

**2010 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 28 November 1990. Title I, Section 107, of the law amended Section 206 of the Magnuson-Stevens Fishery Conservation and Management Act (hereafter referred to as the Magnuson-Stevens 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 30 June 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's 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 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 1 January 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 2 November 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 31 December 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 effect the immediate termination of high seas large-scale driftnetting 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 six 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 3 November 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 2010 in fulfillment of the Section 206(e) reporting requirement. Information pertaining to U.S. actions in support of the Act prior to 2010 and after 1988 can be found in the 1990-2009 annual driftnet reports to the Congress available from NMFS. The reports for 2004-2009 are also on the NMFS website 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(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 31 December 2010, the UNGA global moratorium on large-scale high seas driftnet fishing has been in effect for 18 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. Of the two major problem areas in recent years, the North Pacific Ocean and the Mediterranean Sea, three vessels capable of conducting unauthorized large-scale high seas driftnet fishing operations were sighted in the North Pacific Ocean in 2010. The United States is not aware of any large-scale driftnet vessel sightings on the high seas of the Mediterranean Sea in 2010, although anecdotal information from nongovernmental organizations (NGOs) indicates that large-scale driftnet fishing is continuing in the region.

#### **North Pacific Ocean**

Three suspected driftnet vessels were sighted operating on the high seas of the Northwestern Pacific Ocean by the international community in 2010, one more than in 2009. One of the vessels was Cambodian flagged, one was determined to be stateless, and the nationality of the third vessel was unknown. Cambodia took corrective action against the Cambodian-flagged vessel, China seized the stateless driftnet vessel (which later sank in Japanese waters), and the third vessel avoided apprehension.

#### **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 and ecologically-related species, including marine mammals, sea birds, and non-anadromous fish, 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 in Yuzhno-Sakhalinsk, Russia, on 20-21 April 2010, 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 2010 fishing season. The meeting included updates by each Party on IUU activity in 2009, information on enforcement efforts to date in 2010, and coordination of enforcement plans and resources for the remainder of 2010. The USCG presented its 2010 threat assessment for the NPAFC Convention Area. The presentation showed trends in high seas driftnet fishing activities, including fishing gear, deployment methods, and deceptive/defensive measures, and the potential for IUU fishing on salmon, squid, and albacore tuna. A detailed coordinated patrol schedule was developed in an attempt to maximize patrol coverage of the Convention Area as effectively and efficiently as possible.

Among the items proposed and discussed at the EECM was a bi-weekly conference call to be held throughout the high seas driftnet fishing season for the purpose of sharing and coordinating patrol efforts and sighting reports. After the EECM, the member agencies agreed to participate, and 11 conference calls were held from 24 May through 21 October 2010. The effort proved productive for sharing patrol and sighting information among the Parties and they agreed to continue the practice in 2011. Canada volunteered to coordinate the calls, with support from the United States, as needed.

NPAFC Annual Meeting: The 18th Annual Meeting of the NPAFC was held in Busan, Korea, on 1-5 November 2010. Enforcement officials of the Parties met under the auspices of the NPAFC Committee on Enforcement to review enforcement activities in 2010 and begin planning activities for 2011. Representatives of Taiwan observed the proceedings of the meeting.

Collectively, member countries conducted a total of 147 ship patrol days and 183 aerial patrol hours in the Convention Area in 2010. A U.S. Coast Guard aircraft sighted a Cambodian-

flagged vessel, the *ARVID* suspected of illegally fishing with 4.8 nautical miles (nm) of driftnets in the NPAFC Convention Area (additional information provided below). Although other factors, such as environmental conditions and market forces certainly affect fisher's behavior, 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 2003-2010 indicate that the high seas driftnet threat in the North Pacific Ocean is shifting fishing effort from salmon to squid and albacore tuna. Of the 18 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, more effective surveillance of traditional high seas salmon fishing grounds, and more effective control of fishing fleets by North Pacific countries.

A total of 29 vessels suspected of high seas driftnet fishing were sighted from 2008-2010. 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 it is likely that they 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.

Because 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 invite the WCPFC to send representatives to observe its 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 2011 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 Honolulu, Hawaii, the week of 21 February 2011.

