

**2011 REPORT OF THE SECRETARY OF COMMERCE  
TO THE CONGRESS OF THE UNITED STATES  
CONCERNING**

**U.S. ACTIONS TAKEN ON FOREIGN LARGE-SCALE HIGH  
SEAS DRIFTNET FISHING**

**Compiled by the National Marine Fisheries Service  
Pursuant to Section 206(E) of the  
Magnuson-Stevens Fishery Conservation and Management Act,  
as Amended by Public Law 104-297,  
The Sustainable Fisheries Act of 1996**

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## INTRODUCTION

**Public Law 101-627:** The President signed Public Law 101-627, the Fishery Conservation Amendments of 1990, on November 28, 1990. Title I, Section 107, of the law amended Section 206 of the Magnuson-Stevens Fishery Conservation and Management Act (16 USC 1826) to incorporate and expand upon provisions of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987.

Section 206(b) of the Magnuson-Stevens Act sets forth Congressional findings, including *inter alia* that "the continued widespread use of large-scale driftnets beyond the exclusive economic zone (EEZ) of any nation is a destructive fishing practice that poses a threat to living marine resources of the world's oceans." It also notes the expansion of large-scale driftnet fishing into other oceans and acknowledges the June 30, 1992, global driftnet moratorium called for by United Nations General Assembly (UNGA) Resolution 44/225. Finally, Section 206(b) recognizes the moratorium on the use of large-scale driftnets agreed through the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, also known as the Wellington Convention.

Section 206(c) sets forth Congress' driftnet policy, specifically that the United States should:

- (1) implement the moratorium called for by UNGA Resolution 44/225;
- (2) support the Tarawa Declaration and the Wellington Convention; and
- (3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone (EEZ) of any nation.

Section 206(d) directs the Secretary of Commerce, through the Secretary of State and the Secretary of Homeland Security, to seek to secure international agreements to implement immediately the findings, policy, and provisions of Section 206, particularly the international ban on large-scale driftnet fishing.

Section 206(e) directs the Secretary of Commerce, after consultation with the Secretaries of State and Homeland Security, to submit to Congress no later than January 1 an annual report (1) describing the efforts made to carry out Section 206, especially subsection (c); (2) evaluating the progress of those efforts, the impacts on living marine resources, including available observer data, and plans for further action; (3) listing and describing any new high seas driftnet fisheries developed by nations that conduct or authorize their nationals to conduct large-scale high seas driftnet fishing; and (4) listing nations that conduct or authorize their nationals to conduct high seas driftnet fishing in a manner that diminishes the effectiveness of or is inconsistent with any international agreement governing large-scale driftnet fishing to which the United States is a party. (The number of reporting requirements in Section 206(e) of Public Law 101-627 were reduced in 1996 to those above by Public Law 104-297, the Sustainable Fisheries Act.)

Finally, Section 206(f) provides that, if at any time the Secretary of Commerce, in consultation with the Secretaries of State and Homeland Security, identifies any nation that warrants inclusion in the list described in (4) above, the Secretary shall certify that fact to the President. This certification shall be deemed to be a certification for the purposes of Section 8(a) of the Fishermen's Protective Act of 1967 (22 USC 1978(a), as amended by Public Law 102-582), commonly referred to as the Pelly Amendment. Such a certification gives the President discretion to embargo products imported into the United States from that nation, so long as such action is consistent with U.S. obligations under the General Agreement on Tariffs and Trade.

**Public Law 102-582:** On November 2, 1992, the President signed Public Law 102-582, the High Seas Driftnet Fisheries Enforcement Act. Among other things, this Act is intended to enforce implementation of UNGA Resolution 46/215, which called for a worldwide driftnet moratorium beginning December 31, 1992. Once the Secretary of Commerce identifies a country as a nation whose nationals or vessels are conducting large-scale driftnet fishing beyond the EEZ of any nation, pursuant to the Act, a chain of U.S. actions is triggered. The Secretary of the Treasury must deny entry of that country's large-scale driftnet vessels to U.S. ports and navigable waters. At the same time, the President is required to enter into consultations with the country within 30 days after the identification to obtain an agreement that will immediately end high seas large-scale driftnet fishing by its vessels and nationals. If these consultations are not satisfactorily concluded within 90 days, the President must direct the Secretary of the Treasury to prohibit the importation into the United States of fish, fish products, and sport fishing equipment from the identified country. The Secretary of the Treasury is required to implement such prohibitions within 45 days of the President's direction.

If the above sanctions are insufficient to persuade the identified country to cease large-scale high seas driftnet fishing within 6 months, or if it retaliates against the United States during that time period as a result of the sanctions, the Secretary of Commerce is required to certify this fact to the President. Such a certification is deemed to be a certification under Section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a), as amended by Public Law 102-582).

**Public Law 104-43:** Public Law 104-43, the Fisheries Act of 1995, was enacted on November 3, 1995. Title VI of this law, the High Seas Driftnet Fishing Moratorium Protection Act, prohibits the United States, or any agency or official acting on behalf of the United States, from entering into any international agreement with respect to the conservation and management of living marine resources or the use of the high seas by fishing vessels that would prevent full implementation of UNGA Resolution 46/215. Title VI also charges the Secretary of State, on behalf of the United States, to seek to enhance the implementation and effectiveness of the UNGA resolutions and decisions regarding the large-scale high seas driftnet moratorium through appropriate international agreements and organizations. Finally, the act specifies that the President of the United States shall utilize appropriate assets of the Department of Defense, the U.S. Coast Guard (USCG), and other federal agencies, to detect, monitor, and prevent violations of the UN large-scale high seas driftnet moratorium for all fisheries under the jurisdiction of the United States, and to the fullest extent permitted under international law for fisheries not under

U.S. jurisdiction.

The National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, in consultation with the Department of State and the Department of Homeland Security, submits the following report for 2011 in fulfillment of the Section 206(e) reporting requirement. Information pertaining to U.S. actions in support of the Act prior to 2011 and after 1988 can be found in the 1990–2010 annual driftnet reports to the Congress available from NMFS. The reports for 2004–2010 are also available online at [http://www.nmfs.noaa.gov/ia/intlbycatch/rpts\\_driftnet\\_fishing.htm](http://www.nmfs.noaa.gov/ia/intlbycatch/rpts_driftnet_fishing.htm).

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

### **Implementation of the Global Driftnet Moratorium called for by UNGA Resolutions 44/225, 45/197, and 46/215:**

#### **Current Status of the Driftnet Moratorium**

As of December 31, 2011, the UNGA global moratorium on large-scale high seas driftnet fishing has been in effect for 19 years. International implementation of the moratorium in the world's oceans and enclosed and semi-enclosed seas continues to be generally successful, although problem areas remain. In the two major problem areas in recent years, the North Pacific Ocean and the Mediterranean Sea, two vessels conducting unauthorized large-scale high seas driftnet fishing operations were sighted in the North Pacific Ocean in 2011. The United States is not aware of any large-scale driftnet vessel sightings on the high seas of the Mediterranean Sea in 2011, although anecdotal information from nongovernmental organizations (NGOs) indicates that large-scale driftnet fishing persists in the region.

