

**2016 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**

TABLE OF CONTENTS

| | |
|---|-----------|
| INTRODUCTION | 2 |
| DESCRIPTION AND PROGRESS OF EFFORTS MADE TO CARRY OUT PROVISIONS OF SECTION 206(C) POLICY | 4 |
| IMPLEMENTATION OF THE GLOBAL DRIFTNET MORATORIUM CALLED FOR BY UNGA RESOLUTIONS 44/225, 45/197, AND 46/215..... | 4 |
| <i>Current Status of the Driftnet Moratorium</i> | <i>4</i> |
| North Pacific Ocean | 4 |
| Mediterranean Sea | 10 |
| Indian Ocean | 12 |
| <i>Interagency Agreements</i> | <i>14</i> |
| <i>Bilateral Driftnet Agreements.....</i> | <i>14</i> |
| <i>UNGA Driftnet Resolutions and Decisions</i> | <i>15</i> |
| EVALUATION OF THE IMPACTS ON LIVING MARINE RESOURCES..... | 16 |
| 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..... | 16 |
| 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. | 17 |

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 2016 in fulfillment of the Section 206(e) reporting requirement. Information pertaining to U.S. actions in support of the Act prior to 2016 and after 1988 can be found in the 1990–2015 annual driftnet reports to the Congress available from NMFS (e-mail christopher.rogers@noaa.gov or call 301-427-8350).

DESCRIPTION AND PROGRESS OF EFFORTS MADE TO CARRY OUT PROVISIONS OF SECTION 206(c) 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, 2016, the UNGA global moratorium on large-scale high seas driftnet fishing has been in effect for 24 years. International implementation of the moratorium in the world's oceans and enclosed and semi-enclosed seas continues to be generally successful.

North Pacific Ocean

In 2016, no vessels were sighted by the U.S. conducting unauthorized large-scale high seas driftnet fishing operations in the North Pacific Ocean.

North Pacific Regional Driftnet Enforcement Coordination

North Pacific Anadromous Fish Commission (NPAFC): The NPAFC serves as a forum for promoting the conservation of anadromous fish 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 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.

The NPAFC serves as the venue for coordinating the collection, exchange, and analysis of scientific data regarding anadromous fish stocks 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 the Convention does not specifically ban large-scale high seas driftnet fishing, fishing for salmonids on the high seas has historically been conducted using this fishing gear. Consequently, the NPAFC and its enforcement activities primarily target 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, although the operational capabilities of each member vary.

Although the NPAFC has served as a forum for joint enforcement planning and coordination in the NPAFC Convention Area, it has no enforcement authority against non-salmon non-Party high seas driftnet fishing threats. Because of the different target species and vessel flags involved, the NPAFC continues to work multilaterally through enforcement and diplomatic channels to bring pressure on these driftnet fishing vessels and the flag states these vessels are operating under to end operations in the North Pacific.

Table 1 shows the number of high seas driftnet vessel sightings and apprehensions by the NPAFC Parties, China, and Taiwan in the North Pacific Ocean from 2000-2016. 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 reported 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 ongoing autumn illegal, unreported, and unregulated (IUU) fishery. Given that the NPAFC Parties have patrolled the North Pacific for IUU fishing since 1992, it is likely that the illegal driftnet fleet has learned how to modify its fishing operations to avoid detection. Since Parties have focused enforcement efforts on the Northwest Pacific, the number of sightings has dropped significantly--to low single digits from 2009 on and none in 2013 and 2015. Large-scale high seas IUU driftnet operations may adapt by shifting effort geographically or temporally, but those operations utilizing IUU gear will likely continue to try to mask their operations on the edges of legitimate fishing fleets targeting the same species.

Sightings, boardings, and fishing vessel seizures from 2003– also indicate that the high seas driftnet threat in the North Pacific Ocean has shifted fishing effort from a primary focus on salmon to squid, sharks, and/or albacore tuna. Of the 21 driftnet vessels intercepted since 2003, only 3 had salmon on board; the rest had squid, tuna, sharks, and other fish species. This shift is attributed to a combination of factors including favorable squid markets, effective surveillance of traditional high seas salmon fishing grounds, and more effective control of fishing fleets by North Pacific countries.