A summary of high seas driftnet vessel sightings and apprehensions by North Pacific nations from 1999 to 2010 is provided in the table below.

**North Pacific high seas driftnet vessel sightings and apprehensions from 1999-2010.**

<b>Country</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
Canada	3	3	0	0	1	2	1	26	9	7	0	0
Japan	2	0	0	3	0	1	17	67	21	5	0	1
Russia	1	0	0	0	0	0	0	0	2	0	0	0
China	0	0	0	0	0	11	0	0	0	0	1	1
Taiwan	3	0	0	0	0	0	1	0	7	2	1	0
United States	2	1	0	2	24	8	5	5	8	10	0	1
<b>Total Sightings*</b>	<b>11</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>Apprehended**</b>	<b>3</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>

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

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

**U.S. Driftnet Enforcement Efforts**

The USCG patrolled high threat areas in the North Pacific in support of the U.S. High Seas Driftnet Fisheries Enforcement Act, NPAFC initiatives, and to monitor compliance with the UN high seas global driftnet fishing moratorium. Operation North Pacific Guard 2010, the USCG’s North Pacific high seas fisheries enforcement plan, began in April 2010 with the deployment of an HC-130 patrol aircraft out of Shemya Island, Alaska. The USCG Cutter *JARVIS* deployed to the North Pacific in early August 2010. USCG aircraft flew a total of 122 dedicated mission hours in 2010, with 76 hours directly surveying the Convention Area. The USCG Cutter *JARVIS* conducted a 105-day patrol (45 patrol days in the Convention Area) in direct support of Operation North Pacific Guard. The USCG sighted one suspected high seas driftnet vessel in 2010, but did not board or seize any vessels.

The *JARVIS* participated in a multi-national IUU fisheries enforcement patrol from 3 August through 15 November, which included coordination with NPAFC parties and the People’s Republic of China Fisheries Law Enforcement Command (FLEC). *JARVIS* embarked Chinese FLEC officers from 3 August to 31 October, and also conducted a professional exchange and a 3-day joint patrol with two FLEC patrol vessels within the Convention Area. The Japan Coast Guard conducted two joint Gulfstream-V flights coincidental with the *JARVIS* patrol of the driftnet high-threat area and provided sighting reports of the flights to assist *JARVIS* in its efforts. The USCG Seventeenth District sent an officer to Tokyo to participate in both flights as an observer. These flights continued

joint U.S.-Japan high seas driftnet aircraft patrol operations (the first was in 2006) and, as has been the case in the past, sighted several fishing vessels. However, none were configured for large-scale high seas driftnet fishing.

In addition, Canada's Department of Fisheries and Oceans (DFO) and Department of National Defense (DND) collaborated to deploy a CP-140 patrol aircraft to Shemya Island, Alaska, in September 2010. This deployment was in direct support of USCG Cutter *JARVIS* with real time sighting reports of fishing fleet activity. Each agency assigned a liaison officer to the USCG Seventeenth District officer in Juneau, Alaska, to facilitate close coordination between Canada and U.S. patrols.

NMFS Office of Law Enforcement personnel worked on cases of suspected high seas driftnet violations, deployed with USGC C-130 patrols to assist in the identification of vessels, investigated suspected illegal fishing activity, and attended NPAFC meetings to discuss and plan strategies for high seas driftnet enforcement in 2010. A total of 288 person-hours were expended on these activities.

Scientific Support: The *JARVIS* carried two NMFS satellite buoys with the intent to tag and track any derelict driftnet gear encountered while on patrol in the North Pacific Ocean. *JARVIS* did not locate any untended nets in the Convention Area and therefore did not have an opportunity to deploy any of the buoys. The *JARVIS* also carried sampling equipment on board to collect salmon tissue samples for genetic analysis. NOAA's Ted Stevens Marine Science Institute in Juneau, Alaska, provided basic lab supplies (sampling vials, reagent dispensers, etc.) for the effort. No opportunities for sample collection in the Convention Area were available.

