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STATEMENT OF GLENN ROGER DELANEY

US COMMISSIONER TO ICCAT

Before the

COMMITTEE ON RESOURCES

SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS

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Mr. Chairman, Members of the Subcommittee, thank you for holding this timely and important hearing. And, thank you for this opportunity to provide the following testimony regarding ICCAT issues that are important to the 2003 annual meeting.

I first became involved with ICCAT in 1982 as a staffer on the Merchant Marine & Fisheries Committee, Subcommittee on Fisheries & Wildlife Conservation and the Environment. In the late 1980's and early 1990's, I participated as an ICCAT industry advisor, and for the past nine years I have served as one of the three US Commissioners.

Given this background, I would first like to provide a brief historical perspective of how and why we are where we are at ICCAT today. I think this would be helpful to put the 2003 US ICCAT agenda in the proper context. Then, I will provide some very specific recommendations for inclusion on the US agenda of ICCAT priorities and objectives at the 2003 meeting.

Historical Context of 2003 Meeting

Since 1982, ICCAT has gone through a remarkable transformation. During the 1980s, it would not be unfair to characterize ICCAT as being in the stone age of fisheries conservation and management. It was during that time such terrible decisions as drawing an arbitrary line down the middle of the Atlantic to divide the bluefin tuna population into 2 separate stocks and management regimes were made. This placed US bluefin tuna fishermen under an overly conservative and rigid management regime while nations fishing in the eastern Atlantic were effectively allowed to run amok. This was done more for political expediency than good conservation or smart science (bluefin certainly do not respect an imaginary line drawn across the ocean). Today we still suffer the conservation, political and economic consequences of that decision as we struggle with serious conservation and compliance issues in the Mediterranean and an inequitable situation for US fishermen.

Compliance and enforcement during those years were essentially 'non-issues' because, frankly, there were few rules to comply with or to enforce. Year after year, my impression of the basic result of the annual ICCAT meeting was for nations to report your catches, proclaim "status quo" for the almost nonexistent management regime, and go home. Frankly, the US didn't appear to do much to change or improve that course.

As stocks began to suffer, US industry and other constituencies did begin pushing a more progressive and conservation-oriented agenda in the late 1980s and early 1990s. However, it wasn't until 1994, when the leadership of the US ICCAT Delegation changed dramatically, that a serious US effort to reform ICCAT became possible.

Since then, the US has asserted itself as an effective leader and voice of conservation at ICCAT. We began a deliberate and stepwise campaign to put in place the many basic rules for conserving the stocks, managing the fisheries and collecting the data necessary to properly assess stock status and measure the results of the management regime. We also moved quickly to put rebuilding plans in place for some of the stocks of greatest interest to the US such as swordfish, billfish and bluefin tuna.

The US succeeded in pushing through a comprehensive regime of conservation, management, rebuilding, scientific data collection, quota allocation, compliance, monitoring, enforcement and trade measures now adopted by ICCAT. A compendium of these many ICCAT measures now on the books is attached to my testimony. (see Attachment 1) Today ICCAT is arguably the most progressive international fishery conservation and management forum in the world—at least on paper.

That is not to say we haven't achieved some remarkably tangible results. For example the rapid rebuilding of the north Atlantic swordfish stock was an extraordinary conservation achievement. But, the truth is that the more rules we put on paper, it seems the more these rules are broken by many of the nearly 50 nations represented in the ICCAT process. It is becoming a very serious problem with no easy solutions.

Compliance Violations

Violations fall across the entire spectrum of conservation measures--from quota overages and the excessive harvest of juvenile swordfish and tunas to blatant failure to submit even the most basic catch data vital to scientific stock assessments. Serious violations also fall across the full spectrum of ICCAT nations—from the least developed and most politically unstable to the richest and most technologically advanced. There follow just two examples among the more egregious problem areas, but the actual list is much, much longer.