NPAFC Joint Patrol Schedule Meeting (JPSM): Enforcement representatives of the NPAFC Parties met virtually, via e-mail communications, from February 29th through March 3rd, 2016, for the annual NPAFC JPSM. The primary purpose of the JPSM was to review and agree on the 2016 joint patrol plan for the North Pacific Ocean. The plan was adopted by the Committee on Enforcement at the 24nd NPAFC Annual Meeting in May 2016. The NPAFC Parties held a virtual JPSM February 14-16, 2017.

Table 1. Total North Pacific high seas driftnet vessel sightings and apprehensions from 2000–2016.

| Country | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|-------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Canada | 1 | 0 | 0 | 1 | 2 | 1 | 26 | 9 | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 |
| Japan | 0 | 0 | 3 | 0 | 1 | 11 | 67 | 21 | 5 | 0 | 1 | 2 | 0 | 0 | 0 | 0 | 1 |
| Russia | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| China | 0 | 0 | 0 | 0 | 11 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Taiwan | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 7 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| United States | 1 | 0 | 2 | 24 | 8 | 5 | 5 | 8 | 10 | 0 | 1 | 0 | 1 | 0 | 1 | 0 | 0 |
| Total Sightings* | 2 | 0 | 5 | 25 | 22 | 18 | 98 | 47 | 24 | 2 | 3 | 2 | 1 | 0 | 1 | 0 | 2 |
| Apprehended** | 1 | 0 | 0 | 6 | 1 | 0 | 0 | 7 | 2 | 1 | 1 | 1 | 1 | 0 | 1 | 0 | 0 |

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

** Out of the total number of vessels sighted.

NPAFC Annual Meeting: Republic of Korea hosted the 24th Annual Meeting of the NPAFC in Busan on May 16-20, 2016. The NPAFC Parties reported no sightings of large-scale high seas driftnet fishing vessel activity in the North Pacific from late 2015-spring 2016. The contributions of each Party to the 2016 high seas driftnet fisheries enforcement effort are summarized below.

U.S. Driftnet Enforcement Efforts in 2016

The United States Coast Guard's annual fisheries enforcement operation, known as Operation North Pacific Guard, was conducted from May 16 to August 14, 2016. The focus of this Operation is to detect, deter, and eliminate IUU fishing activity on the high seas of the North Pacific Ocean and includes identifying large-scale high seas driftnet fishing activity and any high seas capture of anadromous species. Operation North Pacific Guard 2016 was planned and executed by the Commander of U.S. Coast Guard (USCG) District 17 in coordination with the multilateral enforcement focus of the NPAFC Enforcement Coordination Committee. In addition, Operation North Pacific Guard implemented the *Memorandum of Understanding between the Government of the United States of America and the Government of the People's Republic of China [China] on Effective Cooperation and Implementation of United Nations General Assembly Resolution 46/215 of December 20, 1991*.

Three deployments by a USCG HC-130 maritime surveillance aircraft from USCG Air Station Kodiak were staged out of Misawa Air Base, Japan, and out of Yokota Air Base, Japan. With these aircraft, the USCG conducted a total of 29 maritime air sorties in the North Pacific Ocean amounting to a total of 264 patrol hours. The USCG Cutter *MELLON* patrolled the NPAFC Convention Area from May through August 2016, for a total of 91 days. Operation North Pacific Guard 2016 was also supported by a Canadian CP-140 patrol aircraft, staged out of Hakodate, Japan, under the tactical control of USCG District 17 in Juneau, Alaska. Two Canadian Department of National Defense officers and one Department of Fisheries and Oceans officer were assigned to District 17 in Juneau, AK to facilitate joint coordination of the CP-140 aircraft missions staged out of Hakodate, Japan.

MELLON conducted three boardings pursuant to the Western and Central Pacific Fisheries Commission's (WCPFC) Conservation and Management Measure (CMM) 2006-08 - High Seas Boarding and Inspection (HSB&I) Procedures. The vessels boarded were the *CHIN LONG FA*, *QUAN SHENG FA*, and *HAKKO MARU NO.35*. The first two vessels were Taiwan-flagged and the last was Japanese flagged. All but the *QUAN SHENG FA* were found to be in



compliance with WCPFC CCMs, including the WCPFC prohibition against the use of large-scale high seas driftnets.