2010 Driftnet Vessel Sightings: USCG aircraft patrols detected one vessel engaged in high seas driftnet fishing in the NPAFC Convention Area in 2010. On 29 April, a USCG C-130 located the Cambodia-flagged fishing vessel *ARVID* at 50°34'N, 164°27'E. At the time of the initial sighting, the *ARVID* was retrieving a 4.8 nm driftnet. The aircrew observed silver-colored fish, which appeared to be salmon, on deck and in the net. The USCG Seventeenth District passed the sighting information to the Russian Northeast Border Guard Directorate (NBD), which immediately dispatched a patrol vessel to the area. The USCG relocated the *ARVID* on subsequent flights on 30 April, 7 May, 10 May, and 19 May. Unfortunately, the NBD patrol vessel was unable to locate and apprehend the *ARVID* due to severe weather and other critical mission operations. On 24 May, the USCG obtained permission from Cambodia to stop, board and search the vessel for evidence of illegal activity; however, by that time the *ARVID* was suspected to have departed the area.

The USCG passed all sighting information for *ARVID* to NPAFC partners and the North Pacific Coast Guard Forum. On 30 May, the USCG obtained open-source port-entry notification information for the *ARVID* for the port of Busan, Korea. The USCG advised Korean enforcement officials of its concerns and provided port-arrival information. The *ARVID* was

subsequently boarded and investigated by Korean authorities upon its arrival in Busan. Details of the investigation are included below under the section on Korea's 2010 driftnet enforcement efforts.

On 20 August, the USCG received an unconfirmed report from a U.S.-flagged fishing vessel of possible driftnet activity in the eastern North Pacific approximately 800 nm west of Oregon. A surveillance flight was conducted out of Kodiak, Alaska, on 24 August but it did not observe any high seas driftnet fishing activity.

Planned Future Efforts: The USCG will patrol with available aircraft and patrol vessels in 2011 in order to address the projected high seas driftnet and high seas salmon fishing threat. USCG high endurance cutters will continue to patrol in areas of the U.S. EEZ and in the Convention Area as scheduling and resource demands allow. USCG Pacific Area current planning includes 115 cutter days in support of the North Pacific NPAFC-IUU high seas driftnet mission in 2011. NMFS will continue to conduct investigations on high seas driftnet violations and will consider placing officers on available Canadian high seas driftnet surveillance flights in 2011. They will also accompany USCG HC-130 patrols when possible.

The USCG intends to continue issuing Local Notices to Mariners year-round, encouraging mariners and fishing fleets to report sightings of suspected high seas driftnet fishing operations. The United States will also continue to encourage other countries to establish similar systems for advising mariners and encourage the submission of informative sighting reports of suspected IUU high seas driftnet activity.

### **Canadian Driftnet Enforcement Efforts**

As in past years, Canada's 2010 high seas driftnet fishing enforcement operations were based out of Eareckson Airfield on Shemya Island, Alaska. The operation involved one DND CP-140 aircraft, associated aircrew, technicians and ground support, plus 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, previous year's experience, and the NPAFC Convention Area.

An operational command center was established at the USCG Seventeenth District headquarters in Juneau, Alaska. Fishery officers lead the high seas driftnet enforcement operations, with support of 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 23 September to 4 October 2010, Canada completed 5 patrols for a total of 48.4 hours; 1 patrol was cancelled due to bad weather and 3 patrols were impacted due to mechanical problems. The aircraft sighted and identified two vessels of interest, but their specific activity in the Convention Area could not be determined. They did not appear to be equipped for driftnet fishing.

In addition to the DFO aerial surveillance program, DND was invited to participate in a goodwill visit with the Japan Maritime Defense Force in Hachinohe, Japan. This provided an opportunity for DFO to conduct aerial surveillance patrols over international waters while transiting to and from Japan. This resulted in increased Canadian aerial surveillance hours in the Convention Area's lower south west corner, which has been identified as the "high threat" area for IUU high seas driftnet fishing.

In addition to its long-range aerial surveillance patrols, Canada provided radar satellite (RS II) data to Japan's Ministry of Agriculture, Forestry and Fisheries and the USCG in support of patrol tasking and asset deployment.

Canadian Driftnet Enforcement Efforts for 2011: The Canadian Government remains committed to combating IUU fishing in the North Pacific Ocean in 2011 using long-range aircraft patrols. Canada plans to increase aerial surveillance hours to 120 hours. No surface assets will be deployed. Canada anticipates that it will again utilize RS II and space-based Automated Identification System data to support its aircraft patrols and, where possible, the enforcement activities of the other NPAFC Parties.

