, they are U vessels. They are unregulated vessels in terms of international control. There are somewhere between two and eight Japanese vessels. There is one Korean vessel,

and there is an unknown number of Russian vessels. The Russians don't seem to have a good grip on how many vessels they have.

Senator STEVENS. Is that the area you mentioned, too, Dave?

Mr. BENTON. Yes, Senator, that seamount chain that stretches from Hawaii up toward the Aleutian Islands is where those fisheries are occurring now, and the fishing that is going on there is a definite concern.

The problem that I see and I think the problem that Ms. Speer also sees is the piecemeal approach to dealing with this. There is equally large and important seamount provinces in the eastern North Pacific Ocean that extend up into the Gulf of Alaska and up into our own waters. Right now, it is not a really large fishery that is going on there. As Ms. Speer pointed out, there is probably maybe 20 vessels that are over there, but they are having a very significant effect.

And if we have sort of a situation where we squeeze the balloon in the Northwest Pacific, then they are going to move over into our part of the world or other fleets potentially can. That is why we support a comprehensive solution, one that covers the entire Pacific Ocean and deals with protecting areas like seamounts.

You know, the North Pacific Council closed the seamounts in our own waters, and we did that in recognition that seamounts are a very unique habitat. Seamount fishing in other parts of the world is an important way of doing it, but I think off of Hawaii inside our own zone, we have pretty adequate controls on how you do that without damaging seamount resources.

But we won't see that in the international waters unless we get a comprehensive agreement and we get regulations put in place. But if we don't do that for the entire area between Asia and the Americas, we are not solving the problem. We are just moving the problem.

Senator STEVENS. Do we have any information at all about any fishing that is up in the area, the Baffin Islands on the Canadian side?

Mr. BENTON. Up on the Arctic side?

Senator STEVENS. Yes.

Mr. BENTON. There is, I think, some small near-shore coastal subsistence fisheries that are occurring up in that area, but nothing of any consequence.

Senator STEVENS. You haven't heard of any commercial fisheries up there, have you?

Mr. BENTON. No. I don't believe there are any. And there is a very small semi-commercial fishery at the mouth of the Mackenzie River as well.

Senator STEVENS. Well, I thank you very much, and I thank the Chairman for allowing us to have this hearing in his absence because I think it is important for us to get a record and proceed on it. I do plan to approach the Secretary and to try to enlist not only the Secretary of State, but the Secretary of Commerce in terms of a concept of trying to dig into this issue.

As I said, the area north of our State, I think it is totally virgin territory, and north of Wrangel Island and Russia, too, I don't think there has been much commercial fishing up there either. I do think that we have a chance to show what scientific manage-

ment could bring and maybe hold as an example to the other countries of the Arctic what can be done if they really assert their authority to protect the fishery resources of the Arctic Ocean.

Most people seem to think the ice is going to disappear altogether. It will be there in the wintertime. We are not going to have any wintertime fisheries I am told, but the summer fisheries could be just zip in and zip out if we are not careful. If there is unregulated access to the Arctic Ocean through the Bering Straits, we are going to be in trouble.

The concepts of freedom of navigation would apply to that area, and we have to find ways to limit that with regard to vessels that could do a great harm to fishery resources. We have not mentioned the basic problem that a lot of the basic food chain for the fishery resources of the North Pacific originate in the Arctic area. That is my information, and I do think that we ought to pursue it and make sure that information is correct.

Mr. Cook, the Chairman gives you his apologies, and I spoke to him. He deserves to be where he is, and I hope he stays in bed because he had a bad cold.

Ms. Speer?

Ms. SPEER. I just wanted to say one more thing. The United Nations is a terribly dysfunctional body, but it is a place where you can make progress, and people remember you. They really do. And I think there is a lot of discussion of Arctic issues, but people are looking for a leader. And I think if you came to the United Nations, it would have a very big impact in elevating this issue.

Senator STEVENS. Well, I thank you for that. That is why I asked the Chairman to allow us to have this hearing. You don't go up there until you are ready, and you have to be sure you have your own people with you. The reason we succeeded in terms of the driftnet fishery was that we went from the hearing to Secretary Albright and then to the U.N. together.

A Senator can't rush up to the U.N. and say, "Look, guys, listen to me." It has to be as a representative of his country. They have to be behind the Senator before that takes place. So I hope that we can go from here and to the Cabinet and then to the President and then to the U.N. And it would be much better if I had the President of the United States speaking to the U.N. about protecting the Arctic Ocean. I hope we can convince him to do that.

So thank you all very much. As I said, there may be questions submitted by any members of the Committee. There is a debate on the floor about housing. So I understand why they are not here and I am. But I am where I want to be.

Thank you very much.

[Whereupon, at 11:25 a.m., the hearing was adjourned.]

# APPENDIX

## PREPARED STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

Americans are among the top consumers of seafood products in the world. Despite the strength of the U.S. seafood industry, the majority of these products are imported. Yet all too often we are completely unaware of the product history of the seafood we consume: where it has been, how it was harvested and whether it is safe.

With respect to seafood safety, Senator Stevens and I have recently introduced legislation to help ensure that imported seafood products are properly inspected, deemed safe, and meet the food safety standards that American consumers deserve.

Along with ensuring that seafood is safe for consumption, it is critically important that we ensure fish are harvested in a sustainable manner.

The problems of illegal, unreported, and unregulated (IUU) fishing, coupled with global overfishing in general, have had a significant impact on our marine environment and on our economy.

With the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act, the United States is committed now, more than ever before to thwart destructive fishing practices.

Marine science tells us, however, that many fish stocks know no boundaries, and in fact traverse across national maritime borders and into the high seas. We therefore need responsible, cooperative, balanced and enforceable international conservation and management agreements for fisheries.

With this goal in mind, I am especially concerned with the inability of the Inter-American Tropical Tuna Convention (IATTC) and the Western Central Pacific Fisheries Commission (WCPFC) to reach consensus on establishing and enforcing management and conservation measures for tuna, specifically bigeye tuna, in the Pacific. I am also concerned that while our fishermen are stepping up to the plate, an uneven playing field is being created because of the members of the Commissions that will not make decisions and are allowing their fishermen to continue in an unfettered manner with bad practices.

To the extent that conservation and management measures are currently in place, I have significant concerns regarding the ability of the responsible agencies to effectively enforce existing mandates. I hope that today's witnesses can help us identify gaps in enforcement that exist under the current regime, and recommend how we can better position these agencies and our country to address foreign fishing incursions into our waters, and how can we increase our role in combating IUU both at home and on the high seas.

Responsible and enforceable conservation and management will help ensure a sustainable supply of fish both within our Exclusive Economic Zone (EEZ) and on the high seas.

I look forward to working with the witnesses before the Committee today to strengthen the role of the United States on these crucial fisheries issues.

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## PREPARED STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

I'd like to thank Chairman Inouye and Co-Chairman Stevens for holding this important hearing today.

I would like to start out by expressing my sorrow for the recent tragedy of the Alaska Ranger, which sank near the Aleutian Islands on February 23. My condolences go out to the families and friends of the five crewmembers who were lost, and to the rest of the crew who endured this harrowing ordeal.

I would also like to recognize the courage of the Coast Guard members who braved extremely difficult conditions to conduct a heroic rescue—saving dozens of crewmembers' lives.

The results of the investigations into the Alaska Ranger incident will be of the utmost importance as we learn what went wrong so we can determine what steps to take to make sure such tragedies are not repeated in the future.

**International Fisheries**

By its very nature, fishing is a truly international endeavor. Fish don't restrict their movement to geopolitical borders, and the health of international fish stocks is critical to the livelihood of fishermen in the Pacific Northwest and throughout the world.

Last year, more than $1 billion worth of seafood was imported into the Port of Seattle from dozens of other countries, including Ecuador, Greenland, Malaysia, Canada, Sri Lanka, China, and Russia. We also exported over $1.1 billion of seafood to just as many countries.

Because of this international nature, what happens in high seas fisheries is both everyone's responsibility and, at the same time, nobody's responsibility. We cannot let this fact tempt us into inaction.

We must hold ourselves accountable to play an active role in ensuring that the world's fisheries are managed in a responsible, sustainable way that preserves their integrity for future generations.

**Fisheries Management**

Effective fisheries management is a complicated and difficult job.

Our experience tells us, though. that it requires a few key building blocks:

1. *It Requires an Effective Management Authority*—There must be a management organization with a clear mandate, clear lines of authority, and the ability to effectively regulate, control, and limit harvest.

2. *It Requires Reliable Scientific Data*—We must be able to reliably and consistently track changes in fish populations, and understand when they are going up, down, or sideways so we can take wise management actions that the fishing industry will believe and accept.

3. *It Requires the Long-term Interest of Stakeholders in Conservation*—Fishermen need to believe that maintaining the health of the fisheries is in their best interest. From time to time, catches will inevitably need to be reduced, and getting cooperation and buy-in from the fishermen to do this is essential.

These three prerequisites are only a starting point, but they are an important and necessary foundation.

If we don't get these building blocks right, there is little hope that we will achieve the sustainable fishing practices that our oceans deserve.

**Fisheries in International Waters**

Unfortunately, the international community has largely failed to achieve these few key building blocks for international fisheries.

Management of international fisheries is done through a patchwork of regional fishery management organizations. A glance at a map of these organizations shows that they are a confused and disorganized mess of overlapping jurisdictions.

Famous for their ineffectiveness, these organizations are far from the strong international management authorities we need.

Scientific data on international fisheries is often lacking, leaving scientists to rely on uncertain models (and sometimes guesswork) to make management decisions.

Where data do exist, it is often questionable or incomplete.

Nations that do provide reliable data usually demand anonymity on who is fishing where, preventing scientists from understanding which nations are acting responsibly, and which are causing damage.

On conservation, the international fishing community has not yet accepted that conservation is in their long-term best interest. The business of international fishing is still too focused on short-term interests and dollars-and-cents.

This means that responsible, conservation-minded fishing practices in international waters are the exception—not the rule.

**Moving Forward**

There are many issues to complain about with international fisheries, and many of these topics will undoubtedly be raised here today.

I believe, though, that it is important to understand that the United States is just one player.

There is only so much that we can actually control, and there are limits to what the United States alone can achieve.

We can, however, play an active and productive role.

To do this, we must focus on the things that lie within our control, and push the international community to develop a basic foundation upon which all sustainable fisheries must be based.

We must ask how we can be more effective players in the international fisheries world:

- How can we help foster the development of effective regional management organizations?
- What can we do to improve the science of international fisheries and to encourage the open, transparent collection and sharing of reliable scientific data?
- And how can our government convince others that conservation is in their best interest—encouraging them to adopt fishing practices that are less destructive, more sustainable, and reduce bycatch?

We must also look ahead to the challenges facing us in the coming years and decades.

We must consider the future role of rapidly growing nations like China. As China continues to industrialize, it has the potential to play a major role in the future of fisheries in the high seas.

It is also essential that the international community—including the United States—find a way to more effectively deal with illegal, unregulated, and unreported fishing.

Achieving effective international management will mean nothing if people don't follow the rules.

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PREPARED STATEMENT OF HON. OLYMPIA J. SNOWE, U.S. SENATOR FROM MAINE

Thank you, Mr. Chairman, for convening today's hearing on International Fisheries: Management and Enforcement. As Ranking Member on the Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard, I am fully aware of the vital implications of these issues not only for our domestic industries, but in some cases for the global viability of entire species.

In a seminal article first published in the journal *Science* in 1968, Garrett Hardin described the "tragedy of the commons"—a scenario in which the freedom of individuals to exploit commonly held property must inherently lead to its ruin. Hardin based his theory on the assumption that individuals will seek to increase their yield from the common property because in the absence of regulation, if they don't do it, someone else will. As pressure increases the resource is used up faster and faster until it is completely destroyed.

Part of passage of the Magnuson-Stevens Fishery Conservation and Management Act in 1976 was Congress' recognition that the tragedy of the commons was occurring in the fisheries of the United States. Fish stocks were declining, fishing pressure was increasing, and catch rates were spiraling into an abyss from which we feared our stocks might not recover. Today, I see that tragedy once more playing itself out, this time on a global stage, and while the United States cannot manage this crisis alone, we can and must be world leaders in the fight to protect the fisheries that put food on our tables, and to safeguard the species that are in danger of abject collapse.

I would point to the example of bluefin tuna, a species that has been a vital component of the New England fishing industry for decades. In recent years, demand for this fish, prized by sushi connoisseurs, has skyrocketed leading to dockside prices that can reach tens of thousand dollars *per fish.* Despite out best efforts to manage bluefin stocks under an international agreement, the world's population is estimated to have declined by over *ninety percent* in the last 30 years. These figures are reflected in New England where the catch in 2006—the most recent year in which figures are available—was just 124.3 metric tons, less than 10 percent of the fishery's peak of 1,390 metric tons. In Maine, the problem was even more acute, with just 9.1 metric tons landed in 2006, a level of futility that exceeds anything we have experienced in the past half century.

We in the U.S. are doing our part to prevent overharvesting of bluefin, but this is a problem that extends beyond our waters, across the Atlantic Ocean, and into the Mediterranean Sea. And until the other countries that share this valuable fish stock stop overfishing and start managing the resource for the long term, the bluefin population will continue to dwindle.

The bluefin tuna fishery is just one example of the struggles our fisheries currently face to meet the rising demand for seafood while maintaining sustainable harvest levels and healthy fishing communities. The U.S. cannot go it alone, but we can influence global policy through more than a dozen Regional Fishery Management Organizations to which we belong. To enhance our efforts in this regard, I worked alongside many of my colleagues on this Committee—Senator Stevens notable among them—to include in the most recent reauthorization of the Magnuson-

Stevens Act several provisions enhancing our authority to enforce international treaties and agreements to which the U.S. is a party, and to impose import restrictions on nations that fail to adhere to these standards.

And as we strive to protect the world's dwindling fish stocks, we must also protect our domestic fisheries. The fishing industry has been integral to my home state of Maine for generations, and in 2006, Maine's fishery landings were valued at over $368 million. Given our state's reputation, it should surprise no one that the vast majority of that figure, nearly $300 million, came from a single species: lobster. Today, Maine's lobster industry faces numerous challenges, but paramount among them are new regulations that will require our lobstermen to fish using sinking rope, ostensibly to protect endangered species of whales. The Maine Lobstermen's Association has estimated that these regulations will cost each fisherman $10 to $15,000 in the first year alone, and will pose a serious safety risk in some areas.

Meanwhile, lobstermen working just across the Maritime Boundary Line in Canadian waters face no similar restrictions despite plying the same type of ocean bottom for the same lobsters and interacting with the same endangered whales. This blatantly flawed system creates a double-standard for the lobster industry, allowing Canadian lobstermen to pocket additional profits, and to the extent that lobster gear poses a risk to whales, it fails to protect these critically endangered species on one side of a line that is entirely meaningless from an ecological perspective. This is why I introduced a resolution calling for the U.S. to enter into bilateral negotiations with Canada to develop a joint management system that will level the playing field for our fishermen while affording increased protection to our endangered species of whales.

Ultimately, if the world is to avoid turning its high seas into a vast "tragedy of the commons," it will require a legitimate commitment from all fishing nations to recognize that the future of fishing lies not in vacuuming the life out of our seas today, but in responsible, forward-thinking management practices that allow fish populations to regenerate themselves tomorrow. I want to thank Deputy Secretary Negroponte, and all of our witnesses for taking the time to be here today to address these critical issues and to help find a way toward a sustainable future for the world's fish stocks and our fishing communities.

Thank you, Mr. Chairman.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN F. KERRY TO HON. JOHN NEGROPONTE

*Question 1.* The absence of sanction measures within the Regional Fisheries Management Organizations (RFMOs) appears to be a significant challenge in enforcing any strong fisheries management measures within those organizations. Do you agree that this is a problem? Will the U.S. propose more stringent sanction measures within the RFMOs that it plays an active role in?

Answer. The United States has been a leading proponent of ensuring that RFMOs have a comprehensive suite of tools to enforce compliance with agreed conservation and management measures. We developed the first schemes within the International Commission for the Conservation of Atlantic Tunas (ICCAT) to use trade measures to address actions by non-members whose vessels were undermining ICCAT measures. We later worked to expand these measures to members as well, and developed a process by which members would be automatically subject to quota reductions when they exceed their annual limits. In the Northwest Atlantic Fisheries Organization (NAFO), we drafted the first measures to restrict vessels engaging in illegal, unreported, or unregulated (IUU) fishing from landing or transshipping catch taken in contravention of NAFO rules in members' ports. Other RFMOs, including the Commission for the Conservation of Antarctic Living Marine Resources (CCAMLR) and the Inter-American Tropical Tuna Commission (IATTC) have since adopted similar trade or landing restrictions, and almost all RFMOs have adopted schemes for identifying and sanctioning vessels that are engaged in IUU fishing.

But the strong tools already available within most RFMOs can only be effective if all parties have the will and the capacity to use them. While there may be additional steps we can take to strengthen and expand existing sanctions measures, our main concern is the lack of political will by all RFMO members to take the necessary actions to comply with agreed rules.

Another key element is ensuring that all RFMOs develop comprehensive schemes to improve the monitoring, control, and surveillance of the fisheries under their purview. Measures intended to deal with compliance problems that have already occurred are most effective when they complement an appropriate mix of control

measures including effective observer schemes, high seas or port inspection programs, catch and trade tracking systems, or transshipment regulations.