QUAN SHENG FA was boarded by *MELLON* on July 19 on high seas of the North Pacific Ocean. *QUAN SHENG FA* was a Taiwan registered long liner targeting highly migratory tuna stocks inside the WCPFC Convention Area. The boarding was conducted to evaluate compliance against WCPFC CMMs. The boarding team observed that the vessel failed to maintain sufficient records of catch and catch related data in accordance with the Commission's reporting requirements. *MELLON*'s boarding team suspected that the vessel was in violation of WCPFC CMM 2006-08 and WCPFC CCM 2013-05, which are both designed to require tracking of catch and effort while fishing with a longline within the convention area. The Boarding team documented the WCPFC CMM violation and educated the master on the proper protocol. D17 reported the boarding and results to both the WCPFC Secretariat and flag of registry (Taiwan) in accordance with standard WCPFC reporting procedures. On August 7th, the Fisheries Agency of Taiwan reported to D17 that the fishing license of *QUAN SHENG FA* was suspended for two months due to the violations detected by *MELLON*'s boarding team.

The WCPFC HSB&I regime, developed in part with USCG involvement, has proven to be a critical tool for patrolling USCG cutters to employ in the pursuit of addressing IUU fishing activity on the high seas; including enforcement against the practice of large-scale high seas driftnet fishing. In cases where a species regulated by the WCPFC could be found on a vessel in the North Pacific, the WCPFC HSB&I regime provides USCG patrol assets with a mechanism for establishing jurisdiction to board foreign fishing vessels on the high seas of the North Pacific Ocean. Boardings conducted pursuant to these procedures ensure compliance with the provisions of the Convention and the CMMs adopted by the Commission (including a prohibition against large-scale high seas driftnet fishing). The WCPFC HSB&I regime facilitates reporting to flag state authorities and requires transparency on flag state actions taken pursuant to reports of suspected violations of WCPFC regulations. The USCG hopes that this same tool will be effectively brought to bear in the fight against IUU and the practice of large-scale high seas driftnets in the North Pacific once the United States formalizes its membership in the new North Pacific Fisheries Commission.

While this year's operations did not result in the detection of any fishing vessels suspected of employing large-scale high seas driftnets, the coordinated USCG enforcement efforts covered a significant portion of the high seas of the North Pacific Ocean and visually identified 1,260 vessels operating in compliance with international standards.

Canada's Driftnet Enforcement Efforts in 2016

Canadian enforcement activities included 120 hours from 11 CP-140 aircraft patrols conducted during the period of June 6-24, sighting 425 fishing vessels operating in compliance with international standards. Canada continued to use radar satellite imagery in support of its aerial patrols in 2016. Canada sighted one vessel of interest, the MYS URUMPET on June 6th and 19th within the Russian EEZ with a large-scale driftnet deployed. Canada passed the sighting information to the NPAFC Russian point of contact for further action.

Japan's Driftnet Enforcement Efforts in 2016

A Fisheries Agency of Japan surface patrol vessel operated in the NPAFC Convention area for 9 days and a Citation V aircraft patrolled the convention Area for 92 hours from May through September 2016.

Additionally, a Japan Coast Guard Gulf V aircraft patrolled for 16 hours in July 2016. A total of 367 vessels were sighted during the Japan patrols in 2016 with one vessel of interest sighted on September 11th, the Chinese flagged HAIDA 705, with characteristics of HSDN fishing but no net deployed. Japan forwarded the information to the China Coast Guard point of contact at the North Pacific Coast Guard Forum for further action.

Korea's Driftnet Enforcement Efforts in 2016

Korea did not patrol in the NPAFC Convention Area in 2016.

Russia's Driftnet Enforcement Efforts in 2016

Russian Federation conducted two air patrols, with all patrols conducted in the northern part of the NPAFC Convention Area. Russia reported to the USCG that none of their patrol assets detected any vessels engaged or suspected to be engaged in illegal driftnet fishing in 2016.