#### **North Pacific Ocean**

Two driftnet vessels were sighted operating on the high seas of the Northwestern Pacific Ocean by the international community in 2011, one less than in 2010. Both vessels were determined to be stateless. The USCG seized one of the vessels, but the other vessel escaped capture.

#### **North Pacific Regional Driftnet Enforcement Coordination**

**North Pacific Anadromous Fish Commission (NPAFC):** The NPAFC serves as a forum for promoting the conservation of anadromous stocks in the high seas area of the North Pacific Ocean. This area, as defined in the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean (the Convention that established the NPAFC), is "the waters of the North Pacific Ocean and its adjacent seas, north of 33° North Latitude beyond 200 nautical miles (nm) from the baselines from which the breadth of the territorial sea is measured." The members of the NPAFC are Canada, Japan, the Republic of Korea (Korea), the Russian Federation

(Russia), and the United States.

In addition, the NPAFC serves as the venue for coordinating the collection, exchange, and analysis of scientific data regarding the above species within Convention waters. It also coordinates high seas fishery enforcement activities by member countries. The Convention prohibits directed fishing for salmonids and includes provisions to minimize the incidental take of salmonids in other fisheries in the Convention area. Although it does not specifically ban large-scale high seas driftnet fishing, fishing for salmonids on the high seas has historically been conducted in this manner. As a result, the NPAFC and its enforcement activities are primarily targeted against high seas driftnet fishing vessels. The Parties to the NPAFC jointly plan and coordinate their high seas enforcement operations in order to most efficiently utilize enforcement resources, but the operational capabilities of each member vary.

NPAFC Enforcement Evaluation and Coordination Meeting (EECM): Representatives of the NPAFC Parties met on February 23–24, 2011, in Honolulu for the annual NPAFC EECM. The primary purpose of the EECM was to discuss the threat of illegal, unreported, and unregulated (IUU) fishing for salmon in the Convention Area and to formulate a joint enforcement plan for the 2011 fishing season. The meeting included updates by each Party on IUU activity in 2010, information on enforcement efforts to date in 2011, and coordination of enforcement plans and resources for the remainder of 2011. The USCG presented its 2011 threat assessment for the NPAFC Convention Area. The presentation showed trends in high seas driftnet fishing activities, including fishing gear, deployment methods, deceptive/defensive measures, and the potential for IUU fishing on salmon, squid, and albacore tuna. A detailed coordinated patrol schedule was developed in order to maximize patrol coverage of the Convention Area as effectively and efficiently as possible.

Among the items proposed and discussed at the EECM were recommendations from the 2010 Performance Review Report on improving operations of the NPAFC Committee on Enforcement, a statement of work on creation of an NPAFC enforcement promotional video, draft terms of reference for an NPAFC IUU vessel list, and coordination of the 2011 bi-weekly enforcement conference calls. The calls are held throughout the high seas driftnet fishing season for the purpose of sharing and coordinating patrol efforts and sighting reports. Canada agreed to coordinate the calls in 2011. Eleven conference calls were held from May 25 through October 12, 2011. The effort proved productive for sharing patrol and sighting information among the Parties and they agreed to continue the practice in 2012. At the 2011 NPAFC 19<sup>th</sup> Annual Meeting, the United States volunteered to host the calls in 2012.

NPAFC Annual Meeting: The 19th Annual Meeting of the NPAFC was held in Nanaimo, British Columbia, Canada, on October 23–28, 2011. Enforcement officials of the Parties met under the auspices of the NPAFC Committee on Enforcement to review enforcement activities in 2011 and begin planning activities for 2012.

Collectively, member countries conducted a total of 72 ship patrol days and 341 aerial patrol hours in the NPAFC Convention Area in 2011. A Fisheries Agency of Japan patrol aircraft sighted two vessels suspected of illegally fishing with large-scale driftnets in the NPAFC

Convention Area (additional information follows below). Although other factors, such as environmental conditions, patrol tactics, and market forces certainly affect fishermen's behavior and detection rates, the low number of driftnet vessel sightings on the high seas again this year may be attributable, in part, to the increased effectiveness of coordinated enforcement efforts of NPAFC members.

Sightings, boardings, and fishing vessel seizures from 2003–2011 indicate that the high seas driftnet threat in the North Pacific Ocean has shifted fishing effort from salmon to squid, sharks, and albacore tuna. Of the 19 driftnet vessels intercepted since 2003, only two had salmon on board; the rest had squid, tuna, sharks, and other species. This shift may be attributed to a combination of factors including depressed salmon markets and favorable squid markets, more effective surveillance of traditional high seas salmon fishing grounds, and more effective control of fishing fleets by North Pacific countries.

A total of 31 vessels suspected of high seas driftnet fishing were sighted from 2008–2011. Approximately one-half of these sightings occurred in the September–November time frame. Prior to 2005, the Parties concentrated most of their enforcement efforts in the summer months in the North Pacific Ocean. In 2005, however, Japan patrolled the far northwestern part of the Convention Area in the September–October timeframe and made 11 of the 18 total driftnet vessel sightings for that year. There is some uncertainty as to whether the increased number of sightings in 2006 and 2007 represented a real increase in the occurrence of large-scale high seas driftnet fishing in the North Pacific Ocean or whether enforcement efforts simply uncovered an existing IUU fishery. Given that the NPAFC Parties have been patrolling the North Pacific for IUU fishing since 1992, it is likely that the illegal driftnet fleet has learned when and where not to conduct fishing operations. Since Parties have focused enforcement efforts on the Northwest Pacific, the number of sightings has dropped significantly. IUU driftnet vessels may adapt by shifting effort geographically or temporally, but they likely will continue to try to hide within the legitimate squid jigging fleet in the high threat area.

Although the NPAFC has successfully deterred high seas salmon fishing and served as a forum for joint enforcement planning and coordination in the NPAFC Convention Area, it has limited enforcement authority against non-salmon non-Party high seas driftnet fishing threats. Because of the different target species and vessel flags involved, the NPAFC will continue to work multilaterally through enforcement and diplomatic channels to bring pressure on these driftnet fishing vessels and their flag states to end operations in the North Pacific.

As the North Pacific illegal driftnet fleet is operating in the part of the NPAFC Convention Area that is partially overlapped by the Western and Central Pacific Fisheries Commission (WCPFC) Convention Area, and targeting species of interest to that Commission, the NPAFC has agreed to coordinate with the WCPFC to eliminate the illegal fishing. The NPAFC established closer relations with the WCPFC in November 2010 by concluding a Memorandum of Understanding (MOU) between the two organizations, *inter alia* for the exchange of information on North Pacific large-scale driftnet fishing activities. The NPAFC will continue to work with the WCPFC and invite it to send representatives to observe NPAFC annual meetings.

Due to the continued threat of high seas fishing for salmon in the NPAFC Convention Area, all Parties reaffirmed their commitment to maintain 2012 enforcement activities at high levels as a deterrent to the threat of potential unauthorized fishing activities. To coordinate enforcement efforts, the Parties agreed to hold the next annual EECM in Korea the week of March 26, 2012.

A summary of high seas driftnet vessel sightings and apprehensions by North Pacific nations from 2000 to 2011 is provided in the table below.