*Question 2.* I understand that the U.S. is playing a lead role in negotiating a new global agreement under the auspices of the Food and Agricultural Organization of the United Nations (FAO) to restrict access to ports to vessels that cannot certify that their catch has been caught legally or that have a history of illegal fishing. Can you provide an update on those negotiations? Do you expect these agreements to apply to only fishing vessels, or carrier vessels as well? What actions can the U.S. take in the meantime—domestically as well as through the RFMOs—to deny access to U.S. markets to illegally-caught fish?

Answer. The United States joined with other members of the Food and Agriculture Organization of the United Nations (FAO) in agreeing to negotiate a legally binding instrument on Port State Measures to control IUU fishing. The United States hosted an expert consultation in September 2007, which produced a first draft of such a treaty. This first draft covers all vessels—catcher vessels and carrier vessels—that are bringing to port fish that has not been previously landed and sets minimum standards for port States to prohibit landing or transshipment of fish caught in a manner that undermines international conservation and management efforts. The final scope of the agreement will be the subject of negotiations that will begin at FAO headquarters in Rome in June. The goal is to produce a treaty that can be adopted at the next meeting of the FAO Committee on Fisheries in March 2009.

We believe that this goal can be achieved. Most governments and interested stakeholders recognize the desirability of having a minimum set of port State controls that apply on a worldwide basis. The FAO has already developed a Model Scheme on Port State Measures, which has usefully influenced the development of port controls by individual nations and by regional fisheries management organizations (RFMOs). But a treaty would increase the chances that port States, individually and through RFMOs, will harmonize such controls and raise the costs of engaging in IUU fishing.

In the meantime, we understand that NOAA fisheries is completing the final rulemaking process to ensure the United States can implement its commitments under the RFMO IUU vessel listing schemes to which we are bound. This will allow us to prevent use of—or in some cases even access to—our ports by listed vessels. We also helped to develop an expedited process by which NAFO may add IUU vessels listed by the North East Atlantic Fisheries Commission (NEAFC) to its IUU list, and we later helped to develop a similar measure in ICCAT to allow the reciprocal inclusion of vessels listed by any tuna RFMO on the ICCAT list. These measures give the United States the ability to act against IUU vessels identified even by organizations, such as NEAFC, to which the United States is not a party and substantially increase our ability to restrict entry of IUU-caught fish into the United States.

*Question 3.* What steps is the U.S. taking within the RFMOs to ensure that vulnerable seafloor habitats are protected from bottom trawling?

Answer. The United States, at its highest levels of government, recognizes that the effects of destructive fishing practices on vulnerable marine ecosystems (VMEs) in all parts of the oceans are a serious problem. As such, we strongly support the 2006 United Nations General Assembly resolution (61/105) that calls for specific actions by States and regional fisheries management organizations and arrangements (RFMO/As) to protect VMEs by the end of 2008. The United States has been a leader in protecting VMEs from significant adverse impacts (SAIs) of certain types of fishing activities, including bottom trawling, both domestically and through RFMO/As.

The United States is party to two RFMO/As with the competence to regulate bottom fisheries and protect VMEs: the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) and the Northwest Atlantic Fisheries Organization (NAFO).

At the 2007 Annual CCAMLR Commission meeting, the U.S. proposed a conservation measure to implement UNGA resolution 61/105, which was ultimately adopted by a consensus of the Parties. The measure, which covers all bottom fishing activities (the use of any gear that interacts with the bottom), freezes the footprint of such activities to areas currently approved for bottom fishing through November 2008. Then, starting December 1, all individual bottom fishing activities are subject to assessment by Scientific Committee. The measure will be reviewed in 2008 and in 2009, and biennially thereafter, to assess its effectiveness.

In NAFO, the United States participated in the development of a measure adopted in 2006 that resulted in the closure of four seamounts to all demersal gear for period of 2007–2010, with an option for exploratory fishing based on Scientific Com-

mittee advice. In 2007, the U.S. worked to secure further protections in NAFO through the establishment of a Coral Protection measure that closed certain areas to all fishing from January 2008 to December 2012. The United States actively participated in the recent special NAFO Intersessional Meeting to develop further measures for VMEs to implement resolution 61/105. We are pleased that at that Meeting the Parties were able to adopt a measure that is fully consistent with resolution 61/105. We look forward to working with Contracting Parties at the upcoming Annual NAFO Commission Meeting to further elaborate certain aspects of the measure.

In addition, the United States is an active participant in two ongoing negotiations to establish regional fisheries management arrangements for non-highly migratory high seas fisheries in the Northwest Pacific and the South Pacific Ocean. In February 2007, the participants in the Northwest Pacific negotiations adopted a set of interim measures that are consistent with UNGA resolution 61/105. These interim measures were further strengthened in October 2007. As discussions continue toward a more permanent management arrangement for this area, the U.S. delegation has proposed expanding the scope to include a broader area of the North Pacific, including the area adjacent the U.S. EEZ off Alaska and the west coast of the continental United States, so that this area is not left unregulated. In May 2007, the United States brokered the adoption of interim measures for South Pacific region that are also fully consistent with resolution 61/105, and which will apply until permanent measures are adopted by the future RFMO.

Further, the United States has continually called upon other nations to take similar actions within areas under their respective national jurisdiction, much as the United States has done and continues to do. The United States has the largest EEZ in the world and has taken very significant steps to protect VMEs, including seamounts, hydrothermal vents and cold-water corals, from destructive fishing practices, including bottom-trawling, that has adverse impacts on VMEs.

*Question 4.* The European Community has proposed a certification scheme which would require that all seafood products imported into the EU receive prior certification from the appropriate flag state that the products are legal and that the vessel holds the necessary licenses, permits and quotas. Does the U.S. have any plans for implementing a tracing or certification system? Would a system like the EU's work for the United States? How do we ensure that certification systems actually reduces IUU fishing, rather than just directing IUU products to other markets without similar certification systems in place?

Answer. In October 2007, the European Commission introduced a suite of proposed regulations intended to close European markets to IUU-caught fish and strengthen tools to combat IUU fishing by vessels and nationals from both EU Member States and third countries. The centerpiece of the plan is a new requirement that all fisheries products imported into the EU, whether fresh, frozen, or processed, must be accompanied by prior certification from the flag State of the catching vessel that the products are legal and that the vessel concerned held the necessary licenses and quotas. These catch certificates may either be established under a bilateral arrangement or pursuant to a multilateral catch documentation scheme, and they will follow the fish or fish products throughout the market chain.

We understand the proposals are undergoing considerable discussion among Member States, and support is mixed. They are now scheduled to be taken up by the EU Council of Fisheries Ministers in June.

The United States has already implemented catch or trade tracking systems adopted by CCAMLR for toothfish species, by ICCAT and IATTC for frozen bigeye tuna, and by ICCAT for swordfish, as well as the tuna tracking program of the Agreement for the International Dolphin Conservation Program (AIDCP) that documents purse-seine harvested tuna from the time of capture forward. We are also working to implement the new bluefin tuna catch documentation system adopted by ICCAT. NOAA Fisheries has recently begun the process to incorporate these schemes into the U.S. International Trade Data System, the "single window" through which government agencies may collect, store, and disseminate all international trade data. This will allow for faster and more seamless import tracking of fish covered under the multilateral schemes above.

We are not aware of any intention to implement a general U.S. fisheries import certification scheme such as the one being contemplated in the EU. Certainly, any such scheme would have to be carefully tailored to ensure that it would be consistent with our trade obligations, would not put an undue burden on U.S. businesses, and would provide a meaningful deterrent to IUU fishing.

*Question 5.* I understand that discussions are underway within the WTO to reduce or eliminate fisheries subsidies. Can you provide us with an update on those negotiations? Do you believe this is an important step in reducing IUU fishing?

Answer. The negotiations on fisheries subsidies are part of the WTO Doha Round "rules" negotiations, and are being conducted in a series of sessions taking place in Geneva on establishing a subsidies discipline. The Doha mandate contains, for the first time, a mandate to establish a set of rules to discipline fishery subsidies that contribute to overcapacity and overfishing, leading to the depletion of fish stocks around the world. In November 2007, the Chair of the negotiating group addressing fisheries subsidies released an ambitious draft text, which would prohibit a broad list of potentially harmful fisheries subsidies, with some exceptions (including for developing countries).

If the prohibition on subsidies is strong enough, and the exemptions or allowable subsidies are clearly defined and appropriately applied within the WTO membership, then they could allow the international community to focus on those vessels or flag states that have not been following the rules or that realize incentives in acting outside of the agreed frameworks and management regimes. However, this step would only be effective if we considered it as part of a larger suite of measures, agreements and approaches that the United States and others in the international community are taking at both global and regional fora to address the multiple challenges associated with, and solutions to, IUU fishing.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUYE TO JAMES W. BALSIGER, PH.D.

*Question 1.* Dr. Balsiger, what is the status of implementing the "equivalent conservation measures" section in the reauthorized Magnuson-Stevens Act?

Answer. In preparation for the first identifications of nations required under Section 610 ("Equivalent Conservation Measures") of the Moratorium Protection Act, NOAA Fisheries has been collecting information from the public and will be seeking to corroborate such information. On March 21, 2008, NOAA Fisheries published a notice in the Federal Register soliciting information from the public regarding nations whose vessels are engaged in the bycatch of protected living marine resources. The information request has been circulated broadly within our constituent groups.

NOAA Fisheries is also in the process of drafting a proposed rule for the identification and certification of nations under the Moratorium Protection Act. In preparation for the development of the proposed rule, NOAA Fisheries published an Advanced Notice of Proposed Rulemaking in June 2007 and the agency held several public meetings in July 2007 to solicit public comments on this process. The proposed rule that is currently under development will outline what equivalent conservation measures nations must have in place to address the bycatch of protected living marine resources in order to receive a positive certification. NOAA Fisheries anticipates that the rule will be available for public comment this summer.

Under the authority of Section 610 of the Moratorium Protection Act, NOAA Fisheries has been involved in various international efforts to support capacity building through agreements and bodies, including the United Nations (UN) Fish Stocks Agreement, U.N. General Assembly and various regional fishery management organizations (RFMOs).

NOAA Fisheries, in cooperation with its Federal partners, has assisted other nations in addressing IUU fishing activity and reducing the bycatch of protected living marine resources, by hosting and supporting workshops on techniques and tools to strengthen enforcement and prevent IUU fishing; on employing methods to prevent and mitigate the incidental take of marine turtles, mammals, seabirds, and other marine resources; and on the proper response to marine mammal strandings. NOAA Fisheries has also provided technical and other assistance to developing countries to improve their capabilities for the monitoring and control of fisheries and has sought to promote the development of effective fisheries observer programs in other countries. NOAA Fisheries will continue to reach out to other nations and provide the assistance and tools necessary to help them reduce the bycatch of protected living marine resources and increase their capacity for sustainable fisheries management.

*Question 2.* Dr. Balsiger, what is being done to expand the capacity of the MCS network to developing countries?

Answer. The Director of NOAA Fisheries Office of Law Enforcement (OLE) is currently serving as the Chairman of the Monitoring, Control and Surveillance (MCS) network and OLE is working to enhance the network through various initiatives including updating the MCS Network website, planning the 2nd Global Fisheries En-

forcement Training Workshop, and increasing network membership. The recent addition of an MCS Network coordinator and ongoing efforts to hire fisheries analysts and a training coordinator will further improve the capabilities of the International MCS network in 2008.

In April 2008, the MCS Network and NOAA Fisheries OLE participated in the Global Oceans Forum in Hanoi, Vietnam in an effort to increase membership of the network and publicize the role and opportunities the MCS network can provide to the Global community. The MCS Network hosted a workshop on illegal, unreported and unregulated (IUU) fishing during the Forum and fostered international dialogue on the challenges and potential solutions to combat IUU fishing in both developed and developing countries. Through this effort, contacts with MCS practitioners in developing countries in Africa has led to discussions on joint projects with the MCS Network and several African nations to conduct operational training and enforcement efforts in portions of Western Africa. Additionally, NOAA Fisheries OLE is working closely with NOAA Fisheries Office of International Affairs on MCS capacity building in Central America and is working with the MCS Network to increase its role in Central America.

*Question 3.* Dr. Balsiger, what is being done to ensure that foreign nations will be prepared to meet international requirements negotiated pursuant to the reauthorized Magnuson Stevens Act?

Answer. NOAA Fisheries has been diligent in communicating the international requirements of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act to other countries at every possible opportunity. To illustrate, NOAA Fisheries has engaged in ongoing communication with other nations about these requirements at workshops and multilateral/bilateral meetings. In addition, NOAA Fisheries has provided information to U.S. Commissioners of RFMOs to ensure that our delegations are aware of and communicate these requirements to other countries at international meetings. NOAA Fisheries will continue to take advantage of every opportunity to communicate these new requirements to RFMOs and other nations.

As discussed in more detail in the response to question #1 above, NOAA Fisheries has also provided assistance to other nations to help them address IUU fishing activity and the bycatch of protected living marine resources. NOAA Fisheries will continue to actively work with other nations to help achieve the goals set forth in the international provisions of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act.

*Question 4.* What are the likely effects that these requirements will have on the importation of seafood into the United States?

Answer. Under the Moratorium Protection Act a vessel of a nation that has been identified as having vessels engaged in IUU fishing and/or bycatch of protected living marine resources may be denied entry into U.S. ports to which they currently have access if such nation does not receive a positive certification from the Secretary of Commerce. An identified nation that fails to receive a positive certification may also be prohibited from importing certain fish or fisheries products into the United States or be subject to other measures.

*Question 5.* What is the percentage of nations that are aware of the MSA requirements?

Answer. NOAA Fisheries is making every effort to communicate these requirements to other countries at workshops and bilateral/multilateral meetings. However, it is unclear what percentage of nations is aware of the international requirements under Title IV of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act.

*Question 6.* Dr. Balsiger, what steps need to be taken to further strengthen the relationship between NOAA and the Coast Guard to improve enforcement and prosecution capabilities?

Answer. NOAA Fisheries OLE and the U.S. Coast Guard (USCG) continue to have a strong working relationship and routinely collaborate on fisheries enforcement issues. The USCG maintains a full time liaison position within the NOAA Fisheries OLE which greatly enhances communications and coordination between the two agencies. In addition, close coordination is routine throughout the Nation between NOAA Fisheries OLE field offices and staff and the USCG personnel in their geographic areas of responsibility. Other relationships between USCG legal staff, as well as operational fisheries law enforcement personnel, and the NOAA Office of General Counsel for Enforcement and Litigation (GCEL) are continuing to increase effectiveness of the two agencies in the arena of fisheries enforcement and prosecution.

*Question 7.* Dr. Balsiger, what tools do you need to strengthen your ability to execute the follow-on investigation and prosecution of violators?

Answer. NOAA Fisheries Office of Law Enforcement (OLE) staff, including 148 sworn Federal agents and officers, continues to work closely with international, Federal and state law enforcement partners in effort to detect, apprehend and prosecute those involved in the illegal importation of IUU product into the United States and/or its territories and to attack the global trade of IUU fisheries product. There are some tools needed to address current gaps in enforcement capabilities to effectively combat IUU fishing:

*Significantly increased civil monetary penalties*—under many of our statutes, civil penalty limits prevent assessment of penalties adequate to deter illegal importation of fish product into the United States. Modernization of the civil penalties to a level beyond a "cost of doing business" is essential to address illegal product being imported into the United States.

*Improved capability to share information*—confidentiality provisions and limitations on information sharing with international fishery management organizations and the governments of other nations currently reduce NOAA's ability to work collaboratively with other governments to track IUU product and conduct joint enforcement operations. In addition, NOAA would benefit from enhanced access to data currently being collected by other Federal law enforcement agencies and the agencies that constitute the intelligence community. OLE is already working, within its existing authority and through on-going initiatives (such as CBP's International Trade Data System (ITDS)) to share information and collaborate with other Federal agencies in the effort to detect IUU fishing but additional congressional authority would assist in this effort.

*Increased criminal authority to allow for criminal fines and penalties for substantive violations*—An expansion of available enforcement tools to allow for the option of criminal prosecution of substantive violations will significantly enhance the deterrent effect of enforcement actions and increase the penalty level beyond a "cost of doing business" for those engaged in illegal trade of fish and fish product.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO JAMES W. BALSIGER, PH.D.

*Question 1a.* Fisheries management in the Pacific Northwest and Alaska are renowned for being some of the best-managed fisheries in the world. The fish, however, don't exactly recognize international borders in the ocean. While we often do a great job managing the fisheries within our borders, our fish resources are also impacted by irresponsible fishing outside our border How important is effective management of international fisheries for the U.S. fishing industry?

Answer. Effective management of international fisheries is very important for the U.S. fishing industry. Effective conservation and management of international fisheries is very important for the U.S. fishing industry. Many of the marine resources of interest to the U.S. fishing industry are resources the United States shares with other nations. As a result, the United States must engage internationally to advance U.S. objectives for the effective conservation and management of the marine resources.

*Question 1b.* What are the main tools and levers that we have for helping push for better international management? What are the main obstacles?

Answer. Bilateral and multilateral arrangements through regional fisheries management organizations (RFMOs) are the basic tools for improving international fisheries management.

Because the resources covered by these management arrangements are shared, Parties are cognizant that irresponsible fishing behavior has a destructive effect on their own fisheries and that conservation and management cooperation result in mutual benefits.

One of the main obstacles in all international (as well as domestic) fisheries management is the availability of complete and reliable data on which to base conservation and management regimes. Due to the enormous size and remoteness of the ocean, access to data is a significant obstacle.

*Question 1c.* Would you say that NOAA is doing enough to push for more effective fisheries management?