Potential Driftnet Threat in the North Pacific Ocean in 2017

The current level of large-scale high seas driftnet utilization in the North Pacific is difficult to quantify. Historical sightings indicate that the high seas threat continues to exist in the North Pacific. However, the decrease in sightings of potential high seas driftnet vessels after 2008 indicates that this particular method of fishing is most likely on the decline. The results of the multilateral patrol efforts to address and combat the threat of large-scale high seas drift netting in the North Pacific continues to indicate a persistent, if diminished threat. Past years' observations support a shift of fishing effort, both toward the beginning and again in later parts of the fishing season, and to a primary target species of squid. In addition, evidence indicates that anadromous and other highly migratory species (e.g. albacore tuna) may continue to be captured by high seas driftnet vessels as target species and/or 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

The North Pacific illegal driftnet fleet has historically operated in the part of the NPAFC Convention Area that is partially overlapped by the WCPFC Convention Area, and is expected to target species of interest to that Commission. Consequently, the NPAFC coordinates with the WCPFC with the desire to eliminate the illegal fishing. Under the leadership of the United States, in 2008, the WCPFC adopted a conservation and management measure (CMM 2008-04) prohibiting the use of large-scale driftnets on the high seas of the WCPFC Convention Area. CMM 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 provides 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 is available to help investigate potential violations and ensure compliance. The NPAFC established closer relations with the WCPFC in November 2010 by concluding a Memorandum of Understanding between the two organizations, inter alia for the exchange of information on North Pacific large-scale driftnet fishing activities.

Mediterranean Sea

The United States is not aware of any documented sightings of large-scale driftnet fishing activity on the high seas of the Mediterranean in 2016. However, the non-governmental environmental community continues to believe that Italy and Morocco conduct large-scale driftnet fishing. In the case of Italy, this is based on observations of fishing vessels in ports with large-scale driftnets onboard and large-scale nets stored openly on the docks.

A complete discussion of European Union (EU) driftnet regulations and measures, rulings of the European Court of Justice pertaining to driftnet fishing, regional fisheries management organization binding driftnet measures in the Mediterranean Sea, and background information on Italian and Moroccan large-scale driftnet fishing, can be found in the 2011 and 2012 driftnet reports to the Congress available online at:

http://www.nmfs.noaa.gov/ia/iuu/driftnet_reports/driftnet_reports.html

Based on European Court of Justice rulings, it is clear that member country compliance with the EU driftnet regulatory framework in place has not been very good. The small-scale nature of the fishing vessels involved, and the fact that they don't operate together in the same areas, has made it easier for them to escape monitoring, control, and proper enforcement. Illegal driftnet activities, including large-scale driftnet fishing, carried out by EU fishing vessels continue to be reported and have been the cause of criticism regarding EU compliance with applicable international obligations.

2015-2016 Developments: On May 14, 2014, the European Commission published a draft regulation (COM(2014)265) on the prohibition of driftnets, a technical measure that is part of the legal framework for implementing the reform of the Common Fisheries Policy agreed in 2013. The draft regulation would apply a blanket ban on driftnet fisheries in EU waters irrespective of the mesh size, net length, and configuration of net. It would address enforcement difficulties by closing loopholes in current EU legislation. The proposed Regulation was scheduled to enter into force on January 1, 2015, pending approval by the European Parliament and the Council of EU Fisheries Ministers. Once in force, it would prohibit the capture of any living marine resource using driftnets. It would also prohibit the possession of any kind of driftnet on board EU member fishing vessels thus circumventing the possibility of fishermen illegally using driftnets to catch prohibited species while declaring that the species were caught with other gear types. According to the Regulation, a driftnet is “a net made up of one or more walls of netting, hung jointly in parallel on the headline(s), held on the water surface or at a certain distance below it by floating devices and 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 or to limit its drift such as a sea anchor or an anchor on the bottom attached at one single end of the net.”

