

103

**ATLANTIC TUNAS CONSERVATION ACT
REAUTHORIZATION**

Y 4. M 53: 103-71

Atlantic Tunas Conservation Act Re... **ING**

THE
SUBCOMMITTEE ON FISHERIES MANAGEMENT
OF THE
COMMITTEE ON
MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS
FIRST SESSION

ON

H.R. 779
**A BILL TO REAUTHORIZE THE ATLANTIC TUNAS
CONVENTION ACT OF 1976**

OCTOBER 20, 1993

Serial No. 103-71

Printed for the use of the Committee on Merchant Marine and Fisheries



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1994

75-499 -.

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-043581-1

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ATLANTIC TUNAS CONSERVATION ACT REAUTHORIZATION

WEDNESDAY, OCTOBER 20, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES MANAGEMENT,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, DC.

The Subcommittee met, pursuant to call, at 1:35 p.m., in room 1334, Longworth House Office Building, Hon. Thomas J. Manton [chairman of the Subcommittee] presiding.

Present: Representatives Manton, Hughes, Taylor, Lancaster, Cantwell, Pallone, Coble, Kingston, and Torkildsen.

Staff Present: Jeffrey Pike, Chief of Staff; Sue Waldron, Press Secretary; Jim Mathews, Staff Director; Greg Lambert, Counsel; Lori Rosa, Clerk; Jean Flemma, Professional Staff; Vicki Credle and Bill Price, NOAA detailees; Julie Roberts, Sea Grant Intern; Margherita Woods, David Whaley, Laurel Bryant, Ed Lee, and John Rayfield, Minority Professional Staff.

Mr. MANTON. Good afternoon, everybody. We are supposed to start at 1:30 but you may have heard the bells go off for a vote. I suppose most Members of the Subcommittee will want to head over now to vote, so that is precisely what I am going to do. If you will just bear with us, we should be back in about 10 minutes and we will get started.

(Recess.)

STATEMENT OF HON. THOMAS MANTON, A U.S. REPRESENTATIVE FROM NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON FISHERIES MANAGEMENT

Mr. MANTON. Good afternoon ladies and gentlemen. We will get started. This year the Subcommittee on Fisheries Management has devoted considerable attention to the reauthorization of the Magnuson Fishery Conservation and Management Act. The Magnuson Act established a conservation and management regime for fish stocks that dwell primarily within the United States exclusive economic zone.

We now turn our attention to some fish stocks that roam the high seas. While international law allows a nation to exclude foreign fishing vessels from its exclusive economic zone, on the high seas it is a veritable free-for-all, where any fishing boat from any nation may take whatever amount of fish it can handle without regard to the need for responsible conservation measures.

Fortunately, in some instance, fishing nations have joined together to manage and conserve international fish stocks. With regard to tuna and other highly migratory species, the United States and 21 other nations have joined the International Convention for the Conservation of Atlantic Tunas, known also as ICCAT.

Clearly, U.S. efforts to conserve Atlantic tuna would be wasted if other fishing nations continued to harvest these fish without regard to reasonable management measures. Through ICCAT, 22 nations come together to develop recommendations to manage tuna fishing activities on both the high seas and within the relevant exclusive economic zones.

There have been and continue to be many complaints about the ICCAT management regime. Immediately following this hearing, the Subcommittee plans to mark up and report a resolution addressing one of the most serious concerns, that U.S. fishermen are restricting catch to conserve the resources while others continue to harvest without regard to conservation needs.

For the moment, however, our focus is more narrow. We need to hear from our witnesses what changes, if any, are needed to improve the Atlantic Tuna Conservation Act, or ATCA. This act, passed in 1975, is the domestic legislation that implements ICCAT.

The authorization for this act expired at the beginning of this month and the legislation before the Subcommittee will authorize continued funding of ATCA. Accordingly, we are also interested in the views of witnesses on an appropriate level of funding for the implementation of this act.

I welcome our witnesses and we will recognize our ranking member when he gets here. Mr. Coble, would you care to make an opening statement?

Mr. COBLE. I have no opening statement, Mr. Chairman. I would, without objection, enter the statement of Mr. Fields in the record.

Mr. MANTON. Without objection, so ordered.

[The statement of Jack Fields follows:]

STATEMENT OF HON. JACK FIELDS, A U.S. REPRESENTATIVE FROM TEXAS, AND RANKING MINORITY MEMBER, COMMITTEE ON MERCHANT MARINE AND FISHERIES

Mr. Chairman, today the Subcommittee on Fisheries Management meets to hold a hearing on legislation to reauthorize the Atlantic Tunas Convention Act of 1976 (ATCA).

As the members know, the Atlantic Tunas Convention Act of 1976 is the United States' implementing legislation for the International Convention for the Conservation of Atlantic Tunas (ICCAT). While the Senate ratified the convention in 1967, implementing legislation was not enacted until 1976.

ATCA includes the mechanisms for selecting commissioners to ICCAT, for allocating resources between commercial and recreational fishermen, and provides for enforcement of regulations governing fishing of Atlantic tuna. This Act has been periodically reauthorized, the most recent being passed in 1990.

While H.R. 779 is a straight reauthorization of ATCA through 1997, we will hear testimony on a number of issues, including the effectiveness of the 1990 amendments to the Act.

I look forward to hearing today's testimony since we will be addressing a related issue dealing with the Atlantic bluefin tuna later today and at the Full Committee markup tomorrow.

Mr. MANTON. Are there any other members that desire to make an opening statement? If not, we will proceed with the panel and

we will recognize our first witness who, I believe, has a plane to catch. Dr. Foster.

STATEMENT OF DR. NANCY FOSTER, DEPUTY ASSISTANT ADMINISTRATOR FOR FISHERIES, NATIONAL MARINE FISHERIES SERVICE ACCOMPANIED BY RICHARD STONE, DIRECTOR, HIGHLY MIGRATORY SPECIES DIVISION, NATIONAL MARINE FISHERIES SERVICE

Dr. FOSTER. Actually my plane has been canceled, so I am yours for the afternoon.

Mr. Chairman and members of the Subcommittee, I am very pleased to be here today. I am the Deputy Assistant Administrator for Fisheries within NOAA and with me is Mr. Richard Stone, head of our Highly Migratory Species Division, who watches over the programs we are going to talk about.

I am pleased to be back here again before this Subcommittee, this time to present our Department's views on the Atlantic Tunas Convention Act, and I will try to be brief so you can get to all the questions I know you have.

Our role in this effort on behalf of the Secretary is to implement the ICCAT recommendations through domestic policy, by promulgating regulations under ATCA, or through the Magnuson Act FMP process, and fishery management plans implementing regulations.

And as I indicated, we have established this new Highly Migratory Species Division in order that we might do this work.

Now, this Division doesn't work all alone. It is supported by our Northeast and Southeast Regions and Science Centers, by the fishery management councils, the industry, and anybody with an interest in these issues.

We just recently published our highly migratory species process document which actually is intended to set forth administrative procedures that we intend to follow as we implement and prepare to issue Magnuson Act FMPs and their amendments.

This process goes to great lengths to identify areas where the public can get involved in the decisions that we are making. In fact, there are those folks who have said we have practiced a little overkill with our intent on making sure that everybody had a chance to speak their piece.

Now that we have completed this process document, we intend to look at additional things that need to be done, additional activities, such as looking at ways that we can better track landings of recreationally caught bluefin, things we can do for additional tagging studies, and economic studies. In fact, I would like to just mention how grateful we are for the efforts of the Chairman on our behalf during the budget process this year. Because of his efforts, we might actually be able to do some of these things.

We believe that the United States has been particularly successful in implementing ICCAT recommendations; however, we want to make sure that we point out that ICCAT's Committee on Research and Statistics, as well as our own scientists, continue to believe that the western Atlantic stock of bluefin tuna remains in a state of significant decline.

We would also point out that the United States' commercial and recreational fleets harvest about 52 percent of the total western Atlantic bluefin tuna quota, and that comes to only about 4 to 6 percent of the total Atlantic catch, and that is generally true for our involvement in ICCAT fisheries. Although the U.S. share of the total Atlantic catch of species covered under ATCA is relatively low, we continue to be aggressive participants and strong supporters of ICCAT and continue to believe that ICCAT is the primary avenue by which these resources can be successfully managed.

We support H.R. 779 and the reauthorization of this law. We do have one suggested amendment. We propose to delete the provision in the law that prohibits the Secretary from issuing regulations which might have the effect of increasing or decreasing the total quota of fish allocated to the United States.

We think that provision potentially could cause a problem if the United States wanted, for example, to establish a domestic quota on the local stock or a substock for conservation purposes and that quota should happen to be less than what was allowed by ICCAT.

We believe that this provision inhibits some of the long-term benefits and that it unnecessarily ties the hands of the Secretary.

I understand that, and as the Chairman mentioned, Congressman Studds has introduced a concurrent resolution, and while it is obvious that the administration has not yet taken a position on this resolution, I would just like to say that we feel, again, very strongly that the United States must take an aggressive and a proactive role in trying to do any and everything we can, using all the tools at hand, to see that other nations who are signatory to ICCAT play by the same rules that we do.

Thank you for letting me express these views, and we will try to answer any questions you might have.

Mr. MANTON. I think that we will go through the entire panel and then we will take questions from the various members.

[The statement of Nancy Foster can be found at the end of the hearing.]

Mr. MANTON. Our next witness, Mr. Nelson Beideman, Executive Director of the Blue Water Fishermen's Association.

STATEMENT OF NELSON BEIDEMAN, EXECUTIVE DIRECTOR, BLUE WATER FISHERMEN'S ASSOCIATION

Mr. BEIDEMAN. Thank you, Mr. Chairman, Members of the Subcommittee, for inviting me to speak.

I am Nelson Beideman, Executive Director of Blue Water Fishermen's Association and have been a fisherman since childhood and began commercial fishing year round after graduating from Maine Maritime Academy in 1975.

Blue Water represents commercial fishermen, vessel owners, fish dealers, and supporting supply companies involved with Atlantic highly migratory marine species. These family-run small businesses are proud to carry on the tradition of providing healthy food for other Americans who cannot or do not want to catch their own.

Our members are active in research programs, including tagging, the fishery management process, and we have developed a voluntary pilot program to donate dead swordfish that we are currently

required to discard to feed hungry Americans while providing CPUE information to the scientists.

Blue Water strongly supports retaining secretarial authority. Despite the delay, National Marine Fishery Service has made significant progress in setting up a system that is responsive to both the fishermen and the resource. However, two essential areas must be reviewed.

