

Before the
House Resources Committee
U.S. House of Representatives
Subcommittee on Fisheries Conservation,
Wildlife and Oceans

Regarding:

H. Con. Res. 427

Testimony presented by:

Robert G. Hayes
Ball Janik, LLP
1455 F Street, NW
Suite 225
Washington, DC 20005
202-638-3307

September 26, 2002

Good afternoon, my name is Robert Hayes and I appear before you today in my capacity as one of three commissioners to the International Convention for the Conservation of Atlantic Tunas (ICCAT). I also note that I am the General Council for the Coastal Conservation Association and the American Sportfishing Association. The views I am presenting are my own, although each of

the groups I represent agree with what I have to say here today.

I am not here to extol the virtues of ICCAT. It is a difficult place to make progress and it is a process that is often frustrating and laborious. I am here to tell you that this is where the conservation game gets played for highly migratory species in the Atlantic Ocean. ICCAT can be made to work if we continue US conservation leadership and we are imaginative, well armed with good science and stand by our principles throughout our negotiations. The Congress has been helpful in reinforcing the US commitment to sound conservation principles and in demonstrating our commitment to our foreign counterparts. The resolution, which we will discuss today and the actions of the Congress need to send just such a signal again as we head for yet another round of contentious international conservation negotiations.

The fisheries that ICCAT manages cover the entire Atlantic Ocean, including the Mediterranean Sea, the Gulf of Mexico and the Caribbean Sea. The countries that are members of the Commission are mostly Atlantic coastal countries except for the distant water fishing countries like Japan, Korea and China. There are 32 members of ICCAT with the European Union representing 15 individual countries including Spain, France and Portugal.

To date, ICCAT has established conservation restrictions for eastern and western bluefin tuna, yellowfin tuna, albacore, big eye tuna, blue and white marlin and swordfish. It has considered but has yet to adopt binding measures for sharks, turtles and seabirds. To enforce these measures, ICCAT has adopted compliance measures for member and non-member countries whose vessels operate in contravention of the Convention's conservation measures. Almost all of these measures have been put in place in the last ten years and they have begun to bear fruit.

The most recent assessment for Atlantic Swordfish demonstrates that sound management

measures based on universally accepted and peer reviewed science can recover stocks of fish. I think it is fair to say that the efforts of the Congress, three administrations, the industry, the recreational and environmental communities and the legions of volunteers and agency staff are beginning to pay off. Having said that, there is a mountain of work yet to do.

ICCAT has just begun to address the concept of bycatch. The impact of large commercial harvesting of target species on sharks, billfishes, seabirds and turtles is just beginning to come under the purview of ICCAT. At the insistence of the United States, marlin were the first non-target species in the Atlantic to get protection. As most in this room know, billfishes are much valued in the United States as gamefish. However, in other parts of the world they are a food source at best and a waste of bait at worst. Nevertheless, ICCAT has promulgated a series of rules directed at retarding the decline of Atlantic marlin. In 1995, they adopted an enhanced data program to establish a baseline for future stock assessments. In 1996, ICCAT adopted a voluntary program to encourage the release of all live marlin. In 1997, a mandatory 25% reduction in landings was adopted followed up three years later by adoption of a 50% reduction for blue marlin and a 67% reduction for white marlin. These escalating restrictions were in response to a concern shared Atlantic-wide that marlin stocks were in significant trouble and that effort restrictions were justified.

These reductions apply to the fleets that are fishing legally in the Atlantic. To my knowledge, all of the ICCAT member countries have complied with the marlin recommendations. It is too early to assess what affect the latest measures will have on arresting the decline and furthering the recovery of marlin, but most international scientists agree that these measures have produced a significant decline in mortality.

ICCAT is at best an incremental process. One cannot assume that all of the ills, as this country sees them, will be solved every year. However, as long as our goal is conservation of the resource, the prevention of overfishing and the recovery of overfished stocks, we can make

progress. This year there are two very large problems on which we can make progress. The first is bringing a recovery program to eastern bluefin tuna; the second is putting measures in place to control illegal, unregulated and unreported fishing.