The bluefin tuna situation in the eastern Atlantic is out of control. The relatively recent development of pen-raising technology for rapidly growing and fattening bluefin tuna for the high-valued sashimi market has created a black hole in the ICCAT management system. We will have to wait until November to see what the official numbers are, but we are hearing credible reports that bluefin landings in the eastern Atlantic may be as much as 50,000 metric tons—substantially above the ICCAT quota and about twice the level recommended by the scientists. Much of this fish is going into farming pens and there are serious questions about the correct reporting and accounting of this harvest. The European Union is the major player in that situation, but the reality is that nearly all of the nations bordering the Mediterranean contribute to the chaos, particularly those on the north African coast.

Another tremendous concern is the performance of Taiwan. Fishing vessel operators based in Taiwan but hidden by many layers of paper companies have been the source of a fleet of pirate large-scale pelagic longline vessels using flags of convenience to operate in the Atlantic and throughout the world. These vessels are often referred to in international circles as the "IUU fleet" (Illegal Unreported and Unregulated).

Only due to strong pushing by the Japanese government, the Taiwanese government has responded half-heartedly. In addition, Taiwanese fishing companies have now deliberately built a fleet of vessels that fall just under the 24 meter minimum length for application of most ICCAT measures. These, 23.9 meter vessels have operated extensively in the Caribbean decimating shark stocks and causing serious billfish bycatch problems. Even those Taiwanese vessels that actually do fly the Taiwan flag and are large enough to fall under ICCAT jurisdiction are causing serious compliance problems with swordfish and bigeye tuna. The government of Taiwan either lacks the means or will to control this situation.

Current US Focus at ICCAT

I think the US continues to be on the right track. We are following through on the necessary progression of first putting into place the basic conservation rules for ICCAT and now we are pursuing a very deliberate process of ratcheting down on compliance and enforcement. We must put teeth behind those rules, primarily through increasing the scope and effectiveness of market controls and trade measures. In this regard I believe the US is focused on the proper issues and we are being just as aggressive in pursuing the full range of compliance and enforcement measures as we were in establishing the basic conservation and management rules in the first place. A valid question, however, is whether the US Commissioners alone can be successful.

Market controls and trade measures are the most effective response to compliance problems because they take money away from people when they behave badly. It's a great way to get a non-compliant nation's

attention. But, it takes great strength and a smart plan to achieve. Market controls and trade measures as well as more effective conservation and management regimes for bluefin tuna and billfish will continue to be among the most difficult to negotiate. While I don't think there is cause for panic, I think all of the Commissioners would agree that we could definitely use some high-level assistance in this current ICCAT era. The US Commissioners will need the strong backing from high levels of US Government including Congress to pursue these objectives.

I have no doubt that we have such backing from Congress and especially the members of this Committee. Such efforts as House Concurrent Resolution 268 can be particularly helpful in demonstrating to our ICCAT adversaries a sense of US Government purpose, resolve and solidarity behind the Commissioner's efforts at ICCAT. That Resolution as well as this hearing also help to raise the issue to a higher level of attention within our own Administration. We are beginning to gain some serious attention at the highest level of the Department of Commerce thanks to your efforts.

US ICCAT Agenda for 2003

Although our US position has yet to be formally decided, there follows several of the more important issues I hope and expect will be on the US agenda of priorities for the 2003 meeting. Please note that I have also identified areas where I think Congress can assist our efforts and that some of these would require a financial commitment.

White Marlin In the case of white marlin, a picture is worth a thousand words. The chart on the following page (page 5) of this testimony is an excerpt taken from the 2002 ICCAT white marlin scientific stock assessment and shows the distribution of catch for the decade 1990-1999 across the Atlantic. (A complete chart showing the same information for each decade since 1950 is attached to this testimony. See Attachment 2).

As you can see, the vast majority of white marlin mortality occurs in areas south of the equator, especially off the southeastern coast of Brazil. (The distribution of blue marlin catch is very similar. See Attachment 3). This has been a consistent occurrence since the 1960s. As extensive US tagging efforts have confirmed, particularly those supported by The Billfish Foundation, these fish are highly migratory. Excessive mortality off the coast of South America will have a direct impact on the abundance of white marlin (and blue marlin) off the US east coast.

Because white marlin is generally a bycatch species in directed fisheries for tuna and swordfish, the solution to this problem is not so simple. ICCAT took the first step by adopting a US proposal designed to substantially reduce both white and blue marlin mortality through requirements to reduce landings and increase the release of fish that are alive when brought to the boat.

