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**LEGISLATIVE HEARING ON BILLS ADDRESSING
ILLEGAL, UNREPORTED, AND UNREGULATED FISHING, PIRATE FISHING
VESSEL DISPOSAL, AND BILLFISH**

**BEFORE THE
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON FISHERIES, WILDLIFE, OCEANS, AND INSULAR
AFFAIRS**

UNITED STATES HOUSE OF REPRESENTATIVES

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Introduction

Good morning, Mr. Chairman and Members of the Committee. I appreciate the opportunity to speak with you today about a number of the bills before the Committee. My name is Eric Schwaab and I am the Acting Assistant Secretary for Conservation and Management, within the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce. Thank you very much for the opportunity to come before you today to discuss legislation on illegal, unreported, and unregulated (IUU) fishing, and billfish conservation. I will address these topics in the order just given.

IUU Fishing

IUU fishing activities harm fish and fishermen. IUU fishing violates conservation and management measures, such as quotas or bycatch limits, which have been established for domestic fisheries or under international agreements. Through adverse impacts on fisheries, marine ecosystems, food security, and coastal communities around the world, IUU fishing undermines both conservation and economic goals. IUU activities particularly threaten food security and harm the economic security of many small island and coastal developing countries and are particularly problematic for vulnerable fish stocks.

Annual global economic losses due to IUU fishing are estimated to be approximately \$10-23 billion¹. While the incidence of IUU fishing varies by region, the greatest incidence occurs off West Africa where total estimated catches are 40 percent higher than reported catches.

¹ <http://www.mrag.co.uk/Documents/ExtentGlobalIllegalFishing.pdf>

IUU fishing constitutes one of the most serious threats to the conservation and sustainable exploitation of marine biological resources in the world's oceans. The United States plays a unique role in the commercial exploitation of fishery products globally, both as a flag State for fishing vessels and as one of the world's largest importers and consumers of seafood. As such, the United States carries a significant responsibility for the protection of the oceans' vital food and marine biological resources. In that regard, U.S. laws and regulations play a key role in curbing IUU fishing. U.S. IUU fishing laws and regulations promote the sustainability of transboundary and shared fishery stocks by imposing requirements that are comparable to those in place in U.S. fisheries.

As one of the world's largest importers and consumers of seafood, the United States is in a unique position to support sustainable fisheries around the world while providing a level playing field for our domestic fishermen. Accordingly, it is imperative that the United States take steps to eliminate the incentives for engaging in IUU fishing by keeping IUU fish products out of our markets.

In 2010, U.S. consumers spent an estimated \$80.2 billion for fishery products. In producing and marketing these items, the commercial fishing industry contributed \$41.4 billion in value added to the U.S. GNP in 2010.² IUU fishing risks the sustainability of this multi-billion dollar domestic U.S. industry. When you consider that the United States imports over 85% of the seafood it consumes, valued at over \$24 billion, the sustainability, safety, and legal status of these imports is of great concern to wholesalers, retailers and consumers. For certain seafood products, such as swordfish, U.S. fishermen's landings compete directly with swordfish that is imported from other countries, and U.S. fishers often face tougher regulations on catch quotas, bycatch gear, time/area restrictions and monitoring measures. For many species associated with foreign fisheries, both the target and the bycatch stocks may be highly migratory and therefore shared by U.S. and foreign fleets. IUU fishing can have a direct impact on U.S. fleets through target stock and ecosystem impacts that could result in further restrictions to U.S. fishermen.

We applaud this Committee's efforts in highlighting the IUU fishing problem and introducing legislation aimed at providing additional authority that will help the United States continue to be a leader in efforts to prevent, deter, and eliminate this activity.

NOAA strongly supports Congress' efforts to address the problem of illegal, unreported, and unregulated ("IUU") fishing, and applauds measures to strengthen the enforcement provisions in our marine fisheries laws. H.R. 4100 is an important step in that effort by providing improved authority to address IUU violations and we support the adoption of HR 4100 as drafted. Further, NOAA supports enactment of stronger enforcement provisions to provide a fuller complement of administrative, civil judicial, and criminal enforcement remedies that could be used as appropriate to address such violations. Having the ability to seek civil judicial or criminal sanctions, in addition to administrative sanctions, would enable the United States to respond more appropriately to violations of differing levels of severity and would strengthen our enforcement efforts in the international arena.