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

Japan's 2010 driftnet fishery enforcement efforts consisted of the deployment of four Fisheries Agency of Japan (FAJ) patrol vessels in the North Pacific Ocean for a total of 52 ship days at sea from 22 July to 22 September 2010. The FAJ also deployed a Citation V aircraft for 72 patrol hours from 14 June to 12 October 2010.

The Japanese Coast Guard (JCG) conducted 21 hours of aerial surveillance with a Gulf V aircraft from 12 May to 16 September 2010. The aircraft patrolled 732,000 km<sup>2</sup> in the northwest Pacific Ocean. No large-scale high seas driftnet fishing activity was observed during any of these operations.

On 22 May 2010, a Japanese tuna longline vessel sighted, and photographed, the 8 *YUAN YU* equipped for driftnet fishing at 37°31'N, 151°30'E. The nationality of the vessel was not determined.

Japanese Driftnet Enforcement Efforts for 2011: Japan will report on its 2011 enforcement plans at the NPAFC EECM in Honolulu, Hawaii, in February 2011. Although no illegal driftnet fishing vessels were sighted by Japanese patrols in the past 3 years, Japan believes it is necessary to continue conducting cooperative enforcement activities to combat IUU fishing activities in the Convention Area.

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

Korea did not participate in large-scale high seas driftnet fisheries enforcement activities in the NPAFC Convention Area in 2010 and has no plans to conduct enforcement activities in the area in 2011. However, as a member of the WCPFC, Korea is considering taking part in WCPFC enforcement activities in 2011.

As mentioned earlier in this report, USCG patrol aircraft sighted a Cambodian-flagged fishing vessel, the *ARVID*, conducting illegal large-scale high seas driftnet fishing operations in the NPAFC Convention Area. Based on USCG information, the Korean Government was informed that the *ARVID* would arrive in Busan on 31 May 2010. In accordance with Korea's national legislation (Port State Inspection) and in line with the minimum standards of the Port State Measures Agreement adopted by the FAO in 2009, Korean inspectors examined the vessel's documents to see if there was evidence of driftnet gear use and illegal salmon catch in the NPAFC Convention Area. The Korean Government prepared a port detention order for the *ARVID* pending its investigation.

*The ARVID* had no fishing certificate, nor did the vessel have any fish products or fishing gear on board at the time of the inspection. The inspectors suspected that the vessel was involved in illegal activity, however, because it was configured to fish with driftnets and there was fresh paint on its bow of the hull concealing a name. The *ARVID* departed from Busan before the detention order could be presented to the master.

NPAFC Follow-up: On 11 August 2010, the President of the NPAFC, James Balsiger (United States), conveyed the NPAFC's concerns about the *ARVID*'s illegal activities to the Government of Cambodia in a letter. He asked Cambodia to take all possible preventive measures to ensure that Cambodian vessels are not involved in unlawful driftnet fishing in the NPAFC Convention Area. The Government of Cambodia responded on 15 September 2010 and stated that it had removed the *ARVID* from the International Ship Registry of Cambodia. Cambodia also assured the NPAFC that if any Cambodian-flagged vessels abuse international marine regulations or laws, it will arrest those vessels and take similar actions.

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

The Russian Federal Security Service's NBD in Petropavlovsk-Kamchatsky and the Sakhalin Border Guard Directorate in Yuzhno-Sakhalinsk deployed patrol vessels for a total of 50 ship days and patrol aircraft for 42 hours from May-October 2010 in the NPAFC Convention Area. No vessels were observed engaged in large-scale driftnet fishing or other illegal fishing activities.

On 8 July 2010, the Russian patrol vessel *ARGAL* discovered an untended driftnet with radio buoys attached. The net and buoys were brought on board for inspection. Investigators discovered that the radio buoys were manufactured in Busan, Korea, which may provide some information about the purchaser.

Russian Driftnet Enforcement Efforts for 2011: Russia will finalize its 2011 driftnet enforcement activities at the NPAFC EECM in Honolulu, Hawaii, in February 2011.