However, these measures alone are not likely to be sufficient to reduce fishing mortality to levels that can rebuild this stock. And, compliance has been a problem. I anticipate that the data we receive at ICCAT this year will indicate that Brazil and perhaps Venezuela will confirm their violation of the ICCAT marlin landing reduction requirements. Given the status of white marlin, much more will have to be done. There follow two recommendations for US initiative to address this situation.

1) Strengthen enforcement of white marlin bycatch limits. ICCAT must authorize market controls—such as the suspension of eligibility of the violating nation's vessels to market tuna and swordfish in other ICCAT nations. The key is to authorize market or trade sanctions against ICCAT species other than marlin, because marlin are not regularly exported to other ICCAT nations and are consumed within the harvesting nations. (The US already prohibits sale of Atlantic marlin in US.)

2) US Cooperative Research Program to reduce white marlin bycatch. In order to reduce marlin mortality beyond the current ICCAT live release and landing measures, we

will have to do better than simply tell other nations they have to stop or substantially reduce their directed fishing for tuna and swordfish. I do not believe that would be a realistic goal.

If we expect to achieve any further meaningful reductions in marlin mortality, I think the reality is that the United States must take the initiative to develop alternative pelagic longline fishing gear and methods and then export these solutions to other ICCAT nations. The truth is that no other nation is likely to take this initiative or make the investment and, frankly, the US has by far the greatest social and economic interests

in doing so. We are also faced with the continued threat of an Endangered Species Act listing, which would have catastrophic impacts on US commercial and recreational fisheries. I believe this research program is a very important financial commitment for Congress to consider.

The first phase of developing such solutions could be achieved through a NMFS cooperative research program with US longline fishing vessels. NMFS and the US

pelagic longline fishery has established a very positive cooperative research relationship through their phenomenally successful experimental fishery to substantially reduce bycatch and nearly eliminate bycatch mortality of sea turtles on the Grand Banks (Northeast Distant (NED) statistical area).

As we learned from the Grand Banks project, the use of special baits and circle hooks, specifically designed to reduce bycatch and bycatch mortality of whatever the species in question is, holds great promise. The use of hook timers and time-depth recorders used so successfully in the Grand Banks research to understand sea turtle behavior is also likely to provide extremely valuable information regarding marlin behavior and provide clues for how to reduce marlin interactions with longline gear.

It would seem that the second phase of exporting solutions that reduce marlin bycatch and bycatch mortality to foreign fisheries where the preponderance of marlin bycatch mortality occurs should be initiated in the areas off of Brazil where marlin bycatch has been so highly concentrated for so many years. This is something we can initiate through ICCAT. Of course, the same solutions should be implemented for US longline fisheries as appropriate

Specific ICCAT Trade Measures and Market Controls

I recommend that the US pursue the following objectives at the 2003 ICCAT meeting:

General: Harmonize the hodgepodge of ICCAT trade and market control measures adopted to date into one overarching program that expands these measures to have the broadest possible coverage of fish stocks harvested by member and non-member nations.

This initiative is already underway at ICCAT but much more work and strong US leadership will be required to get the job done. Notably, the current drafts of this Supplemental Trade Measures proposal we have been working on with the EC, Japan and Canada over the past year include the crucial multilateral authority for ICCAT importing nations to enforce ICCAT bycatch controls (such as for marlin) through import restrictions on other, non-bycatch (tuna and swordfish) exports.

Tuna Farming: Expand the scope of the ICCAT "positive list" market control program to include the explosion of poorly regulated bluefin tuna farms in the Mediterranean. Currently this program, (which was a US initiative), establishes a formal registry of ICCAT vessels and enables member nations to prohibit the importation of fish landed by any vessel not on that list.

The US should lead an effort to expand the application of the ICCAT 'positive list' market controls to bluefin tuna farming pens.

Billfish: As explained previously, the challenge with white marlin and blue marlin is that in most nation's fisheries it is a bycatch. (This may or may not be the case in Ghana, where blue marlin consumption and landings are the highest on record.) Billfish bycatch is generally not exported to major market nations like the US, Japan and EC where effective market controls can be exerted.