**North Pacific high seas driftnet vessel sightings and apprehensions from 2000–2011.**

Country	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Canada	3	0	0	1	2	1	26	9	7	0	0	0
Japan	0	0	3	0	1	17	67	21	5	0	1	2
Russia	0	0	0	0	0	0	0	2	0	0	0	0
China	0	0	0	0	11	0	0	0	0	1	1	0
Taiwan	0	0	0	0	0	1	0	7	2	1	0	0
United States	1	0	2	24	8	5	5	8	10	0	1	0
<b>Total Sightings*</b>	<b>4</b>	<b>0</b>	<b>5</b>	<b>25</b>	<b>22</b>	<b>24</b>	<b>98</b>	<b>47</b>	<b>24</b>	<b>2</b>	<b>3</b>	<b>2</b>
<b>Apprehended**</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>7</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>1</b>

\* May include multiple sightings of the same vessel or vessels.

\*\* Out of the total number of vessels sighted.

**U.S. Driftnet Enforcement Efforts**

Operation North Pacific Guard 2011, the USCG’s North Pacific high seas fisheries enforcement program, began in May 2011 with an HC-130 patrol aircraft deployment out of Shemya Island, Alaska. USCG aircraft flew a total of 150 dedicated mission hours in 2011, with 103 hours directly surveilling the Convention Area.

The USCG Cutter *MUNRO* conducted a 100-day patrol with an estimated 42 patrol days in the Convention Area in direct support of Operation North Pacific Guard 2011. The *MUNRO* participated in a multinational IUU fisheries enforcement patrol from July 25 through November 1, which included enforcement coordination with NPAFC Parties and China’s Fisheries Law Enforcement Command (FLEC). *MUNRO* embarked Chinese FLEC officers from July 25 through September 26. The Japan Coast Guard conducted two joint Gulfstream-V (G5) flights coincidental with *MUNRO*’s patrol of the driftnet high-threat area. The USCG 17th District sent an officer to Tokyo to participate in both flights as an observer. These flights continued joint U.S.–Japan high seas driftnet fishing aircraft patrol operations (the first was in 2006) and, as has been the case in the past, sighted several fishing vessels. However, none of the vessels were configured for large-scale high seas driftnet fishing.

In addition, Canada’s Department of National Defense (DND) and Department of Fisheries and Oceans (DFO) collaborated with the USCG to deploy a CP-140 Aurora patrol aircraft to Shemya Island, Alaska, in September 2011 and conducted four patrols in support of the *MUNRO*’s patrol. Two DND officers and one DFO officer were assigned to the USCG 17th District office in



Juneau, Alaska, to facilitate close coordination between Canada and U.S. patrols assets.

2011 Driftnet Vessel Sightings: On August 31, 2011, during the 2011 high seas driftnet fishing season, two driftnet fishing vessels, the *BANGUN PERKASA* and *SHUN LI NO. 6*, were sighted on the high seas of the North Pacific Ocean by a Japanese Fisheries Agency (FAJ) aircraft. The two vessels were located at 42°17'N, 155°44'E and the *BANGUN PERKASA* was sighted fishing with a 3.7 km driftnet.

Acting on the vessel sighting information provided by Japan, the USCG Cutter *MUNRO* located both vessels on September 7, 2011, approximately 2,600 nm southwest of Kodiak, Alaska. The two were engaged in driftnet fishing and abandoned their fishing nets and attempted to leave the area once they sighted the Coast Guard. During the right of approach questioning by the *MUNRO*'s helicopter, both vessels made verbal claims of Indonesian registry. These claims were later refuted by the Indonesian Government.

The USCG determined that the *BANGUN PERKASA* was operating without valid flag state registration, and seized it as a vessel without nationality for violations of U.S. law. A *MUNRO* boarding team determined that the vessel had over 9 nautical miles of driftnets, 30 tons of squid, and approximately 30 shark carcasses on board. The vessel master was from Taiwan; the crew was comprised of 10 Vietnamese, 7 Indonesian, and 4 Chinese nationals. The *MUNRO* retrieved the abandoned net and the vessel was escorted to Dutch Harbor, Alaska. The *BANGUN PERKASA* arrived in Dutch Harbor on October 3. The crew was transferred to U.S. customs and immigration officials, and the responsibility for the vessel and case was transferred to the NOAA Office of Law Enforcement. The vessel is currently undergoing a forfeiture process under U.S. domestic law. On October 24, a Dutch Harbor company purchased the *BANGUN PERKASA*'s catch at auction for use as bait.

The *BANGUN PERKASA* may not be a stranger to the North Pacific Ocean. A vessel bearing the same name was sighted by a Canadian patrol aircraft in September 2008 driftnet fishing approximately 175 nm northeast of where the *BANGUN PERKASA* was seized. In addition, a vessel matching the *BANGUN PERKASA*'s identity was sighted in the North Pacific by Japan in September 2006 using the name *TIMUR JAYA NO. 168*.

As the *MUNRO* intercepted the *BANGUN PERKASA*, the *SHUN LI NO. 6* departed the area. The *SHUN LI NO. 6* was later sighted on the high seas east of Taiwan on September 23, 2011. Crew members were observed actively painting the name "MITRA-888" on the bow of the vessel. In addition, the vessel's driftnet tube and net bin had been disassembled, and no driftnets were visible on deck. The *SHUN LI No. 6* is suspected to have been transiting toward a port in China or Taiwan. The USCG provided this information, along with photographs, to the Taiwan Coast Guard and China's FLEC. Both agencies agreed to monitor their ports for the vessel.

NOAA/NMFS Office of Law Enforcement personnel investigated the *BANGUN PERKASA* and *SHUN LI No. 6* high seas driftnet violation cases, deployed with USGC C-130 patrols to assist in

the identification of vessels and investigation into suspected illegal activity, and attended NPAFC meetings to discuss and plan strategies for high seas driftnet enforcement. More than 1,200 person-hours were devoted to high seas driftnet enforcement activities in 2011.

U.S. Commercial Fleet Cooperation. The USCG continued its practice of requesting sighting information from other vessels on the high seas, including the U.S. tuna fleet operating on the high seas of the North Pacific, via Local Notice to Mariners broadcasts. Although no reports of high seas driftnet fishing activity were received from the public in 2011, the Ocean Friends Against Driftnets, a U.S. commercial albacore tuna fishermen's organization, reported to the WCPFC in September 2011 that 2 percent of the daily catch of albacore tuna were net marked, presumably by driftnets.

Planned Future Efforts: The USCG will patrol with available aircraft and patrol vessels in 2012 to meet the projected high seas driftnet and high seas salmon fishing threat. The current USCG Pacific Area planning directive provides 105 cutter days in support of the North Pacific IUU/high seas driftnet mission in 2012. The 2012 major cutter patrol is planned to begin in late June, which is earlier than in past years. This adaptation addresses indications that, in recent years, high seas driftnet fishing activity has been occurring earlier in the fishing season. NOAA/NMFS will also continue to place officers on available Canadian high seas driftnet surveillance flights in 2012 and patrol with USCG HC-130 deployments when able.

The USCG intends to continue issuing Local Notices to Mariners prior to and during the driftnet high threat season, encouraging mariners and fishing fleets to report sightings of suspected high seas driftnet fishing activity. The United States encourages other parties to establish similar systems for advising mariners and encourage the submission of informative sighting reports of suspected IUU fishing activity.