² National Marine Fisheries Service, *Statistical Highlights - Fisheries of the United States, 2010* available at <http://www.st.nmfs.noaa.gov/st1/fus/fus10/highlight2010.pdf>.

I will describe the steps NOAA has taken domestically to address IUU fishing activity, actions taken multilaterally through relevant Regional Fishery Management Organizations (RFMO), and enforcement efforts conducted in conjunction with partner agencies. I will highlight some of the areas where NOAA has made progress and explain some of the inadequacies of our existing authorities to combat IUU fishing.

Domestic Efforts to Address IUU Fishing

Implementation of the International Provisions of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act

The reauthorized *Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Reauthorization Act)*, which was enacted in January 2007, provides several tools to help NOAA combat IUU fishing activity. Specifically, the *Magnuson-Stevens Reauthorization Act* amends the *High Seas Driftnet Fishing Moratorium Protection Act* to require the Secretary of Commerce to produce a biennial report to Congress that lists countries the United States has identified as having vessels which engaged in IUU fishing, bycatch of protected living marine resources, and shark fishing on the high seas using inadequate conservation measures.

NOAA has actively worked to implement the international provisions of the *Magnuson-Stevens Reauthorization Act* to combat IUU fishing, and in January 2009 and January 2011, NOAA submitted biennial reports to Congress. In 2009, we identified France, Italy, Libya, Panama, China, and Tunisia as having vessels engaged in IUU fishing during 2007 or 2008 (consistent with the timeframe in the *Magnuson-Stevens Reauthorization Act*). In 2011, we reported that the issues that led to these identifications had been successfully addressed, and all six countries received positive certifications. In that same report, we identified Colombia, Italy, Ecuador, Panama, Portugal, and Venezuela for having vessels engaged in IUU fishing (the repeat identifications involved different fishing vessels).

NOAA Enforcement Activity and Challenges in Combating IUU Fishing

Increasing compliance and ensuring enforcement of needed regulations is an important part of meeting NOAA's goal of sustainable fisheries. Unregulated and unreported harvests and mislabeled product can introduce unsafe product into U.S. markets. Illegal, unregulated, and unreported (IUU) fishing decimates migratory stocks important to the health of the world's oceans, U.S. markets, and the commercial industry. The NOAA Office of Law Enforcement (OLE) is routinely engaged in international investigations targeting multi-national business operations that engage in illegal trafficking on a worldwide scale. In recent years, NOAA OLE has been able to identify a number of multi-million dollar operations engaged in the trafficking of IUU fish and fish products through investigations that resulted in successful interdiction, prosecution and, ultimately, the termination of these operations. Such cases have eliminated many activities that were causing egregious harm to marine resources throughout the world.

While NOAA regulates seafood imports under a number of statutes, including the *Magnuson-Stevens Act* and those that implement international fisheries agreements, one of NOAA's strongest tools in combating IUU fishing and keeping IUU-caught fish and fish products off the U.S. market is the Lacey Act. The Lacey Act prohibits the importation of wildlife, fish, and

plants that have been illegally harvested in the waters of another country or harvested in violation of a treaty. The Lacey Act assists U.S. agencies in ensuring that this fish comes from legal sources and does not undercut seafood prices and negatively affect American jobs. It has been successful, not only as a way to prevent the importation of illegal fisheries products, but also to assist other countries with enforcement of their domestic laws.

One case that is a good example of how we are stopping IUU fish from entering our markets is *US v Virginia Star, et al.* In this case, individuals and companies were prosecuted by the Department of Justice's Environmental Crimes Division for criminal offenses related to a large-scale seafood smuggling scheme. The defendants conspired to illegally import and sell fraudulently labeled Vietnamese catfish as grouper or other more valuable species, which had a two fold incentive. First, this would avoid federal import tariffs associated with Vietnamese catfish, which in this case was approximately \$9.3 million, and the second is the market value of grouper or other mislabeled species is much higher than that of Vietnamese catfish. The defendant illegally imported more than ten million pounds, or \$15.5 million worth, of frozen fish fillets. By trying to misrepresent the imported product as higher value, more desirable species, this illegal activity threatens to displace legitimate, legally produced domestic fish product and creates an uneven playing field on the U.S. market.