The European Commission estimated that 887 small scale fishing vessels from Bulgaria, France, Italy, Portugal, Romania, Slovenia and the UK would be affected by the proposed regulation. This resulted in considerable opposition to the proposal. The European Commission suggested that the European Maritime Fisheries Fund could be used to support the transition towards a total ban, such as changing the fishing gear as long as a fishing license allows it, the new gear is more selective, and the change is made before the entry into force of the ban.

During the meeting of the European Parliament Fisheries Committee held on October 16, 2014, the majority of Ministers expressed disapproval of the driftnet ban. They noted that the draft regulation does not take into account possible socio-economic impacts on fishermen and coastal communities and the impact assessment and data available was insufficient to give a clear picture of the situation. The Minister from Poland proposed to reject the proposal immediately and asked the Committee to put pressure on the Commission to draft a new one.

The Fisheries Committee was expected to vote on the draft regulation on May 7, 2015. However, due to calls for the outright rejection of the draft proposal, it was decided that the proposal would be sent to the Committee on Constitutional Affairs for an opinion. The European Commission sent a letter to the European Parliament Fisheries Committee with a new approach; proposing to address the driftnet issue through regionalization (the simplification of fisheries management by ensuring that fishing rules are adapted to the specific needs of each fishery and each basin) under the new technical measures framework directive. This solution was welcomed by Members of the European Parliament. On November 10, 2015, the Director General for Maritime Affairs and Fisheries announced that the European Commission had dropped its proposal to ban all kinds of drift nets throughout EU waters and stated that the regulation of drift nets would rather be addressed through regionalization and the framework proposal on technical measures due to be published in early 2016.

On March 11, 2016, the European Commission adopted COM(2016) 134, Regulation of the

European Parliament and of the Council on the conservation of fishery resources and the protection of marine ecosystems through technical measures, COM(2016) 134 contained a technical measures regarding restrictions on the use of static nets. This includes the consolidation of the existing restrictions on the use of driftnets (i.e. prohibition to use drift nets above 2.5km, prohibition on using such gears to target highly migratory species and the total prohibition on the use of driftnets in the Baltic). Under regionalization Member States should strengthen these provisions up to and including the introduction of a total prohibition on the use of such gears where there is scientific evidence that shows the continued use of driftnets constitutes a threat to the conservation status of sensitive species in that region.

Italy

On March 28, 1996, the U.S. Secretary of Commerce identified Italy pursuant to the U.S. High Seas Driftnet Fisheries Enforcement Act, 16 U.S.C. 1826a-1826c, as a nation for which there was reason to believe its nationals or vessels were conducting large-scale high seas driftnet fishing in contravention to United Nations General Assembly Resolution 46/215. The identification invoked, among other things, the provision of the Dolphin Protection Consumer Information Act (DPCIA), 16 U.S.C. 1371(a)(2)(F) that requires that an exporting nation whose fishing vessels engage in high seas driftnet fishing provide documentary evidence that certain fish and fish products (specified in regulations at 50 CFR 216.24(f)(2)) it wishes to export to the United States were not harvested with large-scale driftnets anywhere on the high seas. Effective May 29, 1996, all shipments from Italy containing the specified fish and fish products became subject to this driftnet reporting requirement.

The United States and Italy formally agreed on measures to effect the immediate termination of Italian large-scale high seas driftnet fishing, thus avoiding the imposition of trade sanctions on Italian fish, fish products, and sport fishing equipment pursuant to the Act. However, the export reporting requirement persisted well into 2015 as a deterrent to large-scale high seas driftnet fishing by Italy.

Because the United States did not receive any documented sightings of Italian fishing vessels deploying large-scale driftnets on the high seas of the Mediterranean Sea from 2009–2014, it wrote to the Government of Italy on February 9, 2015, expressing willingness to remove the DPCIA reporting requirements contingent upon an Italian Government official certifying that none of Italy's vessels use large-scale driftnets on the high seas of the Mediterranean Sea. On April 2, 2015, the Government of Italy responded with a letter certifying that no Italian vessel is involved in the use of large-scale driftnets on the high seas. Consequently, on June 4, 2015, the United States lifted the export reporting requirement. In addition, fish and fish products exported from Italy, and imported into the United States under Harmonized Tariff Schedule (HTS) numbers specified in U.S. regulations at 50 CFR 216.24(f)(2)(iii), no longer need to be accompanied by a Fisheries Certificate of Origin (NOAA Form 370).