First, we suggest that Congress amend the act to require the Secretary of Commerce to appoint planned development teams for each species for the membership of the ICCAT Advisory Committee and Species Working Group.

NMFS says that this cannot be done because of the Federal Advisory Committee Act. The regional councils and their advisory groups were exempted in the Magnuson Act. A similar exemption is needed for management of highly migratory species.

The second element must clarify whether U.S. fishermen should be disadvantaged and restricted beyond ICCAT recommendations. In 1990, Congress spoke clearly that U.S. fishermen must be given a reasonable opportunity to harvest their share of an international quota allocation and that no regulation may have the effect of increasing or decreasing any allocation or quota of fish to the United States agreed to pursuant to a recommendation of the commission.

NOAA has interpreted these terms quite literally. If, as in the case of swordfish, the international recommendation says to reduce fishing mortality, NOAA feels that it does not have to follow this section. As a fisherman, it seems especially contradictory to me when NOAA immediately converts it into a quota for enforcement and monitoring purposes.

Congress should amend references to allocation of quotas in both the acts by adding the term "fishing mortality levels" and restore integrity to the system. I have attached a table based on NMFS and ICCAT's statistics. The total U.S. share of these migratory species as reported landed to ICCAT is only 3.5 percent.

This illustrates why international management is absolutely essential. Regulating only U.S. fishermen will not do the trick for these migratory species. How successful can conservation negotiations be if other countries know that the United States will carry the full burden?

What incentive do they have to conserve these resources with us? How does this differ from the International Jurisdictional Fisheries Bill which calls for fairness and is strongly supported by the environmental and recreational groups?

Unilateral restrictions on international resources would only forfeit American industries for nothing in return. The guy on the deck is willing to make some shared sacrifices if they are, in fact, shared. Where will we all be in the future when we cannot harvest food fish from the offshore waters? What benefits will have come from our sacrifices?

We support Congress' defense of American fishermen, and their related industries against hasty unilateral actions. In the case of swordfish, we now know that the dramatic unilateral reductions of nearly 80 percent were unjustified. We also found that international harvest controls are more effective and produce faster results. The north Atlantic swordfish resource is rebuilding.

International cooperation in management, research, can ensure that conservation goals are sound and that measures are appropriate. Our fishery today is better off, thanks in large measure to the judgment of this Committee that American fishermen should not be made to bear a disproportionate share of the conservation burden.

I thank the Chairman for the opportunity to testify.

Mr. MANTON. Thank you, Mr. Beideman.

[The statement of Nelson Beideman can be found at the end of the hearing.]

Mr. MANTON. Mr. Bogan.

STATEMENT OF RAY BOGAN, LEGAL COUNSEL FOR THE UNITED BOATMEN OF NEW JERSEY AND NEW YORK

Mr. BOGAN. Thank you very much, Mr. Chairman, fellow members.

My name is Ray Bogan and I am legal counsel and represent the United States Boatmen of New Jersey and New York, which are a group of party boat and charter boat fishermen.

I am also an adviser on the ICCAT Advisory Committee and finally, my family has been involved in this fishery for well over 65 years.

As a prelude to the testimony I would like to give today, it is important to point out that the New York Bight region has disproportionately suffered as a result of implementation of domestic policy as to Atlantic bluefin tuna.

In that regard, we have suffered significant economic harm which has threatened the very viability of this important fishery. To a great extent, the mechanisms necessary to promulgate equitable regulations to carry out ICCAT recommendations are already in place in the Atlantic Tuna Convention Act, and in that regard, we support the reauthorization of the act.

In particular, the act provides that to the extent practicable, the regulations affecting highly migratory species must be consistent with fishery management plans prepared and implemented under Magnuson.

I would like to highlight some of the standards under Magnuson to show how they can particularly focus on Atlantic bluefin tuna and other highly migratory species.

I submit that the following recommendations would achieve equity, while not compromising effective conservation and management. The first standard in Magnuson which we would point to is the achievement of optimum yield from each domestic fishery while preventing overfishing. Totally precluding certain regions from engaging in a fishery or inhibiting that fishery by extremely short seasons or unpredictable closures, both of which have been suffered by our region, wind up resulting in a failure to achieve optimum yield. That is because by the very definition of optimum yield in Magnuson, a well established and significant portion of the party and charter boat industry from these two States which are engaged in this fishery add significantly to the overall benefit to the national economy, which is most fundamental in Magnuson.

Moreover, the school and medium fishery long engaged in by this region provides two fundamental things required under Magnuson's optimum yield requirements, and they are, a food source to those engaged in that fishery, and finally, a great recreational opportunity for thousands of fishermen.

Likewise, maximum sustainable yield under Magnuson must be reviewed and considered in the context of social and economic impact of closures and undue restrictions on this region or any other fishery affected. More equitable structured allocations and administration of bluefin allotments would result in a greater viability for this region's depressed fishery.

These same factors will come into play as soon as we get to the point where we have more domestic regulations of yellowfin, bigeye, albacore and the like. All highly migratory species will wind up being affected in the same way, and therefore I respectfully submit that that becomes very relevant.

Likewise, the national standard requires implementation of plans using the best scientific information available. User groups, as well as peers, have reviewed documentation used by NMFS scientists for years and have questioned the same and tried to make constructive recommendations to create a better data base and to reach more sound conclusions. That is not criticism per se. What that is, is involving yourself in the process. I think the Atlantic Tuna Convention Act already, by providing for the best scientific information available to be included, mandates these scientists and those persons within NMFS considering this data to look at all of the data, to look at the broadest possible base so that the greatest and most equitable conclusion can be reached.

Only then can we have effective international management as well as national management.

Standard four provides that conservation and management shall not discriminate between residents of different States. Notwithstanding this standard, I respectfully submit that NMFS would agree that the results of their regulations over the last several years have been quite discriminatory against our region.

In particular I refer to the New York Bight, New York State, as well as the State of New Jersey. An example would be a 600-ton allotment this year on giants to the New England area, eight tons to the State of New Jersey. That is extraordinary.

It is a stark comparison, but it shows that the Magnuson standards are there to guide, but unfortunately, because of difficulty in implementation and difficulty in monitoring, which sometimes is the result of just a difficult and burdensome administrative process that NMFS has to live with by way of less money, whatever, results in a very, very discriminatory practice. Not purposeful. It is just the result.

Likewise, the closures of the school bluefin and large school medium fishery, from Cape May all the way out to the tip of New York. We have always stated that that is the most essential of all fisheries for us, yet year after year we have either had extremely short closures or unpredictable seasons.

It is essential that we rely and have that ability to have that fishery. We could perhaps create buffers, buffer periods, rather, in which NMFS is given the opportunity to catch up to the data

which often lags behind, thus causing an early closure or unpredictable closure.

As to the U.S. role in ICCAT, I would just like to say that the United States cannot carry most of the conservation burden on its shoulders. Certainly questions have been raised. In the ICCAT advisory meeting last week, almost every adviser had questions with regard to data which ultimately affects the management decisions of NMFS and ultimately determines the management decision and recommendations of our commissioners.

When data is offered, when data is out there and when reasonable conclusions can be examined again or other conclusions can be examined again, we feel it is incumbent upon NMFS or upon the southeast region, whoever is handling it, to look at that data again and again so it can benefit United States fishermen, and most importantly, to be consistent with the statute, to make sure that those fishermen are not put at an unfair advantage to international fishermen.

Likewise, an 8 percent tolerance, which in our opinion we respectfully submit is too low, creates through that fishery the greatest monitoring process possible, and under ICCAT, if we are monitoring quota, then the more region you cover, the more fish you catch on a greater area, the better for the monitoring process.

In summary, stricter adherence to the national standards contained in Magnuson and greater considerations and openness to industry and peer participation and contribution toward the scientific monitoring and data base, and reconsideration, most importantly, when it is appropriate and when it will mean the difference between the United States being able to practice and fish in a more competitive manner.

That is what ATCA can guarantee and what is there already.

Thank you.

Mr. MANTON. Thank you, Mr. Bogan.

[The statement of Ray Bogan can be found at the end of the hearing.]

Mr. MANTON. Next witness, Mr. Eric Hesse, member, board of directors, East Coast Tuna Association.

STATEMENT OF ERIC HESSE, MEMBER, BOARD OF DIRECTORS, EAST COAST TUNA ASSOCIATION

Mr. HESSE. Thank you, Mr. Chairman. My name is Eric Hesse and I am a commercial bluefin tuna fisherman from Centerville, Massachusetts. I am also the Vice President of East Coast Tuna Association, and I have a Master's of science in environmental engineering from the University of Massachusetts at Amherst.

I appreciate this opportunity to share my views with the Subcommittee.

Our overall view is that the current system of highly migratory management with principal authority vested with the Secretary of Commerce is fundamentally sound. The four major points of my testimony are: One, the authority for highly migratory species management must remain with the Secretary of Commerce.

Two, the responsibility for scientific assessment of Atlantic bluefin tuna must be transferred to the Northeast Fishery Center in

Woods Hole in order to restore scientific integrity and balance and the fishermen's confidence and trust in the scientific and management process.

Three, the ATCA provision limiting disadvantaging of U.S. fishermen needs to be strengthened, and four, changes are necessary to allow the establishment of FACA exempt plan development teams and require important but minor technical revisions regarding data collection and timing of rulemaking.

Getting onto our first point, we believe that highly migratory management under the Secretary of Commerce is sound. The decision by Congress in 1990 to transfer highly migratory authority from the regional councils to the Secretary of Commerce was correct, and without question, substantial progress has been made since 1990 to improve ICCAT in our domestic programs for bluefin tuna and swordfish.

We hope that Congress will see through the smoke put forward by the few groups suggesting that authority be returned to the councils. We believe their motivation for restoring authority to the councils is to deny adequate commercial fishery representation.

Recreational and other non-commercial interests now dominate the East Coast councils and this situation prevents balanced decisionmaking in any shared multiple council decision arena.

We do support a continuing important role for the councils because this regional system affords many individuals and organizations an effective voice in the process.

Moving onto our second point, Mr. Chairman, we have before us a *major crisis* regarding the U.S. bluefin position at the November ICCAT meeting this year. The crisis stems from the fact that our scientists from Miami have politicized the scientific process to a dangerous level, one that now threatens the Atlantic-wide conservation of bluefin tuna and, for all practical purposes, would end significant U.S. participation in the bluefin fishery.

I have attached several important documents that provide evidence of the problems with Miami trying to protect their controversial two-stock working hypothesis.