Answer. Achieving effective international fisheries management is a constant challenge and NOAA strives to improve this process. For example, in the Pacific Northwest and Alaska, NOAA is currently involved in the negotiation of a North-

west Pacific RFMO to address the adverse effects of fishing gear on vulnerable marine ecosystems. NOAA is also anticipating the possible need to negotiate an Arctic RFMO to conserve and protect Arctic living marine resources as the ice recedes in the Arctic Ocean.

*Question 2a.* U.S. law prohibits foreign fishing vessels and cargo vessels from landing their catch in U.S. ports. American Samoa, Guam, and the U.S. Virgin Islands are exempt from this law, so foreign cargo vessels that accept at-sea transshipments of fish species and foreign flagged fishing vessels can land product in these U.S. ports. How do we ensure that the fish landed at these ports were not harvested in an illegal, unregulated, or unreported (IUU) manner?

Answer. Vessels are subject to NOAA Fisheries Office of Law Enforcement (OLE) inspection upon arrival in port in the United States' territories. Inspections are conducted based on the availability of law enforcement resources and are specifically designed to detect suspected IUU activity and areas for additional investigation. Enforcement action may be pursued by NOAA Fisheries OLE and our law enforcement partners at any time.

Very few cargo (fish carriers) vessels land fish in Guam or American Samoa and most of those that do are used to receive fish from local plants. Carriers operating in the territories of the Pacific tend to transport fish from the fishing grounds to processing plants such as canneries and loining plants.

Since there is a cannery in American Samoa, carriers occasionally enter port to off load. However these carriers come from other ports in the Pacific such as Pohnpei, Honiara, or Majuro and they do not typically carry fish transshipped at sea. These carriers are generally registered with the Forum Fisheries Agency (FFA), and thus they are monitored by the FFA Vessel Monitoring System (VMS). Transfers of purse seine caught fish at sea typically takes several days and loitering of a vessel equipped with VMS would be detected and investigated as potentially suspicious activity.

*Question 2b.* Why are these locations exempt from the law that applies to U.S. ports?

Answer. The Nicholson Act prohibits foreign vessels from landing fish in most United States' ports however it does allow for foreign vessels to unload in the United States' territories. It is our understanding that the exemption to the offloading of fish product in the territories was in part due to an interest in encouraging economic growth. NOAA is not certain of other reasons for the exemption of the territories from the Nicholson Act provisions which apply to all other U.S. ports.

*Question 2c.* Do we have any idea if IUU fish are landed in these territories?

Answer. IUU fish and/or fish product does come into the United States' territories occasionally, and NOAA Fisheries OLE and our law enforcement partners have utilized the provisions of the Lacey Act to prevent IUU fish from being introduced into the United States. As recently as March 2008, NOAA Fisheries OLE initiated an investigation of a foreign flagged vessel landing in American Samoa that was suspected of various illegal fishing activities. To date, this ongoing investigation has yielded numerous instances of IUU fishing activity by this vessel. However, the IUU fish landed in the United States' territories of the Pacific comes almost exclusively from fish harvesting vessels and not freight carrier vessels. NOAA Fisheries OLE and our law enforcement partners are aware of the potential use of these ports for IUU product and have used the Lacey Act successfully for several years to combat it. The establishment of the Western-Central Pacific Fisheries Commission, and subsequent implementation of their conservation and management measures (VMS requirements, observer requirements, etc.), are significantly enhancing NOAA Fisheries OLE's ability to monitor, detect and intercept IUU activity. The current challenge we face is being able to adequately respond to the increased demands for investigation and monitoring of fishing vessel activity in the Western and Central Pacific area.

*Question 3a.* One of the key steps necessary for achieving sustainable fisheries is developing management organizations with clear mandates, clear lines of authority, and the authority to reduce catch and regulate harvest. Taking a look at a global map of the world's international fishery management organizations, though, it seems like they are more like a disorganized mess. How would you grade the international community's success in developing management organizations with clear mandates and clear lines of authority to regulate fishing harvest?

Answer. In most cases where an RFMO exists, there are few problems with lines of authority. The RFMO has the authority to make conservation and management decisions, and RFMO members have the duty to carry them out. Unfortunately, RFMOs do not always have the information or political support necessary to make the appropriate conservation and management decisions.

*Question 3b.* What is the U.S. Government doing to help improve the situation?

Answer. The United States has been at the forefront of efforts to conduct RFMO performance assessments, and several of these are being currently carried out. Our intention has been to call the public's attention to problems, such as you have identified, to help increase awareness and generate pressure to correct them.

*Question 3c.* Can the United States play a greater role? What roadblocks are holding us back?

Answer. Developing states often need assistance in meeting their obligations within RFMOs. Such needs can range from data collection to effective domestic management programs to enforcement. Title IV of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act recognizes these needs and authorizes NOAA Fisheries provide assistance to address them with available resources.

*Question 3d.* To what extent has not ratifying the Law of the Sea impacted the United States' ability to participate internationally in these issues?

Answer. The Status of the United States as a non-party to this vital treaty undermines our credibility with other major fishing nations, virtually all of which are parties to the Convention. The Administration appeals to the Senate to provide its advice and consent to U.S. accession to this treaty.

*Question 4a.* In order to manage fisheries responsibly, we need to be able to track fish stocks effectively. Good, solid science is necessary not just to help in making wise management choices, but also for getting cooperation and buy-in from the fishermen who are impacted by those management choices. What is the United States doing to help coax other nations into providing better data on international fishing?

Answer. As noted above, the United States has been working actively in the RFMO context to encourage other nations to provide better data on international fishing activities, including data on harvest and bycatch. NOAA Fisheries is also providing assistance and expertise to developing nations to improve their capacity to collect and provide such data.

*Question 4b.* In your view, what are the countries that need to make the largest improvements in providing quality fisheries data?

Answer. It is difficult to say which countries need to make the largest improvements in this area. We are working diligently with our counterparts in other nations, both bilaterally and multilaterally, to make such improvements. Particularly, some developing states have the greatest need for resources to make improvements in fisheries data collection.

*Question 4c.* To date, little is known about the impacts of IUU fishing on open-ocean and deepwater ecosystems. What research is NOAA currently conducting to address these gaps in our knowledge?

Answer. Understanding the ecosystem effects of fishing is a high priority for NOAA. Collaborating with our international partners through global science bodies and RFMO/As, NOAA will continue to examine the impact of fishing activities on non-target fish stocks, protected species and their related habitats. For example, NOAA plans to collaborate with international partners on assessments of the impact of bottom fishing activities in the North Atlantic, Pacific and Southern Oceans to ensure the protection of vulnerable marine ecosystems, including seamounts, deep sea corals, and hydrothermal vents. At a time when human activities are expanding into deeper waters, it is crucial to document the effect of such activities on seafloor habitat to provide a foundation for developing sound policy and making wise management decisions.

*Question 5.* NOAA is currently developing a list of vessels and nations that engage in IUU fishing, an activity in which eight RFMO to which the U.S. is a party are also engaging. In a progress report released by your agency in January 2008, the need for consolidation of lists identifying IUU vessels and nations was highlighted. How is the development of a separate list by NOAA an effective use of scarce time and resources?

Answer. Under the Moratorium Protection Act, as amended by the Magnuson-Stevens Act, NOAA Fisheries is required to identify and certify nations whose vessels are engaged in IUU fishing and/or bycatch of protected living marine resources. The list of identified nations must be included in a report to Congress that is due in January 2009.

*Question 6a.* United States fishing fleets often have to deal with rigorous regulations to reduce bycatch of threatened or endangered species like humpback whales, Steller sea lions, and sea turtles. Many of these species, however, are threatened not just by U.S. fleets, but from other nations' fleets in international waters. What is the U.S. Government doing to convince other nations' fishing fleets to adopt more environmentally-sensitive fishing methods used by U.S. fleets to reduce bycatch?

Answer. The United States continues to actively work within the international community to promote measures that will protect and conserve protected living marine resources from the adverse impacts of fisheries interactions. The United States works toward this objective through bilateral and multilateral engagement with other nations to address bycatch. The United States provides assistance and training in the use of bycatch reduction gear, mitigation techniques, and other appropriate measures. To date, U.S. efforts and RFMO actions to protect and conserve protected living marine resources have generally concentrated on the impacts of fishing on sea turtles, sharks, dolphins and other marine mammals. For example, together with international partners, like the World Wildlife Fund for Nature and the Interamerican Tropical Tuna Convention, we have conducted experiments with countries around the world to demonstrate how large circle hooks with the appropriate bait combination can reduce the interactions and post-hooking mortality rates of sea turtles with longlines. NOAA Fisheries' scientists, together with a regional non-governmental organization, WIDECAST, are also conducting research on how to reduce the bycatch of leatherback turtles in coastal gillnets. Through NOAA's research on bycatch reduction, we are able to regularly export bycatch reduction solutions with a minimal goal of voluntary adoption of these solutions, which in time will hopefully lead to their support of mandatory measures at the RFMOs. As another example, NOAA Fisheries is actively engaged in capacity building in the West Africa and Central America regions with an emphasis on enhancing the ability of these countries to monitor and manage their fisheries with respect to reducing protected species bycatch. NOAA Fisheries recently conducted observer training in Ghana to enhance this country's monitoring capability.

*Question 6b.* How successful is our track record in getting other nations' fleets to adopt bycatch-reducing fishing methods?

Answer. NOAA Fisheries has had successes in getting other countries to adopt bycatch reduction technologies. Through our technology outreach to other countries we demonstrated to countries that using bycatch reduction devices, such as Turtle Excluder Devices, can reduce bycatch while maintaining target catch retention. Through domestic legislation like Public Law 101–162, and through significant technical outreach, nations wishing to maintain access to U.S. markets have adopted bycatch reduction measures in order to comply with import regulations for certain fisheries products. In the case of Turtle Excluder Devices, the United States certified 40 nations and one economy on May 1, 2008 as meeting the requirements of Public Law 101–162. Of those 40 nations, 16 countries conduct operations in waters where shrimp trawls are likely to interact with sea turtles. Those 16 countries met the TED standards set forth in U.S. regulations. The U.S. Government will continue to promote bycatch mitigation technology for all fisheries where proven technology exists. It is worth noting that P.L. 101–162 currently lacks enforcement authority and the authority to promulgate regulations as well as any specific language prohibiting the importation of embargoed product. Inclusion of such authorities and prohibition would allow enforcement actions to be brought in response to embargoed product entering the United States.

*Question 6c.* If other nations don't adopt such methods and continue to drive endangered species toward extinction, couldn't this eventually threaten to close some U.S. fishing fleets under the Endangered Species Act?

Answer. The United States' government believes that all countries should promote and use fishing practices that reduce adverse impacts on all living marine resources, including endangered species. Several endangered species are shared amongst many nations. The United States regularly engages countries in cooperative activities to recover species protected under the U.S. Endangered Species Act, especially species shared across national borders. The United States' government believes that these efforts are vital for meeting each species' recovery goals. Section 7 of the Endangered Species Act requires evaluation of the effects of Federal actions (*e.g.,* authorization of Federal fisheries) on listed species, within the context of the species status. Thus we take into account a wide variety of activities within the range of the species that may affect the species.

*Question 6d.* What more should we be doing, and what are the main impediments keeping us from being more successful in this arena?

Answer. Increasing the capacity of other nations to address the management of their fisheries and to reduce the bycatch of protected living marine resources is vital to ensuring their recovery. It is also a difficult task. The United States often works with countries that do not have the same regulatory and financial capacities. In addition to our efforts, other developed nations also provide assistance in this regard. The United States strives to take advantage of opportunities as they arise and will

continue to reach out to other nations to build capacity and export successful by-catch reduction measures.

*Question 7.* A number of marine mammals that are listed as protected under the Endangered Species Act or that are listed as depleted under the Marine Mammal Protection Act are commonly involved in incidental takes during IUU fishing activities. Mortality associated with fishing has been identified as a significant factor contributing the decline of some of these species, such as humpback whales, sperm whales, fin whales, pantropical spotted dolphins, and Steller sea lions. Why has the National Marine Fisheries Service failed to account for mortality due to IUU fishing in the recovery plans for these species?

Answer. NOAA Fisheries does not specifically address IUU fishing in our recovery plans mainly because it is not currently considered to be a significant threat for any of the species listed in the question above. Of the species mentioned, recovery plans exist for Steller sea lions (2008), sperm whales (draft—2006), fin whales (draft—2006), and humpback whales (1991). These plans call for monitoring of the populations, which would indicate if fishing interactions, including IUU fishing, becomes a problem. NOAA Fisheries periodically update recovery plans, and any new information with regard to fishery interactions generally, and IUU fishing in particular, would be reflected in the new plans.

With regard to pantropical spotted dolphins, they are not listed under ESA and therefore we do not develop recovery plans for them. The anthropogenic factor with the greatest affect on this stock of dolphins is the take of these dolphins incidental to the purse seine fishery for yellow-fin tuna in the Eastern Tropical Pacific Ocean. This mortality is being addressed through conservation measures adopted by the Inter-American Tropical Tuna Commission (IATTC) and within the United States through the dolphin-safe labeling standard for marketing tuna within the United States. The level of mortality is well documented through observer coverage and subsequent reports to IATTC.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN F. KERRY TO JAMES W. BALSIGER, PH.D.

*Question 1a.* I understand that NOAA is taking an active role in improving the international Monitoring, Control and Surveillance (MCS) network. Can you describe your efforts, particularly regarding actions to improve MCS capabilities in developing countries?

Answer. The United States continues to play a proactive role in the fight against IUU fishing and is hosting the International Monitoring, Control and Surveillance (MCS) Network. The MCS Network is a voluntary organization dedicated to linking together law enforcement professionals from the global community to exchange information, offer assistance and to provide training on MCS issues. The Director of NOAA Fisheries Office of Law Enforcement (OLE) is currently serving as the Chairman of the Monitoring, Control and Surveillance (MCS) network and OLE is working to enhance the network through various initiatives including updating the MCS Network website, planning the 2nd Global Fisheries Enforcement Training Workshop, and increasing network membership. The recent addition of an MCS Network coordinator and ongoing efforts to hire fisheries analysts and a training coordinator will further improve the capabilities of the International MCS network in 2008.

In April 2008, the MCS Network and NOAA Fisheries OLE participated in the Global Oceans Forum in Hanoi, Vietnam in an effort to increase membership of the network and publicize the role and opportunities the MCS network can provide to the Global community. The MCS Network hosted a workshop on illegal, unreported and unregulated (IUU) fishing during the Forum and fostered international dialogue on the challenges and potential solutions to combat IUU fishing in both developed and developing countries. Through this effort, contacts with MCS practitioners in developing countries in Africa has led to discussions on joint projects with the MCS Network and several African nations to conduct operational training and enforcement efforts in portions of Western Africa. Additionally, NOAA Fisheries OLE is working closely with NOAA Fisheries Office of International Affairs on MCS capacity building in Central America and is working with the MCS Network to increase its role in Central America.

*Question 1b.* What kind of resources and capacities/authorities are needed to strengthen MCS?

Answer. One of the challenges of the MCS network is that the costs are significantly higher than first estimated. The network's main goal is to make the network free to join for all members. At present only five members contribute to the network enhancement project. The costs related to running both the network and the en-

hancement project (costs beyond what the member countries contribute) fall on NOAA Fisheries OLE. The reauthorization of the MSA has greatly expanded OLE's role international capacity building and cooperation. The MCS network enhancement project, which was highlighted in the ministerial level High Seas Task Force (HSTF) final report, "Closing the Net", is a project that they fully endorsed. The HSTF report and MSRA have placed a very bright spotlight on the MCS enhancement project and put NOAA on the world stage as the leader in combating IUU fisheries.

*Question 2.* The International Commission for the Conservation of Atlantic Tunas (ICCAT) is a showcase of the failure of regional fishery management organizations (RFMOs) to properly conserve global fisheries. ICCAT has consistently ignored the advice of its scientific committee on bluefin tuna and has authorized total allowable catch in the eastern Atlantic and Mediterranean that is twice the recommended level to rebuild the population. In addition, 10 years into a rebuilding plan for bluefin in the western Atlantic, there are so few bluefin left that the U.S. was unable to catch its quota last year. Does NMFS plan again to seek a moratorium on bluefin tuna fishing in the eastern Atlantic and Mediterranean until a robust rebuilding plan is adopted? Does NMFS support an Atlantic-wide moratorium on bluefin tuna landings?

Answer. The adoption of appropriate new management measures and improving compliance in the eastern Atlantic and Mediterranean bluefin tuna fishery will be very high priorities of the United States at ICCAT this November. Both the eastern and western stocks of bluefin tuna will be assessed this year. The United States and other western Atlantic bluefin tuna harvesters have been following scientific advice with respect to this stock and will continue to do so. Per agreement by ICCAT in 2006, the management measures for the eastern bluefin tuna stock will be reviewed in November 2008. We fully expect that ICCAT will need to adopt new measures to improve the management of eastern bluefin tuna, including substantially reducing fishing mortality.

Last year, compliance concerns together with the steep decline of the eastern stock, led the United States to propose a temporary suspension of the eastern bluefin tuna fishery until such time as countries could demonstrate control of their fisheries. Our proposal did not achieve consensus. Harvesters did agree to report in detail on their implementation of eastern bluefin tuna fishery rules before the 2008 ICCAT meeting. The United States will review over the coming months the steps taken by eastern harvesters to comply with ICCAT's rules. It is too early to say where that review will lead us.