Indian Ocean

Background: Gillnet (driftnet) vessels from Iran and Pakistan have fished on the high seas since

the late 1980s, initially in waters of the Arabian Sea but covering a larger area in recent years, as they moved to operate also in tropical waters of the western Indian Ocean and Mozambique Channel. Pakistani gillnetters now regularly travel into the high seas at least as far as Madagascar, routinely deploying 10-12 km driftnets. Some larger vessels are reported to use driftnets as long as 26 km. According to the International Seafood Sustainability Foundation (ISSF), the northern Indian Ocean driftnet fleets land as much fish as other gears in the area combined. Although data is scarce, these fleets appear to have bycatch of ecologically sensitive species, like sharks and sea turtles, at a level that is orders of magnitude higher than other gear types in the region. In addition, ISSF maintains that none of the fleets are in conformity with the UNGA ban on the use of large-scale driftnets on the high seas.

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 nm 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 (IOTC) in 2009. These vessels ranged from 14 to 33 meters long. There is little information available about the activities of this fleet (fishing effort, the length of nets, fishing zones, bycatch, etc.). In response, the IOTC adopted *Resolution 09/05: To Prohibit the Use of Large-scale Driftnets on the High Seas in the IOTC Area*. Resolution 09/05 charged each IOTC contracting party and cooperating non-contracting party to take all measures necessary to prohibit their fishing vessels from using large-scale driftnets (greater than 2.5 km in length) while on the high seas in the IOTC Convention Area. It also stated that, in 2012, the IOTC would assess whether additional measures should be adopted and implemented to ensure that large-scale driftnets are not employed in the Convention Area.

At the 16th Session of the IOTC held in Fremantle, Australia, on April 22-26, 2012, the Commission agreed to delay the assessment of Resolution 09/05 for an additional year. The Commission adopted *Resolution 12/12: To Prohibit the Use of Large-scale Driftnets on the High Seas in the IOTC Area*. Resolution 12/12 superseded Resolution 09/05 and is nearly identical with the exception that it states that the first large scale driftnet assessment will take place in 2013.

At the 16th Session of the IOTC Scientific Committee held in Busan, ROK, on December 2–6, 2013, the Scientific Committee reiterated its previous recommendation that the Commission considers allocating funds to support a regional review of the current and historical data available for gillnet fleets operating in the Indian Ocean. As an essential contribution to this review, scientists from all contracting and cooperating non-contracting parties having gillnet fleets in the Indian Ocean, in particular those from Iran, Oman, Pakistan and Sri Lanka, should collate the known information on bycatch in their gillnet fisheries, including sharks, marine turtles and marine mammals, with estimates of the likely order of magnitude where more detailed data are not available. The Committee also recommended that a consultant be hired for 30 days to assist with this task.

2014: The United States did not receive any reports of illegal large-scale high seas driftnet fishing in the Indian Ocean in 2014. We are aware that the driftnet assessment referenced in IOTC Resolution 12/12 and recommended by the IOTC Scientific Committee in 2013 did not

take place in 2014. Apparently, the project was not funded because it was not proposed to the IOTC Standing Committee on Administration and Finance in the IOTC's Program of Work. As a result, the IOTC Working Party on Ecosystems and Bycatch requested that each individual contracting and cooperating non-contracting party begin work on collecting driftnet fisheries information at a national level through data mining and research activities.

2015: The United States did not receive any reports of illegal large-scale high seas driftnet fishing in the Indian Ocean in 2015. At the 19th Session of the IOTC held in Busan, Republic of Korea, from April 27-May 1, 2015, the Commission noted the requirement in Resolution 12/12 for it to undertake a periodic evaluation of the effectiveness of Resolution 12/12 and agree if other steps are required to strengthen it. The Commission concluded that no revisions were required and an evaluation should take place once sufficient information is received by the IOTC Secretariat from Parties on the implementation of the Resolution.