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

The Taiwan Coast Guard has conducted high seas fisheries enforcement patrols in the North Pacific Ocean since 1993 to deter Taiwan fishing vessels from engaging in illegal fishing activity. Taiwan has existing regulations and measures that prohibit Taiwan vessels and nationals from conducting large-scale high seas driftnet fishing operations. Any Taiwan captain who violates these regulations will be regarded as engaging in a criminal activity, and at a minimum, will lose his captain's license.

In 2010, Taiwan deployed the Taiwan Coast Guard patrol vessel *HSUN HU NO. 3* to the North Pacific Ocean to monitor the fishing activities of Taiwan squid jigging vessels. Taiwan provided the Executive Director of the NPAFC information on Taiwan's 2010 patrol plans on 21 June, prior to the departure of the *HSUN HU NO. 3*.

The *HSUN HU NO. 3* patrolled the area of 39°-44°N, 148°-165°E, from 30 June to 27 September 2010, for a total of 84 vessel days. No driftnet fishing activities were observed.

Taiwan's Driftnet Enforcement Efforts for 2011: Taiwan will continue to cooperate with the members of the NPAFC to ensure the conservation of the species covered by the Commission.

### **Chinese Driftnet Enforcement Efforts**

Although driftnet fishing for salmon on the high seas is illegal under Chinese law, Chinese fishing vessels and nationals have continued to engage in large-scale high seas driftnet fishing in the North Pacific Ocean in recent years. The encouraging news is that the cooperative efforts of U.S. and Chinese fisheries law enforcement authorities are achieving success toward eliminating the problem.

In 2010, China sent two patrol vessels, the "201" and "118," to the North Pacific high seas to carry out joint operations from 21 July to 20 August. The *URAL 1* was sighted by the two patrol vessels on 1 August, 2010, at 39°59'N, 159°28'E. It had been sighted driftnet fishing in the North Pacific in July 2009 by a Taiwan patrol vessel and reported to the NPAFC at its 2009 Annual Meeting. When hailed by the FLEC patrol vessel, the *URAL 1* claimed registry in St. Christopher and Nevis but could not produce documentation to validate this claim. FLEC declared the vessel stateless and conducted a boarding. Upon inspection, FLEC found that all of the vessel's certificates had expired, and the vessel's name on the hull did not match the name *MITRA 2266* shown on its own certificate. In addition, the master admitted that all of the catch on board was taken using high seas driftnet gear. Consequently, FLEC seized the vessel and began to escort it back to China. On 5 August, the *URAL 1* sank in Japanese waters (41°8'N, 144°41'East) due to an inlet valve malfunction. The crew was rescued by the FLEC patrol vessel *118* and taken back to China. There were 26 crew members on board--15 from China, 2 from

Taiwan, 7 from Indonesia, and 2 from Vietnam. The captain was also from Taiwan. The FLEC is currently investigating the case.

2009 Update: The USCG learned in March 2010 that the FLEC seized the PRC-flagged vessel *HU SHUN YU 809* on 9 August 2009, after it was detected fishing at 42°43'N, 152°31'E with large-scale driftnets. The catch was jettisoned by the crew during pursuit, but was believed to be entirely squid. The vessel's owner was given administrative penalties, including a fine of 50,000 RMB (approximately \$7,500), confiscation of the vessel, and cancellation of the vessel's high seas fishing permit. The owner is currently appealing the court's decision.

China's Driftnet Enforcement Efforts for 2011: China's FLEC will continue to send two patrol vessels to the high seas of the North Pacific Ocean between July and August, and participate in joint operations organized by the North Pacific Coast Guard Forum, pending approval of the FY 2011 budget by the Chinese Government.

### **Potential Driftnet Threat in the North Pacific Ocean in 2011**

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 towards the later parts of the fishing season, and to a primary target species of squid. Additionally, evidence shows that anadromous and highly migratory species (e.g. swordfish and shark) 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, 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 8-12 December 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 between NPAFC and WCPFC members. An MOU between the two organizations to this effect was signed on 5 November 2010. Cooperation between the WCPFC and the NPAFC will include, 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.”

### **Mediterranean Sea**

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 29 April 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 8 June 1998, banned the use of all driftnets for catching tunas, billfish, sharks, dolphinfishes, sea bream, sauries, and cephalopods by 1 January 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 1 January 2002.
- Regulation No. 812/2004, adopted on 30 April 2004, expanded the ban to the Baltic Sea on 1 January 2008.