On behalf of more than 400 fishermen in our East Coast organization and more than 50 support industries, I am requesting that your Committee carefully investigate this matter.

We hope that the investigation will include the inappropriate expenditure of U.S. Government funds to send seven U.S. scientists to Madrid on a week-long junket to carry out their crusade against the U.S. commercial bluefin fishery.

Here are the facts, Mr. Chairman. This chart, which has been included in my written testimony, shows that United States fishermen, since 1975 (the western Atlantic catch is on the bottom and the eastern Atlantic catch is on the top), U.S. fishermen are doing more to conserve Atlantic bluefin tuna than fishermen from any other country in the world.

Since 1981, our bluefin quota has been reduced by 65 percent and our share of the total Atlantic catch of bluefin is now less than 3.5 percent.

U.S. fishermen comply with an absolute minimum size of 14 pounds. We have a restricted quota on fish below 66 pounds and we prohibit the sale of bluefin less than 150 pounds. U.S. fishermen

also protect the Atlantic bluefin when they migrate through the known spawning grounds in the Gulf of Mexico.

These expensive conservation sacrifices by U.S. fishermen are in stark contrast to the continuing situation on the eastern Atlantic and Mediterranean bluefin fishing grounds.

Since 1981 the reported catches of bluefin from the eastern Atlantic and Mediterranean fishing grounds have increased by more than 42 percent. ICCAT scientists continue to point out that catches from these grounds are known to be under reported and some fishing countries do not provide any statistics on bluefin catches.

Eastern Atlantic and Mediterranean fishing countries have flagrantly violated the 1975 ICCAT agreement to cap fishing mortality to recent levels with these increases in catch and effort. The 1992 ICCAT Infractions Committee report provides ample evidence that eastern Atlantic and Mediterranean fishing countries do not abide by the 1975 Atlantic-wide minimum size of 14 pounds.

Scientists now know that at least 3 million bluefin tuna under the minimum size are captured to support domestic cannery markets. You may note that western fisheries for bluefin have now been reduced by national regulations to catching only about 20,000 fish total.

Finally, eastern Atlantic and Mediterranean countries continue to target spawning bluefin for the roe to support a luxury product market. This practice is reprehensible and an insult to western Atlantic fishermen, given the extent of the conservation program here.

Mr. Chairman, it is our view that the totally unregulated and booming bluefin fisheries of the east can only be occurring and be sustained as a result of the dramatic sacrifices of fishermen in the western Atlantic fishing grounds.

With the stark contrast of the western fisheries under exceptionally restricted management and the eastern fisheries yet to have basic conservation measures, such as minimum size and quotas, fishermen find the Miami position calling for another 50 percent reduction on our quota for the next 10 years to be incomprehensible.

Under the Miami plan, the U.S. share of the total Atlantic catch will be reduced immediately to less than 1.5 percent and this figure will shrink as the eastern fisheries continue to prosper at our expense, this despite the known fact that the line separating the stocks is arbitrary.

Recent ICCAT information now tells us that Japanese fishermen catch from about 800 to nearly 1,400 tons of bluefin in an area approximately 150 miles east of the controversial line. These fish obviously belong to any western stock, and in the light of these recent catches, the arbitrary line now looks downright silly.

Under the Miami plan, our fishery will be devastated but it is open fishing on bluefin as soon as they swim across this line.

At the most recent U.S. ICCAT advisory Committee on October 14th and 15th, a straw poll was taken and the results demonstrate little support for current Miami positions. 18 of 20 U.S. ICCAT advisors believe that the primary focus of U.S. policy needs to be the establishment of management measures on the eastern and Medi-

terranean fisheries that now account for more than 93 percent of the total Atlantic catch.

Thirteen of the U.S. advisors did not believe the hypothetical stock division has any merit. 14 of the U.S. advisers will no longer support further reductions in the restricted U.S. bluefin quota.

In the interest of getting back to objective science and real conservation, Mr. Chairman, I regret that we must call upon Congress in the reauthorization of the ATCA to transfer scientific assessment responsibilities from the southeast fishery center in Miami to the northeast fishery center in Woods Hole, Massachusetts.

Fishermen throughout the northeast have lost all confidence in the Miami scientists to objectively assess this resource. We are totally frustrated by the repeated rejection of our earnest attempts to participate in the scientific process and offer suggestions and evidence that might help Miami scientists uncover problems that cause their mathematical models to not reflect the condition of the resource.

Briefly, Mr. Chairman, in the last two years, NMFS has been unable to complete the rulemaking process to implement regulatory changes affecting the current year's fishery.

In some cases, fishermen are being forced to make business decisions related to selection of fishing categories before the rules of that category or even quota levels are finalized by NMFS. This is an unacceptable situation and we request that the Committee address this matter. We believe that all regulatory changes must be finalized by May 15th or prior to the start of the bluefin fishing season.

We also support modifications to ATCA and Magnuson that directs the Secretary to appoint plan-development teams to recommend plans for the Secretary's review and adoption.

And finally, Mr. Chairman, one of the more controversial issues arising from the 1990 amendments of ATCA and the Magnuson Act are the respective provisions limiting the authority of NMFS to implement measures that place U.S. fishermen at a competitive disadvantage with foreign fishermen engaged in the same fisheries.

We believe that Congress never intended to sacrifice the interests of U.S. fishermen and support industries to prod international management or that U.S. fishermen should be required to do more than their fair share to conserve highly migratory resources.

We are disappointed with the NMFS position to disadvantage U.S. fishermen. We urge the Committee to consider our suggestions for strengthening protection for U.S. fishermen against regulations that put us at a disadvantage and make us do more than our fair share.

Thank you very much.

Mr. MANTON. Thank you, Mr. Hesse.

[The statement of Eric Hesse can be found at the end of the hearing.]

Mr. MANTON. Our last panelist is Ms. Suzanne Iudicello—I got it right this time, thank you—Center for Marine Conservation.

STATEMENT OF SUZANNE IUDICELLO, SENIOR PROGRAM
COUNSEL, CENTER FOR MARINE CONSERVATION

Ms. IUDICELLO. Thank you, Mr. Chairman, and Members of the Committee. My name is Suzanne Iudicello, and I am General Counsel for the Center for Marine Conservation. We appreciate the invitation to share our views today and the opportunity to present testimony on behalf of ourselves and our colleagues in an organization called ICCAT Watch, which is a joint initiative of the World Wildlife Fund, the National Audubon Society and ourselves.

You asked for our comments on several aspects of the implementation of the Atlantic Tunas Convention Act, as well as recommendations for legislative changes to that law and to the Magnuson Act. Our written statement provides detailed comments on a variety of issues, but in brief summary, we believe that the transfer of management of highly migratory species from the fishery management councils in 1990 has, in its implementation, shut out the public participation that has been the cornerstone of fishery management since the Magnuson Act was enacted in 1976, and at least in the case of tunas and swordfish, has rendered the Magnuson Act pretty much irrelevant.

The worthy goals of the highly migratory species provisions remain illusory. At the time of passage, the record of the floor debate should have made clear the intent of the Congress that neither the ATCA nor the FCMA would undermine the Secretary's authority to take necessary action to protect the fishery resources placed under his or her care through the Magnuson Act.

In our view, that intent has yet to be realized. In numerous efforts to encourage domestic non-allocation conservation measures that should not be disadvantageous to U.S. fishermen, we have been thwarted repeatedly because the agency views that this international mandate is a mandate to look for the lowest common conservation denominator.

Secondly, with regard to U.S. leadership at ICCAT, it is our view that the United States has abrogated its own fishery conservation goals to an international regime that has proven unable to stop the decline of the species under its jurisdiction.

The United States could enhance its leadership at ICCAT through four actions. First, by naming new U.S. commissioners to replace the hold-over incumbents, by insisting on management and adherence with credible science, and in this, we do agree with the rest of the panel, by continuing to call for strong conservation measures and by promoting the inclusion of NGOs as observers to ICCAT proceedings. As you know, non-government observers, that is, conservation and environmental groups, have been excluded from ICCAT for several years.

The first step toward leadership by the United States has been taken actually today by the Congress with the introduction of House Concurrent Resolution 169 calling for compliance by all fishing nations with ICCAT conservation and management measures. We would like to express our very strong support for this resolution, Mr. Chairman, and commend you and your cosponsors, Mr. Studds and Mr. Young, for the strong sentiment expressed in it,

particularly the potential for using the Fishermen's Protective Act sanctions to bring other nations into compliance.

I would like to move now into our suggestions for recommended legislative changes. Most of the recommendations that we are outlining today have been endorsed by the Marine Fish Conservation Network, which is a group of more than 40 commercial, recreational, and conservation organizations interested in the conservation of marine fishes.

In our view, the Magnuson Act needs to be amended to allow domestic fishery management actions for large pelagic fish, so-called highly migratory species, to be more restrictive than those recommended by international agreement when such action is necessary to achieve U.S. conservation and management goals. And as you have heard from others, we do recommend that Congress return management for the large pelagics to the Atlantic councils once again.

The act itself recognizes that international management measures alone are not sufficient or effective. Moreover, restricting the scope of measures that the United States may take is inconsistent with U.S. law and is unique among the ICCAT treaty nations. In our view, it undermines U.S. authority to properly manage our own fish in our own waters. In effect, handcuffing domestic regulations to the ICCAT allocation scheme makes the Magnuson Act irrelevant to the management of highly migratory fish in the Atlantic.

The transfer of the management of these species from the councils to the Secretary in 1990 appears to be inconsistent with the management scheme that Congress devised when you enacted the Magnuson Act in 1976, which included a policy of assuring that all conservation and management measures involved people and were responsive to the needs of interested and affected citizens.

Denying this kind of participation and oversight to the Atlantic councils has reduced public participation in the process and the accountability of fishery managers to the public. One of the reasons that we have been so firm on this view is that we have been dissatisfied that the promulgation of the new highly migratory process has incorporated sufficient public participation measures in the way that process has unfolded.

We recognize as well that part of the reason that public participation is difficult for the agency is that it costs an awful lot, and we thank you, Mr. Chairman, for your efforts on behalf of the Highly Migratory Species Division to gain more funding for them in this budget round.

For all of these reasons, the Marine Fish Conservation Network urges Congress to repeal the language that was added in the fishery conservation amendments of 1990 that limits domestic authority over highly migratory species to strictly implementing the international recommendations, and we would, in the same vein, recommend repeal of the similar language that was added to the Atlantic Tunas Convention Act at that time.