### **Canada's Driftnet Enforcement Efforts**

As in past years, Canada's 2011 high seas driftnet fishing enforcement patrol operations were based out of Eareckson Airfield on Shemya Island, Alaska. The operation involved one DND CP-140 Aurora aircraft, associated aircrew, technicians and ground support, and a DFO fishery officer. The patrol area, west of 175°W to the Russian/Japanese EEZs and north of 38°N, was determined based on the high probability of thermoclines used by salmon, information resulting from the USCG threat assessment, the previous year's experience, historical vessel location data, and the NPAFC Convention Area.

An operational command center with three Canadian liaison officers was established at the USCG 17th District headquarters in Juneau, Alaska, to assist with patrol tasking. Fishery officers led the high seas driftnet enforcement operations, with support of the DND, and jointly assessed intelligence products, directed aerial assets to areas within the Convention Area that were considered high threat, and coordinated with USCG on surface asset management.

From September 16–20, 2011, Canada completed four patrols in the Convention Area for a total of 31 hours. Additional planned patrols were cancelled due to mechanical problems with the

aircraft. No high seas driftnet vessels were sighted by Canada in 2011.

In addition to its long-range aerial surveillance patrols, Canada provided radar satellite (Radarsat) 2 and space-based automatic identification system (AIS) support to the USCG during the 2011 season.

Canadian Driftnet Enforcement Efforts for 2012: The Canadian Government remains committed to combating IUU fishing in the North Pacific Ocean in 2012 using long-range aircraft patrols. The total number of allocated patrol hours will be in the range of 80 to 120 hours in the September 1–30 time frame. No surface assets will be deployed. Radarsat 2 satellite imagery and AIS will again be utilized to support long-range aircraft patrols.

### **Japan's Driftnet Enforcement Efforts**

Japan's 2011 driftnet fishery enforcement efforts consisted of the deployment in the NPAFC Convention Area of an FAJ Citation V patrol aircraft for 98 patrol hours from May 17 through October 12, 2011, and a Japan Coast Guard G-V patrol aircraft for a total of 12 hours on August 1–2, 2011. A USCG observer accompanied the Japan Coast Guard aerial patrols.

Although the Japan Coast Guard patrols did not observe any large-scale high seas driftnet fishing activity, on August 31, 2011, the FAJ patrol aircraft sighted two high seas driftnet fishing vessels, the *BANGUN PERKASA* and the *SHUN LI NO. 6*, fishing for squid and sharks. Japan provided the NPAFC Parties the sighting information and detailed photos of the two vessels.

Japan did not conduct any surface patrols in 2011 due to damage sustained by two FAJ patrol vessels from the March 2011 earthquake and resulting tsunami.

Japanese Driftnet Enforcement Efforts for 2012: Because there were sightings of high seas driftnet fishing activity in the NPAFC Convention Area in 2011, Japan will continue enforcement activities in the Area in 2012.

### **Korea's Driftnet Enforcement Efforts**

Korea did not participate in large-scale high seas driftnet fisheries enforcement activities in the NPAFC Convention Area in 2011 and has no plans to conduct enforcement activities in the area in 2012. However, Korea is improving and reinforcing its port state measures through port state inspections. It is currently creating multilingual inspection questionnaires and standardized inspection procedures, not only for salmon but also for other species. Korea is also increasing the number of port inspection personnel. Korea will continue to share information and cooperate with the other NPAFC Parties to strengthen the conservation of anadromous species.

### **Russian Federation's Driftnet Enforcement Efforts**

The Russian Federal Security Service (FSB) Coast Guard Directorates in Kamchatka (Northeast

Directorate) and Sakhalin were responsible for large-scale driftnet fishing enforcement in the NPAFC Convention Area in 2011. These Directorates deployed AN-72 patrol aircraft for a total of 97 hours—6 patrols for 33 hours by the Northeast Directorate and 12 patrols for 64 hours by the Sakhalin Directorate. In addition, four patrol vessels were also deployed in the NPAFC Convention Area for a total of 30 days. No vessels engaged in illegal driftnet fishing were detected by Russian patrol assets.

Russian Driftnet Enforcement Efforts for 2012: Russia has not yet finalized its 2012 driftnet enforcement activities.

### **China's and Taiwan's Driftnet Enforcement Efforts**

The United States did not receive any reports of large-scale high seas driftnet fisheries enforcement activities from China or Taiwan in 2011.

### **Potential Driftnet Threat in the North Pacific Ocean in 2012**

Historical sightings indicate that the high seas driftnet threat continues to exist in the North Pacific Ocean. Past years' observations support a shift of fishing effort, both toward the later parts of the fishing season, and to a primary target species of squid. In addition, evidence shows that anadromous and highly migratory species (e.g., swordfish and sharks) are still being captured by high seas driftnet vessels as target species and as bycatch.

Driftnet fishing targeting salmon is expected to take place north of 47°N, west of 173°E, and bounded by the U.S. and Russian EEZs. The greatest threat period for salmon is generally from April through June and for other species from May through November. High seas driftnet fishing vessels targeting squid may deploy nets in areas of strong temperature change. Targeted areas primarily include waters with a sea surface temperature (SST) between 11–17° Celsius (C). These waters typically occur in the North Pacific between 35°–48°N and 150°E–165°W. Strong evidence suggests fishing vessels target areas where SST changes rapidly over short distances. Historical evidence shows that Japanese fishing vessels deployed driftnets in areas where SST may differ by 2–3° C from one end of the net to the other. Prime fishing areas may be locations where the SST isotherm dips down to the south and forms a U-shaped pocket.

### **Western and Central Pacific Ocean**

At the Fifth Regular Session of the WCPFC held in Busan, Korea, on December 8–12, 2008, the Commission adopted Conservation and Management Measure (CMM) 2008-04, prohibiting the use of large-scale driftnets (greater than 2.5 km in length) on the high seas within the WCPFC Convention Area. CCM 2008-4 charges Commission Members, Cooperating Non-Members, and participating territories to take all measures necessary to prohibit their fishing vessels from using large-scale driftnets while on the high seas in the Convention Area. The measure will provide greater authority for at-sea boarding and investigation of possible high seas driftnet vessels in the western and central Pacific, and the WCPFC High Seas Boarding and Inspection Scheme will be available to help investigate potential violations and ensure compliance.

The WCPFC has coordinated with the NPAFC to establish a cooperative framework between the two organizations to exchange information on North Pacific large-scale driftnet fishing activities. An MOU between the two organizations to this effect was signed on November 5, 2010. Cooperation between the WCPFC and the NPAFC includes, among other things, “development of a process to promote harmonization and compatibility of conservation and management measures as relevant, including measures relating to monitoring, control, surveillance and enforcement.”

The boarding of the *BANGUN PERKASA* by the USCG was conducted pursuant to WCPFC conservation and management measures (CMMs). The violations of WCPFC CMMs included using prohibited gear, intentional taking or retention of species in contradiction of applicable CMMs adopted by the Commission; failure to maintain sufficient records of catch and catch-related data; fishing without a license, permit, or authorization issued by a flag member; not using a vessel monitoring system as required by the Commission; not being listed on the WCPFC Record of Fishing Vessels; and operation without displaying a WCPFC identification number or international radio/telecommunication union call sign.