Notably, ICCAT does have instruments that allow for the application of penalties, including quota reductions and multilateral trade restrictive measures, under certain circumstances. We strongly support the use of such instruments where appropriate. Further, we expect more robust compliance discussions at ICCAT this year as a member of the U.S. Delegation to ICCAT now chairs the Compliance Committee.

*Question 3.* Electronic documentation can reduce the potential for abuse of documentation systems, improve the speed at which information can be exchanged and reduce the compliance burden on legitimate operators and regulatory authorities. Does NOAA anticipate that the IUU certification scheme as mandated under the Magnuson Stevens reauthorization will include a comprehensive, electronic catch documentation system that traces product from the point of harvest to consumer?

Answer. One important development that should improve NOAA's ability to detect IUU fish being imported into the United States is the International Trade Data System (ITDS) currently under development by the Department of Homeland Security (Customs and Border Patrol). ITDS is an integrated, government-wide system for the electronic collection, use, and dissemination of trade data. The Safe Ports Act of 2006 made ITDS mandatory for all Federal agencies that have a role in determining the admissibility of imports to the U.S. market and NOAA Fisheries has taken steps to become a participating government agency in ITDS.

Currently, NOAA Fisheries administers several trade monitoring programs under the authority of various statutes and international agreements. ITDS will significantly improve the capability of NOAA Fisheries to enforce trade measures and documentation requirements of these programs. Currently, NOAA Fisheries may not learn of import violations related to permitting, documentation and reporting requirements until long after they have occurred, making their investigation and forfeiture of product difficult or impossible. ITDS will allow screening and targeting of inbound shipments, potentially on a pre-arrival basis. Such capability will place NOAA Fisheries in a position to approve entries of product into the United States or to place holds on shipments when permits and/or documentation are missing.

Close interagency coordination through the ITDS will help ensure the detection of potential IUU shipments of fish and fish products as well as the effective and consistent application of import regulations.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO JAMES W. BALSIGER, PH.D.

*Question 1.* Last month I introduced a Senate Resolution 456, calling for the U.S. to enter into bilateral negotiations with Canada to come to an agreement on regulations to protect endangered whales from entanglement in fishing gear. NMFS has issued new regulations that will have a drastic impact on Maine's lobster industry, imposing costs of $10–$15,000 per fisherman to re-equip their gear. Meanwhile, the Canadian lobster industry, fishing just across the Maritime Boundary Line and interacting with the same whales, operates with no comparable restrictions. This reduces the effectiveness of our own regulations and allows Canada's fishermen to operate at a distinct competitive advantage over our fleet. Has NMFS made any effort to engage the Canadians on this issue? If so, why has it been so difficult to come to any agreement?

Answer. NMFS has made an effort to engage the Canadians on the development of conservation measures to address both gear and vessel interactions with large whales. NMFS Northeast Regional Office and Canada's Division of Fisheries and Oceans (DFO) Maritime Region has established a Species at Risk Working Group (Group) to address transboundary protected species issues. The Group reports to an overarching Transboundary Resources Steering Committee co-chaired by NMFS Northeast Regional Administrator and the DFO Directorate for the Maritimes Region. The Group met via teleconference on December 4, 2007 to develop a work plan for 2008. The Group agreed to:

1. Identify issues that would require consultation by each country;
2. Identify when each country should consult with one another (being mindful of each countries processes);
3. Develop a protocol for how each country will consult with one another, both on a formal and informal basis; and
4. Update the transboundary species at risk table, which identifies all transboundary stocks covered by the U.S Endangered Species Act (ESA) and Canada's Species at Risk Act (SARA). The list also provides useful information concerning where the species is with respect to each country's listing process.

The Group is currently working with its respective staffs to address these issues. At its next meeting, the Group will review their findings and develop a strategy for the Steering Committee's consideration, which will identify how the Group intends to address these communication-type issues. The Group intends to meet in late summer 2008.

The Group also provided updates on various transboundary marine mammal and protected species issues. Of particular interest was the update on the Canadian Right Whale Recovery Strategy. The Recovery Potential Assessment (RPA) for right whales was completed in February 2007. This science based process provided the analysis required to complete several components of the draft Recovery Strategy. The Recovery Strategy is expected to be finalized in early 2008. The Recovery Strategy is analogous to NMFS' Right Whale Recovery Plan under ESA. DFO reported that at its next Canadian Right Whale Recovery Team meeting, the Team would be moving forward to identify strategies for reducing right whale interactions with lobster gear and right whale avoidance strategies for reducing vessel strikes. The Team is very interested in NMFS input into these strategies. The Canadian Right Whale Recovery Team met in March 2008 and is investigating additional industry based meetings in collaboration with International Fund for Animal Welfare Canada to discuss education and outreach efforts concerning large whale entanglements with commercial fishing gear.

*Question 2.* In recent years, demand for bluefin tuna has skyrocketed, leading to vastly increased pressure to catch these fish, some of which can retail for tens of thousands of dollars per fish. In New England, bluefin has been a profitable fishery for decades, but since a brief boom period in the late 1990s and early 2000s, our catch history has suddenly plummeted to historic lows. Maine's fishermen landed just 9.1 metric tons in 2006, barely 5 percent of what they caught less than a decade prior. And for several years running the U.S. has been unable to land the quota afforded to it by the International Convention on the Conservation of Atlantic Tunas. Meanwhile, the European Community and others are harvesting more than their

quotas—effectively taking the fish that if left to mature could resupply the U.S. fishery. What actions does the U.S. intend to undertake at the next meeting of ICCAT to prevent the further decimation of this vital U.S. industry?

Answer. Both the eastern and western stocks of bluefin tuna will be assessed this year. The United States and other western Atlantic bluefin tuna harvesters have been following scientific advice with respect to this stock and will continue to do so. Current management measures for the eastern bluefin tuna stock, however, are not consistent with scientific advice. Per agreement by ICCAT in 2006, the management measures for this stock will be reviewed in November 2008. We fully expect that ICCAT will need to adopt new measures to improve the management of eastern bluefin tuna, including substantially reducing fishing mortality. The adoption of appropriate and effective new management measures is a very high priority of the United States. Given mixing between the eastern and western bluefin tuna stocks, management measures that are set in line with scientific advice and adhered to should benefit the western stock and fishery.

Compliance in the eastern fishery, however, has been poor over the years. Improving compliance in this fishery continues to be a high priority for the United States. We expect more robust compliance discussions at ICCAT this year as a member of the U.S. Delegation to ICCAT now chairs the Compliance Committee. The United States will review over the coming months the steps taken by eastern harvesters to comply with ICCAT's rules. While it is as yet too early to say where that review will lead us, ICCAT does have instruments that allow for the application of penalties, including quota reductions and multilateral trade restrictive measures, under certain circumstances. We strongly support the use of such instruments where appropriate.

*Question 3.* States such as the U.S., Canada, and Japan have, for the past quarter century, adhered to a stringent management regime for bluefin tuna in the western Atlantic. Meanwhile, nations fishing in the East Atlantic and Mediterranean Sea have over-exploited their resources, and now their overfishing seems to be impacting our harvest here in the western Atlantic despite our conservation efforts. Despite the fact that we have a long history of responsible, sustainable fishery management in direct contrast to our counterparts across the Atlantic, there are some in the environmental community who would suggest that the western Atlantic nations should give the Eastern states additional effort reduction in order to convince them to adhere to stricter conservation standards as well—effectively ignoring all the cuts our fishermen have taken in years past and rewarding the easterners for their bad behavior. Does the U.S. plan to offer reductions in our effort to catch bluefin tuna at the next ICCAT meeting in hopes of gaining similar concessions from nations fishing the eastern and Mediterranean stock? If so, doesn't this simply add insult to the injury our fishermen have already received and reward the bad actors for continuing to flout the rules of the Convention?

Answer. The new assessments for both stocks of bluefin tuna will be completed in early July 2008. The United States will press ICCAT to adopt new measures for the eastern stock that are consistent with scientific advice. Such action must be taken regardless of what the scientific advice may be for the western stock. As noted, the United States and other western harvesters have consistently followed the science for the western bluefin tuna stock. The U.S. Delegation will do everything possible to protect U.S. interests with respect to bluefin tuna and other ICCAT species this November.

*Question 4.* The most recent reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act includes language authorizing the Secretary of State to identify and impose trade restrictions against states known to engage in Illegal, Unregulated, and Unreported fishing. While the language includes a 2-year buffer, meaning implementation is not required until January 2009, in the case of bluefin tuna, the 2008 meeting of ICCAT will be critical to future management of this dwindling fish stock, and the threat of listing or sanctions for nations who are ignoring their responsibilities under the Convention could be a vital tool in our effort to establish a responsible, scientifically-supported international management program. Would State Department action such as described above be helpful to your cause as you attempt to protect U.S. access to bluefin tuna stocks, and ensure that other nations cease over-harvesting of the species?

Answer. For clarification, the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) established new requirements for the Secretary of Commerce, in consultation with the State Department, to combat illegal, unreported, or unregulated (IUU) fishing and help reduce the bycatch of protected living marine resources. Among the Act's requirements, the Secretary of Commerce must identify in a biennial report to Congress those nations whose vessels are en-

gaged in IUU fishing or bycatch of protected living marine resources. Subsequently, the Secretary of Commerce must certify whether the identified nations have taken appropriate corrective action to address such activities. The first biennial report is due to Congress in January 2009.

In preparation for the first identifications, NOAA Fisheries has been collecting information from the public and will be seeking to corroborate such information. On March 21, 2008, NOAA Fisheries published a notice in the Federal Register soliciting information from the public regarding nations whose vessels are engaged in IUU fishing and bycatch of protected living marine resources. The information request has been circulated broadly within our constituent groups. At this stage, it is too early to tell what the results of our information review will be. If any information comes to light through this process that is of concern, NOAA Fisheries would be prepared to use it bilaterally, at ICCAT or in other international fora as appropriate.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUYE TO HON. DAVID A. BALTON

*Question 1.* What is the Administration doing to level the playing field on the high seas for our domestic fishing fleets which are regulated under the Magnuson-Stevens Act and are disadvantaged compared to the unregulated foreign high seas fleets?

Answer. We recognize that effective international fisheries management is critical to the U.S. fishing industry and other stakeholder groups, both for achieving sustainable fisheries world-wide and for creating a level economic playing field for U.S. fishing industries.

The United States works bilaterally, regionally, and globally to strengthen international fisheries governance, sustainably conserve and manage fisheries resources, protect vulnerable marine species and habitats, and to combat IUU fishing. Through RFMOs we are seeking stronger monitoring, control, and surveillance measures, including broader access to data from vessel monitoring systems, increased vessel observer programs, stronger documentation schemes, and the adoption of controls and standards to regulate the landing and transshipment of fish in port, and advocating for stricter adherence to scientific advice when adopting conservation and management measures. We are also pressing for performance reviews to assess how well RFMOs are meeting their mandates and to identify how each could strengthen its functioning. At the global level, the United States is working actively through international organizations, such as the United Nations and the U.N. Food and Agriculture Organization (FAO), to press for strengthened and more effective implementation of agreed international rules and instruments and to develop technical guidance that will ensure consistent application of standards across RFMOs and oceans.

Further, in areas of the world where RFMOs do not yet exist, the United States is taking a leadership role in the negotiations to establish new fisheries management organizations. Such negotiations are underway in the Northwest Pacific and the South Pacific for currently unregulated non-highly migratory species. In both of these negotiations, the United States is pressing for modern agreements that are consistent with the established principles of international law, as outlined in the 1982 U.N. Convention on the Law of the Sea, and that reflect the conservation and management objectives established by the 1995 U.N. Fish Stocks Agreement and other related instruments.

*Question 2.* Mr. Balton, what efforts has the international community taken in recent years in the Pacific to address sea turtle bycatch? Have any other countries followed the leadership of the longliners in the Pacific and adopted their techniques?

Answer. The international community, which together faces many challenges in managing fisheries target species, has in recent years devoted attention and resources to reducing sea turtle bycatch, largely as a result of U.S. leadership. However, the work accomplished to date is really only the beginning and much additional work and follow through will be required. A number of nations are now in the process of undertaking new gear and research trials to develop fishing gear modifications and to identify mitigation techniques most appropriate for their fisheries and their regions. With regard to one significant success, through bilateral outreach, multilateral coordination and participation in regional fishery management organizations (RFMOs), the United States has been able to promote the importance, ease of use and effectiveness of circle hooks and bait combinations in longline fisheries. While few nations other than the United States currently require the use of circle hooks in their shallow set longline fisheries, many countries have agreed to carry de-hooking equipment, perform gear trials, consider requirements for circle

hooks in future management strategies and participate cooperatively in RFMOs where sea turtle conservation and management measures have or may soon be adopted. Last year, the Inter-American Tropical Tuna Convention (IATTC) adopted a U.S. proposal to mitigate the impact of tuna fishing on sea turtles. Additionally, the United States also participated in discussions regarding a conservation and management measure for sea turtles in the Western and Central Pacific Fisheries Commission and will lead efforts to develop a proposal that may be adopted by that Commission later this year.

Coordinated international efforts to reduce sea turtle bycatch in fisheries are supported by U.S. participation in meetings of multilateral bodies that address the management challenges of sea turtle conservation across a broader range of issues in addition to fisheries, including those of habitat protection, scientific research and recovery strategies. These organizations and forums include the Indian Ocean-Southeast Asia Marine Turtle Memorandum of Understanding, the Inter-American Convention for the Protection and Conservation of Sea Turtles, the International Fishers Forum and the Annual Symposium on Sea Turtle Biology and Conservation. Additionally, the Convention on Migratory Species may soon begin discussions on the development of a multilateral Memorandum of Understanding focused specifically on sea turtle conservation in the Pacific Ocean. Forums such as these increase the ability of the international community to effectively reduce sea turtle bycatch as they provide opportunities for nations to share new gear technologies and lessons learned as well as coordinate research, outreach and regional workshops. Through these cooperative efforts the international community will continue to take meaningful steps and will undoubtedly be successful at further reducing sea turtle bycatch.

*Question 3.* The United States is a world leader in efforts to reduce bycatch mortality, not only in application, but also in research and development. What efforts are being taken to distribute this knowledge and resources to the rest of the world?

Answer. Representatives from the United States travel around the world, conducting workshops, participating in gear trials, sharing research and distributing modified fishing gear such as circle hooks. During the last calendar year, the United States participated in several turtle excluder device (TED) workshops, provided support funds and in kind assistance for training and technology transfer, and sent thousands of circle hooks to regions, such as South America and the Pacific Islands. U.S. scientists and gear specialists actively participate in international conferences, workshops and the scientific committees or related bodies of RFMOs where they are able to share recent findings, encourage collaborative research and promote effective mitigation techniques with a global audience. The United States also partners with local organizations to build regional capacity while undertaking some of the burden of monitoring fisheries interactions with non-target species and conducting rigorous gear trials.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO HON. DAVID A. BALTON

*Question 1.* Last month I introduced a Senate Resolution 456, calling for the U.S. to enter into bilateral negotiations with Canada to come to an agreement on regulations to protect endangered whales from entanglement in fishing gear. NMFS has issued new regulations that will have a drastic impact on Maine's lobster industry, imposing costs of $10-$15,000 per fisherman to re-equip their gear. Meanwhile, the Canadian lobster industry, fishing just across the Maritime Boundary Line and interacting with the same whales, operates with no comparable restrictions. This reduces the effectiveness of our own regulations and allows Canada's fishermen to operate at a distinct competitive advantage over our fleet. Does the Department of State have any plans to discuss a bilateral whale conservation agreement with Canada? Do you agree that such negotiations would make sense given the cost of the new regulations we are imposing on our domestic industry? I understand that there is precedent for such bi-lateral agreements such as the Pacific Salmon Treaty which manages shared salmon stocks on the Pacific coast.

Answer. The Department of State agrees it would be useful and appropriate to have complementary approaches with Canada in whale conservation, particularly with respect to North Atlantic right whales. We understand that Canada has already implemented certain measures to reduce ship strikes, and that National Marine Fisheries Service (NMFS) personnel have approached their Canadian counterparts over the years to engage further on right whale conservation. Through our regular communication channels, we will work with NMFS and Canadian officials

to implement the most efficient bilateral means to protect this and other whale species along our coasts, including the possibility of a formal agreement.

*Question 2.* In recent years, demand for bluefin tuna has skyrocketed, leading to vastly increased pressure to catch these fish, some of which can retail for tens of thousands of dollars per fish. In New England, bluefin has been a profitable fishery for decades, but since a brief boom period in the late 1990s and early 2000s, our catch history has suddenly plummeted to historic lows. Maine's fishermen landed just 9.1 metric tons in 2006, barely 5 percent of what they caught less than a decade prior. And for several years running the U.S. has been unable to land the quota afforded to it by the International Convention on the Conservation of Atlantic Tunas. Meanwhile, the European Community and others are harvesting more than their quotas—effectively taking the fish that if left to mature could resupply the U.S. fishery. Why have U.S. efforts been so ineffective in the past? What should we be doing differently?

Answer. We remain very concerned by the declines in bluefin tuna Atlantic-wide, and by the apparent impact that overfishing elsewhere is having on U.S. fisheries. The United States and other Western Atlantic harvesters have consistently adopted management measures for bluefin tuna in the Western Atlantic that are in line with the advice of ICCAT's Standing Committee on Research and Statistics. The situation in the Eastern Atlantic and Mediterranean is very different. Management measures adopted for this fishery have time and again been inconsistent with the scientific advice, and many years of poor monitoring and control has ensured that even these inadequate measures have not been respected.