NOAA OLE's staff, including 135 sworn federal agents and officers, works closely with international, federal, and state law enforcement partners to detect, apprehend, and prosecute those involved in the illegal importation of IUU product into the United States and its territories. In particular, NOAA OLE works with U.S. Customs and Border Protection to detect illegal imports and NOAA is in the process of improving this effort by integrating its trade monitoring programs into the International Trade Data System. The International Trade Data System is a government-wide system, maintained by Customs and Border Protection, for the electronic collection, use, and dissemination of trade data necessary for Federal agencies to perform their missions. NOAA's implementation of the International Trade Data System will significantly enhance the coordination between Federal agencies in detecting and responding to potential IUU fish and fish products.

NOAA OLE works closely with the U.S. Coast Guard to detect illegal incursions into the U.S. Exclusive Economic Zone using sea and air patrols, vessel monitoring systems, and other surveillance tools.

Increasing IUU fishing activity, as well as the sophistication of many of those engaged in the illegal trafficking of fisheries products, has created a need for enhanced enforcement tools to combat these illegal practices. To meet this need, OLE has begun to enhance its capacity to access, evaluate, and analyze fisheries-related intelligence and create intelligence-driven products to focus limited enforcement resources. NOAA also emphasizes the importance of maintaining the agency's capacity to fully address domestic requirements related to IUU and other fisheries violations, to provide additional international training to reduce the harvest and global trade in IUU product, and to provide a sound basis for NOAA to speak from experience in its international capacity building endeavors.

International Efforts to Address IUU Fishing

Actions of Regional Fishery Management Organizations (RFMO)

Most RFMOs have adopted procedures to identify and list vessels that have engaged in IUU fishing in areas, and for stocks, under their jurisdiction. The procedures require parties to the RFMO to apply a range of sanctions to listed vessels. Sanctions range from restricting access to port services to outright denial of port entry. These IUU vessel lists also serve to highlight illegal operations, so the fishing industry (including processors and importers who were previously unaware that such activities were taking place) is aware of vessels that have been engaged in such activities. With a few key exceptions, the United States already prohibits foreign flagged fishing vessels from landing, transshipping, or processing fish at U.S. ports, but such vessels are not barred from port entry for other purposes, such as maintenance, provisioning, or even loading of fish or fish products. NOAA has promulgated regulations to address these issues of port entry and access to port services for vessels included on an RFMO IUU vessel list.

International Cooperation and Assistance

Given the highly migratory nature of some fish stocks, protected living marine resources, and sharks, it is crucial for the United States to work cooperatively with its international partners to implement fishery management programs, improve data collection and monitoring, and utilize fishing gear and practices that reduce bycatch and adverse impacts of fishing. One of the most effective ways to promote these sound practices is to provide other nations with tools, training, and resources to increase their capacity for sustainable fisheries management and enforcement.

Under the reauthorized *Magnuson-Stevens Act*, NOAA is authorized to provide this type of capacity building assistance. Consistent with this authority, NOAA has engaged in various international assistance efforts directly in developing countries and also through agreements and bodies, such as the United Nations Fish Stocks Agreement, the Food and Agriculture Organization of the United Nations, and various RFMOs. In cooperation with its federal partners, NOAA hosted workshops on how to reduce bycatch of turtles and other protected species; conducted cooperative research to understand species statistics and improve harvesting practices; and provided training to strengthen enforcement capacity and improve fisheries observer programs in other countries. In addition to improving the capabilities of other nations, these activities have the potential to increase our collaboration with non-traditional partners and make work at RFMO meetings more productive.

Based on need, mutual interest and resource limitations, NOAA is currently focusing on three regions for international cooperation and assistance: West Africa, the Caribbean and Central America, and Southeast Asia. But the demand for international assistance continues to grow. NOAA has received an increasing number of requests for assistance from other nations to address IUU fishing or bycatch of protected living marine resources.