### **Mediterranean Sea**

NGOs, including Oceana, Earthtrust, and the Pew Environment Group, asserted that Italian and Moroccan vessels and nationals continued to fish with large-scale driftnets in the Mediterranean Sea in 2011. However, the United States is not aware of any documented sightings of large-scale driftnet vessels of either of these countries fishing on the high seas of the Mediterranean in 2011.

In addition to the UNGA global moratorium on large-scale high seas driftnet fishing, several other international mechanisms are in place to prohibit large-scale driftnet fishing in the Mediterranean Sea.

European Union (EU) Ban on Driftnets: In 1997, the EU began to consider an EU-wide driftnet ban in the Mediterranean Sea and North Atlantic Ocean as a means of complying with the UN driftnet moratorium. From 1997 to 2004, the EU adopted a series of regulations leading to this goal:

- Regulation No. 894/97, adopted on April 29, 1997, stated that no vessel could keep on board, or use for fishing, one or more driftnets whose individual or total length is more than 2.5 km.
- Regulation No. 1239/98, adopted on June 8, 1998, banned the use of all driftnets for catching tunas, billfish, sharks, dolphinfishes, sea bream, sauries, and cephalopods by January 1, 2002, in all waters falling within the jurisdiction of Member States, as well as outside those waters, with the exception of the Baltic Sea. The EU driftnet ban entered into force on January 1, 2002.
- Regulation No. 812/2004, adopted on April 30, 2004, expanded the ban to the Baltic Sea on

January 1, 2008.

One of the major problems in enforcing the European Commission's (EC) driftnet regulations was that, until recently, the EC never legally defined what a driftnet is. This allowed the French and Italian Governments to exploit loopholes in EC Regulation 1239/98 by redefining driftnet gear and continuing to fish. Conventional large-scale driftnets--nets that fish passively, drift with ocean currents, and are often more than 20 km long--are called "spadare" driftnets in Italy. In 1998, after the EU driftnet ban was adopted, the Italian Government approved a new type of driftnet fishing gear called "ferrettara." Ferrettara driftnets could legally measure up to 2 km long, have a mesh size up to 100 mm, and had to be fished within 3 nm from the coast. In April 2005, the Italian Government amended the law to allow fishermen to use ferrettara up to 5 km long, 20 m deep, and with mesh up to 180 mm. These nets could be fished up to 10 nm from the coastline. Over the years, many of the spadare driftnet fishermen hid behind the name "ferrettara," without modifying their spadare nets.

The French Government, on the other hand, redefined its fishermen's large-scale driftnet gear as "thonaille," or set surface gear. The thonaille was a type of driftnet up to 9.2 km long with mesh size measuring from 10-20 cm. Rather than drifting freely, the net incorporated a floating anchor, or sea anchor, at one end. This allowed the French Government to claim that the net was an anchored gillnet, not a driftnet. Acoustic deterrent devices, or pingers, were also incorporated in thonaille to help minimize the bycatch of marine mammals. In March 2009, the EU Court of Justice (ECJ) found that the *thonaille* was a drift gillnet and censured France for failing to meet its obligation to respect rules prohibiting drift gillnets to capture large pelagic fish species. In response to the Court's orders, in August 2009, France promulgated regulations that prohibited the use of *thonaille* for targeting large pelagic fish species, thereby eliminating the legal loophole created by excluding *thonaille* from the definition of large-scale driftnet gear.

To remove any confusion about what a driftnet is, the EC adopted a new definition of driftnets on 20 September 2006. The Commission believes that this single definition will simplify and increase transparency in EU legislation governing this fishing gear and facilitate the control and enforcement of current restrictions on the use of driftnets. The Commission's driftnet definition follows:

“Drift net means any gillnet held on the sea surface or at a certain distance below it by floating devices, drifting with the current either independently or with the boat to which it may be attached. It may be equipped with devices aiming to stabilize the net and/or to limit its drifting.”

The EC adopted on 28 June 2007 Regulation No. 809/2007, which amended the EC regulations that relate to the use of driftnets (No. 894/97, as amended by No. 1239/98, No. 812/2004, and No. 2187/2005, the regulation on technical measures in the Baltic Sea) by applying the new driftnet definition.

General Fisheries Commission for the Mediterranean (GFCM): At its 22<sup>nd</sup> Session in October 1997, the GFCM adopted binding Resolution 97/1 concerning the use of large-scale pelagic drift-

net gear. The resolution, taking UNGA Resolution 44/225 into account and considering that uncontrolled expansion and growth of driftnet fishing may entail serious disadvantages in terms of increased fishing effort and increased bycatch of species other than target species, prohibited vessels flying the flag of a Contracting Party of the GFCM from keeping on board, or fishing with, one or more driftnets whose individual or total length is more than 2.5 km.

At the 29<sup>th</sup> Session of the GFCM on February 21–25, 2005, the Commission adopted ICCAT Recommendation 03-04 (described below) prohibiting the use of driftnets for fisheries of large pelagics in the Mediterranean Sea as Recommendation GFCM/2005/3(A).

International Commission for the Conservation of Atlantic Tunas (ICCAT) Driftnet Recommendation: On November 26, 2003, at its 18<sup>th</sup> Annual Meeting in Dublin, ICCAT adopted Recommendation (03-04), which prohibits the use of driftnets in fisheries for large pelagic species in the Mediterranean by its Contracting Parties, Cooperating Non-Contracting Parties, Entities, and Fishing Entities. Contracting Parties are legally bound by the recommendation. In practical terms, the recommendation closes a driftnet fishing loophole that could be used by countries that are members of ICCAT but not the EU, and therefore are not bound by the EU driftnet ban. Unlike the UN high seas driftnet moratorium, neither the EU ban nor the ICCAT recommendation differentiates between driftnet fishing on the high seas or in territorial waters—driftnet fishing is prohibited in both.

Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic Area (ACCOBAMS): At the third meeting of the Parties to ACCOBAMS held in Dubrovnik, Croatia, on October 22–25, 2007, the ACCOBAMS Scientific Committee urged Parties to take immediate action to ensure compliance by their nationals with the EU ban on driftnets and to encourage similar actions by relevant non-member states. The Scientific Committee stressed that cetacean bycatch in driftnets is by far the primary cause of anthropogenic mortality for most pelagic cetacean populations in the Mediterranean Sea. Consequently, the Parties agreed to include in the text of the Agreement the prohibition on the possession and use of driftnets on board fishing vessels to bring the Agreement into line with other international agreements. The Agreement entered into force for all Contracting Parties on March 22, 2008. It states that “no vessels will be authorized to keep on board or to use any driftnets.”

### Italy:

**2011 Developments:** Despite the EC’s new definition of driftnets, Italian Agriculture Under Secretary Antonio Buonfiglio, who had the Minister of Agriculture’s delegation of authority for fisheries matters, signed a decree on June 4, 2009, eliminating the 10-mile maximum limit on the distance from the coast for the use of ferrettara driftnets under Italian law. Instead, the decree authorized the use of ferrettara nets according to the distance from the coast authorized for each vessel, thus allowing some vessels to fish the gear beyond the previous limit. This change meant that Italian enforcement authorities had to inspect net length, ensure that vessels were setting nets only on permitted species (e.g., mackerel, European pilchard, and anchovy), and check the authorized distance from the coast for each vessel. Fisheries Directorate International Affairs

Director Cesare Tabacchini stressed that Italy intended to strictly enforce both the 2.5-km length limit and the species limitations. The species rules were intended to limit the incentive for vessels to fish farther from the coast, since the permitted species all tend to be found close to the coast, except for anchovy.