The United States led development of the Western Atlantic rebuilding plan that was adopted by ICCAT in 1998, and we have also spearheaded initiatives within ICCAT to impose consequences on ICCAT members who do not follow the rules. Unfortunately, too many other ICCAT members have lacked the political will to adopt and implement meaningful conservation measures. We have been working to get other members to recognize the seriousness of the status of bluefin tuna Atlantic-wide and the urgent need for ICCAT to act. We are also hopeful that changes in the functioning of ICCAT's Compliance Committee called for by both the new Chairman of the Commission and the new U.S. chair of the Compliance Committee itself will result in ICCAT finally undertaking a comprehensive review of member compliance at the next annual meeting.

*Question 3.* States such as the U.S., Canada, and Japan have, for the past quarter century, adhered to a stringent management regime for bluefin tuna in the western Atlantic. Meanwhile, nations fishing in the East Atlantic and Mediterranean Sea have over-exploited their resources, and now their overfishing seems to be impacting our harvest here in the western Atlantic despite our conservation efforts. Despite the fact that we have a long history of responsible, sustainable fishery management in direct contrast to our counterparts across the Atlantic, there are some in the environmental community who would suggest that the western Atlantic nations should give the Eastern states additional effort reduction in order to convince them to adhere to stricter conservation standards as well—effectively ignoring all the cuts our fishermen have taken in years past and rewarding the easterners for their bad behavior. Does the U.S. plan to offer reductions in our effort to catch bluefin tuna at the next ICCAT meeting in hopes of gaining similar concessions from nations fishing the eastern and Mediterranean stock? If so, doesn't this simply add insult to the injury our fishermen have already received and reward the bad actors for continuing to flout the rules of the Convention?

Answer. The situations in the western and eastern Atlantic are linked by our insistence that management measures in place for both must be consistent with the best available scientific advice on what will allow bluefin tuna stocks to rebuild to sustainable levels. As we work with our partners in NOAA Fisheries to develop U.S. positions for this fall's ICCAT annual meeting, we will ensure that they reflect the results of the upcoming bluefin stock assessment to be done in July. But we will insist on the strongest possible measures for the eastern Atlantic and Mediterranean fishery regardless of the outcome of the western stock assessment.

*Question 4.* The most recent reauthorization of the Magnuson Stevens Fishery Conservation and Management Act includes language authorizing the Secretary of State to identify and impose trade restrictions against states known to engage in Illegal, Unregulated, and Unreported fishing. While the language includes a 2-year buffer, meaning implementation is not required until January 2009, in the case of bluefin tuna, the 2008 meeting of ICCAT will be critical to future management of this dwindling fish stock, and the threat of listing or sanctions for nations who are ignoring their responsibilities under the Convention could be a vital tool in our effort to establish a responsible, scientifically-supported international management

program. Why has the Department of State failed to implement these policies? Do you plan to list or threaten to list any nations engaged in IUU fishing prior to the next ICCAT meeting slated for November 2008?

Answer. The reauthorized Magnuson Stevens Act contains a number of new international fisheries provisions, including a process by which the Secretary of Commerce, in consultation with the Secretary of State, may identify Nations whose vessels are engaging in IUU fishing or other fishing that results in bycatch of protected species beyond certain standards. The Department has been working closely with NOAA as they work to implement these provisions as quickly as possible. In the meantime, we have begun collaborating to gather and follow up on information about nations whose vessels may be engaging in IUU fishing or bycatch of protected resources. We agree that this process provides us with a valuable opportunity to gather additional information that may be useful in our bilateral outreach and at the ICCAT Annual Meeting this fall.

*Question 5.* The most recent report on global fish production from the United Nation's Food and Agriculture Organization shows that today's fish harvests are larger than ever before, yielding over 154 million tons of fish in 2005 alone. That same report estimates that 77 percent of the world's fish stocks are being fished at levels either at or in excess of their maximum sustainable limits. As technology allows vessels to catch more fish with less effort, and as landings close in on their maximum sustainable levels, we will invariably be faced with a problem of too many fishermen chasing too few fish to sustain their livelihoods. This problem is exacerbated by fisheries subsidies. Japan, for example, spends approximately $750 million annually subsidizing its fishing fleet and the European Union over $530 million. The U.S., by contrast, averages just $24 million annually, much of which is specifically targeted to capacity reduction programs such as vessel buybacks and loans. The U.S. Trade Representative is advocating the elimination of these harmful subsidies, and that their efforts are supported by the UN's Food and Agriculture Organization. Specifically what efforts has the U.S. taken at the international level to discourage the use of harmful fisheries subsidies? What effect have these efforts had on the targeted fisheries?

Answer. Negotiations on fisheries subsidies are part of the WTO Doha Round "rules" negotiations, and are being conducted in a series of sessions taking place in Geneva on establishing a subsidies discipline. The Doha mandate contains, for the first time, a mandate to establish a set of rules to discipline fishery subsidies that contribute to overcapacity and overfishing, leading to the depletion of fish stocks around the world. In November 2007, the Chair of the negotiating group addressing fisheries subsidies released an ambitious draft text, which would prohibit a broad list of potentially harmful fisheries subsidies, with some exceptions (including for developing countries). It is not clear how long the negotiations may take, as they will be subject to the overall progress made in the larger context of the Doha Round.

If the prohibition on subsidies is strong enough, and the exemptions or allowable subsidies are clearly defined and appropriately applied within the WTO membership, then they could allow the international community to focus on those vessels or flag states that have not been following the rules or that realize incentives in acting outside of the agreed frameworks and management regimes. However, this step would only be effective if we considered it as part of a larger suite of measures, agreements and approaches that the United States and others in the international community are taking at both global and regional fora to address the multiple challenges associated with, and solutions to, IUU fishing.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUYE TO REAR ADMIRAL ARTHUR E. BROOKS

*Question 1.* Rear Admiral, I understand the Coast Guard leverages VMS resources in the North Pacific, enabling more effective international fisheries enforcement in that region. What is the Coast Guard doing to increase utilization and access of VMS in the Western and Central Pacific Region? What are the impediments to expanding Coast Guard access to VMS feeds internationally? What alternatives are available to the Coast Guard to increase its Maritime Domain Awareness when access to VMS data is not available?

Answer. The Coast Guard continues to establish comprehensive Maritime Domain Awareness (MDA) to inform decisions on how best to employ finite resources to deter the threat of Illegal, Unregulated, Unreported (IUU) fishing. MDA is enhanced through application of technologies such as Vessel Monitoring Systems (VMS). VMS refers to satellite-based ship tracking systems used as part of a living marine resources regulatory regime.

NOAA has implemented VMS requirements as a critical component of many domestic fishery management plans. The Coast Guard has real-time access to this data under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). VMS requirements are also being increasingly adopted through international fishery agreements. For example, the Pacific Forum Fishery Agency requires that foreign fishing vessels seeking to fish within member Exclusive Economic Zones (EEZs) must carry operable VMS. In the Fourteenth Coast Guard District, we have executed agreements with Pacific Forum Fishery Agency countries to gain near-real time access to this VMS position data. The Coast Guard can see the movement of many U.S. and foreign-flagged vessels operating in the non-contiguous U.S. EEZs of the Pacific, which provides us with improved visibility on what is happening in this geographically expansive area. VMS is also a provision of other Regional Fisheries Management Organizations' (RFMO) management schemes, including the Central Bering Sea "Donut Hole" Convention and the Western and Central Pacific Fisheries Commission. Relaxation of the data confidentiality provisions in the MSFCMA to allow for sharing data with RFMOs and other nation's enforcement agencies would allow the U.S. to participate more fully in centralized vessel monitoring and trade tracking schemes.

VMS alone is not enough to maintain effective MDA for IUU enforcement. VMS is not infallible; as it is not part of every management measure nor on board every potential IUU vessel. The Coast Guard is able to close this gap in some key areas by utilizing national resources to monitor foreign fishing vessel activity.

*Question 2.* What resources are needed to increase the Coast Guard's maritime domain awareness so you can more effectively patrol, enforce, and target illegal, unreported, and unregulated fishing on the high seas?

Answer. Enforcement of international fisheries management schemes is a mission largely conducted by the Coast Guard Deepwater and large legacy cutters assets. Access to most of the eight non-contiguous U.S. EEZs in the Western and Central Pacific require several days to over a week in transit time for a cutter departing the nearest Coast Guard base. The centerpiece of the Coast Guard's future capabilities to address a projected increase in IUU threat and secure our Nation's maritime borders is the Integrated Deepwater System. The Deepwater acquisitions are designed to enhance the Coast Guard's ability to enforce international and domestic living marine resources regulations in the U.S. EEZ and on the high seas.

The Coast Guard needs to replace aging vessels, aircraft, and shore infrastructure, and sustain these assets during recapitalization. The cost of maintaining and operating out-dated assets is continually increasing, as are major unplanned maintenance evolutions and reductions in readiness. Lost cutter days within the legacy deepwater cutter fleet continue to mount. During the last 2 years, an average of 400 scheduled deployment days was lost in the Pacific Area due to unplanned maintenance and engineering casualties. Ultimately, the future operational success of the Coast Guard to help combat the global threat of IUU fishing is dependent upon a comprehensive recapitalization of front line assets and shore and support infrastructure. We can provide a comprehensive briefing on our recapitalization plans and programs if helpful.

*Question 3.* What effect will the delays in the Deepwater acquisition have on the Coast Guard's ability to patrol the extensive Western Pacific EEZ?

Answer. The majority of patrols conducted in the Western Pacific are completed by the two 110' patrol boats and the 225' buoy tender assigned in Guam. Any delays in the Deepwater program have no impact on these vessels ability to patrol in the Western Pacific EEZ.

The patrols of these smaller cutters are occasionally augmented by High Endurance Cutters and Medium Endurance Cutters on an as needed basis based upon operational requirements in the Western Pacific EEZ.

*Question 4.* I understand that the Unmanned Aerial Systems (UAS) program has been put on hold under Deepwater. What was the Coast Guard's plan for using the UAS for fisheries enforcement?

Answer. Unmanned Aerial Systems (UAS) would provide long range persistent surveillance that, when coupled with an end-game asset (*i.e.,* surface ship), would provide detection and monitoring capability and the means to execute an effective on scene presence to conduct fisheries enforcement. We are evaluating alternatives for future UAS capabilities.

*Question 5.* Rear Admiral Brooks, what would the United States gain by ratifying the United Nations Convention on Law of the Sea? How would this enhance our ability to address illegal, unreported, and unregulated fishing?

Answer. The U.S. Government would reap significant dividends by ratifying the United Nations Convention on Law of the Sea (UNCLOS), particularly with respect

to combating Illegal, Unreported, Unregulated (IUU) fishing. UNCLOS promotes an economically and environmentally balanced fisheries management regime, something of vital importance to the United States. UNCLOS provisions on fisheries management are entirely consistent with U.S. domestic fisheries laws as well as U.S. international fisheries agreements and understandings. UNCLOS also imposes basic obligations of environmental protection and species preservation on all member states. The international framework applicable to the treaty continues to evolve and strengthen protection of aquatic resources.

Absent ratification, it is challenging for the U.S. Government to credibly participate in the evolution of IUU fishing counter-measures and to make our voice heard on these issues because UNCLOS is the international legal instrument that established the overall structure for international fisheries management. Without accession, the U.S. Government will continue to silence its otherwise considerable voice in international oceans and IUU discussions among parties to UNCLOS, and we will unnecessarily restrict our ability to enforce the elements of UNCLOS that are in the interest of the U.S. Government. Ratifying UNCLOS would demonstrate the U.S. Government's global commitment to the fight against IUU fishing.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO REAR ADMIRAL ARTHUR E. BROOKS

*Question 1.* U.S. law prohibits foreign fishing vessels and cargo vessels from landing their catch in U.S. ports. American Samoa, Guam, and the U.S. Virgin Islands are exempt from this law, so foreign cargo vessels that accept at-sea transshipments of fish species and foreign flagged fishing vessels can land product in these U.S. ports. How do we ensure that the fish landed at these ports were not harvested in an illegal, unregulated, or unreported (IUU) manner? Why are these locations exempt from the law that applies to U.S. ports? Do we have any idea if IUU fish are landed in these territories?

Answer. Coast Guard expertise resides in our authority, competency, and capability to conduct at-sea enforcement for Federal laws and regulations. Accordingly, the Coast Guard is not in a position to address regulations related to landing requirements and recommends you contact the Department of Commerce for further information.

*Question 2.* One of the key steps necessary for achieving sustainable fisheries is developing management organizations with clear mandates, clear lines of authority, and the authority to reduce catch and regulate harvest. Taking a look at a global map of the world's international fishery management organizations, though, it seems like they are more like a disorganized mess than a system with clear lines of authority to regulate international fishing. How would you grade the international community's success in developing management organizations with clear mandates and clear lines of authority to regulate fishing harvest? How would you grade the international community's success in defining clear lines of responsibility and authority for effective fisheries enforcement in international waters? Do the international regional fishery management organizations do an effective job giving the U.S. Coast Guard a clear picture of the jurisdictions for international fisheries regulation and enforcement, and where the U.S. Coast Guard should operate within them? To what extent has not ratifying the Law of the Sea impacted the United States' ability to participate internationally in these international fishery management issues? Has it hurt our ability to play a clear and effective role in this arena?

Answer. The Coast Guard applauds and supports the National Oceanic and Atmospheric Administration (NOAA) and the State Department in their efforts to bring additional tools to bear on combating Illegal, Unregulated, Unreported (IUU) fishing, such as the application of Port State Measures to deter IUU importation, implementation of Catch Documentation Schemes, and development of an International Trade Data System. These tools help restrict market access for IUU product, thereby making IUU activity less profitable. However, at-sea enforcement and the ability to deliver consequences to those found directly engaged in illegal fishing activity remains a critical element of the overall U.S. Government effort to address the IUU threat, as outlined in the *U.S. National Plan of Action to Prevent, Deter, and Eliminate IUU Fishing.*

The Coast Guard is dedicated to supporting multilateral efforts to bolster legal regimes that deter IUU and deliver consequences to violators. Considering maritime initiatives and policies as part of a larger system enables a better understanding of their inter-relationships and effectiveness. A well designed system of regimes creates the opportunity for mutually supporting domestic and international regulations. Together, they provide a comprehensive system of maritime governance.

The Coast Guard fully supports modernization of Regional Fishery Management Organizations (RFMOs) to include comprehensive boarding and inspection regimes as called for by the *1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*—more commonly referred to as the U.N. Fish Stocks Agreement. The Western and Central Pacific Fisheries Commission's recent incorporation of these enforcement principles into its management regime is a particularly relevant example. This Commission is one of the first in the world to employ a fully-developed boarding and inspection protocol for high seas enforcement based on the U.N. Fish Stocks Agreement. The Coast Guard is proud to have been involved in its development.

While the Coast Guard continues to work with our international partners on IUU fishing enforcement and counter-measures, the United States' status with respect to the United Nations Convention on Law of the Sea (UNCLOS) does present challenges in our ability to enforce some elements of UNCLOS that are in the interest of the United States. Ratifying UNCLOS would demonstrate the United States' commitment to our international partners in the fight against IUU fishing and the provide the United States increased legitimacy in international oceans and IUU discussions.

*Question 3.* Does the Coast Guard enforce illegal, unreported, and unregulated fishing in the high seas in the same way that you engage in drug interdiction in international waters? Does the Coast Guard even have the ability or authority to do this? Please explain the primary legal, political, logistical, and resource-related issues impeding the U.S. Coast Guard from participating in high seas fisheries enforcement.

Answer. The principle source of the Coast Guard's authority to conduct maritime law enforcement operations, including Illegal Drug Interdiction and Illegal, Unreported, Unregulated (IUU) fishing activity, resides in 14 U.S.C. 89. This section allows the Coast Guard to "make inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas and waters over which the United States has jurisdiction . . ." Similarly, for both mission areas, the Coast Guard utilizes multi- and bilateral agreements (*e.g.,* shipriders) to maximize legal authority to engage in law enforcement activities on participating flag state vessels.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN F. KERRY TO REAR ADMIRAL ARTHUR E. BROOKS

*Question 1.* I understand that the Coast Guard has developed capacity building programs in certain West African nations, to assist states who currently do not have the ability to police or protect their own EEZ. What type of support does the Coast Guard need to fully develop and implement this program?

Answer. The Coast Guard currently has a Memorandum of Agreement with the Department of the Navy which allows Coast Guard participation in the delivery of Security Assistance programs authorized by the Foreign Assistance Act and the Arms Export Control Act. The Coast Guard has very limited organic authorities to provide training to foreign nationals. These are limited to training in conjunction with normal operations (coincident to a port call) which must be coordinated with Department of State (DoS) and follow human rights vetting procedures and assistance to non-compliant ports under the International Ship and Port Facility Security Code (ISPS) to correct deficiencies. Under Security Assistance, the Coast Guard can only provide training to foreign nationals at the request of another government agency, at the request of a U.S. Embassy team, or in conjunction with normal operations (coincident with a port call), coordinated with the Department of State and fully reimbursed under the Economy Act. The Coast Guard does not possess independent legal authority or funding to assist other countries directly for the purpose of training and education.

*Question 2.* In your experience, what are the most important steps we can take at the regional or international level to improve flag state accountability?