The US should lead an effort to enforce current ICCAT marlin bycatch management measures. I believe immediate action should be considered for some nations through the suspension of a violating nation's ICCAT 'positive list' status if that nation's exports include species for which ICCAT has a 'statistical document' program (bluefin, swordfish and bigeye tuna).

Alternatively, if adopted, the Supplemental Trade Measures proposal designed to harmonize and expand the scope of existing ICCAT trade measures for both member and non-member nations now under consideration by ICCAT potentially provides a much broader coverage of the situation. As mentioned earlier in my testimony, this proposal includes provisions to restrict non-marlin bycatch exports (such as tuna and swordfish) until such time as the violating nation comes into compliance. This approach may take another year before it can be applied, but it would effectively address the Ghana blue marlin problem by targeting their canned tuna exports for control.

Scientific Data: Incredibly, it appears that some ICCAT member nations are deliberately withholding catch data from ICCAT on key fisheries such as bluefin tuna. I suspect this has been done in order to escape scrutiny and enforcement of compliance measures. This is about as low as it gets. ICCAT data is fundamental to our scientific ability to assess the status of the stocks and, therefore, to develop or adjust management measures to achieve the goals of rebuilding stocks and of maximizing the yield from each stock.

The US should lead an effort for ICCAT to adopt a provision that has the effect of automatically suspending 'positive list' status for the vessels of any nation that fails to submit timely data to ICCAT.

US Office of Fishery Trade Monitoring and Enforcement: The future of ICCAT, and presumably other international fishery management organizations, is the aggressive adoption and implementation of a comprehensive regime of trade measures and market controls necessary to effectively enforce the conservation and management program. To be effective, such trade measures and market controls must be very closely monitored and enforced by US Government personnel. This is not at all intended to be a criticism, but it has been my observation that the NMFS personnel responsible for this activity are already struggling to keep up with what ICCAT has on the books today. In anticipation that this activity and workload will increase substantially as ICCAT fully develops this regime, and given that an effective US capability to monitor and enforce ICCAT trade and market control measures, I believe Congress and the Administration should seriously consider the establishment of a new office devoted entirely to this mission and this would likely require a financial investment by Congress.

Limit Exports to ICCAT Quotas: Although certainly not a new idea, there has been increased interest in developing ICCAT multilateral authority for member nations to limit the total amount of their imports of a specific ICCAT stock to the amount of the exporting nation's catch quota.

While on the surface it sounds simple enough, in actuality the implementation would be very tricky and this is why the concept has not gained widespread support in the past. One very big problem is that ICCAT completely lacks any mechanism or resources to keep track of real-time exports of individual ICCAT stocks for each exporting nation. Exporting nations generally export ICCAT species to multiple destinations. The problem is how ICCAT and importing nations can determine when a nation's total exports to all nations have reached its total ICCAT catch quota and, therefore, when it would be appropriate and effective for individual importing nations to prevent further imports of that stock from that nation. Absent this information, it seems unlikely that this approach will be effective. Nevertheless, because management and compliance problems have become some so dire it is probably time to at least revisit this approach.

The US should explore the feasibility of developing an effective mechanism for providing authority to ICCAT importing nations to limit their imports of an ICCAT stock to each exporting nation's total ICCAT quota.

Unilateral Trade Measures

Our efforts at ICCAT are necessarily delimited by recognized principles of international trade law requiring multilateral authority for trade restrictive measures. I believe this has also been the consistent view of each Administration I have served under as Commissioner.

Nevertheless, as a private citizen I am certainly NOT averse to discussing some unilateral approaches which may strengthen our hands at ICCAT. It is a very sensitive issue—both within domestic law and policy circles—as well as at ICCAT. If US unilateral trade measures are to be applied against ICCAT nations, this must be very well conceived and timed.

I think the Committee is probably already far more familiar than I with the Pelly Act and Section 301 of the Trade Act of 1974, both of which are under current consideration by the Administration for application to ICCAT.

However, I would also like to reinforce the Committee's attention to the trade measures also on the books within the Atlantic Tunas Convention Act (ACTA). This statute is the 'organic Act' for US implementation of the ICCAT Convention.