2016: The United States received a report from Sea Shepherd of illegal large-scale high seas driftnet fishing in the Indian Ocean in 2016 by vessels flagged to China. Sea Shepherd communicated its evidence and findings to the Chinese government, which took responsive actions against certain vessels involved in the illegal activity.

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 USCG. A copy of the MOU was attached to the 1993 Driftnet Report to the Congress. The National Ocean Council Committee on IUU fishing and Seafood Fraud recommendation three working group is currently in the process of updating the MOU. There are no other interagency agreements regarding high seas driftnets.

Bilateral Driftnet Agreements

U.S.-China MOU

For 23 years, the USCG, with financial support from NOAA, has embarked fisheries enforcement officers from China on Coast Guard assets patrolling in the North Pacific Ocean for illegal high seas driftnet fishing pursuant to the terms of the *Memorandum of Understanding [MOU] Between the Government of the United States of America and the Government of the*

People's Republic of China on Effective Cooperation and Implementation of United Nations General Assembly Resolution 46/215 of December 20, 1991, 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, provisions of the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, and conservation and management measures of the Western and Central Pacific Fishery Convention. They also enable China to more effectively enforce domestic laws that prohibit high seas driftnet fishing by Chinese-flagged vessels in the North Pacific. The current MOU expires on December 31, 2019.

The United States and China continued joint operations in the North Pacific Ocean in 2016 pursuant to the terms of the MOU. The MOU established boarding procedures for law enforcement officials of either country to board and inspect U.S. or Chinese-flagged vessels suspected of high seas driftnet fishing. The MOU also established a “shiprider” program, which permits Chinese enforcement officials to embark on USCG vessels or aircraft. The USCG has had a strong working relationship with China fisheries enforcement officials for 23 years. This working relationship increases opportunities for cooperation on high seas fisheries enforcement efforts. China has provided a total of 103 enforcement officials to the USCG since the MOU first entered into force in 1993. This cooperation has led to 18 interdictions and enforcement actions against vessels engaged in large-scale high seas driftnet fishing activity.

Six China Coast Guard (CCG) shipriders from the CCG Fisheries Law Enforcement Division were hosted onboard the USCG Cutter *MELLON* during Operation North Pacific Guard in 2016. These officials were instrumental in facilitating communications between the USCG and the CCG, and effectively expanded the jurisdictional reach of both enforcement agencies.

UNGA Driftnet Resolutions and Decisions

Since December 1992, the United States has ensured that implementation of the high seas driftnet moratorium remains a priority of the UNGA. 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), 66/68 (2011), 67/79 (2012), 68/71 (2013), 69/109 (2014), 70/75 (2015), 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 2015 were provided in previous driftnet reports to the Congress available from NMFS.

At the time this report was written, the UN General Assembly had not adopted the 2016 Resolution 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 draft Resolution of November 25, 2016, however, preserves the driftnet language in previous resolutions. It recognizes the efforts of States, individually and through regional fisheries management organizations and arrangements, to implement UNGA Resolution 46/215 of December 20, 1991, which called for a

global moratorium on all large-scale pelagic drift-net fishing.

The 2016 draft Resolution also expresses concern that, despite the adoption of UNGA Resolution 46/215, the practice of large-scale pelagic driftnet fishing still exists and remains a threat to living marine 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 driftnets in all seas and oceans. Specifically, efforts to implement Resolution 46/215 should not result in the transfer of illegal driftnets to other parts of the world. Finally, the draft Resolution calls upon States to ensure that vessels flying their flags that are duly authorized to use large-scale drift nets in waters under their national jurisdiction do not use such gear for fishing while on the high seas.

The draft Resolution requests the Secretary-General to bring the present resolution to the attention of relevant intergovernmental organizations, the organizations and bodies of the United Nations system, subregional and regional fisheries management organizations and relevant non-governmental organizations.

The provisional agenda of the UNGA 71st 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 71st session will consider the possibility of including this sub-item in future provisional agendas on a biennial basis.

Support for the Wellington Convention

The United States took no specific actions in support of the Wellington Convention in 2016. 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 2016 are provided in previous driftnet reports to the Congress.

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 nation that conducts, or authorizes its 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.