Answer. The Coast Guard fully supports NOAA and the State Department in their efforts to bring additional tools to bear on combating Illegal, Unreported, Unregulated (IUU) fishing, such as the application of Port State Measures to deter IUU importation, implementation of Catch Documentation Schemes, and development of an International Trade Data System. These tools will help restrict market access for IUU product, thereby making IUU activity less profitable. However, at-sea enforcement and the ability to deliver consequences to those found directly engaged in illegal fishing activity remains a critical element of the overall U.S. Gov-

ernment effort to address the IUU threat, as outlined in the *U.S. National Plan of Action to Prevent, Deter, and Eliminate IUU Fishing.*

*Question 3.* It is critical that we have good information on the vessels that are entering our waters. What kind of monitoring/tracking is currently required, for both large and small boats entering U.S. waters? Is this data shared between countries? What level of tracking is reasonable and manageable?

Answer. The Coast Guard employs a variety of classified and unclassified vessel tracking information systems and processes to monitor vessel movement. These systems include the Automatic Identification System (AIS) and in 2009, the Long Range Identification and Tracking (LRIT) system, both of which are International Maritime Organization (IMO) mandated systems for commercial vessels. While these systems do not currently provide information on smaller vessels, the Coast Guard is exploring the option of extending AIS requirements to some smaller class of vessels. Indeed, the Coast Guard is currently working with the Department of Homeland Security to finalize a Notice of Proposed Rulemaking to mandate AIS carriage on certain vessels 65′ and larger, as required by the Maritime Transportation Security Act of 2002. Additionally, classified systems are utilized on a limited basis to monitor vessels and Vessel Traffic Services (VTS), the Inland River Vessel Movement Center (IRVMC), and the National Vessel Movement Center (NVMC) monitor commercial vessels in various ports and waterways of the United States. Improved tactical vessel tracking is planned using surface search radar in the vicinity of major ports under the Interagency Operations Center/Command 21 project, and the use of unclassified commercial space capabilities is being assessed. Finally, all commercial vessels entering U.S. waters are required to submit an Advanced Notice of Arrival (ANOA) report to the Coast Guard, and any vessel entering U.S. waters from overseas, regardless of size or category, must report to Customs and Border Patrol. Some of this information is being shared with international partners, subject to U.S. law, and more sharing agreements are being sought for the future.

As a component of many domestic fisheries management plans and international fisheries agreements, some fishing vessels are required to maintain a vessel monitoring system (VMS). The coordination, development, implementation, and management of domestic VMS programs resides within NOAA. The application of domestic VMS systems on U.S. vessels to meet international requirements of various Regional Fishery Management Organizations (RFMOs) is also overseen by NOAA. As such, NOAA is in a better position to respond to questions regarding data sharing, system and carriage requirements, and the overall national management of VMS information.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO REAR ADMIRAL ARTHUR E. BROOKS

*Question 1.* When the Coast Guard was transferred to the Department of Homeland Security in 2003 it gained a new suite of maritime security missions but to date has not appreciably expanded its personnel level. While we can debate what that investment represents in terms of effective execution, in 2007, for the second straight year, the Coast Guard failed to achieve its self-imposed targets for five of its eleven mission programs. It is telling that four of those five are so-called "traditional" Coast Guard missions, including living marine resources enforcement—the mission area that includes fisheries management at the domestic and international levels. Meanwhile, IUU fishing is on the rise, and the Coast Guard annually detects over a hundred incursions into our Exclusive Economic Zone. Understanding that the Coast Guard's motto—*semper paratus*—implies its willingness to always accomplish the mission required with whatever capabilities it has at the ready, I wonder: can the Coast Guard effectively carry out its required enforcement against IUU fishing practices given its current level of assets and financial support?

Answer. Coast Guard Operational Commanders are tasked with conducting risk-based decision-making to conduct operational planning, apportion and allocate resources, and align mission priorities. The Coast Guard applies this standard to the Other Law Enforcement mission (*i.e.,* Foreign Fishing Vessel Enforcement) to determine the appropriate level of Coast Guard effort. The Other Law Enforcement mission's performance target for Fiscal Year 2009 is to reduce the number of detected foreign fishing vessel incursions into the U.S. Exclusive Economic Zone (EEZ) to 195 or less. The Coast Guard anticipates a continued focus on high threat areas as outlined in the Coast Guard's Fisheries Enforcement Strategic Plan, *Ocean Guardian,* and on ensuring compliance with international fisheries agreements. We will ensure mission performance continues to drive allocation of operational assets.

*Question 2.* I understand that the Coast Guard has entered into cooperative agreements with some Pacific nations known or suspected of significant IUU fishing effort, specifically targeting vessels fishing with driftnets greater than 2.5 kilometers in length—a method banned by the United Nations. These agreements include provisions allowing foreign enforcement officials to "ride along" on Coast Guard vessels providing immediate sovereign authority for boarding foreign vessels and to interpret between Coast Guard officers and the suspected violators. While I appreciate the innovative nature of this program, I am concerned that it may shift too much of the Coast Guard's focus away from domestic fisheries enforcement, given that living marine resourced missions taking up just 9.3 percent of the Coast Guard's 2006 budget allocation. Can you provide us with an update on this program? What impact has this and other cooperative enforcement programs had on high seas driftnet fishing in particular and IUU fishing in general? Are similar programs being developed for other areas of the high seas, and if so, will they further deplete resources that would otherwise be used for domestic enforcement?

Answer. The Coast Guard continues to develop active international partnerships through the development of bilateral enforcement agreements and participation in multilateral groups, like Regional Fisheries Management Organizations and the North Pacific Coast Guard Forum. Combating Illegal, Unreported, and Unregulated (IUU) fishing internationally requires that the Coast Guard work closely with the National Oceanic and Atmospheric Administration (NOAA) and the U.S. State Department to develop and advance cooperative enforcement agreements. For example, over the past year the Coast Guard coordinated with North Pacific Anadromous Fish Commission and North Pacific Coast Guard Forum partners including Canadian, Chinese, Japanese, and Russian surface and air patrols to cooperatively deter IUU in the North Pacific.

These two forums further supplement the Coast Guard's implementation of a bilateral U.S. Government—People's Republic of China (PRC) Memorandum of Understanding (MOU) to enforce the United Nation's moratorium on large-scale high seas driftnet fishing. The MOU (also referred to as the "U.S.-PRC Shiprider Agreement") establishes boarding procedures for law enforcement officials of either country to board and inspect U.S. or Chinese flagged vessels suspected of driftnet fishing. The Memorandum also establishes a shiprider program, which allows China's Ministry of Agriculture's Bureau of Fisheries (FLEC) officials to embark on U.S. Coast Guard resources during each driftnet fishing season. Pursuant to this provision, China has provided a total of 46 enforcement officials to the Coast Guard since 1994. In 2007, two FLEC officers rotated through the North Pacific Regional Fishery Training Center in Kodiak, Alaska, from April-August 2007. In addition, two FLEC shipriders were deployed on the USCG Cutter BOUTWELL during its IUU Patrol. These officials were instrumental in facilitating communications between the USCG and the FLEC and effectively expanded the jurisdictional reach of both enforcement agencies allowing for six vessel seizures, the largest number in the North Pacific since the implementation of the MOU.

Beyond our work in the North Pacific, the Coast Guard is increasingly involved in West Africa and with Pacific Island nations to utilize bilateral fisheries enforcement agreements. In mid-February of this year, Coast Guard Cutters ASSATEAGUE and SEQUOIA, with embarked Federated States of Micronesia shipriders, interdicted two Japanese-flagged fishing vessels in the Micronesian EEZ 160 nautical miles south of Guam. Both Japanese fishing vessels were found to be fishing in violation of Micronesian law. The Coast Guard cutters, acting under authority of their embarked Micronesian fisheries enforcement officers, escorted these suspected IUU fishing vessels toward Pohnpei, Micronesia for further investigation and prosecution. Finally, in June, the high endurance Coast Guard cutter DALLAS will deploy to West Africa under the operational control of the Department of Defense. Planning efforts are underway to conduct maritime law enforcement operations with Cape Verde, which include using Cape Verde maritime law enforcement officer "ship-riders" as a proof-of-concept test. If successful, the U.S. Coast Guard and U.S. Navy may consider expanding such operations to other West African nations with the interest and capacity to participate.

Coast Guard Operational Commanders are tasked with conducting risk-based decision-making to conduct operational planning, apportion and allocate resources, and align mission priorities. The Coast Guard applies this standard to the Other Law Enforcement mission (*i.e.,* foreign fishing vessel enforcement) and the Living Marine Resources Law Enforcement mission (*i.e.,* domestic fisheries enforcement) to determine the appropriate level of Coast Guard effort. Coast Guard mission planning and execution is accomplished through performance based management. Performance in the Other-Law Enforcement mission has exceeded program targets in four of the last 5 years. Performance has been similarly consistent in the domestic Living Ma-

rine Resources Law Enforcement mission. The Coast Guard conducted a near historical high number of commercial fishing vessel boardings in Fiscal Year 2007 (6,375 boardings), and observed at-sea compliance rate for domestic fisheries has been within 1 percent of the 97 percent observed compliance target for the past 5 years.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO DAVID BENTON

*Question 1a.* In your testimony, Mr. Benton, you talk about how the Alaska fisheries have been so successful at least partly because of United States success in making major inroads with other nations on fishery management agreements and treaties. Why do you think we have been so successful in forging successful international agreements for Alaska's fisheries? What was the main tipping point that pushed us into these treaties?

Answer. In my testimony I describe some of the conservation challenges that the United States faced in the North Pacific in the decades leading up to the passage of the MSA and into the mid–1980s. Passage of the MSA, and the declaration of the EEZ was a major milestone and allowed us to protect and management resources out to 200 miles. However, throughout that period, the U.S. also made great efforts to address challenges on the high seas, but for the most part was unsuccessful. Then, several factors came together that afforded us the opportunity to achieve our conservation goals and establish these new international agreements. Chief among these was a renewed sense of united purpose within the United States lead by Members of Congress, the fishing industry, and the Dept. of State; coupled with the thawing of relations with the (then) Soviet Union that allowed for the two nations to work closely together. The other players in the region: Japan, Taiwan, Republic of Korea, China, and Canada all had various interests some of which aligned with our interests, many of which did not. And, while this had been the case for many years, the gridlock was broken when the two superpowers brought forward joint proposals for new fishery arrangements in the North Pacific. This, in my view, was perhaps the main "tipping point" that made many of these arrangements possible.

*Question 1b.* How much was this success because of the cooperativeness of international partners?

Answer. Certainly the cooperation of international partners played a key role, but internal agreement within the U.S. was equally important. In particular, leadership out of the Congress and especially the Senate helped forge a united U.S. position. The states of Alaska, Washington, and Oregon worked well together, and with the fishing industry. We had a common goal and a shared approach. In addition, at that time there was a better working relationship between the fishing industry, the environmental lobby, and other U.S. interests than exists today. This allowed the United States to put forward a strong and unified position that, when coupled with the new cooperation with some of our international partners, was very powerful. Unfortunately, relationships today between the fishing industry and the environmental lobby are more antagonistic. In fact, many in the fishing industry believe that the environmental lobby is using some of these international issues to put pressure on U.S. domestic fisheries over and above the requirements of existing U.S. law such as the MSA. This will make it harder for the United States to form a strong and united front to address legitimate conservation issues on the high seas.

*Question 1c.* Why have we not been able to repeat this success for other fisheries in other regions? What makes Alaska different? What can we do to repeat the success of the Pacific Northwest in other fisheries and regions?

Answer. I think these two questions are very closely related, and I would suggest that there have been successes elsewhere with other fisheries and other arrangements. For example, the emerging fishery management regime in the Western Central Pacific holds promise to be an effective management tool for highly migratory species there, although a lot of work remains to be done. There have been improvements in some of the southern oceans fishery management arrangements as well as bilateral arrangements with Canada and Mexico. Many of these improvements have come about, or are coming about, due to evolving international standards such as those pushed by Alaska in the North Pacific, and through implementation of broader international instruments such as the Code of Conduct and the U.N. Fish Stocks Agreement.

Looking forward, the new provisions regarding international fisheries in the most recent reauthorization of the MSA should help advance U.S. interests internationally if they are implemented thoughtfully. In my view, this means we need to get back to some basics. In recent years, international agreements have often times be-

come more about furthering somewhat esoteric principles instead of focusing on practical and effective measures to address real-world management and conservation issues. It has become more fashionable to pursue ill-defined, but rhetorically gratifying language in these discussions than to buckle down to the hard work of crafting and implementing basic fishery management regimes. What is needed is less focus on "principles" and more work on solid science programs, effective harvest and fishing capacity controls, and at-sea monitoring and enforcement programs. And, in the end, U.S. fishing interests need to see some benefit from these international agreements. Instead of U.S. fishermen sitting on the beach while foreign fishing fleets continue to fish, new agreements need to place the same requirements on all participants, including opportunity for U.S. interests to fish as well as foreign fleets. This is the approach we have used in Alaska and the Pacific Northwest over the years with some success.

*Question 2.* You mention in your testimony that high-seas driftnet fisheries (which are banned by U.N. moratorium) are the ultimate Illegal, Unreported, and Unregulated fisheries. You also mention that they are experiencing a significant resurgence. In your view, why is this resurgence happening? Who, if anyone, is responsible for capturing and prosecuting individuals who fish with driftnets illegally on the high seas? If our government catches someone doing this outside our EEZ, do we even have the ability to capture and prosecute them?

Answer. I am not sure exactly why the resurgence of large scale high seas fishing is occurring. It appears to be related to the growing economies of China and Southeast Asia, with the attendant demand for seafood and a higher standard of living.

In the North Pacific we have a strong international cooperative enforcement regime. This regime initially came about because of the North Pacific Anadromous Fish Convention (NPAFC) which set up a mechanism for cooperative enforcement by non-flag state members. As I understand it, this initial arrangement has been expanded and reinforced through various bi-lateral arrangements with nations not party to the NPAFC. The result is an enforcement net implemented by the major coastal states of the North Pacific, with the ability for them to detain, board, inspect, and bring into port vessels engaged in illegal fishing activities such as high seas driftnet fishing. Prosecuting violators remains with the flag state. So, as a result, the U.S. Coast Guard does have the ability to detain, for example, a Japanese vessel illegally engaged in high seas driftnet fishing and bring it into a U.S. port. Prosecution would be by the Japanese government once the vessel and/or the captain and crew were turned over to Japanese authorities.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO DAVID BENTON

*Question 1.* In recent years, demand for bluefin tuna has skyrocketed, leading to vastly increased pressure to catch these fish, some of which can retail for tens of thousands of dollars per fish. In New England, bluefin has been a profitable fishery for decades, but since a brief boom period in the late 1990s and early 2000s, our catch history has suddenly plummeted to historic lows. Maine's fishermen landed just 9.1 metric tons in 2006, barely 5 percent of what they caught less than a decade prior. And for several years running the U.S. has been unable to land the quota afforded to it by the International Convention on the Conservation of Atlantic Tunas. Meanwhile, the European Community and others are harvesting more than their quotas—effectively taking the fish that if left to mature could resupply the U.S. fishery. These issues with bluefin tuna also apply to other highly migratory species such as swordfish and white and blue marlin. Such issues are also similar to some of those you have addressed in the north Pacific. Based on your experiences with fisheries enforcement in the North Pacific, what are the features of effective high seas fisheries enforcement that can be translated to the North Atlantic Ocean? How can Congress help facilitate effective high seas enforcement partnerships with other countries?

Answer. I recall several years ago Senator Snowe came to Alaska to see how we are doing, and asking similar questions. We discussed at the time the similarity between Alaska and New England: small communities with a long tradition of being dependent on the sea for their livelihood. I appreciate her leadership on oceans issues, and her continued interest in improving our Nation's fisheries conservation programs while at the same time promoting policies aimed at maintaining sustainable fisheries and communities.

I am less familiar with North Atlantic high seas enforcement than with the North Pacific. However, I believe that there are some fundamental characteristics to successful and effective programs that transcend regional differences. These include:

*Good science.* The foundation of successful management and conservation is having a strong scientific program that provides managers with the information they need to ensure sustainable harvests and take into account ecosystem factors. For HMS, this is especially true, given their complex life history.

*Accurate monitoring.* For fisheries operating on the high seas, effective and verifiable monitoring programs are a must. At-sea observers, augmented by vessel logs and independent verification are a necessary part of successful management. This is especially true for international agreements that set harvest quotas among numerous nations. Each party (nation) must be able to independently verify the catches reported by the other parties in order for all parties to trust the management system.

*Strict application of catch levels and other restrictions.* There needs to be an effective, cooperative regime in place to ensure that catch levels are adhered to, with stiff penalties for overharvest. For example, if a party (nation) overharvests its quota for bluefin tuna in a given year, then the quota for the next year should deduct that amount plus an additional amount as a penalty for non-compliance. I do not know if such an arrangement exists in the North Atlantic; but given the history of overharvest of various species by parties such as the EU, something similar should be implemented.

*Cooperative enforcement.* In the North Pacific, pursuant to the North Pacific Anadromous Fish Convention (and subsequently other arrangements) enforcement vessels from a non-flag state can detain, board, inspect, and divert to port vessels engaged in IUU fishing such as high seas driftnet fishing. This means that a U.S. Coast Guard Cutter could detain a Japanese vessel engaged in illegal high seas driftnet fishing in the North Pacific. Prosecution of the offenders is by the flag state. Much credit goes to the U.S. Coast Guard for their diligent work to ensure that these cooperative arrangements continue to work. As a result, in the North Pacific there is an effective cooperative enforcement net for stopping violations of the relevant international agreements. This has been an extremely effective and necessary component to our international management regime.