Establishing cooperative relationships with developed countries is also extremely important to making NOAA's efforts to combat IUU fishing successful. In September of 2011, Under Secretary of Commerce and NOAA Administrator Dr. Jane Lubchenco signed a statement with Maria Damanaki, European Union Commissioner for Maritime Affairs and Fisheries, on bilateral cooperation to combat IUU fishing. In this statement the United States and the European Union

agreed to work together on a number of fronts including information exchange and improved anti-IUU measures in the RFMOs and other international bodies. Combining the efforts of two major fishing and seafood consuming states will strengthen the fight against IUU fishing.

Monitoring, Control, and Surveillance (MCS) Network

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

H.R. 4100, Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2012

NOAA supports the intent of H.R. 4100 to provide additional tools to combat IUU fishing. Among other things, the legislation makes several technical changes to improve current international fisheries statutes, advances NOAA's enforcement capabilities, authorizes a broader capacity building program to help other nations address IUU fishing, and includes implementing legislation for the Antigua Convention, which modernizes the Tuna Conventions Act of 1950.

NOAA has experienced several challenges in implementing the international provisions of the *Magnuson-Stevens Reauthorization Act*, which this legislation would help to overcome.

First, the timing of the alleged IUU fishing activities, bycatch, and shark conservation has been a key issue. Much of the information available to NOAA in developing the list of identified nations, particularly information regarding bycatch of protected living marine resources and harvest of sharks, does not fall within the timeframes required in the *Magnuson-Stevens Act*. NOAA is only authorized to identify nations based on bycatch and shark fishing activity that occurred during the calendar year preceding publication of the biennial report. However, information on bycatch is rarely available for the previous year. H.R. 4100 would extend that time period to 3 years.

Second, NOAA believes it is important to more clearly link the IUU fishing, bycatch activities, and shark fishing activities on the high seas of a particular nation. This approach is used at the RFMOs and in other international fora for gauging the degree of severity of such activities. H.R. 4100 would provide this authority.

Finally, H.R. 4100 authorizes, but does not require, the United States to create an IUU vessel list. Implementation of such a provision, in our view, would draw solely from the IUU vessel lists established by the various RFMOs to which the United States is a Party, and others as appropriate, and to work to consolidate and harmonize those lists to the extent practicable.

In addition, NOAA believes that the provisions in H.R. 4100 that clarify and strengthen our enforcement authority and harmonize those authorities across all of the statutes that implement our international fisheries obligations are also helpful. These tools would improve the ability of law enforcement officials and prosecutors to address IUU activity with sanctions more proportional to the significant profits made through IUU fishing and trade in the resulting product. H.R. 4100 also provides enforcement authorities to improve the ability for law enforcement to address imports of IUU fish and fish products and authorizes NOAA to share fisheries data with other appropriate agencies and officials, both domestically and internationally — an important tool to combat the global IUU problem.

Moreover, we are happy to see Title II, The Antigua Convention Implementing Act, included in this bill. Enactment of Title II will enable the United States to ratify the Antigua Convention. The Antigua Convention is an important international agreement that provides critical updates to the principles, functions, and processes of the Inter-American Tropical Tuna Commission (IATTC).

The Antigua Convention reflects the duties and responsibilities of nations to cooperate to ensure the sustainable management of shared fisheries resources, to minimize impacts to bycatch species and to conserve the marine ecosystems on which sustainable fisheries depend. The Antigua Convention also provides improved monitoring, control, and surveillance provisions, which increase the IATTC's capacity to combat illegal, unreported, and unregulated (IUU) fishing and illegal imports of tuna product.

The Administration looks forward to working with Congress to address any constitutional concerns that the current draft of this bill may raise, so as to fulfill the statute's goals of enhancing the government's capabilities to combat IUU fishing.

H.R. 3472, Pirate Fishing Vessel Disposal Act of 2011

The Administration has not taken a position on H.R. 3472. We would be happy to provide formal views at a later date. As previously mentioned, IUU fishing is harmful to our fisheries and our fishermen. The vessels that engage in IUU fishing, what happens when they are seized and thereafter, is a matter of great importance to NOAA, the Coast Guard, and other federal agencies. We look forward to working with this Committee and the bill's sponsor on this important issue.