Secondly, we are urging the repeal of language that transfers U.S. authority from the Atlantic councils to the Secretary, and at the same time, we would suggest an amendment to facilitate preparation of multi-council plans. We believe that the U.S. posture in

the international negotiations could be strengthened by designating in the ATCA the director of the National Marine Fisheries Service as the head of the U.S. delegation to ICCAT, and we recommend as well prohibiting appointment as commissioners those individuals who have a direct financial stake in the fisheries under the Commission's jurisdiction.

Specific legislative language on each of these points has been included to a supplement to our testimony, as well as the names of those organizations endorsing these views.

We don't expect that each of these notions is going to be embraced with enthusiasm, but we have been gratified by the amount of common ground we have been able to find with the segments of the industry with whom we have met to share some concerns, and we are committed to continuing that dialog. We also look forward to working with you and the Subcommittee as you undertake your own deliberations.

Thank you very much.

[The statement of Ms. Iudicello can be found at the end of the hearing.]

Mr. MANTON. Thank you, Ms. Iudicello.

That concludes our panel. Before we move to questions, I would like to recognize the presence of someone who is not currently a member of this Subcommittee, but who is on the Full Committee, Mr. Pallone of New Jersey. I understand, however, he will be joining the Subcommittee tomorrow, after action of the Full Committee.

I believe Mr. Pallone has a statement.

**STATEMENT OF HON. FRANK PALLONE, JR., A U.S.
REPRESENTATIVE FROM NEW JERSEY**

Mr. PALLONE. Thank you, Mr. Chairman, and I just wanted to thank you for all your help in making the transfer to the Subcommittee. And it is true, I understand that I won't be officially on the Subcommittee until tomorrow, but I wanted to thank you for your help. Also, thank you for having this hearing, which I think is really crucial.

I wanted to mention that one of my constituents, Mr. Bogan, is here, and also that Nelson Beideman, who has been very helpful to me and certainly on this issue in the past, is also someone that I recognize being there on the panel and I am glad he is here today.

What I was hoping is that since Dr. Foster is present, that I could focus my comments briefly on the National Marine Fishery Service's allocation of the domestic bluefin tuna quota rather than the convention act itself, and essentially follow up on some of the comments that were made by Mr. Bogan, that time and time again, New Jersey anglers are getting the raw end of the deal in the allocation of the bluefin tuna quota.

We were promised a 20-ton set-aside in the general category. However, NMFS allowed New England to overrun this quota and our 20-ton is gone. Late reporting was cited as the cause of this overrun, but the NMFS regulations require that the dealers fax daily reports to NMFS.

I would like the enforcement arm of NMFS to look into why dealers did not submit timely reports and would like NMFS to seek punitive actions against dealers who did not comply with the regulations.

Last week we learned that NMFS did manage to scrape together eight tons, 20 to 40 fish, from different categories for the New York Bight general category fishery.

The other thing of course is two days ago, NMFS dealt New Jersey anglers another blow in closing the fishery for large school tuna and small-medium tuna. I think Mr. Bogan mentioned that. They took 30 tons out of a large school and small-medium angling category because, in the words of one NMFS staffer, quote, there was plenty of padding there, and gave it to the general category.

However, as we learned last week, there wasn't enough padding there when NMFS announced the closure of the category, and again, I believe, that the recreational fishermen from my region were trampled on.

In my opinion, Mr. Chairman, NMFS has been negligent in distributing the quota in a fair and equitable fashion. Perhaps a better method for distributing an angling category quota would be to allocate the quota on the basis of three regions as opposed to two as is currently done, and basically that would have a southern region, a New England region and a Mid-Atlantic or New York Bight region, and that will allow the fishermen in the New York Bight area to participate in the traditional mud hole fishery without being closed out by the other regions.

In my district in New Jersey, there has been a traditional small boat recreational fishery for bluefin in the school category for over 50 years. In recent years, it seems as though this fishery has remained open for no longer than a blink of the eye. Next year, NMFS will require that these anglers pay a \$20 license fee.

The recreational fishery has a very large impact on the economy of New Jersey. It has been estimated that recreational angling for bluefin tuna generates over \$7.8 million and many charter boat operators, bait and tackle shops and marinas, benefit directly from this fishery.

I don't want Dr. Foster to get me wrong. I am very much for the resource, and scientists, as we know, estimate that if bluefin tuna populations were allowed to rebuild, U.S. fishermen could harvest 11,000 metric tons annually on a sustainable basis, about four times what they harvest now. I would like to see a full recovery of the Atlantic bluefin tuna to their historic stock size, but I do not believe that New Jersey's anglers should bear the entire burden of this responsibility.

And finally, I would like to see the United States actively pursue through ICCAT greater regulations of the fishery on the eastern stock of the Atlantic bluefin tuna, and I want to thank Mr. Studts for introducing the CR that is going to be marked up today. I believe I am also a cosponsor of that and I think that is the way to go.

Thank you, Mr. Chairman, for allowing me the time to do this after the panel has spoken. I appreciate that.

Mr. MANTON. Thank you, Mr. Pallone.

Mr. MANTON. Without objection, the statement of our ranking member, Don Young, will be made part of the record.

[The statement of Mr. Young follows:]

STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA, AND RANKING MINORITY MEMBER, SUBCOMMITTEE ON FISHERIES MANAGEMENT

Mr. Chairman, the issues concerning Atlantic tuna are an important topic for this Subcommittee. I look forward to hearing from these witnesses who should be able to provide us with additional information about these highly migratory stocks.

Atlantic tuna are managed internationally by the International Commission for the conservation of Atlantic Tunas (ICCAT). The Atlantic Tuna Convention Act, which must be reauthorized, is our implementing law for the Convention. Some of the issues which need to be discussed include: how to deal with countries which harvest Atlantic tuna and are not members of ICCAT; how to deal with allocations between recreational and commercial tuna fishermen; and whether the changes made in the Act in 1990 are working.

While we in Alaska do not harvest Atlantic tuna, I am interested in working with my colleagues from the East Coast who have an interest in this fishery.

Mr. MANTON. And now we will ask the panel to stand for some questions.

Dr. Foster, could you describe the rationale for putting the scientific support for highly migratory species in the Southeast Center of Miami versus the Northeast Center in Woods Hole, in the first place?

Dr. FOSTER. In the first place, my understanding, and you can jump in, Dick, is, before the highly migratory species responsibility was transferred to the Secretary, that is where the expertise resided historically. We depend quite heavily on the science centers and the regions. They have the resources and the expertise, and that is why they are doing it for us.

But they are not doing this alone. I mean, we are only one of the strong voices in the science that underlies this entire process. The United States is one member of the ICCAT working groups, the advisory groups, and I can speak for the agency when I say that we are always open to any kind of peer review, any kind of reconsideration.

In fact, we also agree that in some of these instances, we need to go back and look at how we got to where we are and some of the decisions that were made; we need to look at the data. We are always looking for new ways to collect information. Dick, anything you want to add?

Mr. STONE. Well I might add just a little bit. Again, to reiterate what Dr. Foster has stated, we do use scientists from the other centers to get involved in this as well as outside scientists in our peer reviews. We certainly involve and call upon the Northeast Fisheries Science Center personnel in the assessments that we do, as well as scientists from outside of NMFS. We are constantly trying to get input and peer review from other than just the Southeast Science Fisheries Center.

Mr. MANTON. Mr. Hesse, you want to comment on it?

Mr. HESSE. I think the testimony I made was rather clear about that. As a fisherman, I feel that we have been really stymied by our interactions with Miami scientists and that it appears they are trying to defend a two-stock working hypothesis, even in the face of scientists from other stations that now claim that maybe there was

a mistake 8 or 10 years ago, now, and we should reevaluate this new information. That is really at the other end of the spectrum from where we see it as fishermen.

We are more intimately associated with the data collection process and the design of the surveys through which NMFS makes conclusions about abundance of bluefin tuna appears to be faulty in that people aren't being surveyed that have a reasonable chance of catching a fish, and this information seems to translate directly into catch per unit effort statistics through which the abundance of bluefin is derived. We have made suggestions about how this can be improved repeatedly, and repeatedly have been told that we are way out of line.

So I think having access to a place like Woods Hole (whereas 80 percent or more of bluefin are caught in the northeast), we would be able to discuss things on a more rational basis with the scientists and we wouldn't be separated by 1,500 miles or more.

Thank you.

Mr. MANTON. Thank you.

Mr. Beideman, ICCAT in 1982 specifically called for no directed harvest of bluefin within the spawning grounds of the Gulf of Mexico. The United States, however, continues to allow harvest through the incidental catch by long-liners in the Gulf. Should this harvest be further restricted in order to take away any possible incentive to illegally target this highly valuable fish?

Mr. BEIDEMAN. I agree that there has been a pretty much directed fishery up until National Marine Fishery Service made the regulations on the 2,500-pound directed catch in order to have one bluefin tuna, incidentally. Since that time, there has been no directed fisheries. That did solve that problem.

The problem is, it did create some other problems and we feel need modification of the 2,500 pounds in order to find the balancing point that will keep a directed fishery from the spawning stock in the Gulf and not unfairly prejudice against the Gulf fishermen.

Mr. MANTON. Well, Mr. Bogan, you have criticized the science because the analyses have led to ICCAT recommendations which require U.S. fishermen to bear the brunt of conservation efforts. What amendments to ATCA are necessary to provide non-NMFS scientists a role in this process?

Mr. BOGAN. Mr. Chairman, I don't even know that an actual amendment is needed. I think what is needed is perhaps a tightening of the language contained in—again, ATCA refers over to Magnuson with regard to best scientific information available, and in that regard, there may be some tightening of the language with regard to how to obtain the best scientific information available. But I think that if NMFS abides by the mandate of Magnuson and ATCA, I don't think that it is necessary to necessarily do that through new language.

In its most basic sense, best scientific information available means gather all of that which can lead to a better data base, a broader data base so as to reach a less faulty conclusion. In this instance, every major user group has questioned that whole base and have made recommendations as to how that can be implemented. It is not necessarily something that needs to be addressed legis-

lately. Unfortunately, that is something that should be addressed administratively.

Mr. MANTON. Thank you. I see my time for questioning has expired.

Mr. Torkildsen from Massachusetts.

Mr. TORKILDSEN. Thank you, Mr. Chairman. I want to commend you for having the panel here today. It is great when we can have regulators and regulatees all at the same table.