Eastern Bluefin

Last year, the United States took the extraordinary step of objecting to the harvest levels proposed for eastern bluefin tuna.^[1] The action precipitated a series of events which cratered last year's meeting and resulted in the first series of votes ever taken by ICCAT. Many delegations in the room in Murcia, Spain were shocked the United States felt so strongly about a fishery that they did not participate in and what, at least to most, was a fishery which had little impact on the United States.^[2]

Why was the United States so adamant in its opposition to the harvest levels agreed upon by the EU and 20 other members of ICCAT?

The United States has three paramount interests here. The first is the impact on the conservation ethic of our own citizens. US harvesters, commercial and recreational, are the conservation leaders at ICCAT. Year after year, our harvesters tighten their belts, lower their expectations and work toward conservation regimes that prevent overfishing and rebuild stocks. It is extremely difficult to maintain that ethic in the face of foreign vessels fishing well in excess of scientifically recommended levels.

The second reason is biological. Scientists have increasingly found evidence that there may not be two stocks of bluefin in the Atlantic. At a minimum they are concluding that there is a significant amount of intermingling of the east and the west. The level of dependence of one on the other will be determined in the future but it is now clear that the two stocks mix. What happens in the east does have some impact on the western stock.

Lastly, there is the integrity of ICCAT itself. ICCAT has operated as a consensus organization for 30 years. Consensus is important because any country disagreeing with a conservation measure can object to it after the meeting and the measure will not apply to harvests from that country. The use of objections, which are being used more frequently, undermines the conservation objectives of ICCAT. In order to get consensus and reduce the use of objections, it is necessary for the larger fishing nations and the principal seafood markets to show conservation leadership. Without that leadership the conservation gains of ICCAT will quickly erode to an all nation harvest free-for-all.

For the last ten years, the United States has endorsed harvest at levels supported by sound science. For the last six years, the United States has followed the management formula in the Magnuson-Stevens Act, namely, preventing overfishing and rebuilding stocks as quickly as possible. What the European Union proposed last year was a harvest of some 8000 MT above the harvest level recommended by the SCRS of 25,000 MT. They simply wanted to overharvest for a couple more years so they could get a comprehensive allocation scheme put in place. When the United States objected, other countries, notably Canada and Korea, voiced concerns. Soon enough Korea noted the absence of a quorum without which no votes could be taken. Subsequently, ICCAT has taken a series of votes by mail. All of them passed except the EU eastern bluefin tuna proposal.

This leaves the issue of eastern bluefin tuna to the beginning of this year's meeting. ICCAT will have to decide what to do about this year's catch level and then decide on subsequent years. It will have to make that decision in a far more heated environment than last year. The Recreational Fishing Alliance has filed a 301 petition here in the United States asking for trade sanctions for the EU's failure to comply with ICCAT measures.^[3] The petition has the support of a number of

recreational and commercial groups. There is a rumor that the World Wildlife Fund will file a Pelly Act petition making similar arguments. In addition, there is the continued Congressional oversight of the EU actions. Lastly, the voting coalition that the EU enjoyed in Murcia dissolved during the mail votes on the eastern bluefin proposal last spring.

Last year, the United States position was clear and so far it has remained unchanged. The countries in the eastern bluefin fishery need to reduce their harvest to a level consistent with the SCRS recommended level. This may take a series of years to achieve but the continuation of the overharvesting at the present level is unacceptable. We need to press forward aggressively on eastern bluefin to ensure that harvest of all ICCAT species is consistent with sound internationally accepted principles of conservation.

Illegal, Unregulated and Unreported Fishing

The second problem that needs to be addressed at this year's session is the ongoing dilemma of illegal, unregulated and unreported (IUU) fishing. The world has been chasing a fleet of pirate vessels harvesting on the high sea for the last ten years. These vessels are not registered in countries that are part of any regional conservation regime and for the most part don't comply with any of the conservation recommendations. These vessels are predominately longliners built in the 60's and 70's as part of the Japanese longline fleet. Japan, wishing to right size its overcapitalized longline fleet, sold these vessels in the early 90's and the chase began. These vessels harvest tunas and swordfish on the high seas without encumbrances.