One of the major problems in enforcing the European Commission's (EC) driftnet regulations was that, until recently, the EC never provided a definition for driftnet. This allowed the French and Italian Governments to exploit loopholes in EC Regulation 1239/98 by applying their own definitions of 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, 20m 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.

The thonaille fishery was outlawed under French law in August 2005, due to a successful court case brought by three French conservation organizations--France Nature Environnement, the Cetacean Research Group (GREC), and SOS Grand Bleu. Despite this, the French Minister for Fisheries and Agriculture restated his support for the use of thonaille in a ministerial notification in September 2005. He defined thonaille as anchored driftnets. In 2006, the Ministry of Agriculture and Fisheries allocated a bluefin tuna quota to 47 thonailleurs. This was repeated in 2007, when special fishing permits for bluefin tuna were granted by decree to 67 thonailleurs.

To remove any confusion regarding the definition of a driftnet, 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 driftnet 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 bycatches 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 21-25 February 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 Tuna (ICCAT) Driftnet Recommendation: On 26 November 2003, ICCAT adopted at its 18<sup>th</sup> Annual Meeting in Dublin,

Ireland, 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 which 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 22-25 October 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 the 22 March 2008. It states that “no vessels will be authorized to keep on board or to use any driftnets.” France, Italy, Morocco, Tunisia, and Turkey are all members of ACCOBAMS.

### **2010 Developments:**

NGOs, including Oceana, Greenpeace, and the World Wildlife Fund (WWF), continued to assert that vessels from Italy, Morocco, Tunisia, and Turkey with driftnets from 7-14 km in length are operating throughout the Mediterranean Sea in 2010. However, the United States is not aware of any documented sightings of large-scale driftnet vessels operating on the high seas of the Mediterranean in 2010.

**France:** The European Commission launched an infringement procedure<sup>1</sup> against France in the European Court of Justice (ECJ) on 28 June 2007 for driftnet compliance violations. The infringement resulted from a hearing on bluefin tuna in the Fisheries Committee of the European Parliament in which it came to light that 81 French vessels were reported to be fishing illegally for bluefin tuna with thonaille.

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<sup>1</sup> Article 226 of the EC Treaty gives the Commission power to take legal action against a member country that has not complied with EU law. The process may take considerable time to complete, and, if the Commission concludes that there has been an infringement of EU law, it may call upon the member country to comply within a specified period of time (this is known as a “reasoned opinion”). In the event that the country fails to comply with the Commission’s ruling, the Commission may bring the case before the European Court of Justice. Finally, if the Court of Justice upholds the Commission’s ruling, the member country is required to take all necessary measures to conform. Failure of the member country to comply with the Court’s judgment could ultimately result in a financial penalty and the penalties for noncompliance can be significant.

The French Government applied to ECJ on 10 October 2007 for an exemption from EU Regulation No. 809/2007, disputing the new EU driftnet definition and claiming that thonaille are different from driftnets. On 28 February 2008, the Court ruled that France could not allow fishing with thonaille nets in the Mediterranean. The Court also refused to grant the French Government a temporary exemption from the EU driftnet ban, thereby eliminating the legal loophole created by redefining its fishermen's large-scale driftnet gear as thonaille, or anchored gillnets. This decision essentially eliminated the French thonaille tuna fleet in 2008 and increased the possibility that France could finally be sanctioned for not complying with the EU driftnet ban since 2002.

On 5 March 2009, almost 2 years after the original infringement procedure against France was initiated, the ECJ resolved the case in favor of the European Commission and condemned France for the lack of control over the use of driftnets by its vessels and nationals, rejecting France's appeal. According to the ruling, French authorities had neither effectively inspected nets used by fishermen for catching bluefin tuna, nor had they applied strict enough rules to prevent the use of illegal drift nets.

From a legal perspective, the use of thonaille became illegal from March 2009. No documented sightings of French large-scale driftnet vessels operating on the high seas were reported in 2009 or 2010.

**Italy**: Non-governmental environmental organizations (NGOs) assert that Italian vessels and nationals continued to fish with large-scale driftnets in the Mediterranean Sea in 2010. However, the United States is not aware of any documented sightings of Italian large-scale driftnet vessels fishing on the high seas of the Mediterranean in 2010.

