TESTIMONY OF

JAMES P. WALSH

ON BEHALF OF
SOUTH PACIFIC TUNA CORPORATION

REGARDING

H.R. 3583: AMERICAN SAMOA PROTECTION OF INDUSTRY, RESOURCES, AND EMPLOYMENT ACT

HEARING BEFORE THE SUBCOMMITTEE ON INSULAR AFFAIRS, OCEANS AND WILDLIFE
COMMITTEE ON NATURAL RESOURCES
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Chairwoman Madeleine Bordallo, Ranking Member Henry Brown, and Members of the Subcommittee:

My name is James P. Walsh and I am a partner in the law firm of Davis Wright Tremaine LLP, in its San Francisco, California Office. I am appearing today on behalf of the South Pacific Tuna Corporation (SPTC), based in San Diego, California, which manages a fleet of 14 U.S.-flag tuna purse seine vessels that operate in the Pacific Ocean pursuant to licenses issued under the South Pacific Tuna Treaty (the "Treaty"), representing 36% of the entire U.S. fleet operating under the Treaty. Our firm has assisted SPTC since its formation in 2007. SPTC appreciates the opportunity to appear today and express its views on H.R. 3583, the American Samoa Protection of Industry, Resources, and Employment Act, or ASPIRE. In addition, I have been authorized by Tradition Mariner LLC of Tampa, Florida, which operates 5 U.S. flag vessels under the Treaty, to state that they are in support of SPTC's testimony.

The provisions of the proposed bill, if enacted in present form, would have a direct and profound effect on the SPTC fleet by increasing the cost of operations, without any concomitant benefit to the fleet, thereby making the fleet's tuna harvests less competitive in the world market. In essence, H.R. 3583 attempts to legislate markets rather than letting cost, price and efficiency be the guide to where fish harvests are landed. At the same time, the bill lacks any real forward-looking incentive for landing the SPTC fleet's catches in American Samoa. The meager "landing" subsidy ($100 per metric ton for SPTC vessels) provided for in the bill is not an attractive incentive for SPTC vessels, given the cost of "direct delivery" of tuna catches to American Samoa from distant fishing grounds where the vessels fish. The ocean area covered by the Treaty exceeds 10 million square miles and SPTC vessels operate in ocean areas far from

American Samoa. Legislation such as H.R. 3583 also cannot provide any guarantee that SPTC vessels would realize the proposed subsidy because the price paid to our vessels would likely be discounted by the processor. Moreover, the processing capacity currently operating on American Samoa is quite limited. SPTC has no marketing agreement with the processing company still operating there, so our vessels—unlike other U.S.-flag and Korean-flag vessels—have no market in American Samoa.

In my testimony today, I will (1) provide some general background about the Treaty and the SPTC fleet, including where the fleet currently lands its fish catches; (2) place the proposed legislation in the context of the ever-changing and highly competitive business of catching and landing tuna in the Pacific Ocean; and (3) address the specifics of the bill and indicate the reasons why SPTC must oppose the legislation. In summary, H.R. 3583 is misguided public policy. The bill lacks an understanding of fundamental market economics, the global nature of the tuna fishery, and the competitive realities in which U.S. companies and vessels must operate. The bill was written in a manner that unfairly favors one processor and one segment of the U.S. fleet over their competitors.

The South Pacific Tuna Treaty

A license issued pursuant to the South Pacific Tuna Treaty is the essential ticket to the SPTC's fleet operations in the Pacific Ocean. Without it, U.S. tuna vessels would probably not operate at all in the region. Entered into first in 1988, the Treaty has just been renewed for the third time. The parties to the Treaty are: Australia, the Cook Islands, the Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, the Marshall Islands, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, the United States, and Vanuatu. The Treaty will continue in force until June 1, 2013, unless renewed again.

According to a 2008 NOAA Report, the U.S. purse seine fishery in the region accounted for 79% of the total U.S. catch of highly migratory species in 2007. The estimated value of this catch in 2008 was in excess of $200 million. For the Subcommittee's reference, attached as Exhibit 1 is a chart (Figure 1) showing the geographic distribution of the U.S. purse seine effort in 2007. It should be noted that the prime fishing grounds of the U.S. fleet are thousands of miles distant from American Samoa. Furthermore, it should also be understood that the SPTC fleet is not eligible to fish in U.S. navigable waters or the U.S. Exclusive Economic Zone (EEZ), including around American Samoa. Fishing by the fleet may only occur in the waters open to tuna purse seining under the Treaty or in waters of the high seas, outside the 200-mile EEZ of any nation.