If I could start off asking Dr. Foster and Dick Stone, could you comment on Mr. Hesse's testimony? Do you agree or disagree with what he said, because there were some very strong statements that he made. What Mr. Hesse said, was similar to things I was told up in my district, in the community of Gloucester just several weeks ago. So could you comment on it from your perspective?

Dr. FOSTER. You mean specifically about the science?

Mr. TORKILDSEN. About the science, about the whole process by which the season was closed, the whole overall point that I see about trying to regulate a highly migratory species and whether or not it can be done under the existing framework that we have right now.

Dr. FOSTER. In looking for ways to assign quotas to the various categories, there is actually no right or wrong way to do it. We decided to do it by looking at historic catches and then assigning the quotas, as I understand the process, and Dick certainly knows a lot more about it than I do because he watches it on a day-to-day basis. In the commercial catches we get information on a daily basis, and for the recreational catches, we get information on a weekly basis.

When looking at last year's recreational catch, the take was much under the quota and that was carried forward into this year. For the first part of the season, we were seeing the catches at a very low level on a weekly basis. When the commercial category, the general category ran into problems, we expected that the angling category would not make their quota, so we decided to reassign quota. About the time that we did that, we saw a jump for the angling category.

Mr. TORKILDSEN. Start to increase?

Dr. FOSTER [continuing]. go up, and it just worked out that once we had taken the 30 metric tons, we then saw them probably quadruple the take that we had been seeing earlier on. Because, you see, this kind of a system is clearly imperfect, and I should say, not extremely precise, because you are always estimating, you are predicting based on what happened before, based on what you know, based on what you think, and actually we think we have done a pretty good job, but we are always looking for ways to improve this and are open to suggestions.

Mr. TORKILDSEN. The other statistic which was presented to me several weeks ago is that the catch for eastern Atlantic countries has increased 31 percent, since 1982, against a decline for U.S. catch.

Can you comment on that? And indeed if we are looking at conservation, why a disparity? If the United States is reducing its take, why aren't other countries as well? Do we have the ability to coordinate a reduction with other countries, or are we trying to

stand up against the tide when everyone else seems to be ignoring what efforts the United States may be making?

Dr. FOSTER. As I mentioned at the beginning, we think that it is imperative that the United States take a very aggressive position with regard to what these other nations are doing in the eastern Atlantic and in the Mediterranean. We are all signatories to the same treaty.

We all have the same responsibilities, and we are not responsible just for our fish. We are responsible across the board, and they are not living up to their responsibilities. Therefore, we think that we should do what we can in an aggressive way to get them to abide by the same rules that we have to abide by. I don't think the answer is to say, we shouldn't have to do it anymore or we shouldn't because they are not doing it. The answer is to make them abide by the recommendations.

Mr. TORKILDSEN. Do you have any steps under your current power or—that you can suggest that would bring those countries into compliance? Because clearly they are not in compliance now.

Dr. FOSTER. Well, I am not sure how successful we will be in bringing them into compliance, but I think that there are things that we need to do that we have not done or have not done aggressively in the past. First, I think that we have not been particularly aggressive in ICCAT. I think we have to exhaust that. We have to go in with a very proactive approach.

We have talked about the possibility of going country to country, and then we have other tools. We have the embargo provision in ATCA. It has been suggested, and with the resolution, that we look at Pelly (Pelly Amendment). So we do have an arsenal of tools that we can at least consider, but I think we need to have a strategy, we need to become aggressive about it.

Mr. TORKILDSEN. Thank you. I will just conclude saying that I think that would be appreciated by the people who make their living up in Massachusetts and the coastal areas in the northeast if that aggressiveness for a level playing field could be achieved. That is very, very important. Whatever steps you could take to speed up the collection of data would also be appreciated because a number of people were out on their boats when they heard that they were closed down.

We had a similar situation in New England on ground fish in area two, and it is giving NMFS a reputation that they are really not in control of what they are supposed to be doing. I know that is not true, but people's livelihood depends on these decisions, so whatever steps you could take would be very much appreciated.

Thank you, Mr. Chairman.

Mr. MANTON. The gentleman from North Carolina.

Mr. Lancaster.

Mr. LANCASTER. Thank you, Mr. Chairman, and thank you, ladies and gentlemen of the panel for your testimony.

I am concerned about the testimony I heard here today about the situation in the eastern Atlantic. I wonder if you could educate me a little more on the problem. Is this a problem of signatories who are not complying with the agreement?

Is the agreement not strong enough to protect this fishery in the eastern Atlantic, or are we talking about countries that are not sig-

natories? And if it is a number of countries who are violating, what can we do to enforce the agreement? If the agreement is not strong enough, what can we do to strengthen it?

And if the problem is nonsignatory countries, is there anything we can do to bring compliance from nonsignatory nations? I don't even know who to ask the question, so anybody who feels competent to do so, jump in.

Mr. HESSE. I will take a stab at it. Maybe we will go around the table. I think a little bit of the history of the bluefin problem may be instructive there. Part of the reason that NMFS came up with the two-stock working hypothesis, separating the east and west in 1980, was to allow the western Atlantic countries (meaning the United States, Canada and Japan), to take unilateral conservation sacrifices in the face of unresponsive Eastern European governments and Mediterranean governments. That was part of the reason.

There is some scientific evidence that suggests there may be two stocks, a different spawning area in the Mediterranean and so forth. And I think those countries in the east have resisted the implementation of a program as complex and as large as what we have in the United States to restrict bluefin catches.

It is very difficult, as evidenced by this hearing, for example, to adequately distribute the resource and perhaps these countries haven't felt capable of controlling their own fishermen. Perhaps they feel that since they are faced with such an abundance of bluefin there (perhaps as a result of our conservation sacrifices on this side of the Atlantic), there is no real need for them to abide by any quota restrictions. It appears that perhaps trade restrictions are one of the only threats that people in Eastern Atlantic and Mediterranean countries will listen to.

Clearly, since 1982, the United States has embarked on a strategy of conserving as a way to set an example, and we have taken a 65 percent reduction in our own landings already to further that goal. All it has resulted in is further unrestricted fishing in the eastern Atlantic.

So I think we need to embark on a different strategy than an additional 50 percent reduction for our fishermen in order to set an example for our Eastern Atlantic counterparts.

Thank you.

Mr. LANCASTER. Well, I hope somebody else will give a further answer because that doesn't address whether these countries are signatories or not. If that is the problem, and if the agreement is strong enough in its enforcement mechanisms or if it needs to be changed, and if it needs to be changed, why would we want to reauthorize it?

Why would we not go back to the negotiating table and get a stronger and more effective agreement that will address some of these concerns in the eastern Atlantic?

Mr. BOGAN. Mr. Lancaster, Ray Bogan. With regard to whether it is signatory or nonsignatories, it is both. We have problems with reflagging, which is being addressed to some extent. That is where nations which are under ICCAT try to avoid the restrictions of ICCAT by reflagging, for example. That is a problem which is being addressed in other venues, as well as through ICCAT.

Likewise, I believe there are other nations, and I have looked at the list before. I just don't want to make the mistake of saying a particular country which is not signatory—or saying a particular country isn't when it might be, but there are certain nations, for example, off the Mediterranean or certain nations very near to us, to our south, for example, that might not be signatories and where a lot of the violations, if you will, come from. That is why the issue of sanctions has come about.

As to whether or not we can effectively regulate them and whether the Atlantic Tuna Convention Act is even relevant anymore—I think it is for the following reason: Those nations which have the greatest opportunity or the greatest potential impact on a resource are, to a large extent, those that are involved in ICCAT.

Those nations are also the lead nations with regard to technology and that kind of thing, and the way that we can best address the nations that are not signatories are not complying, is by, in fact, to go out and push for that. If we dropped out of ICCAT, if we disregarded the Convention Act because ICCAT isn't there, then I think we are going to have more problems.

Mr. LANCASTER. One last question before my time expires. Are there conflicts between Magnuson and the ATCA which undermine the effectiveness of conservation of these species? And, if so, do we need to address those conflicts when we reauthorize Magnuson?

Dr. FOSTER. We don't see particular conflicts between the two laws. We think they work very well together. There is different language in each of the laws regarding this provision, restraining the Secretary from setting quotas that are less than what ICCAT sets, but both provisions are attempting to at least get at the same thing, so we don't have any specific conflicts that we would speak to.

Mr. LANCASTER. If there is anyone else who wishes to speak to that.

Mr. BOGAN. Mr. Lancaster, that was to a great extent—I think Magnuson is well addressed in ATCA insofar as it specifically references Magnuson, and indeed the national standards set forth in Magnuson are very well thought out, well drafted standards.

I think with regard to domestic implementation, in an ideal world, if we can, in fact, follow the mandates of Magnuson, we are going to have very good tuna regulations. I think part of the lack of confidence in the present tuna regulations and I don't suggest, by the way, that they are some easy thing to regulate.

These fish move, there are a lot of things to change that, so simply being objective, if there is a way to plug in the fishery to Magnuson standards, you are going to have a very, very well-run, well-regulated fishery on the domestic side, I want to emphasize, but for right now, that has not yet been effective.

Mr. LANCASTER. Thank you very much.

Mr. MANTON. Mr. Coble, of North Carolina, do you have any questions?

Mr. COBLE. Thank you, Mr. Chairman.

I will be very brief. I am sorry I missed a good part of this meeting because of another conflict. Let me ask a couple general questions. Many observers, or some observers have noted that the United States should take a lead role with conservation efforts.

However, other nations, it seems, continue to take more than their fair share regarding the imposing of controls.

I guess my question, to use the vernacular, should we play dirty as well or should we try to continue to impose controls resulting in many instances in what appears to be inequity to our own fishermen while other fishermen from noncomplying countries walk off with the gold?

Ms. IUDICELLO. Thank you. Mr. Coble, since we seem to be the ones most advocating a U.S. leadership position, I would like to take a crack at that. I think where the conservation community is coming from, is not that the U.S. leadership in conservation should be to roll over and play dead while other countries catch all the tuna and we stand by and say, oops, that is too bad, but I think Mr. Lancaster raised an interesting question when he asked whether this was an issue of signatories not in compliance, nonsignatories going out the way they wanted to do and catching the fish.

The United States does have some means to be a leader that aren't simply further restrictions on our own fishermen. One of the ways the United States could be a leader would be to insist on fishery independent sources of data.

Mr. COBLE. Could you pull the mike a little closer to you?

Ms. IUDICELLO. Certainly. Everyone has criticized the ICCAT data, whether it be the fishermen, the environmentalists, that it is too positive, too negative, too pessimistic, too optimistic. I think the United States could push some of the other countries in terms of better data acquisitions, stock assessments, fishery independent sources of acquiring data.