**Italian Decree**: Despite the EC's new definition of driftnets, Italian Agriculture Under Secretary Antonio Buonfiglio, who has the Minister of Agriculture's delegation of authority for fisheries matters, signed a decree on 4 June 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, 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 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 6 June 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 is still only permitted in Italian national waters.

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 10 June 2008. The action was a scathing indictment of Italy's failure to comply with the EU's driftnet regulations.

On 29 October 2009, the ECJ finally declared that Italy has 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.

One other development of note: in January 2009, the EU called on Italy to return 7.7 million Euros (approximately U.S. \$10 million) of Community funds used fraudulently for the first driftnet vessel buyout plan implemented by Italy in 1997. That buyout was a product of the U.S.-Italy 1996 Driftnet Agreement.

**Morocco:** Background--On 20 November 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 United Nations driftnet moratorium. The WWF report came out in advance of the Conference on Mediterranean Fisheries, which was held in Venice, Italy, on 23-25 November 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 15-21 November 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 26-28 September 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 28 Feb 2007, Morocco ratified the EU-Morocco Fisheries Partnership Agreement. The 4-year Agreement allows 119 European vessels, mostly Spanish, to fish in Moroccan waters in exchange for an annual €36.1 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 28 July 2005, after 6 years of negotiations, and ratified by the EU on 29 May 2006.

Morocco passed a new law on 23 July 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 9-18 November 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 1 January 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 9-15 November 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 1 January 2012 to eliminate its driftnet fleet. If it does not meet that deadline, ICCAT will impose sanctions.

2010 Developments: On 2 August 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 enters into force on 2 August 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.

Tunisia: Although Tunisian driftnet vessels have been sighted fishing for bluefin tuna off the Libyan coast in recent years, NMFS is not aware of any Tunisian high seas driftnet vessel sightings in 2010.

Turkey: In regard to NGO charges that Turkey was using large-scale high seas driftnets, Turkey told the United States in a bilateral meeting on 29 September-1 October 2005 that it had fewer than 100 driftnet vessels, each less than 15 meters long. Turkey claimed that these were small-scale operations targeting swordfish in the Mediterranean off the southwest corner of Turkey. The fishing season lasts two months--May through June. The driftnet mesh size is 240-260 mm and the net is made of nylon polyfilament. The total length of the net is 1,000-1,500 m on average, with a depth of 4 m. The fishing areas are 300-2500 m deep and 5-9 nm from the coast. The driftnet is usually set in the evening at a depth of 6-7 m and is retrieved the next morning.

Although Turkish vessels may not be violating the UN high seas driftnet moratorium, Turkey is a member of ICCAT and the GFCM and is fishing in violation of ICCAT and GFCM rules. On 3 October 2005, Turkey opened accession negotiations with the EU, which banned the use of all driftnets by EU member nations beginning in 2002. Turkey must agree to adopt the common rules, standards, and policies that make up the body of EU law as a prerequisite to accession. This would include terminating its driftnet fleet.

Turkey admitted in October 2009 that its fishermen had modified their driftnets by weighting the footlines of the nets so they would not meet the Government of Turkey’s definition of a driftnet. Approximately 150 fishing vessels, 70 percent of which were less than 12 m, were reportedly fishing for swordfish and albacore tuna with such modified gear. At the ICCAT 2009 Annual Meeting in Brazil, the ICCAT Committee on Compliance identified Turkey as being in violation of ICCAT Recommendation 03-04, which prohibits the use of driftnets in fisheries for large pelagic species in the Mediterranean. Turkey responded that it would implement new regulations to ban modified driftnets in 2011.

2010 Developments: On 10 July 2010, the Ministry of Agriculture and Rural Affairs of Turkey published Revised Notification No. 2/1 Regulating Commercial Fishing in the Official Gazette. Revised Notification No. 2/1 prohibits usage of all modified driftnets as of 1 July 2011.