The Lazio (Rome) Regional Administrative Court accepted on June 6, 2009, a case brought by environmental NGOs against the decree. The Court agreed to suspend the implementation of the decree. The Italian Government decided not to appeal the Court's decision and, as a result, ferrettara use was still only permitted in Italian national waters.

On July 1, 2011, the Minister of Agriculture signed a decree requiring fishermen to select between ferrettara nets and longline fishing gear. They will be allowed to carry only one of these gear types on board. This will prevent violators caught with pelagic species such as tuna and swordfish on board from claiming the fish were caught using legal longline gear when they were really caught by illegal driftnets. The administrative fine for violation of this new regulation varies from €1,000 to €6,000 (approximately \$1,400 to \$8,000). The fine is doubled if illegally caught fish are found on board. If the fish are below the legal size limit, the violation becomes penal. Fishermen appealed to the Regional Administrative Court and the decree was temporarily suspended on August 3, 2011. On September 7, 2011, the Regional Administrative Court suspended this decree and determined that the fishermen will be compensated for their loss. The Court will reexamine the decree on January 18, 2012.

On September 21, 2011, because of pressure from the EU, Italy revised its regulations for ferrettara driftnets, limiting their use to 5 km from shore (effective immediately) and reducing the mesh size to 100 millimeters, but keeping the permitted length at 2.5 km (effective January 10, 2012). The Italian Ministry hoped this action would help avoid EU sanctions.

Status of the EC Infringement Procedure against Italy: The EC Directorate for Fisheries and Maritime Affairs began an infringement procedure against Italy in November 2004, after monitoring the driftnet situation in Italy for several years and concluding that Italy was not complying with EC driftnet legislation. In late 2007, the United States learned that the EC Directorate's Office of Legal Services had completed its review of Italy's response to the Commission's second reasoned opinion. The Commission referred the infringement case to the ECJ on June 10, 2008. The action was a scathing indictment of Italy's failure to comply with the EU's driftnet regulations.

On October 29, 2009, the ECJ finally declared that Italy had failed to fulfil its obligations under Article 1(1) of Regulation (EEC) No 2241/87 establishing certain control measures for fishing activities and Articles 2(1), 31(1) and (2) of Regulation (EEC) No 2847/93 establishing a control system applicable to the common fisheries policy, by failing to provide appropriate measures for the control, inspection, and surveillance of fishing activities within its territory and within maritime waters subject to its sovereignty or jurisdiction. Italy was particularly condemned for failure to comply with the provisions governing the retention on board and use of driftnets. Italy also failed to comply sufficiently with its obligation to ensure that appropriate measures are taken against those responsible for infringements of the Community legislation on the retention



on board and use of driftnets, in particular by imposing inadequate penalties. The ECJ imposed a \$19 million penalty on Italy as a result of the ruling, and Italy will have to implement EC driftnet laws.

On September 29, 2011, the EU called on Italy again to take measures and comply with the October 2009 ECJ ruling on Italy's continued illegal use of driftnets. Despite persistent calls on Italy to fulfill its monitoring and enforcement tasks adequately with regard to illegal driftnets, onsite EU inspections in Italian ports in Sicily and Ponza in April and May 2011, respectively, did not show any significant improvements as compared to the situation before the Court's judgment. The Commission's verifications indicated that driftnets are still used illegally in Italy in large numbers, and that actions taken by national authorities are neither sufficient nor adequately efficient to deter their use. The EU threatened to refer the case to the ECJ again, this time asking the Court to impose significant financial penalties (reportedly as high as €120 million, approximately \$160 million) on Italy in accordance with the Treaty rules, if Italy did not take satisfactory actions within 2 months of the notice.

**Morocco:** On November 20, 2003, the World Wildlife Fund (WWF) International released a report titled "Biodiversity impact of the Moroccan driftnet fleet in the Alboran Sea." The report claimed that the Moroccan driftnet fleet, with 177 vessels, was killing thousands of dolphins and other vulnerable species, such as sharks and sea turtles, in the Alboran Sea and around the Straits of Gibraltar. The WWF also alleged that Italian, French, Turkish, and most probably other fishing fleets are using driftnets in breach of existing legislation and the UN driftnet moratorium. The WWF report came out in advance of the Conference on Mediterranean Fisheries, which was held in Venice on November 23–25, 2003. The WWF urged the EU to monitor and prosecute all of the fleets of its member states using driftnets. It also called on the GFCM and non-EU countries, particularly those in North Africa, to introduce legislation banning the use of driftnets in the Mediterranean Sea.

At the 2003 ICCAT Annual Meeting, Morocco admitted to having a driftnet fleet. At the time ICCAT's driftnet recommendation was adopted, Morocco made a statement for the record of its intention to devise a national plan to phase out driftnet gear and pledged to work with the EU and others to accomplish this. At the November 15–21, 2004, ICCAT Annual Meeting in New Orleans, Morocco presented a 4-year plan for eliminating the use of driftnets in its fisheries, primarily through public education and assistance to its fishermen. The U.S. ICCAT delegation highlighted the urgency of this action and offered to work with Morocco to help expedite implementation of the plan.

A U.S. delegation traveled to Morocco from September 26–28, 2005, to discuss issues related to ICCAT and large-scale driftnets. Three of the goals of the trip were to learn about driftnet use by Morocco and other countries bordering the Mediterranean, to educate Morocco on U.S. driftnet laws, and to explore possible areas of cooperation and capacity building, especially regarding the phase-out of Morocco's driftnet fleet. Morocco expressed the need for assistance in transitioning its driftnet fleet to other, more selective gears and noted that it was in the second

year of its driftnet elimination plan. The plan called for buying driftnets and disposing of them. Morocco also expressed an interest in working with the United States on analysis of the social and economic impacts of eliminating its driftnet fleet, including the effect on fishermen, the social loss associated with such a change, and the cost of vessel/gear replacement. The United States provided funds to help with some aspects of Morocco's driftnet elimination program.

On Feb 28, 2007, Morocco ratified the EU-Morocco Fisheries Partnership Agreement. The 4-year Agreement allowed 119 European vessels, mostly Spanish, to fish in Moroccan waters in exchange for an annual €6.1 million (approximately \$46 million) compensation package. A portion of this compensation package, €1.25 million (or \$1.8 million), was earmarked to fund the conversion of the Moroccan driftnet fleet to more sustainable fishing activities. The Agreement was signed on July 28, 2005, after 6 years of negotiations, and ratified by the EU on May 29, 2006.

Morocco passed a new law on July 23, 2007, to punish fishermen who continue to use driftnets in Moroccan waters. Under the new measure, fishermen caught using driftnet gear will face up to a year's imprisonment or heavy fines. Confiscated nets will be destroyed, ensuring that the banned gear will not be sold in other countries. Compensation will be provided to Moroccan fishermen who voluntarily give up their nets, and will enable them to invest in more sustainable activities. Morocco expected to complete the elimination of driftnet fishing gear by the beginning of 2009 and provided an update on the phase-out of its driftnet fishery at the ICCAT 20<sup>th</sup> Annual Meeting on November 9–18, 2007, in Antalya, Turkey.