Another thing we could do is bring significant pressure to bear on those countries who are members of ICCAT and yet buy millions of tons of fish from nonsignatory countries, thereby providing the incentive for overfishing that occurs outside the regulatory regime. We do have the Packwood-Pelly Fishermen's Protective Act. We have never used those kinds of sanctions in this context and they might be useful. Those are just three possibilities.

Thank you.

Mr. COBLE. Anybody else want to be heard?

Mr. BOGAN. Yes. Mr. Congressman Coble, and I understand completely when you said, quote, unquote, "play dirty", because it is in the vernacular. However, we don't need to, even in the vernacular sense, in that one thing we can immediately do to address a prominent disadvantage we have is to have our scientists recognize that we are not, and we can consider Magnuson or any other act, we are not to put ourselves at a disadvantage, and that includes by way of our statistical presentations through ICCAT.

If the scientists are against or somehow timid about accepting additional scientific data which might change our data base or somehow skew our models, then we are not advocating for our best position. And I don't think that anyone would argue that we should have somehow abrogate that duty to our citizenry. What can be done instead is, for example, right now, an immediate way to address that is right now, have our folks reconvene CRS, do things to try to address data that has come in and try to improve our position with the scientists of other nations, therefore maybe

getting a little better shake, instead of having to play the way that we mentioned.

Mr. COBLE. Thank you, sir.

Let me ask one more question, Mr. Chairman, if I may.

Mr. MANTON. Sure.

Mr. COBLE. How can the United States better assert its leadership in ICCAT, question number one? And question number two, do you think this would be a proper role for the United States to pursue? From anybody.

Ms. FOSTER. For the United States to pursue a leadership role?

Mr. COBLE. Yes.

Ms. FOSTER. Yes. I think it would be—

Mr. COBLE. Then I come to how we can better do it.

Ms. FOSTER. I think it would be a proper role, because as you have heard pointed out here, we have taken—

Mr. COBLE. That wasn't my problem. I probably didn't hear it because this may have been discussed when I was away, and for that I apologize.

Ms. FOSTER. I think that we are an appropriate party to take a lead role because our fishermen have played by the rules that we have set forth, and we have taken the leadership in being conservation oriented and trying to be responsive. Sort of like that laundry list that you have heard all of us go through, becoming more aggressive again in ICCAT meetings, getting our commissioners ready to do that within ICCAT, using powers of persuasion like you see in all international bodies like this, going from country to country, actually trying to effect an outcome, using some of these tools that you have heard, or threatening to use some of these tools that you have heard discussed, like the embargo provision and Pelly.

Mr. COBLE. Yes, sir. Thank you.

Mr. HESSE. Eric Hesse. I am not sure whether you were here for this or not. I do support the United States taking a lead role in ICCAT, especially in terms of pressuring other nations to abide by the conservation agreements reached in 1975, that is, to cap mortality levels and fishing effort at the levels they were at at that date. In effect, instead, the eastern Atlantic countries in the light blue on the graph here have increased their catches since 1975 by 42 percent while we have taken a 65 percent reduction. Clearly, I don't think the United States should continue to try to take a lead role by making its own fishermen sacrifice by way of example, and that includes another 50 percent reduction this year.

We have taken these conservation sacrifices and now we are faced with yet another 50 percent reduction. If this is the reward that U.S. fishermen take for their conservation sacrifices, then I don't blame these other nations for saying, we are not going to listen and we are not going to take conservation sacrifices.

We need to put pressure on these nations' trade restrictions, or whatever other means are at our control. I do think the United States has a lead role in conservation of Atlantic tunas and we have certainly shown that through our fishery.

Mr. COBLE. Thank you. Yes, sir. My time has expired, but go ahead if the chairman will give me one more minute or two.

Mr. MANTON. Without objection, the gentleman shall have another minute.

Mr. COBLE. Thank you, Mr. Chairman.

Mr. BEIDEMAN. In the case of swordfish, it is not as bad of a picture of what bluefin tuna is, but if we don't keep up on it, it could deteriorate. The swordfish stock is at 84 percent of optimal size, and it was determined that it was very important that all the countries cap their effort, cap mortalities at that level.

In the last two years, Canada, which is a member of ICCAT, has substantially increased their landings and is taking fish out of that 1,400 metric ton, which is really a slight rebuilding of the stock. So it is very important for the United States to remember that it is not just the bluefin tuna, but all these different species under ICCAT that are going to need attention in order that we don't end up at this same table with the yellowfin, albacore, bigeye tuna, and billfish, on the same route that bluefin has taken.

Mr. COBLE. Thank you all for being with us.

Thank you, Mr. Chairman.

Mr. MANTON. The Chair recognizes the gentleman from New Jersey, Mr. Pallone.

Mr. PALLONE. Thank you, Mr. Chairman. I am hoping that in light of what I said in my statement, if—and this I guess would be addressed to Dr. Foster—if NMFS has any plans to change the way they allocate their domestic quotas—

Dr. FOSTER. We had a discussion about this the other day, and I guess what we are looking for is a better idea, a better way, and if anybody has one, we are ready to talk about it. I mean, do you have anything specific?

Mr. STONE. One of the things, Mr. Pallone, that you mentioned before is dividing up the quota perhaps into three areas, and I know Ray Bogan spoke to that, and we have looked at that.

As a matter of fact, we listened to Ray, and one of the problems with the school fish fishery is we have 100 tons to deal with, and it is almost impossible to manage. It is impossible really to manage 100 tons, and when you start breaking that down into two areas, which we have done, to a southern and northern area, it is more difficult. If you try to break it into three areas, you can see the problem.

Again, we have to collect data, and for the recreational fishery there are surveys and these require a lot of time to gather the data, even though we do it on a weekly basis now in an attempt to keep up and keep us within the quota, it is very difficult.

Now, if that quota were larger, that would be one thing. Then possibly three regions, as you mentioned and Ray had mentioned before, would be feasible. But, again, as Dr. Foster has said, we are looking at ways to try to get better data and work with the fishermen, log books, things like that.

Mr. PALLONE. Well, I would like to talk to you further at some point about this possibility of having the three regions. I think one of the biggest concerns, too, is the fact that they move around these quota allotments during the fishing season. This is what drives people crazy, the fact that there is—you know, that that happens all the time, and I would like to see that changed to. I don't know how you feel about that.

Mr. STONE. Again, as I said, as Dr. Foster said, we are more than happy to look at various ways. We do believe that we have been

very interactive in spite of what Suzanne might have said about interaction with the public. We, I think, are as interactive as anybody has ever been and perhaps more so, and constantly out looking for different things that we might do. So, again, we will be happy to try to work with you and the fishermen.

Mr. PALLONE. What about the—what I mentioned, Dr. Foster, about the reporting by the dealers? I mean, that was cited as the cause of the overrun in the general category and, you know, I mentioned about NMFS taking enforcement action, as to why the dealers didn't submit the reports.

My understanding is they are supposed to fax the information within 24 hours. I mean, that wasn't done and apparently—

Dr. FOSTER. Yes, and this issue has come up and we are discussing it and will do what we can.

Mr. PALLONE. I think that is important, because otherwise, you know, the problems are going to continue again.

Dr. FOSTER. Yes. Yes. We recognize that.

Mr. PALLONE. I don't know if anybody else wanted to comment. Ray.

Mr. BOGAN. Yes, thank you, Congressman Pallone. There is one thing that I would just start bandying about with regard to certain of the quotas, and remember, we have the various size limits and quotas, and that is to have a buffer time period.

I don't have an idea of what would be the best, the minimal amount of time, but, for example, having a two-day time period perhaps designated two different times in the course of the year to stop, make sure the data isn't lagging and to make sure that you don't get overrun this year. And I say this respectfully to Dick because I have not, as have some others, said that this is some kind of purposeful thing.

What I have said is I made calls a week before this and I said, guys, you are going way over. And it was a mystery to me why Ray Bogan and a lot of other folks didn't question. It was done and we knew it was going way over then, and then we got a fax the next day saying we are going to review it on Tuesday. It was impossible to stop it. We knew then, we looked at each other and said, OK, we are gone completely. We were shocked when we got the 20-ton allocation, then we had a 20-ton allocation taken away.

The point being is that there are specific buffer time periods, I don't know what is most adequate, but a period in which they can review data, they will be able to, if need be, make adjustments. When there is no slowdown, the September 15th date, for example, was always our monitoring date several years ago. As it turns out, the September 15th date, immediately thereafter is coincidentally when the numbers went wild, after the monitoring date.

Mr. PALLONE. I would hope that you could look into that also as an option.

Thank you, Mr. Chairman.

Mr. MANTON. Well, that concludes our round of questions and the hearing right on time. We are now going to move to markup a resolution.

[Whereupon, at 3:15 p.m., the Subcommittee proceeded to other business. The following was submitted for the record:]

STATEMENT
OF
DR. NANCY FOSTER
DEPUTY ASSISTANT ADMINISTRATOR FOR FISHERIES
NATIONAL MARINE FISHERIES SERVICE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

BEFORE THE
SUBCOMMITTEE ON FISHERIES MANAGEMENT
MERCHANT MARINE AND FISHERIES COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

OCTOBER 20, 1993

Mr. Chairman and Members of the Subcommittee:

My name is Dr. Nancy Foster. I am the Deputy Assistant Administrator for Fisheries of the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, U.S. Department of Commerce (Department).

I appreciate the opportunity to appear before this Subcommittee to present the Department's views on the reauthorization of the Atlantic Tunas Convention Act (ATCA). My brief presentation here today focuses on three points concerning the ATCA -- namely: the purpose and provisions of the ATCA, the role of the Department and NMFS under the ATCA, and an issue which we believe should be addressed during reauthorization.

Purpose and Provisions of ATCA

The Secretary of Commerce (Secretary) has been using the ATCA to manage Atlantic tunas, particularly bluefin tuna, since 1975. Other species covered by the ATCA (including swordfish and

billfish) have been the Secretary's responsibility since passage of amendments to the ATCA in 1990. The ATCA provides the Secretary with the regulatory authority to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) for tunas, swordfish, and billfish. The 1990 amendments to ATCA indicated that species working groups should be established to provide ICCAT Commissioners and the ICCAT Advisory Committee with advice on highly migratory species (HMS). Such species working groups have been established for bluefin tuna, other tunas, billfish, and swordfish. These working groups are comprised of members from both the ICCAT Advisory Committee itself as well as other organizations (including the fishing industry).