### **Indian Ocean:**

The Seychelles Coast Guard seized three Iranian-flagged vessels fishing illegally in Seychelles waters on 13 January 2010. The three vessels, the *AL-NAVID*, *AL-ZAID*, and the *AL-FAHAD* were part of a 6-vessel fleet spotted fishing with driftnets. The other three vessels escaped. The first two vessels were seized about 60 nautical miles southeast of the island of Mahe. The third vessel was seized about 150 nautical miles southeast of Mahe. A total of 83 fishermen were arrested, among them Iranian and Pakistani nationals. The three boats had approximately 100-150 tons of fish on board, primarily tuna and tuna-related species such as bonito and kingfish, and sharks.

A fourth Iranian-flagged vessel, the *AL-ASAD*, was seized by the Seychelles Coast Guard on 15 January 2010 near the Topaz Bank in Seychelles waters. The vessel was reportedly reeling in a driftnet. Coast Guard officials were not sure that the *AL-ASAD* was one of the three vessels that escaped on 13 January.

On 11 May 2010, the Mozambican Fisheries Authority arrested an Iranian flagged fishing vessel for illegally fishing in Mozambique's waters with large-scale driftnets. The *PAYAM*, registered in the port of Shilat Chabahar, Iran, had entered Mozambican waters without authorization and made a port call in Inhambane on 10 March 2010, where it was arrested by the fisheries inspectors of the Inhambane Fisheries Provincial Directorate.

During the investigation, a 9 km drift net was found onboard and seized by the inspectors. The vessel's captain admitted to discarding 8 metric tons of fish. The fishing vessel had no logbook onboard and its crew members had no identification documents. The owner and the captain of the *PAYAM* were fined \$45,000 for fishing without a license in Mozambican waters, for having no logbook onboard and for having failed to comply with entry/exit EEZ reporting into the Mozambican waters. The driftnet was seized and destroyed.

None of the driftnet vessels in the above cases were seized fishing on the high seas of the Indian Ocean. However, the area could potentially become the next high threat area for large-scale high seas driftnet fishing due to the lack of enforcement capability in the region.

### **Interagency Agreements**

Fisheries Enforcement Memorandum of Understanding (MOU): On 11 October 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 the China's FLEC on Coast Guard assets patrolling the highest threat areas in the North Pacific 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 D.C. on 3 December 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 the PRC to more effectively enforce its domestic laws that prohibit high seas driftnet fishing by PRC-flagged vessels in the North Pacific. The current MOU (also known as the U.S.-China Shiprider Agreement) expires on December 31, 2014.

From August-October 2010, the USCG Cutter *JARVIS* conducted an Operation North Pacific Guard 2010 patrol. Six Chinese FLEC shipriders deployed with the *JARVIS* during this patrol. These officials were instrumental in facilitating communications between the USCG and the PRC FLEC, and effectively expanded the jurisdictional reach of both enforcement agencies. As in past years, PRC FLEC participation was financially supported by NOAA's Office for Law Enforcement, which facilitated the logistics and travel costs of PRC officers. China has provided a total of 67 enforcement officials to the USCG since 1994.

## **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) 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 2009 have been provided in previous driftnet reports to the Congress available from NMFS.

On 7 December 2010, the General Assembly adopted, without a vote, draft 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* (A/65/L.21) as resolution 65/38. The Resolution expresses concern that, despite the adoption of General Assembly Resolution 46/215, the practice of large-scale pelagic drift-net 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 drift-net 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 drift nets 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 drift nets on the high seas. It calls on them to ensure that vessels flying their flag 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. 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.

Resolution 65/38 requests the Secretary-General to bring the present resolution 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. 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.

Resolution 63/112 requested the Secretary-General submit to the General Assembly at its 65<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..." The Secretary-General's report on sustainable fisheries for the 65<sup>th</sup> session was not available when this report was drafted.

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

The United States took no specific actions in support of the Wellington Convention in 2009. 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 2009 are provided in previous driftnet reports to the Congress. No large-scale pelagic driftnet fishing activities have 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 and France: Thanks to European Court of Justice rulings in 2009, there are few, if any, loopholes left for French and Italian fishermen to circumvent EC driftnet regulations. The United States anticipates the end of these fisheries in the near future. The French thonaille tuna fleet was effectively sidelined in 2008-2010. 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 in 2009 and 2010.

Regarding Italy, the Secretary of Commerce identified this nation on 19 March 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 15 July 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 has 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 29 May 1996 it 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. We will consider ending the above reporting requirement in 2011.