The Treaty includes an obligation by the United States to provide $18 million annually to the Pacific Island nations that subscribed to its terms, through an Economic Assistance Program. In addition, the U.S. industry provides other payments to these nations, based on licensing arrangements and the price of fish caught, that total approximately $5.7 million. For this year, each of the 14 vessels in SPTC's fleet paid a Treaty license fee to the Pacific Island nations of $130,000. Each vessel is also obligated to comply with strict conservation and management measures, monitoring requirements (including observers on vessels), regular fishing data reporting, and full-time vessel monitoring using a satellite-based system. In addition, each vessel is subject to U.S. licensing and ocean resource management regulations. The treaty area in question is a major source of tuna that is used for the world canned tuna market. Access to the fishing grounds in the Treaty area is essential to the U.S. tuna industry, in particular to the SPTC fleet.

General Background on the SPTC Fleet

As noted by other witnesses, the United States Government, the Pacific Island Treaty nations, and the U.S. tuna industry became quite concerned when the number of U.S. flag tuna purse seine vessels operating under the Treaty began to decline earlier in this decade. Competition with foreign-flag fleets is intense and the U.S. fleet, which had started out in 1988 with 50 Treaty licenses available and in use, dwindled to as few as 11 vessels in 2005. As in many other industries competing in the global market, U.S. vessels had to figure out a way to reduce operating costs in order to remain competitive and the SPTC fleet is trying to do that.

Each vessel in SPTC's fleet is documented under 46 U.S.C. §§ 12103 and 12111 (registry) of the Vessel Documentation Act and not under § 12113, which provides for fishery endorsements that are general licenses to fish in U.S. waters. Consequently, all of the tuna purse seine vessels in the SPTC fleet are owned by American companies in which U.S. citizens own 51% of the interests. The remainder of the equity investment is provided by foreign investors.

Today, the overall U.S. fleet operating under the Treaty consists of 39 vessels, but by agreement cannot exceed 40. The Treaty nations have been discussing further limitations on fishing opportunities through something called the "Vessel Day Scheme", which would allocate a limited number of days for fishing under the Treaty to licensed vessels. Obviously, the existing Treaty system is subject to change, with potential new limits on fishing opportunities that will bring new competitive challenges.

Over the last several years, as part of the international cooperation fostered by the Treaty, the U.S. fleet has been developing business networks in the Pacific Island Treaty nations, including the following ports and nations: Majuro, Republic of the Marshall Islands; Rabual, Papua New Guinea; Kiribati; Pohnpei, Federated States of Micronesia, Palau; Honiara, Solomon Islands; Vanuatu; and Papeete, Tahiti. The transshipping arrangements in these countries have been essential to the overall success of the Treaty.

The Impact of H.R. 3583, APIRE, on the SPTC Fleet

SPTC has great sympathy for the current plight of those who live on American Samoa because of the recent tsunami. For many years, representatives of the U.S. tuna fleet have had close personal bonds with the people of American Samoa and its Congressional leaders. We would like to do more to help. However, given the powerful economic forces of the world economy, with more changes on the horizon, SPTC has no choice but to strongly oppose H.R. 3583.

The difficulties facing the tuna canneries on American Samoa also appear to stem from economic forces affecting their ability to compete in the world market, including a high minimum wage requirement relative to other global processing locations. The Findings section of the bill focuses on the shore-side processing component of the industry and admits that the U.S. tuna fleet no longer directly delivers to American Samoa. What the Findings fail to recognize is that using a U.S. tuna purse seine vessel as a transport for its own catch over long distances just to deliver to American Samoa makes no economic sense. Fishing time is at a premium and using SPTC's vessels for both fishing and transport would take the vessel off the fishing grounds for long periods of unproductive time. SPTC estimates that the cost (lost fishing time and fuel) of making a single vessel delivery to American Samoa under the bill would be prohibitive and make SPTC vessels non-competitive in the world market.