The ACTA authorizes the Secretary of Commerce to prohibit the entry into the United States of any ICCAT-managed species and taken from the ICCAT Convention area (Atlantic Ocean / Mediterranean) in a manner which would diminish the effectiveness of ICCAT's conservation program. The Act authorizes the Secretary

to prohibit the importation of ICCAT species other than the species for which violations occur. This is central to the ability to effectively enforce bycatch requirements for species that only enter international trade in very limited numbers such as white and blue marlin.

I am grateful to the authors, Congressmen Gilchrest and Saxton, that this authority is a particular focus of H. Con. Res. 268. The legislative amendments that created this authority in the 1990's was an initiative and priority of the US fishing industry. Unfortunately, it has been my very frustrating experience that the Administration (NMFS) never embraced this authority as the effective tool it could have been. Specifically, NOAA/NMFS attorneys interpreted the provisions to require automatic sanctions if any nation (or its vessels) was so much as "identified" as diminishing the effectiveness of ICCAT.

To the contrary, I would argue that the 'consultations' provisions of these ACTA trade measures deliberately provide an opportunity for the US to enter into a bilateral negotiation with a violating ICCAT nation from a position of great strength, and to achieve a constructive, mutually acceptable resolution of the situation without the need to actually apply a trade sanction.

I hope that the Committee will strongly encourage the Agency to revisit its interpretation of this statute and reconsider its application to any number of situations in which ICCAT member nations and non-member nations are clearly, repeatedly and, in some cases, deliberately undermining the effectiveness of ICCAT. With the proper interpretation of its authority, the Administration could move forward immediately in applying this tool without the need for any further legislative action.

Bluefin Tuna

As I mentioned earlier in my testimony, the arbitrary line drawn down the middle of the Atlantic Ocean in 1982 split the management of bluefin tuna into two very different programs with dire consequences for US fishermen and the resource. In the western Atlantic area, the US, Canada and Japan have operated for more than 20 years under a very conservative quota and compliance has been excellent.

In stark contrast, the eastern Atlantic area, member nations of the European Union and other nations bordering the Mediterranean has operated under a very liberal quota regime that is literally ten-times larger than the western quota. Still, overall compliance by eastern Atlantic bluefin fishing nations has been poor. The situation is very complex and not consistent among nations—we have cases of some nations overfishing their quotas, some declaring autonomous quotas outside ICCAT management, and some choosing not to report their catches at all. The situation is also not static—each year we are presented with a widely different mix of compliance problems among those nations.

As you may know, the problem is exacerbated by the recent definitive scientific conclusions that even if there are two separate, reproductively distinct stocks originating in the Mediterranean and in the Western Atlantic, the spatial and temporal degree of mixing of these two stocks is so great that separate stock management cannot be effective. This landmark US scientific research employing state-of-the-art satellite tagging technologies and funded directly by Congress has turned bluefin tuna science on its head. ICCAT must now answer the very difficult question of how to effectively conserve, manage and allocate bluefin tuna across the Atlantic as if it were one stock.

To answer this question, in 2002 the US initiated the establishment of the ICCAT Working Group on Integrated and Coordinated Atlantic Bluefin Tuna Management Strategies. This Working group is unique in that it will bring both scientists and managers together. Although the first formal meeting of the Working Group is scheduled for November 15 in Dublin (just prior to the ICCAT meeting), US and other ICCAT scientists have already met to outline the scientific research program that will be essential to support this huge endeavor. My understanding is that this program will need a budget of \$2-3 million per year for several years.

The key point is that US fishermen have a great stake in how fisheries are managed in the eastern Atlantic. Gross overfishing and non-compliance in the eastern Atlantic bluefin tuna fisheries have a direct, negative impact on US fishermen as well as US efforts to properly manage and rebuild this fishery. The US must address itself to solving this problem for both parochial and global conservation and economic reasons.