As I mentioned, I am not as familiar with North Atlantic arrangements as I am with the North Pacific. But, if there are lessons to be learned and applied to the North Atlantic I believe that the above characteristics need to be implemented in your region. This will require a concerted effort on the part of the U.S. government, the Congress, the regional seafood industry, and other interests. The various interests need to provide the U.S. with a strong and cohesive position as well as support for aggressive and determined diplomacy at several levels of government. In my view, the biggest challenge to developing a cohesive U.S. policy will depend on whether or not the environmental lobby can set aside its rhetorical stance on some issues and work effectively with other interests such as the seafood industry to achieve a common goal. That has certainly been a challenge in our part of the world.

*Question 1a.* You are clearly very familiar with the gaps in international agreements surrounding Alaska, but have you identified any other gaps in high seas fisheries management elsewhere in the world? What steps can the U.S. take to close these gaps?

Answer. Many, if not most of the international fisheries management regimes and organizations around the world are targeted on specific fisheries. Tuna agreements, squid agreements, salmon treaties, etc. This species/fisheries specific approach is a practical, efficient, and cost effective way for international interests to address real world management issues. However, gaps exist at both the geographic level as well as species coverage. This is true for most parts of the world, even the North Pacific. For example, in the central and eastern North Pacific there are no international management regimes in place to address fishing on seamounts, or for species other than salmon and highly migratory species. With the push now for new Regional Fishery Management Organizations (RFMOs) these gaps hopefully can be filled so there are management regimes in place around the globe. However, again one of the biggest challenges is crafting international arrangements that are simple, effective, and practical. I believe that the international fisheries provisions in the most recent reauthorization of the MSA should help advance U.S. interests internationally if they are implemented thoughtfully. In my view, this means we need to get back to some basics. In recent years, international agreements have often times become more about furthering esoteric principles instead of focusing on practical and effective measures to address real-world management and conservation issues. What is needed is less focus on ill defined "principles" and more work on solid science programs, effective harvest and fishing capacity controls, and at-sea monitoring and enforcement programs. And, in the end, U.S. fishing interests need to see some benefit from these international agreements. Instead of U.S. fishermen sitting on the beach while foreign fishing fleets continue to fish, new agreements need to place the same

requirements on all participants, including opportunity for U.S. interests to fish as well as foreign fleets.

*Question 1b.* How effective has the Coast Guard's high seas driftnet enforcement program been at reducing incidents of IUU driftnet fishing? Are the resources being applied to this program causing a reduction in effort in domestic enforcement? Should the program be expanded into the north Atlantic?

Answer. In my mind, this is one of the most important issues to be addressed. In the North Pacific I do not believe that international arrangements and obligations are currently undermining regional domestic monitoring and enforcement programs. I can not speak to the situation for the North Atlantic. But, if new international arrangements do not build on existing programs, and if these new arrangements are not crafted around solid and easily enforceable requirements, then there is a significant likelihood that we will be placing an unreasonable burden on the U.S. Coast Guard and handing them a mission with an unattainable goal. Even now, USCG resources are stretched thin, and additional funding and assets are needed. But, with the emerging demands of the Arctic Ocean opening up, increased responsibilities for enforcing ever more complicated international laws and treaties, coupled with growing domestic demands the USCG is going to be severely hamstrung if Congress and the Administration doesn't step up to the plate with additional support. So, my belief is that the USCG is up to the task, whether it is in the North Pacific, the South Pacific, the Gulf of Mexico or the North Atlantic: but only if we provide them the tools, support, and resources necessary to get the job done.

*Question 2.* Regional Fishery Management Organizations or RFMOs exist in numerous forms that vary in terms of quantities of fish stocks addressed, numbers of party states, and areas of sovereignty to which the treaties apply. The U.S. alone is party to more than a dozen different RFMOs. Given all these discrepancies between the different organizations, each clearly requires specific negotiations. But there must be some underlying principles that can be applied across multiple organizations—a set of "best management practices" that can facilitate agreements and lead to a brighter future for our world's fisheries. Since each RFMO is designed to address unique regions and stocks, they have adopted different approaches for forging cooperation. What have you found to be some "best practices" of RFMOs that can and should be adopted by other RFMOs?

Answer. I believe that I have addressed most of this above. However, I want to emphasize one of the crucial factors that I believe will determine success or failure. One of the biggest challenges, in my mind, is crafting international agreements that are effective, efficient, and practical. Too often, the environmental lobby has diverted negotiations from the hard work necessary to build effective regimes toward an argument about broad and ill defined principles. This is the path to inaction and needs to be avoided.

As for the rest, RFMOs in my view need to have solid practical requirements for science, independently verifiable monitoring, effective enforcement, and penalties for non-compliance. Decisions need to be transparent, but transparency should not lead to gridlock. And in the end, the parties to any such agreements need to see tangible benefits. This must include U.S. fishing interests that have often times been disadvantaged by such agreements, taking on the majority of the conservation burden while the fishermen of other nations continue to fish.

*Question 3.* RFMOs consistently have problems with securing compliance of their member states, even for simple functions like data reporting. In reauthorizing the Magnuson Stevens Act at the end of the 109th Congress, new authority was provided for the Federal Government to manage international fisheries. Among those provisions was the authority to identify and impose trade restrictions on countries that are known to engage in IUU Fishing practices, but the Federal Government has not yet carried out this authorization. If the Federal Government chose to act on the authority provided by Congress to identify and sanction nations that are know to use IUU Fishing practices, how would that impact our work within the RFMO structure? Would it improve or degrade our negotiating position with other member states? What kinds of incentives can we offer to help encourage other countries to live up to their commitments under RFMOs?

Answer. I believe that the provisions provided by Congress can assist the United States exert a leadership role in the development of RFMOs, or in its efforts to improve existing RFMOs if they are part of a "carrot and stick" approach. This means that U.S. diplomacy must be firm, but practical and reasonable as mentioned in previously. We also need to be careful not to open ourselves to vulnerabilities such as violating world trade rules, or allowing other nation's to use similar measures not for conservation, but to secure trade advantages.

With regard to incentives, the U.S. has the opportunity to assist developing nations to better manage resources within their waters or on the high seas through technical assistance and fiscal support. It will be more difficult to provide incentives to developed nations although there are incentives for many nations to work closely with the U.S. on scientific and conservation programs to better manage resources those countries depend upon.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUYE TO JAMES COOK

*Question 1.* Mr. Cook, can you address the effectiveness of the Western and Central Pacific Fisheries Commission to establish conservation and management efforts?

Answer. Since its inception, the WCPFC has been working implementing essential monitoring and control measures such as Vessel Monitoring Systems (VMS), a regional observer program, vessel identification requirements, and boarding and inspection measures. Currently, the VMS and a regional observer programs have not been fully agreed to and implemented, which indicates that it has taken a significant amount of time to implement some of the more basic, yet essential, conservation and management measures.

Regarding conservation and management of fish stocks, the WCPFC agreed to measures to reduce bigeye tuna overfishing involving catch quotas for longline vessels and fishing effort increases for purse seine vessels. Despite these measures, there is no indication that they have been successful in reducing bigeye tuna overfishing, as there are too many longliners fishing in the convention area and too much purse seine FAD fishing.

*Question 2.* To what extent has the Western and Central Pacific Fisheries Commission consulted with and coordinated with the Inter-American Tropical Tuna Commission? What do you see as possible impediments for the two commissions to come together and collaborate?

Answer. The IATTC and WCPFC have signed a Memorandum of Understanding to cooperate on and as much as possible harmonize fishery management between the two areas of competence. However, the membership composition of the two Commissions is one of the key factors, which may create impediments to reaching a consensus on collaboration. In the WCPFC, the Pacific Islands form a single block, together with Australia and New Zealand, in the form of the Forum Fisheries Agency (FFA), which is a majority of the countries in the WCPFC. Although all of the member countries of FAA sit as independent commission members their interventions in the Commission process are made on the basis of an agreed upon FFA position. There is no similar grouping in the ITTC, where all members speak independently. The South and Central American countries, which are the majority of the IATTC, have not formed a similar bloc within IATTC, and only recently, in 2006 began to caucus to see if they could develop their own consensus on management measures. *Furthermore, the two commissions utilize different organizations to provide stock assessments for fisheries they manage. Often, there are disagreements between the two commissions on the stock structure of manages species such as yellowfin and bigeye tuna.*

*Question 3.* Mr. Cook, you mentioned in your written testimony that 69 percent of U.S. purse seiners use FADs. What effects would the prohibition of this technology as recommended by the WPFMC, have on U.S. purse seiners?

Answer. The U.S. fleet would have to fish on free swimming or un-associated skipjack schools. It would be competing against other purse seine fleets, some of which on un-associated schools, while others fish predominantly on FADs. The U.S. fleet has swung back and forth between using FADs and fishing on un-associated schools, but currently, the use of FADs may be critical since the use of FADs may greatly reduce the fuel requirements by obviating the need to search for free swimming skipjack schools. As fuel becomes more expensive, FAD use will likely increase. FADs are instrumented with radio transponders and have sonar buoys suspended beneath to monitor fish biomass accumulating beneath the FAD. Purse seiners can therefore query each of their FADs to determine which is likely to be the most productive and thus cut down on uncertainty.

*Question 4.* The United States has not released a management plan for the use of FADs as required by the WCPFC in 2006. What is the status of this plan?

Answer. The State Department and NMFS are working on a solution to the FAD problem and hope to gain support at the WCPFC meeting in Pusan this December.

*Question 5.* The Western pacific Management Council has proactively addressed the issue of bycatch, especially in regard to sea birds and turtles. What effects do bycatch reduction techniques included in their bycatch reduction program have on the total catch allowable?

Answer. The implementation of seabird and sea turtles in the Hawaii longline fleet has not had a major influence on catch rates of target species: *however, the requirement of circle hooks and mackerel bait in addition to sea bird mitigation measures such as night setting, side setting, blued dyed bait have significantly reduce sea turtles and seabird interactions by orders of magnitude within fleet. In other words, the bycatch measures have been highly successful in reducing protected species interactions while maintaining high catch rates of target species.*

*Question 6.* Mr. Cook, would you say that other nations enforce bycatch and sea turtle conservation standards to the same degree as the United States?

Answer. *No, other nations do not have nor enforce bycatch and sea turtle conservation standards to the same degree as the United States* as the U.S. has the most strictly regulated pelagic longline fleets in the world. Other fleets, notably the New Zealand and Australian longline fleets have taken steps to reduce seabird interactions but have not made the same changes to their longline fleets to minimize sea turtle interactions. Japan has advocated a requirement for all shallow set longline fleets in the WCPFC to use large circle hooks and fish bait, but Australia, New Zealand and the EU have so far resisted such a measure.

*Question 7.* If not, can you speak to the economic impacts this has on U.S. fisherman?

Answer. The U.S. longline fleet in the Pacific is competing against less regulated fleets which target the same stocks of fish, some of which are exported to the U.S.. In addition to gear requirements such as circle hooks and fish bait, the Hawaii shallow-set longline fishery that targets swordfish is also regulated by an effort limit and sea turtle interaction hard caps as well as 100 percent observer coverage. The Hawaii deep-set longline fishery, which targets bigeye tuna is restricted from deploying shallow-sets on a tuna trip. Historically, these fisheries could switch between gear and often would do "mixed" sets at various depths. Therefore, based on these highly restrictive regulatory regimes, the Hawaii longline fleet has less flexibility, as opposed to unregulated fisheries, to switch between shallow and deep set fishing in response to economic conditions and market demand.

*Question 8.* The Hawaii-based longline fishery is closed down when the maximum limit of sea turtles interactions has been reached. Has the bycatch reduction program impacted the length of longline season?

Answer. From 2004–2007, only in 2006 the shallow set fishery was closed for the remainder of the year when the loggerhead cap of 16 interactions was reached in March. However, the effort cap and turtle caps have had an influence on fishermen behavior. Prior to the current management regime for the swordfish fishery, effort for swordfish would typically peak in the second quarter of the year. By contrast, swordfish effort had tended to peak in the first quarter as fishermen 'race' to the turtle cap, *i.e.,* expend their allowable effort as fast as possible before the loggerhead turtle cap is reached. Loggerhead interaction rates are generally higher in the first quarter of the year, however, in 2008, no loggerhead interactions have been observed in the fishery.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO JAMES COOK

*Question 1.* In your written testimony, I noticed that you say the State Department, National Marine Fisheries Service (NMFS), and Coast guard are all "doing their best to implement the international provisions of the Magnuson-Stevens Reauthorization Act of 2006 within the context of the international regional fishery management organizations." You also mention, though, that NMFS has failed to develop a Fish Aggregating Device management plan as was agreed to under the Western and Central Pacific Fisheries Commission. Papua Guinea has a plan, but the United States does not. Does this mean that Papua New Guinea is a more responsible player in international fishing in the Pacific than we are? Why has the National Marine Fisheries Service failed to develop and issue a plan? What does this do to our credibility on these issues? Doesn't it prevent us from pushing others on conservation?

Answer. The economic zone of Papua New Guinea has a FAD density higher than anywhere in the Pacific and therefore a heightened need to monitor.

The State Department and NMFS are working on a solution to the FAD problem and hope to gain support at the WCPFC meeting in Pusan this December.

*Question 2.* I understand that your fishery has been faced with numerous bycatch issues in recent years, and that we have had a fair amount of success in finding solutions that reduce the fishery's bycatch. What has our government been doing to push other nations' fishing fleets to adopt these successful bycatch reduction methods? What has your company, fishery, or industry done to help this? Wouldn't you say that this responsibility also lies on your shoulders and not solely on the government's?

Answer. The U.S. has been proactive in pushing for the adoption of circle hooks and fish bait for shallow set longline fishing in the WCPFC. The Hawaii Longline association and my company Pacific Ocean Producers (POP) have been extremely supportive and pro-active in developing mitigation technology for seabirds and sea turtles. The technique of side setting to minimize seabird interactions was a result of collaborative effort by POP and the Blue Ocean Institute to test underwater setting chutes for longlining, during which the simpler technique of side-setting emerged and has now been implemented on about one third of the Hawaii longline fleet. The fishing industry must be proactively engaged in the development of longline mitigation technology. Many of the solutions will be found within the vast storehouse of fishermen's knowledge from the thousands of hours of experience fishermen have fishing and observing ocean ecosystem, including bycatch species.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TED STEVENS TO JAMES COOK

*Question 1.* How the U.S. can increase the effectiveness of the WCPFC?

Answer. The U.S. can increase effectiveness in the WCPFC by taking hard stances on various conservation and management issues, *e.g.,* bigeye tuna conservation. The $18 million per year in the funds provided to member nations of the South Pacific Tuna Treaty act is significant and can be used as leveraging tool. The U.S. also needs to be a leader in preparing and submitting reports or plans, such as a plan for purse seine fishing around Fish Aggregation Devices, which is a requirement of WCPFC member nations, however to date, has not bee provided to the WCPFC by the U.S.

*Question 2.* How can we bring about a better relationship with the Western Pacific Fisheries Management Council to improve U.S. international fisheries management?

Answer. The U.S. Government can bring about a better relationship with the WCPFC through perpetually assigning the chair of the WPFMC to be a WCPFC Commission as called for under the MSRA. The U.S. Government should also assign the chair of the WPFMC to be a commissioner of the IATTC to ensure consistency between the Pacific tuna RFMOs which in some cases manage the same fish stocks.

The draft MOU between the State Department, NMFS, and the three Pacific fishery management councils (FMCs), which to date has not been agreed to, is another important tool to bring about a better relationship with the WPFMC. The draft MOU outlines important facets of cooperation between the FMCs and the U.S. Government in relation to international fisheries management and how it applies to domestic regulations. A clear MOU is essential to implement domestic regulations that are based on international agreements.

Further, the U.S. management of highly migratory fish stocks (HMS) is not harmonious between the Atlantic, and the two halves of the Pacific Ocean. In the Atlantic, NMFS has assumed management of HMS and the Regional Fishery Management Councils have been marginalized in the process. In the Eastern Pacific, international management of HMS has been conducted under a 1949 convention which established the Inter-American Tropical Tuna Commission, which was initially for pole-and-line tuna fishing and predates the rise of purse seining, the Magnuson Act and the implantation of the FMCs. The Pacific and Western Pacific Council are marginalized in the process, even though the Western Pacific longline fleet based out of Hawaii fishes in the Eastern Pacific. Neither Council serves as a Commissioner, nor are the Councils even members of the General Advisory Committee or the Science Committee despite making an application for membership on both several years ago. Indeed the GAC is top heavy with purse seiners and Cannery folks, despite the virtual demise of U.S. purse seine fishing in the Eastern Pacific and the canning industry on the West Coast.

The Antigua Convention designed to supersede the 1949 Convention and the implementing legislation is an opportunity to redress this balance and make it mirror the implementing legislation for the Western and Central Pacific Fisheries Commission. This would include having Commissioners from both of the two Councils and to include Council membership in the GAC to include the representative range of fishers from longline and troll fisheries . This would bring the IATTC into line with

the Western and Central Pacific Fisheries Commission and its implementing legislation, which specifies the Council Chairs as Commissioners and its role in the W&C Pacific Advisory Committee. Moreover, the appointment of members of the W&C Advisory Committee is through the Commerce Department not the Department of State, which again is something that should be rectified in the Antigua Convention implementing legislation.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO JAMES COOK

*Question 1.* Regional Fishery Management Organizations or RFMOs exist in numerous forms that vary in terms of quantities of fish stocks addressed, numbers of party states, and areas of sovereignty to which the treaties apply. The U.S. alone is party to more than a dozen different RFMOs. Given all these discrepancies between the different organizations, each clearly requires specific negotiations. But there must be some underlying principles that can be applied across multiple organizations—a set of "best management practices" that can facilitate agreements and lead to a brighter future for our world's fisheries. Since each RFMO is designed to address unique regions and stocks, they have adopted different approaches for forging cooperation. What have you found to be some "best practices" of RFMOs that can and should be adopted by other RFMOs?