ICCAT estimates that there are some 400 of these vessels. The fishing power of this fleet is substantial. As a comparison, the US fleet in the Atlantic is about 100 vessels. They average 70 feet in length and fish about 80 days a year. The IUU fleet averages 120 feet in length and fish in the Atlantic about 200 days a year. The fishing power of this fleet is roughly 10 times that of the US fleet^[4]. But that only begins to describe the potential damage. The 67% reduction in landings

for white marlin does not apply to this fleet. The cap on Yellowfin effort does not apply to this fleet. The rebuilding plan for swordfish does not apply to this fleet. Nothing ICCAT has put in place has been able to be enforced on this fleet. The damage they are doing is stunning.

For the past ten years, ICCAT has instituted a series of enforcement measures, many of which have been directed at these vessels. The committee which reviews the enforcement of these measures now takes almost half of the plenary session to complete its work.^[5] These measures have been directed at the countries that register the vessels. By the time the enforcement measure goes into place the vessels have moved to a new country. ICCAT can not continue to approach controlling this fleet by the use of country specific measures. It needs to take an approach that puts the IUU fleet out of business by controlling access to the market for the fleet's products. Just such a measure is being discussed by the EU, Japan, Canada and the US.

This measure would make harvests of these vessels ineligible for entry into the markets of the ICCAT member countries. Ideally it would work similar to the present coffee and textile agreements. Vessels allowed to harvest in the Atlantic would be registered with the ICCAT Secretariat every year before fishing begins. Harvests would be shipped with accompanying documentation identifying its origin. In order to import swordfish, bigeye, bluefin and yellowfin tuna the import would require a certification from the exporting country that the product was caught in compliance with ICCAT conservation measures.

Domestically, it would mean more work for Customs and NMFS but once the EU, Japan, US and Canada put market controls in place, the impact on the conservation of ICCAT managed stocks will be significant. The adoption and implementation of this measure will have more impact on the conservation of white marlin than any other single measure ICCAT now has under consideration.

Future Needs

The United States will continue its conservation leadership at ICCAT so long as it can provide a scientific justification for the measure it supports. Science, more than any other effort, brings results at ICCAT. The United States is considering the use of closed areas to reduce bycatch and enhance the recovery of stocks. This effort lacks adequate data to analyze the specific areas and the consequences of closures. Longlining continues to be a preferred method of high seas harvest. Many in the United States believe that there are ways to reduce the impact of longlining on non-target species by changing fishing methods and gear. If the United States intends to go this route, it will need some research to support change.

What can Congress do?

1. Support the United States effort to bring the EU into compliance for the harvest of eastern bluefin tuna.
2. Support the adoption of market controls to eliminate IUU fishing.
3. Break out the highly migratory species research portion of the Gilchrist/Saxton bill and add it to the IFQ discussions now being held by the House and the Senate. In the alternative, being an initiative to fund HMS research.

This Congress has already been supportive of the efforts to bring sound conservation to ICCAT. Passage of the resolution before you and continued dialogue with the administration on EU fishing and IUU controls can this year take us all one step closer to a better managed and healthier resource in the Atlantic.

Thank you for this opportunity to comment.

[1] ICCAT operates on consensus but has since its inception had a very detailed voting process. Prior to last year, the voting process had never been used for conservation measures.

[2] It is unclear today what the impact of the US action will be on the future of ICCAT. Last year's meeting will be adjourned this year at the start of the Bilbao meeting after an agreement on how to treat eastern bluefin catches for this fishing year. The need for votes in the future and how it will change the acceptance of measure by individual countries is still in doubt.

[3] EU countries have failed to comply with the minimum size requirement for years. In addition, the EU's reluctance to fish eastern bluefin at MSY levels can be argued to be in contravention of the treaty's objective.

[4] This is a very conservative estimate. The IUU fleet probably fishes 300 days a year in the Atlantic, Pacific and Indian Oceans. Its cargo is transshipped at sea to the major seafood markets in the world.

[5] Five years ago this committee, known as the Permanent Working Group for the Improvement of ICCAT Statistics and Conservation Measures or PWG met for less than two hours in a 10 day meeting.