Unfortunately, the reality is that we will have to drag along kicking and screaming those nations that now fish in the eastern Atlantic. For obvious economic reasons, they do not want this Working Group or this scientific research to succeed in stopping the out-of-control situation they now enjoy in eastern Atlantic bluefin

fisheries. Therefore, I believe it will be necessary for the US to again step up to the plate to fund the scientific research crucial to support the Working Group efforts. This is a very important financial commitment for Congress to consider.

The origins of the eastern Atlantic bluefin tuna management problems are incredibly complex and varied. They include the geopolitics of the region, the ineffectiveness of the EC bureaucracy to control member nations, the wide range of the relative state of economic development and political stability within individual nations, and even cultural issues, as in the case of the large harvest of juvenile bluefin tuna in the Mediterranean that supplies the region's traditional cuisine. Overlying this complex situation is the fact that the Mediterranean is perhaps the most important spawning area for bluefin tuna in the Atlantic.

Although the US has focused a great deal of its attention on the EC, it is not so simple to say this is just an EC problem. Nations that participate in these fisheries range from such nations as France Spain and Italy to Libya, Tunisia, Malta, Turkey and Morocco. Nevertheless, my strong personal belief is that the EC must become the leader of a regional solution to the problem. Other, less developed nations in the region, are likely to follow the example of the EC—good or bad. The US and other concerned ICCAT nations must continue to put great pressure—at the ICCAT level and at much higher levels of the US Government—on the EC to adopt the conservation ethic and leadership role necessary to effect a meaningful change in the Mediterranean bluefin fisheries.

I must be frank, however. I don't know what a single, specific solution to the eastern Atlantic bluefin problem is. There is no silver bullet—at least I can't see one. We have invested enormous efforts in attacking this on all fronts at the ICCAT level year after year. This year will certainly be no exception and it will consume a huge part of our time and attention.

And, while it is true that each year at ICCAT we chip away at the problem, it is also true that each year we are confronted and frustrated by a different and often deteriorating set of circumstances. We need real help on this one. I, and others in the US ICCAT community have been seeking bilateral interventions from the highest levels of our government with such problem areas as the EC, and I think we are beginning to receive it. Congressional actions such as this hearing and the introduction of H. Con. Res. 268 certainly help a great deal.

Swordfish

On important concern I have regarding the north Atlantic swordfish stock is that the US protect its current quota share. Years of aggressive domestic bycatch controls combined with the dramatic rebuilding of the north Atlantic swordfish stock has left the US pelagic longline fishery without sufficient access to the resource to harvest the full US quota.

Repeated failure of the US to harvest any ICCAT quota places our quota in real jeopardy of being reallocated to other nations with poor records of compliance and far less control over their vessels than the US. The demand for ICCAT swordfish, particularly by new ICCAT members and developing nations, far exceeds the scientific total allowable catch. The consequence of such a reallocation to such nations would be to undermine the current level of conservation in the fisheries. Far more white and blue marlin, small swordfish and sea turtles will be killed if US quota is lost to these other nations.

I believe there are two things the US should do to address this concern.

1) Re-open the Grand Banks Fishery. This is a US domestic initiative. As explained above, the US is soon the complete an incredibly successful cooperative research program to reduce sea turtle bycatch with the US longline industry in the NED statistical area. This was conducted under an experimental fishery permit after the NED area was closed to US longline vessels pursuant to the Endangered Species Act (ESA).

I believe the experimental fishery has far exceeded the sea turtle bycatch and mortality reductions of the ESA mandate and that the fishery should be fully reopened early next year. To date, approximately 12-14 US pelagic longline vessels have been allowed to participate in the experimental fishery. This fishery could be expanded through the reopening of the area and by providing US vessel operators the opportunity to refit existing vessels or to build larger vessels that can safely operate so far offshore.

I don't want to overstate this, but the expansion of the Grand banks (NED) fishery provides one important opportunity for the US to shift pelagic longline fishing effort away from US near-coastal areas to the

productive Grand banks swordfish and tuna grounds as well, as to more fully harvest the US quota share.

2) Defend ICCAT Quota. The US must vigorously defend its ICCAT quota share of north Atlantic swordfish so that it is not reallocated to nations that do not even approach the U.S. level of conservation of directed-species or bycatch species. Failure to achieve this objective will undermine the conservation of many ICCAT species.