Answer. Best practices include regular meetings as well as Memorandums of Understanding (MOU) between RFMOs to share common management approaches for the same stock. For example, Article 22 of the Western and Central Pacific Fisheries Convention requires the Commission to collaborate with other relevant intergovernmental organizations particularly those with related objectives and which can contribute to the attainment of the objective of the Convention. The Tuna RFMOs did meet last year in Kobe, Japan and discussed performance measures. I have attached a matrix of "Suggested Criteria for Reviewing the Performance of RFMOs" for your consideration. I believe identifying such criteria is an essential step toward establishing best practices.

Another best practice, however, does not necessarily pertain to RFMOs, but it does involve regular international meetings amongst fishermen to share common understandings and to address management issues regarding target stocks and bycatch of protected species. A good example of a successful series of meetings are the International Fishers Forums (coordinated by the Western Pacific Fishery Management Council) where fishermen from all over the world have gathered to discuss measures and methods to reduce bycatch of sea turtles and seabirds. These types of meetings are essential in bringing fishermen, as well as fishery managers, together to share information and best practices that work in their fisheries.

*Question 2a.* RMFOs consistently have problems with securing compliance of their member states, even for simple functions like data reporting. In reauthorizing the Magnuson Stevens Act at the end of the 109th Congress, new authority was provided for the Federal Government to manage international fisheries. Among those provisions was the authority to identify and impose trade restrictions on countries that are known to engage in IUU Fishing practices, but the Federal Government has not yet carried out this authorization. If the Federal Government chose to act on the authority provided by Congress to identify and sanction nations that are know to use IUU Fishing practices, how would that impact our work within the RFMO structure? Would it improve or degrade our negotiating position with other member states?

Answer. It would send a clear message that the U.S. is taking the issue of fisheries management in the international context very seriously. I think in some cases it could degrade negotiation positions if the U.S. is inconsistent in its IUU listings and sanctions. For example, the U.S. does not have yet to develop a clear policy on how it will list IUU vessels and nations, nor has it developed a policy in how to deal with U.S. vessels that may be considered IUU by RFMOs or other nations. In addition, the U.S. is not necessary compliant on all measures of international fisheries management agreements (*e.g.,* no U.S. FAD management plan as called under the WCPFC). This being said, taking a hard stance on issues and sanctioning IUU nations in some cases would improve our negotiating position as potential sanctions from the world's largest economy is undoubtedly a powerful negotiating tool.

*Question 2b.* What kinds of incentives can we offer to help encourage other countries to live up to their commitments under RFMOs?

Answer. For the Pacific Island Nations that are party to the South Pacific Tuna Treaty (SPTT), I think the annual $18 million the U.S. provides to them under the SPTT for U.S. purse seine access to their waters is a strong incentive and bar-

gaining tool for compliance within RFMOs. Besides the aid the U.S. provides to many nations party to RFMOs, there are really not many incentives the U.S. can provide to nations to live up to commitment under RFMOs. In some cases the U.S. could provide observer training in relation to data collection or enforcement measures. The Western Pacific Regional Fishery Management Council has also been conducting a series of International Fishers Forums (IIFF), which have brought together pelagic fishers from all over the Pacific and beyond to discuss and share ways to develop environmentally responsible methods of pelagic fishing. However, when dealing with resource conservation, there is little the U.S. could do outside of RFMO negotiations in terms of how much of the resource is harvested in within the EEZ of foreign countries.

*Question 3.* In response to a growing awareness among consumers about seafood sustainability, we have seen a proliferation of voluntary eco-labeling practices for fish products. One of the major players in the certification of seafood sustainability is the Marine Stewardship Council, based in the U.K. In my home state of Maine, organizations such as the Port Clyde Groundfishermens' Cooperative and the Maine Lobster Promotion Council have begun taking steps to certify their products as 'sustainable' to take advantage of this trend. In fact, some major retailers in the U.S., such as Wal-Mart have made a commitment to sell nothing but fish certified as "sustainable". What are the costs and benefits of this approach? What are some other voluntary mechanisms for encouraging wise consumer decisions?

Answer. Eco-labeling and certification programs for marine capture fisheries, and sustainable seafood sourcing policies and standards adopted by retailers and seafood buyers is being increasingly referred to as the 'Sustainable Seafood Movement'. Most Sustainable Seafood activities are currently taking place in developed countries, notably in Europe, the USA and Australasia; while there have been a few recent initiatives to help facilitate certification in developing countries.

In Europe in particular, environmental NGO's are currently at the forefront in influencing the sustainable seafood agenda with, for example, Greenpeace's eco-rankings of supermarket retail chains in the UK, Denmark and Sweden, and plans for a similar initiative in the U.S. Greenpeace has been very active in Britain where there are only a few major supermarket chains and where supermarket retailers will do whatever it takes to protect their brands from negative publicity. Greenpeace has also been critical of some fisheries certified by the Marine Stewardship Council (MSC) which creates conflict and confusion for both retailers and the public. One could therefore look at eco-labeling as a cost of doing business or legitimized extortion. Certification can also come with conditions attached. Such is the case of the Marine Stewardship Council's (MSC) certification of the American Albacore Fishing Association (AAFA). Part of the certification conditions include a requirement to take appropriate steps to request that management agencies begin a process to develop a framework for development and clear documentation of decision rules and appropriate harvest control mechanisms in the South Pacific albacore fishery. Although a seemingly reasonable and precautionary requirement, it is nonetheless based on actions which are not directly connected with the sustainability of the AAFA fishery and require AAFA to follow a specified policy agenda.

From the perspective of the Hawaii longline fishery, there is little economic incentive to seek eco-certification since it will not likely improve the already high market profile of fish caught by Hawaii's longliners. However, the Hawaii Longline Association would likely be in favor of the U.S. Government and the National Marine Fisheries Service becoming 'third party' certifiers. NMFS already has a Fish Watch website for consumers where they can read up on fisheries. It would be a natural extension of this initiative to move into certification.

Sustainability criteria used by some environmental non-governmental organizations, retailers, and buyers are based on the Food and Agriculture Organization of the United Nations' Code of Conduct for Responsible Fisheries (COC), and address minimum standards for the: (i) adequacy of the fisheries management systems, (ii) the health of stocks under consideration, and (iii) ecosystem effects (*e.g.,* bycatch of sensitive species groups, habitat effects from fishing gear, status of stocks of non-target catch, impacts on dependent predators). The Hawaii longline fishery has twice been evaluated against the FAO COC and scores in excess of 90 percent.

Further, the Western Pacific Regional Fishery Management Council recently co-hosted the Sustainable Tuna Round Table one of the outcomes of which was agreement that The Food and Agriculture Organization of the United Nation's Code of Conduct for Responsible Fisheries is an appropriate starting point as a global, single set of standards against which to assess the sustainability of individual marine capture fisheries. The FAO has also produced eco-labeling guidelines for countries and industry to develop their own certification programs. Its is planned to hold another meeting immediately prior to the next FAO Committee on Fisheries (COFI) in 2009

which would develop recommendation to be passed to the various member country delegations to have COFI recommend that countries develop their own certification based oin the FAO COC and the FAO eco-labeling guidelines. Although there would be many individual national certification and labeling schemes they would all be rooted in one set of standards and criteria. The Committee may thus need to consider legislation authorizing the National Marine Fisheries Service to produce a government certified eco-label for the U.S.

Retailers and tuna fishing industries have identified concerns with existing assessment and eco-certification programs, including: (i) the need for improved scientific vigor of some assessment/certification programs; and (ii) demand for a single set of global, harmonized minimum sustainability standards as a means to address confusion and diminished confidence created by the recent proliferation of competing certification and eco-labeling programs. Perhaps as the sustainable seafood movement matures, retailers and restaurant chains will harmonize their standards and methods, and as a result, the number of eco-certification and labeling programs will be pared down to the few most scientifically vigorous.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUYE TO LISA SPEER

*Question 1.* What recent progress has been made toward the establishment of a South Pacific Regional Fisheries Management Organization?

Answer. Major progress has been made toward drafting an agreement establishing a South Pacific RFMO, and strong interim measures have been developed by the parties negotiating the new RFMO. That said, concerns remain regarding the implementation of the interim measures, and conflicts surround decisionmaking and other key elements of the draft agreement to establish the RFMO.

*Question 2.* Current RFMOs primarily address highly migratory species, but the South Pacific RFMO will focus on non-highly migratory species. How do you anticipate this RFMO will be different from the others that we are more familiar with?

Answer. The South Pacific RFMO will address both bottom dwelling fish species and non-highly migratory pelagic fish, such as jack mackerel. It is our hope that the SP RFMO agreement will reflect modern principles of fisheries management, and as a result, avoid the chronic problems of overfishing, depletion and impacts on non-target species and ecosystems that have plagued older RFMOs.

*Question 3.* There is general uncertainty about what constitutes a Vulnerable Marine Ecosystem (VME). What is the consensus on the defining this term among the international community?

Answer. A technical consultation is underway under the auspices of the U.N. Food and Agriculture Organization to define that term. The consultation is expected to complete its work by September 2008. Progress to date has been good in some important respects, including identification of specific types of habitats and ecosystems that should be considered VMEs.

*Question 4.* Within international fisheries management, what are the next steps to further address VMEs?

Answer. Under U.N. resolution 61/105, States and RFMOs must, by December 31, 2008, identify VMEs, assess whether bottom fishing would have significant adverse impacts on them, adopt conservation and management measures to prevent those impacts, or not authorize such fishing to proceed.

*Question 5.* Within the United States, there has been increased attention paid to the possible benefits of managing fisheries with an ecosystem-based approach. What efforts have been made internationally toward integrating ecosystem-based management for fisheries?

Answer. With the exception of the Antarctic, very few RFMO/As have adopted meaningful measures to implement an ecosystem approach to fisheries management.

*Question 6.* What are the obstacles to employing this potentially more effective method of natural resource management?

Answer. There are several obstacles, but by far the greatest is the lack of political will to implement ecosystem approaches to fisheries management.

*Question 7.* Ms. Speer, I understand that the issue of shifting baselines is of concern to many in the management community. What effects can a lack of historical catch and biological data have on our ability to sustainably manage global fish stocks?

Answer. A poor understanding of historical catch and biological data hampers efforts to determine what constitutes recovery of fish stocks and ecosystems, which

has in turn led to development of recovery targets that are below what the ecosystem and/or fish stock is capable of reaching if given the chance.

*Question 8.* How can we as a nation work to compile relevant data sets that provide for effective management and conservation efforts?

Answer. An excellent question, one that would benefit from a thoughtful process. One option to consider is commissioning the National Academy of Sciences to convene an expert panel to evaluate this question and make recommendations.

*Question 9.* What do you see as the biggest impediments to creating stock data and catch history within the international fisheries community?

Answer. The lack of funding for these efforts is the single biggest impediment, followed by the absence of a uniform system of data collection and reporting and a central repository to analyze and report out findings.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO LISA SPEER

*Question 1.* One of the key steps necessary for achieving sustainable fisheries is developing management organizations with clear mandates, clear lines of authority, and the authority to reduce catch and regulate harvest. Taking a look at a global map of the world's international fishery management organizations, though, it seems like they are more like a disorganized mess. How would you grade the international community's success in developing management organizations with clear mandates and clear lines of authority to regulate fishing harvest?

Answer. Overall, an F, with few exceptions.

*Question 1a.* What is the U.S. Government doing to help improve that situation? Are we doing enough?

Answer. The U.S. has been a leader in promoting RFMO reform. However there is much more that needs to be done. One very helpful step would be to establish regular, independent reviews of RFMO performance against model RFMO performance standards, such as those developed under the auspices of Chatham House that can be found at *http://www.oecd.org/dataoecd/2/33/39374297.pdf.* A key next step for the U.S. would be to seek agreement at the United Nations to conduct an independent assessment of the RFMOs against the best practices identified in the Chatham House report.

*Question 2.* In order to manage fisheries responsibly, we need to be able to track fish stocks effectively. Good, solid science is necessary not just to help in making wise management choices, but also for getting cooperation and buy-in from the fishermen who are impacted by those management choices. In your testimony you talk about gaps in governance and gaps in enforcement, but do you believe that there are also gaps in the science we need for international fisheries management?

Answer. Yes, very much so. As my friend Sylvia Earle likes to say, we know more about Mars than our own oceans.

*Question 2a.* What are the main reasons for this science gap?

Answer. Scientific research on the high seas is very expensive and time consuming. Much greater funding for deep ocean research is essential if we are to fill the gaps necessary for sound conservation and management decisions.

*Question 2b.* Do you believe that the U.S. is doing enough to play its role in promoting good, solid science for international fisheries management? What more should we be doing?

Answer. One option to consider is supporting the establishment of a regular, high level assessment of the state of ocean health, like an IPCC for the oceans. We would like to see the U.S. to play a leadership role in creating such a process.

*Question 3.* United States fishing fleets often have to deal with rigorous regulations to reduce bycatch of threatened or endangered species like humpback whales, Steller sea lions, and sea turtles. Many of these species, however, are threatened not just by U.S. fleets, but from other nations' fleets in international waters. In your view, is the U.S. doing enough to convince other nations' fishing fleets to adopt more environmentally-sensitive fishing methods used by U.S. fleets to reduce bycatch?

Answer. The U.S. has played a very important role in encouraging other nations to adopt more environmentally sensitive fishing methods. Robust implementation of the 2006 amendments to the Magnuson-Stevens Act on this topic are an important means of making progress.

*Question 3a.* If other nations don't adopt such methods and continue to drive endangered species toward extinction, couldn't this eventually threaten to close some U.S. fishing fleets under the Endangered Species Act?

Answer. My expertise does not extend to the Endangered Species Act, but it is critically important for the U.S. to escalate the pressure on other countries whose practices do not live up to the standards U.S. fishing fleets must comply with.

*Question 3b.* What more should we be doing, and what are the main impediments keeping us from being more successful in this arena?

Answer. Vigorous implementation of the amendments to the Magnuson-Stevens Act on this topic is an important means of making progress. S. 2907, the International Fisheries Stewardship and Enforcement Act, also represents a means of addressing illegal fishing that results in harm to endangered and threatened species.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. OLYMPIA J. SNOWE TO LISA SPEER

*Question 1.* Regional Fishery Management Organizations or RFMOs exist in numerous forms that vary in terms of quantities of fish stocks addressed, numbers of party states, and areas of sovereignty to which the treaties apply. The U.S. alone is party to more than a dozen different RFMOs. Given all these discrepancies between the different organizations, each clearly requires specific negotiations. But there must be some underlying principles that can be applied across multiple organizations—a set of "best management practices" that can facilitate agreements and lead to a brighter future for our world's fisheries. Since each RFMO is designed to address unique regions and stocks, they have adopted different approaches for forging cooperation. What have you found to be some "best practices" of RFMOs that can and should be adopted by other RFMOs?

Answer. There have been a number of efforts to identify best practices among RFMOs. Among the best of these is a report prepared in 2007 by an independent panel convened by Chatham House that can be found at *http://www.oecd.org/dataoecd/2/33/39374297.pdf.* A key next step would be to seek agreement at the United Nations to conduct an independent assessment of the RFMOs against the best practices identified in the Chatham House report.

*Question 2.* RMFOs consistently have problems with securing compliance of their member states, even for simple functions like data reporting. In reauthorizing the Magnuson Stevens Act at the end of the 109th Congress, new authority was provided for the Federal Government to manage international fisheries. Among those provisions was the authority to identify and impose trade restrictions on countries that are known to engage in IUU Fishing practices, but the Federal Government has not yet carried out this authorization. If the Federal Government chose to act on the authority provided by Congress to identify and sanction nations that are know to use IUU Fishing practices, how would that impact our work within the RFMO structure? Would it improve or degrade our negotiating position with other member states? What kinds of incentives can we offer to help encourage other countries to live up to their commitments under RFMOs?

Answer. The provisions included in the reauthorization related to trade sanctions for countries whose vessels engage in IUU fishing were very important steps forward. We believe that trade measures are an important tool in the arsenal, and would help improve the effectiveness of RFMOs if carefully implemented.

*Question 3.* One of the paradoxes of international fisheries management is that some developed nations have built up large, efficient, technologically advanced fishing fleets and have depleted fish stocks in their own waters. In search of fertile fishing grounds these vessels have been forced to go further and further afield to meet their citizens' appetites and keep their fishermen employed. Meanwhile, some developing countries have smaller, more sustainable, even artisanal harvesting practices, but because these are not economically efficient, their governments can reap greater financial rewards by leasing fishing rights to foreign countries, thereby expanding the areas in which these more destructive fishing practices can occur and simultaneously displacing their own workers. What specific steps can the U.S. take to help developing coastal countries to sustain their stocks? What can we do, through development assistance or otherwise, to stop this?

Answer. Assistance to developing countries is crucial to enabling them to sustainably manage fisheries and enforce the rules that apply within their zones. Leasing fishing rights can be problematic, as can IUU fishing in the waters of developing countries that do not have the resources to monitor and control what goes on within their zones. There are many ways the U.S. can help, from providing technical

assistance (for example, with VMS), to training fisheries managers and enforcement officials, to providing financial assistance to FAO to develop a global registry of fishing vessels, which would help all nations, including developing nations, track and control fishing by foreign fleets within their zones.

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