NMFS received anecdotal information in 2008 that less than half of the Moroccan driftnet fleet had converted to longline fishing operations. At the 2008 ICCAT Annual Meeting in Marrakech, the Moroccan representative confirmed that Morocco would require 3 more years for the total conversion of its driftnet fleet. The extended deadline is January 1, 2012. Morocco stated that only 31 of 245 driftnet vessels left the fishery in 2008. Morocco's goal was to eliminate approximately 70 vessels each year over the next 3 years.

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

On August 2, 2010, the Kingdom of Morocco published Law No. 19-7 in State Bulletin 1431 no. 5861, prohibiting the “import, manufacture, retention, sale, as well as the use of driftnets at sea for fishing fish and/or other fishing species.” The law went into effect immediately for driftnet importers, manufacturers, and buyers and sellers. However, it entered into force on August 2, 2011, for Moroccan fishermen. The program will reportedly cost \$1.5 million. The penalty for breaking the law can range from 3 months to 1 year in prison and \$600 to \$120,000, depending on the severity of the infraction.

2011 Developments: The EU-Morocco Partnership Agreement expired on February 27, 2011. On February 25, 2011, the EU initialed a 12-month extension of the protocol under the Agreement with the level of fishing opportunities for EU vessels and the corresponding financial contribution to Morocco remaining the same as in the 2007 protocol.

### **Indian Ocean:**

In 2009, EU purse seiners observed dense concentrations of Iranian driftnet vessels and networks of large driftnets (estimated by EU skippers to be 3.5 to 5.5 nautical miles long) north of the Equator between 2° N and 14° N. Iran identified a fleet of 752 driftnet vessels operating outside Iran's EEZ to the Indian Ocean Tuna Commission in 2009. These vessels ranged from 14 to 33 meters long. Unfortunately, there is little information available about the activities of this fleet (fishing effort, the length of nets, fishing zones, bycatch, etc.).

The United States has not received any reports of illegal large-scale high seas driftnet fishing in the Indian Ocean in 2011. However, the Seychelles Coast Guard seized four Iranian-flagged vessels fishing illegally with large-scale driftnets in Seychelles waters in 2010. The Mozambican Fisheries Authority also arrested an Iranian flagged fishing vessel illegally fishing in Mozambique's waters with large-scale driftnets in 2010. Although none of the driftnet vessels in the above cases were seized fishing on the high seas of the Indian Ocean, this area could potentially become the next high threat area for large-scale high seas driftnet fishing due to the lack of enforcement capability. Incidentally, the various multinational counter-piracy operations in the region could help deter this threat if properly trained on how to identify and report this illegal activity.

In 2009, the Indian Ocean Tuna Commission adopted *Resolution 09/05: To Prohibit the Use of Large-scale Driftnets on the High Seas in the IOTC Area*. The Commission noted that a number of vessels continue to engage in large-scale high seas driftnet fishing in the Indian Ocean. Resolution 09/05 charges each Contracting Party and Cooperating Non-Contracting Party to take all measures necessary to prohibit their fishing vessels from using large-scale driftnets while on the high seas in the IOTC Convention Area. In 2012, the IOTC will assess whether additional measures should be adopted and implemented to ensure that large-scale driftnets are not used.

### **Interagency Agreements**

Fisheries Enforcement Memorandum of Understanding (MOU): On October 11, 1993, the Secretaries of Transportation, Commerce, and Defense entered into the *Memorandum of Understanding Between the Secretary of Transportation, the Secretary of Commerce and the Secretary of Defense Relating to the Enforcement of Domestic Laws and International Agreements that Conserve and Manage the Living Marine Resources of the United States*. The MOU, required under Section 202 of Public Law 102-582, the High Seas Driftnet Fisheries Enforcement Act, established a mechanism for the use of the surveillance capabilities of the

Department of Defense for locating and identifying vessels violating U.S. marine conservation laws and international agreements, including UNGA Resolution 46/215. The MOU also set formal procedures for communicating vessel locations to the Secretary of Commerce and the U.S. Coast Guard. A copy of the MOU was attached to the 1993 Driftnet Report to the Congress. There are no other interagency agreements regarding high seas driftnets.

## **Bilateral Driftnet Agreements**

### **U.S.-China MOU**

For nearly two decades, the USCG, in conjunction with NMFS, has embarked members of China's FLEC on Coast Guard assets patrolling the highest threat areas in the North Pacific Ocean for high seas driftnet fishing pursuant to the terms of the *Memorandum of Understanding Between the Government of the United States of America and the Government of the People's Republic of China on Effective Cooperation and Implementation of United Nations General Assembly Resolution 46/215 of December 20, 1991*, signed in Washington, DC, on December 3, 1993. These patrols support the global large-scale high seas driftnet moratorium called for by UNGA Resolution 46/215 and provisions of the *Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean*. They also enable China to more effectively enforce its domestic laws that prohibit high seas driftnet fishing by Chinese-flagged vessels in the North Pacific. The current MOU (also known as the U.S.-China Shiprider Agreement) expires on December 31, 2014.

The USCG has had a strong working relationship with China's FLEC for 18 years. This working relationship increases opportunities for cooperation on both high seas fisheries enforcement efforts and training. From July to November 2011, the USCG Cutter *MUNRO* conducted an Operation North Pacific Guard 2011 patrol. The *MUNRO* hosted six Chinese FLEC shipriders, rotating two shipriders every 3 weeks during this patrol. These officials were instrumental in facilitating communications between the USCG and the FLEC, and effectively expanded the jurisdictional reach of both enforcement agencies. As in years past, FLEC participation was financially supported by NOAA's Office of Law Enforcement, which facilitated the logistics and travel costs of FLEC officers. China has provided a total of 73 enforcement officials to the USCG since the Shiprider Agreement first entered into force in 1993.

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

### **UNGA Driftnet Resolutions and Decisions**

Details on UNGA Resolutions 44/225 (1989), 45/197 (1990), 46/215 (1991), 50/25 (1995), 51/36 (1996), 52/29 (1997), 53/33 (1998), 54/32 (1999), 55/8 (2000), 57/142 (2002), 58/14 (2003), 59/25 (2004), 60/31 (2005), 61/105 (2006), 62/177 (2007), 63/112 (2008), 64/72 (2009), 65/38 (2010), UNGA Driftnet Decisions 47/443 (1992), 48/445 (1993), and 49/436 (1994), and supporting resolutions and actions taken by the United States in other fora prior to 2011 have been provided in previous driftnet reports to the Congress available from NMFS.