Role of the Department and NMFS

The role of the Secretary, and more specifically of NMFS, is to implement ICCAT recommendations through domestic policy, either by way of ATCA regulations or through Magnuson Fishery Conservation and Management Act (Magnuson Act) fishery management plans (FMP) and implementing regulations. NMFS has established a Highly Migratory Species Division within the Office of Fisheries Conservation and Management to meet the management obligations as required under the ATCA, as well as the Magnuson Act. The HMS Division works closely with our Regional Offices and Science Centers, the Regional Fishery Management Councils (Councils), ICCAT Commissioners, the fishing industry, and others in

formulating and implementing domestic management policy pursuant to ICCAT recommendations.

NMFS recently finalized its HMS Process Document, which is intended only to set forth administrative procedures that NMFS will follow in preparing and issuing Magnuson Act HMS FMPs and FMP amendments. Any regulations implemented under the ATCA must be consistent to the extent practicable with FMPs prepared and implemented under the Magnuson Act. The HMS Process identifies the opportunities for involvement by the public, the fishing industry, the Regional Councils, and the ICCAT Commissioners and advisory groups. In the future, we intend to address additional activities such as improved methods to track landings of recreationally-caught bluefin tuna, development of fishery-independent stock abundance indices, additional tagging studies, geographical coverage for scoping and regulatory hearings, and economic studies on all HMS fisheries.

The United States has generally been successful in implementing and enforcing quotas, area closures, and size limits as per ICCAT recommendations. Indeed, some ICCAT recommendations have been applied by the United States in a manner to further maximize yield and conservation efforts, such as a larger minimum size for sale of bluefin tuna to help speed recovery of the spawning stock biomass. However, ICCAT's Standing Committee on Research and Statistics, as well as our own scientists, believe the western

Atlantic stock of bluefin tuna continues to be in a state of significant decline.

The U.S. commercial and recreational fleets currently harvest 52 percent of the total western Atlantic bluefin tuna quota, and approximately 4 to 6 percent of the total Atlantic catch. The U.S. catch of other tunas is equally low relative to total Atlantic catch. There is no commercial fishery for billfish in the United States, and the recreational catch is again a small part of total billfish catch in the Atlantic and Caribbean. Billfish are managed under the Magnuson Act since there are no ICCAT recommendations for billfish. Although the U.S. share of total Atlantic catch of species covered by the ATCA is relatively low, the United States continues to actively implement the recommendations of ICCAT and believes that ICCAT is a primary avenue through which these important resources can be successfully managed.

Issues to be Addressed in Reauthorization

The Department supports H.R. 779 and reauthorization of the ATCA. Nevertheless, we believe the ATCA should be amended to delete the provision (contained in 16 U.S.C. 971d(c)(3)) prohibiting the Secretary from issuing regulations which have the effect of increasing or decreasing the total quota of fish allocated to the United States. We believe that the primary international management program for HMS should continue to be accomplished

through ICCAT. However, the ATCA's current requirement that U.S. regulations may not have the effect of increasing or decreasing the total quota allocated to the United States may pose a problem if the United States wishes to establish a domestic quota on a local stock or substock of a HMS for conservation purposes that is less than that allowed by ICCAT. The inability to set a lower quota could result in local overfishing and the loss of long-term benefits.

Mr. Chairman and Members of the Subcommittee, this concludes my testimony. I thank you for this opportunity to express the views of the Department. I would be pleased to respond to any questions you may have.

Testimony of
Nelson R. Beideman
Executive Director
Blue Water Fishermen's Association

Before the

Subcommittee on Fisheries Management
Committee on Merchant Marine and Fisheries
United States House of Representatives

October 20, 1993

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to speak to you about the Atlantic Tunas Convention Act (ATCA).

I am Nelson Beideman, Executive Director of Blue Water Fishermen's Association (BWFA). Since 1989, I served as Blue Water's President until last April when my boat, the F/V Terri Lei, was tragically lost at sea. I have been a fisherman since childhood and began commercial fishing year-round after my graduation from Maine Maritime Academy in 1975.

Blue Water Fishermen's Association (BWFA) represents a substantial portion of the commercial fishermen, vessel owners, fish dealers and supporting supply companies with an interest in Atlantic highly migratory marine species, with members from Maine to Texas and California to the Caribbean Islands. These family-run small businesses are comprised of hard-working Americans who, despite the tough economic times, are proud to carry on the tradition of providing healthy food for other Americans who cannot or do not want to catch their own.

BWFA was formed to provide a united voice to respond to proposed management measures that would have effectively closed the U.S. Swordfish fishery. But, BWFA members have always supported conservation measures that are practical, effective and based on a reasonable interpretation of the available scientific data. BWFA is extremely active in voluntary scientific data and specimen collection programs, fish tagging, and in the fisheries conservation and management process. We have developed a voluntary pilot program to donate dead swordfish (that fishermen are currently required by government regulations to discard) to hungry Americans, especially the poor and homeless in our urban areas. This program is designed to help improve the available scientific information for the swordfish fishery.

The current condition of the swordfish stock and BWFA's record of participation in the management process over the past three years clearly establishes that cooperation and responsible involvement of the industry provides conservation and management benefits faster than confrontation and conflict.

Re-authorization and strengthening of the ATCA is a critical part of the revised management program for highly-migratory species (HMS) that Congress initiated with the last amendments to the MFCMA and the ATCA. Congress did the right thing then, and now it is essential that Congress reaffirm its commitment to a balanced approach that coordinates domestic and international efforts.

BWFA has testified several times since 1990 on management of HMS and our efforts to support an open regulatory process that recognizes the necessity of an international focus. Although implementation of Secretarial management authority has been delayed, significant improvements have been made in the past three or four months. After responding to a backlog of priority commitments for revising existing swordfish and bluefin tuna regulations, NMFS has finally issued a formal process document and has started to reach out for regional comments from fishermen on improving existing plans. The recent round of thirteen scoping meetings were comparable to Council hearings in the past and provided opportunities for public discussion on issues and management

alternatives. In contrast to past Council hearings, the hearing officers were receptive to industry suggestions and open debate. This is critical for the success of management efforts. In the past, discussions within the five Council process were not as open. The recreationally-dominated view was already established before they sought public input or considered scientific reports.

There are two areas of the ATCA where additional Congressional instructions are necessary. The first involves the need for Plan Development Teams (PDTs) which include outside non-NMFS Scientists and members of user groups. NOAA has resisted industry requests for this type of approach based on perceived problems with the Federal Advisory Committee Act (FACA). We believe this is a smoke screen because NOAA wants to control the selection of advisory panels and doesn't want any supervision or outside involvement in that selection process. To retain the public involvement and outside participation so critical to the process of developing workable management plans, BWFA offers a proposed amendment (copy attached) that would provide FACA exemption for PDTs established from the membership of the U.S. Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT) Advisory Committee and Species Working Groups established under this Act. This amendment would improve the Secretary's management process by opening it to more constructive outside involvement. By establishing teams from the ICCAT Advisory Committee, it would enhance the linkage between effective domestic and international management programs.

The second missing element which must be addressed is whether U.S. fishermen should be put at a competitive disadvantage and restricted beyond what ICCAT has recommended. This issue was debated when the Acts were amended in 1990. Congress spoke clearly that it did not want to put American fishermen at a competitive disadvantage by stating that "no regulation ... may have the effect of increasing or decreasing any allocation or quota of fish to the U.S. agreed to pursuant to a recommendation of the Commission." NOAA has interpreted the use of the terms "quota or allocation" in the Acts quite literally. If an internationally negotiated management recommendation is phrased as a reduction in "fishing mortality levels", NOAA has determined that it does not have to follow this section since the recommendation is not specifically called a "quota or allocation". As a fisherman, it seems incredible to me that NOAA would deny the linkage between a fishing mortality rate and a quota when they immediately translate it into a quota for enforcement and monitoring purposes.

We suggest that Congress amend the references to allocations and quotas in the ATCA and the MFCMA by adding the term "fishing mortality levels" to address what we consider to be a rather questionable interpretation by NOAA attorneys of the ICCAT swordfish recommendations (copy attached) and to clarify Congressional intent that U.S. fishermen should not be required to do more - or less - than our foreign competitors for conserving these fish that migrate throughout the Atlantic Ocean.

According to NMFS and ICCAT's latest statistics, the total U.S. share of Atlantic highly migratory species landed is only 3.5% of the total Atlantic catch reported to ICCAT. We have included a table of the reported international landings of most of the species that are under ICCAT's jurisdiction and the share that is attributed to U.S. fishermen. BWFA fails to see how unilateral restrictions on U.S. commercial fishermen can have any significant impact on conserving most of these resources when our share is less than five percent of the total catch. This clearly illustrates the need for international management for effective conservation. How the professional scientists of the American Fisheries Society (AFS) can justify support for unilateral restrictions on the minor U.S. component is beyond the comprehension of U.S. commercial fishermen. This is particularly true given the AFS support for the Interjurisdictional Fisheries bill which we think is an appropriate analogy for HMS.

Regulating only the U.S. commercial and recreational fishermen will not conserve these fish which are found in virtually all areas of the Atlantic. How successful can conservation negotiations be if other countries across the table know (before we even sit down to negotiate) that the U.S. will take all necessary steps unilaterally? What incentive do they have to agree to management and conservation measures?

If domestic fishery managers require American fishermen to take on a disproportionate share of the conservation burden without regard to the

international harvest, they will forfeit an American industry for nothing in return. The guy on the deck is willing to make some "shared sacrifices" - if they are, in fact, "shared". Where will the U.S. be in the future when our ability to harvest food fish from the offshore waters has been reduced or eliminated? What benefits will come from the lost jobs that will result?

Continued Secretarial authority is strongly supported by the fourteen commercial fishing associations who are involved with these species. We believe that there is growing support among other groups. The American Fisheries Society recently dropped all mention of reverting authority to the Councils in their position statement, even though that was suggested in early drafts. Further, in recent discussions among the Councils, support for reverting authority to the Councils has failed to gain the support of the New England Council and has been seriously questioned by others because no mechanism for a fair and equitable voting process has been suggested. The enviro-sportfishing coalition supports a vote of all sitting Council members so that they can take advantage of the fact that there is almost a complete absence of any representation from HMS commercial fisheries on the five east coast Councils. How can that coalition work against retaining management authority in the hands of professional fisheries managers where scientifically-based decision-making should reign?