H.R. 2706 Billfish Conservation Act of 2011

The Billfish Conservation Act of 2011 would prohibit a person from offering billfish or billfish products for sale, selling them, or having custody, control, or possession of them for purposes of offering them for sale or selling them. The bill would define "billfish" to include blue marlin, striped marlin, black marlin, white marlin, sailfish, shortbill spearfish, longbill spearfish, roundscale spearfish, and Mediterranean spearfish, but it expressly excludes swordfish. The bill exempts the state of Hawaii and the Pacific Insular Area from the prohibition as long as billfish are sold in Hawaii and the Pacific Insular Area.

The Administration has taken no position on the Billfish Conservation Act of 2011. The Administration recognizes the conservation challenges facing billfish populations in the Atlantic Ocean and to a lesser extent in the Pacific Ocean. The protection of these species is important and the Administration looks forward to working with this Committee and the relevant stakeholders on this issue.

As written, the bill would have little impact on the management of billfish in the Atlantic because regulations currently require the release of all Atlantic billfish, whether alive or dead, caught by commercial fishing operations in the U.S. Exclusive Economic Zone (EEZ), prohibit the possession of billfish onboard commercial fishing vessels inside the U.S. EEZ, and prohibit the sale of Atlantic billfish. If the bill were to become law, there could be some benefit for Atlantic billfish in the form of regulatory streamlining by clarifying that no billfish may be sold, no matter where they were harvested.

The U.S. West Coast Highly Migratory Fishery Management Plan contains only the striped marlin as a management unit species as this is the only billfish that occurs along the U.S. west coast (the plan also includes swordfish, but this species is not a subject of this proposed bill). Striped marlin seasonally occurs off southern California in the late summer and fall and southern California is considered the northern edge of the species' range. Along the West Coast, the State of California has prohibited sale and importation of Pacific striped marlin since 1937, and with a limited exception for black marlin, marlin meat, whether fresh, smoked, canned, or preserved by any means, may not be bought or sold, or possessed or transported for the purpose of sale.

Shortbill spearfish, sailfish, black marlin, and blue marlin are also known to occur off California but their presence is very rare although commercial landings are not prohibited. In fact, Oregon reported that they had a few blue marlin landings in 2008. Consequently, a prohibition of commercial landings for the other billfish species would likely not have significant impact. With regards to billfish imports, there are partial prohibitions within the State of California.

The implications of this bill are somewhat limited in the Pacific Islands Region since the bill's current language does not include swordfish in the definition of "billfish" and also allows sales of defined billfish in Hawaii and Pacific Island territories.

However, with respect to the exemption for traditional fisheries and markets, there is currently some percentage of billfish landed and originally sold in Hawaii that is later delivered to the U.S. mainland market. Accordingly, clarification is necessary as to the point of sale versus the point of ultimate delivery, if on the mainland. If the intent is to prevent Hawaii sold fish from moving in otherwise legitimate interstate commerce to the traditional mainland markets (e.g., billfish landed and sold in Hawaii ultimately served in a mainland restaurant), language clarifying this intent may be necessary.

Similarly, there are billfish products, such as canned smoked marlin, that are processed from billfish that are originally landed and sold in the Pacific Islands Region, which are transported to traditional mainland markets. These products are generally labeled as a product of Hawaii as a

branding initiative, but this is not a requirement. If it is clarified that the sale of these products is restricted on the mainland, there would be a larger impact to those in that production chain.

Finally, because the bill proposes to restrict the international trade in billfish, NOAA encourages the Committee to consult with trade agencies, in particular the Office of the U.S. Trade Representative, to ensure that this bill is consistent with U.S. international trade obligations.

Conclusion

In closing, I would like to reaffirm my gratitude for the opportunity to discuss activities underway at NOAA to address IUU fishing, highlight some of the obstacles we face in this effort, and explain how the enhanced authority provided in H.R. 4100 could further our progress in combating this activity. I have also been happy to share with you NOAA's perspective on H.R. 2706, the Billfish Conservation Act. We look forward to working cooperatively with you on these bills as they move forward. I will be happy to answer any questions.