Despite the economic realities in the tuna business, H.R. 3583 proposes a system of fees, taxes, and subsidies to either lure (or force) the U.S. tuna fleet operating under the Treaty to deliver their catches to American Samoa. First, in Section 3, each of SPTC's fleet would have to pay a new $250,000 fee to the United States Government for the benefit of economic development in American Samoa. This annual fee is nearly double the license fee currently being paid under the Treaty. The fee would be waived if a vessel makes not less than three deliveries per year to shore-side processors in American Samoa. This fee would be applied regardless of whether the SPTC's fleet had any nexus to, or did business in, American Samoa. Second, the SPTC's fleet would be subject to a punitive tax of 6.25 percent per metric ton of fish delivered if a vessel "delivers tuna to another vessel or other location for the purposes of transshipment." The proposed language in the bill amending 48 U.S.C. § 1469d(d) with respect to the 6.25 percent fee is confusing because the words "ad valorem" are not included. But the intent appears to be a tax on the value of a metric ton, not the weight. All of SPTC's vessels currently make such transshipment deliveries. Finally, if the SPTC's fleet decides to deliver to shore-side processors in American Samoa, the fixed $250,000 fee and the ad valorem tax of 6.25 percent per metric ton would be waived and, for each ton so delivered, a subsidy of $100 per metric ton would be paid.

Our conclusion is that a main purpose of the fees and taxes in H.R. 3583 is simply to generate a fund to offset the cost of providing a subsidy to the only processing plant still operating in American Samoa. Further evidence for this conclusion is the fact that the longline fleet based in Hawaii is also subject to the bill's system of fees and taxes. That fleet has never delivered to American Samoa and probably never will, regardless of any incentives for "direct delivery."

The only currently operating tuna processing plant on American Samoa is owned by the StarKist Seafoods, a wholly-owned subsidiary of Dong Won, a Korean company. That company's capacity for processing round light meat tuna is estimated at around 100,000 tons per year. It would be the only market for deliveries of tuna under H.R. 3583. The current yearly harvesting capacity of the entire U.S. fleet operating under the Treaty is approximately 300,000 tons per year. Thus, this stark mismatch between the market for accepting deliveries (or demand for raw fish) and the mandated direct deliveries (or the supply of raw fish) created by the bill makes the entire theory of the legislation irrational. Moreover, there is no requirement that the Starkist plant should remain open or that the mandated fees and taxes should expire if the plant closes. Finally, the only plant in town would surely be able to dictate price to those vessels that must make "direct delivery" in order to avoid the fees and taxes of H.R. 3583.

Therefore, because of inadequate capacity for processing and the possibility of no processing capacity, H.R. 3583 would serve only to pressure all, or a substantial part, of the U.S. fleet to land their catches at American Samoa simply for transshipment to a processing plant located somewhere else in the world. Moreover, the bill would also provide monopolistic pricing power to the only processing plant on American Samoa relative to those who must make direct deliveries, assuming any capacity is available.

SPTC does not believe that the measures in H.R. 3583 can effectively (and artificially) create a shore-side processing industry in American Samoa. If there is no such industry in American Samoa, or if bill is unexpectedly successful but only at maintaining a limited capacity, H.R. 3583 is written in such a way that the SPTC fleet would still be hit with punitive fees. Our client's business simply cannot withstand these kinds of government-ordered fees and remain competitive. Moreover, the subsidy of $100 that would apply to SPTC's vessels is so low as to be a meaningless carrot in light of the cost of using a purse seine vessel as a transport and the associated loss of fishing time. Therefore, SPTC believes that the bill, as written, would not achieve its objectives and would punish important segments of the U.S. tuna fleet.

We believe there is a host of other legal problems with the proposal, in particular the possible treatment of the program by other countries under international trade laws. For example, would the subsidies for direct delivery of fish be grounds for anti-dumping measures by other countries? Anti-dumping laws allow for other nations to impose trade restrictions or duties to offset government subsidies to a particular industry. We have not investigated these issues in detail but suggest that they should be examined before any action is taken on H.R. 3583.

Finally, while this Subcommittee is properly concerned about policies toward the Territory of American Samoa, it must be kept in mind that the purpose of the South Pacific Tuna Treaty is to benefit the United States as a nation, including all of its interests, particularly its foreign policy interests with respect to the Pacific Island nations that are party to the Treaty. Enacting H.R. 3583 for the purpose of helping American Samoa would quite likely result in the transfer and reflagging of the U.S. fleet, thereby undercutting an essential commitment of the United States in the Treaty to provide payment of vessel permit fees to the Pacific Island nations.

In conclusion, we urge the sponsor of the bill to look to other ways to assist American Samoa that would not be so deeply harmful to the U.S. tuna fleet.

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I would now be pleased to try to any questions the Subcommittee may have.