At the time this report was written, the General Assembly was considering for adoption draft Resolution A/66/L.22 on *Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments*. The Resolution expresses concern that, despite the adoption of General Assembly Resolution 46/215, the practice of large-scale pelagic driftnet fishing still exists and remains a threat to marine living resources. It urges States, individually and through regional fisheries management organizations and arrangements, to adopt effective measures, or strengthen existing measures, to implement and enforce the provisions of Resolution 46/215 and subsequent resolutions on large-scale pelagic driftnet fishing in order to eliminate the use of large-scale pelagic drift nets in all seas and oceans. Specifically, efforts to implement resolution 46/215 should not result in the transfer of driftnets that contravene the Resolution to other parts of the world. The Resolution also urges States, individually and through regional fisheries management organizations and arrangements, to adopt effective measures, or strengthen existing measures, to implement and enforce the present global moratorium on the use of large-scale pelagic driftnets on the high seas. It calls on them to ensure that vessels flying their flag that are duly authorized to use large-scale driftnets in waters under their national jurisdiction do not use such gear for fishing while on the high seas. Finally, it reaffirms the request in paragraph 6 of Resolution 46/215 for the submission of information to the Secretary-General and requests the Secretary-General to include this information in his report to the 67<sup>th</sup> session.

Draft Resolution A/66/L.22 requests the Secretary-General to bring it to the attention of all States, relevant intergovernmental organizations, the organizations and bodies of the United Nations system, subregional and regional fisheries management organizations, and relevant non-governmental organizations and to invite them to provide the Secretary-General with information relevant to the implementation of the resolution. The provisional agenda of the 67<sup>th</sup> session will include under the item entitled “Oceans and the law of the sea” the sub-item entitled “*Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments*.” The 67<sup>th</sup> session will consider the possibility of including this sub-item in future provisional agendas on a biennial basis.

## **UN Driftnet Reports**

Since December 1992, the United States has been instrumental in ensuring that implementation of the high seas driftnet moratorium remains a priority of the UNGA. The United States will continue to support UNGA resolutions and decisions requesting that the UN Secretary-General submit to the General Assembly biennial reports on developments relevant to the implementation of the UN driftnet moratorium.

Draft Resolution A/6/L.22 requested the Secretary-General to submit to the General Assembly at its 67<sup>th</sup> session a report on “*Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments,*” taking into account information provided by States, relevant specialized agencies, in particular the Food and Agriculture Organization of the United Nations, and other appropriate organs, organizations, and programs of the United Nations system, subregional and regional organizations and arrangements for the conservation and management of straddling fish stocks and highly migratory fish stocks, as well as other relevant intergovernmental bodies and non-governmental organizations, and consisting, inter alia, of elements provided in relevant paragraphs in the present resolution.

### **Support for the Wellington Convention**

The United States took no specific actions in support of the Wellington Convention in 2011. The Wellington Convention, formally known as the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, prohibits driftnet fishing within the Convention Area, which includes both EEZs of South Pacific countries and territories, and adjacent high seas areas. Details on U.S. actions taken prior to 2011 are provided in previous driftnet reports to the Congress.

On April 15, 2011, an Australian Coastwatch (Australia’s civil maritime surveillance operation) aircraft reported sighting a large driftnet drifting to the west of the Torres Strait inside the Australian EEZ. When an Australian Customs vessel arrived on scene, inspectors found that there were actually two nets—both too large for them to recover. The Australian Marine Safety Authority tasked the emergency towage vessel *PACIFIC RESPONDER* to recover the nets. The nets had a combined length of 7 nautical miles (13 km) and contained 312 fish, including whaler and hammerhead sharks, shark and Spanish mackerel, barracuda, tuna and sailfish, sea snakes, and four sea turtles (two of the sea turtles were successfully released).

The origin of the nets is unknown. It is possible that the nets were set illegally in Australian waters, but they could have drifted into the Australian EEZ from international waters. Nevertheless, this incident may be an indication that some low level of illegal large-scale driftnet fishing is still occurring in the Wellington Convention Area. Prior to this incident, no large-scale pelagic driftnet fishing activities had been reported in the Wellington Convention area since 1991.

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

A detailed evaluation of the impacts of large-scale high seas driftnet fishing on salmonids, marine mammals and birds, tuna and non-salmonid fishes, and marine turtles was provided in the 1992 report to the Congress. The evaluation was based on catch data from the 1989–1992 scientific driftnet monitoring programs with Japan, Taiwan, and Korea. However, an enormous amount of North Pacific ecosystem data resulted from the driftnet scientific monitoring

programs. Analyses and interpretation of these data continued through 1994 and descriptions of such research were included in the 1993 and 1994 driftnet reports. With the advent of the UN moratorium on large-scale high seas driftnet fishing, legal sources for scientific data on this type of fishing gear disappeared. Only Japan continues to conduct research on the distribution and abundance and status of stocks of salmonids and non-salmonid pelagic fishes in the North Pacific Ocean using small-scale driftnets (driftnets less than 2.5 km).

**LIST AND DESCRIPTION OF ANY NEW FISHERIES DEVELOPED BY NATIONS THAT CONDUCT, OR AUTHORIZE THEIR NATIONALS TO CONDUCT, LARGE-SCALE DRIFTNET FISHING BEYOND THE EEZ OF ANY NATION**

We are not aware of any new fisheries that have been developed by nations that conduct, or authorize their nationals to conduct, large-scale pelagic driftnet fishing on the high seas beyond the EEZ of any nation.

**LIST OF NATIONS THAT CONDUCT, OR AUTHORIZE THEIR NATIONALS TO CONDUCT, LARGE-SCALE DRIFTNET FISHING BEYOND THE EEZ OF ANY NATION IN A MANNER THAT DIMINISHES THE EFFECTIVENESS OF OR IS INCONSISTENT WITH ANY INTERNATIONAL AGREEMENT GOVERNING LARGE-SCALE DRIFTNET FISHING TO WHICH THE UNITED STATES IS A PARTY OR OTHERWISE SUBSCRIBES.**

The Secretary has not identified, pursuant to the High Seas Driftnet Fisheries Enforcement Act, any nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the EEZ of any nation in a manner that diminishes the effectiveness of, or is inconsistent with, any international agreement governing large-scale driftnet fishing to which the United States is a party or otherwise subscribes.

U.S. Actions:

Italy: Thanks to European Court of Justice rulings in 2009 and action taken by the EU in 2011, there are few, if any, loopholes left for Italian fishermen to circumvent EC driftnet regulations. The United States anticipates the end of this fishery in the near future. We note that there has been a significant decline in documented sightings of Italian fishing vessels employing large-scale driftnets on the high seas of the Mediterranean in recent years and none from 2009–2011.

The Secretary of Commerce identified Italy on March 19, 1999, pursuant to the High Seas Driftnet Fisheries Enforcement Act as a nation that conducts, or authorizes its nationals to conduct, large-scale pelagic driftnet fishing on the high seas beyond the EEZ of any nation. On July 15, 1999, the United States and Italy formally agreed on measures to effect the immediate termination of Italian large-scale high seas driftnet fishing. For this reason, the United States did not impose trade sanctions on Italian fish, fish products, and sport fishing equipment pursuant to

the Act. Although the 1999 agreement expired, the United States has continued to apply the provision of the High Seas Driftnet Fisheries Enforcement Act that denies entry of Italian large-scale driftnet vessels to U.S. ports and navigable waters. Since May 29, 1996, the United States has also required Italy to provide documentary evidence pursuant to the Dolphin Protection Consumer Information Act (16 U.S.C. 1371(a)(2)(E)) that certain fish and fish products it wishes to export to the United States are not harvested with large-scale driftnets on the high seas.