The underlying issue relates to claims that constraints on Secretarial authority are supposedly restricting management options unnecessarily. As in the FACA case, we believe this is a deliberate attempt to reduce the oversight and reasonable requirements for balancing costs and benefits. We believe it is dishonest for certain special interest groups to portray the Secretary of Commerce as a paper-tiger constrained by a mandate that all U.S. fishermen be given a reasonable opportunity to harvest a fair international allocation and once international programs are established that NOAA must not unilaterally reduce U.S. fishermen's quotas.

BWFA believes that NOAA has not clearly made its case that this is a significant problem which has conservation, as opposed to allocation, implications. In fact, BWFA believes that the record of action taken by NOAA in the past two years clearly establishes the fact that the Secretary has ample flexibility and, in all cases, has implemented regulations that more than fulfill U.S. management obligations. The Secretary has established seasonal and user group suballocations, a minimum size larger than that recommended by ICCAT, trip limits, target species thresholds for an allowed bycatch of bluefin, variable bag limits by size, prohibited gears, experimental fisheries, mandatory permitting, reporting and observer programs for fishermen and fish dealers, and other measures all within the last two years. In particular, the swordfish Total Allowable Catch (TAC), using a risk-averse model, produces U.S. Quotas that are one-half to three-quarters of a million pounds lower than the procedures likely used by other nations to set their quotas. Management and conservation action on some highly migratory species has also been taken without international programs being in place. These actions have been implemented at a much more rapid pace than is possible under the Council process.

Industry believes that reasonable constraints (oversight) are necessary to prevent the Secretary from eliminating U.S. commercial fisheries in the face of enviro-sportfish lobbying. We strongly believe that the alliance between environmental and recreational groups that is making this such a big issue, including their recommendation for reverting authority to the Councils where enviro-recreational interests clearly dominate, is a self-serving gambit to enhance the uncontrolled and poorly monitored recreational fishery for these large pelagics. If Congress reviews the status of most fish stocks under ICCAT jurisdiction and compares their status relative to optimum MSY harvesting targets, they will find that ICCAT's record is better than our own Atlantic regional Councils. The hypocrisy of the enviro-sportfishing coalition is clearly revealed by their intense criticism of the Councils as ineffective on the one hand, but then they call for transferring HMS authority from the Secretary to the Councils. The coalition's portrayal of ICCAT's swordfish management program in particular is an egregious example of unprofessional misinterpretation of the most recent stock assessment. The environmental community must portray ICCAT as being ineffective in order to enhance their fund-raising efforts.

The key here is that the environmental organizations appear to be targeting the sportfishing community for membership contributions and they seem willing to neglect the fact that estimates of recreational landings for some of these HMS species exceed commercial longline landings. If sport angler membership contributions were not an issue, why would the major environmental organizations have taken the tack of seeking additional protection for bluefin tuna through the Convention on International Trade of Endangered Species (CITES) venue (which would only limit commercial trade) rather than relying on the stronger U.S. Endangered Species Act which would also restrict recreational activity which annually kills more individual bluefin tuna than all commercial users currently exploiting the assumed western North Atlantic stock?

The coalition also neglects to reveal that, in some cases, NOAA's inability to assess the status of some of these marine resources relates directly to the absence of reliable estimates of the recreational catch and size composition as well as bycatch of non-target species. While the coalition supports fees and other legislative proposals that would diminish commercial involvement in the process, we have not seen them support any research efforts in the past two years that are not self-serving or that relate directly to allocation discussions. The only exception BWFA has encountered has been the Billfish Foundation, which seems to place a greater emphasis on scientific data collection and is willing to acknowledge and respect the livelihood commercial fishermen have chosen. That organization has approached us constructively and we have responded in kind. One of our members won their tagging award last year and we are currently working cooperatively with them on a large-scale double-tagging experiment which can provide invaluable biological information. They apparently recognize that science-based management and reasonable, practical approaches will produce results quicker than confrontation. We have solicited "seed money" to support this tagging effort from the environmental community; thus far, only the Audubon Society has responded.

Congress should review estimates of harvest levels by user group and then compare these to the existing regulatory burden that supports current management efforts. In particular, BWFA believes that the power and influence of the sportfishing industry in the management process and within NOAA is most clearly revealed by the almost complete absence of permit and reporting requirements for charter, party, and headboats. These small businesses reap the same financial benefits that small family commercial fishing businesses gain by having access to these offshore resources. Our commercial fishing businesses have mandatory permits, mandatory daily logs, mandatory dealer reports of sales and sizes of all species caught, mandatory observer programs, and several other voluntary research programs. The power and influence of the sportfishing lobby and several others have made sure that NOAA has not established comparable reporting and tracing programs for the recreational sportfishing businesses. The emphasis here needs to be on businesses. How can the Agency justify this in light of continued complaints that the marine recreational fishing survey is not appropriate (nor effective) for estimating landings of these HMS species? Even the existing minimum estimates indicate that this user community in the Northeast may harvest more yellowfin tuna than the entire commercial longline fishery off the East Coast. How can the environmental community remain silent on this issue and essentially support turning more and more of these resources over to the U.S. user community that presents the greatest technical and logistics problems for effective monitoring (including all bycatch), enforcement, and compliance? The enviro-sportfishing coalition has also not addressed the continuing problems posed by the sale of so-called "recreational" fish directly to restaurants. This underground economy has supported overcapitalization of these fisheries and the volume of sales undermines commercial markets.

The building issue of bycatch is one that affects all fisheries for HMS, commercial and recreational. It is most acute in the multi-species hook and line fisheries. Eventually, you may come to the conclusion that to a "fish" - a baited hook is a baited hook and it does not recognize the political consequences of choosing whether that hook is at the end of a commercial longline or at the end of a recreational rod and reel. BWFA worked hard to provide the NMFS with East Coast Observer funds which were to be used to cover all gear types interacting with HMS in all areas during all seasons of the year. This Subcommittee should ask NMFS what percentage has been used for observations outside of the pelagic longline and gillnet fisheries? Our understanding is that no money has been spent

on enhanced studies of the charterboat, squid/mackerel trawling, canyon tuna chunking and some other HMS harvesters.

If Congress is really interested in improving management for HMS, they should demand comparable regulations and monitoring requirements for all businesses that profit from access to these resources, require Plan Development Teams, and demand that the Secretary enhance NOAA's research efforts and ensure fair treatment for U.S. fishermen. Our amendments satisfy part of this. To address the other issues, Congress could require licenses for all harvesters of HMS, mandatory permits, logbooks, and sampling sheets for all businesses, including party, charter, and headboat businesses, prohibit sale by non-commercially registered vessels, prohibit all purchases by restaurants and others from non-permitted commercial sources. In short, let's clean up our own problems with monitoring these fisheries, and support responsible science-based management by the Secretary.

We support Congress's wisdom in defending American fishermen and their related industries from hasty unilateral actions. As a fishermen, I remember vividly when the South Atlantic Fishery Management Council almost put my family out of business by asserting that the U.S. should unilaterally cut its swordfish harvest by almost 80%. Fortunately, Congress insisted that multi-national, rather than unilateral, solutions were necessary.

We now know that the draconian harvest reductions were unjustified. We also found that total harvest, both U.S. and foreign, are better controlled (and ultimately - more effective) through international negotiations. We need the cooperation of the international community and the international peer review of the science to ensure that conservation goals are sound and measures are working.

Our fishery today is better off - thanks in large measure to the judgment of this Committee that American fishermen should not be made to bear a disproportionate share of the conservation burden.

I thank the Chairman and the Subcommittee for the opportunity to testify today and I will be happy to answer any questions that you may have.

PROPOSED AMENDMENT FOR THE MAGNUSON ACT (MFCMA)

ISSUE: Fishery Management Plans (FMPs) for Atlantic Highly Migratory Species (Swordfish, Tuna, Marlin, Pelagic Sharks) are being prepared without adequate public participation.

BACKGROUND: The 1990 amendments wisely transferred the responsibility for preparing fishery management plans for Atlantic Highly Migratory Species from the five regional councils to the Secretary of Commerce. This consolidation of authority promoted efficiency and better coordination of domestic and international management efforts. Congress, however, did not specify how plans should be developed by the Secretary other than to require consultation with interested parties.

Despite repeated requests from fishermen, NOAA has failed to establish a plan development process which involves interested parties in open public discussion and review of issues and scientific evaluations. The present ad hoc process does not provide adequate public involvement in developing recommended management options.

PROPOSAL: Direct the Secretary of Commerce to appoint teams from the ICCAT Advisory Committee established under the Atlantic Tunas Convention Act to develop and recommend plans for the Secretary's review and adoption by adding a new subparagraph (G) to 16 U.S.C. 1854 (f)(3) as follows:

"(G) The Secretary shall establish a planning team for each fishery management plan to be prepared under this paragraph composed of not less than seven members of the ICCAT Advisory Committee or species working groups established under the Atlantic Tunas Convention Act who are knowledgeable and experienced with the fishery concerned. Members of such teams shall be appointed by the Secretary for a term of three years, shall be eligible for reappointment, and shall receive no compensation except the Secretary shall reimburse them for any necessary expenses. Teams shall prepare draft plans and plan amendments which the Secretary shall review and consider before proposing plans or plan amendments under this paragraph."

and by adding "planning teams" after the word "Councils" in 16 U.S.C. 18 (j)(1).

PROPOSED AMENDMENT TO THE MAGNUSON ACT AND ATLANTIC TUNAS ACT

ISSUE: NOAA threatens to reduce U.S. harvests in Atlantic highly migratory fisheries below those negotiated with other nations in the International Commission for the Conservation of Atlantic Tunas (ICCAT).

BACKGROUND: Atlantic highly migratory species (tunas, swordfish, billfish, and pelagic sharks) are harvested by vessels from several nations, including the United States, and are managed internationally through the International Commission for the Conservation of Atlantic Tunas (ICCAT). U.S. harvests are regulated under both the Atlantic Tunas Convention Act (ATCA) and the Magnuson Fishery Conservation and Management Act (MFCMA).

Less than 5 percent of the total Atlantic harvests of ICCAT jurisdiction species occurs within the U.S. exclusive economic zone. Unilateral regulation of the very limited U.S. harvests is unlikely to provide longterm conservation benefit to these resources. If foreign negotiators knew U.S. harvests would be restricted irrespective of international agreement, there would be little incentive on their part to agree to harvest limits. In addition, unilateral restriction of U.S. fishermen would place them at a competitive disadvantage with foreign fleets.

In response Congress amended both the MFCMA and the ATCA in 1990 to ensure that U.S. harvest limits would not be more restrictive than those negotiated within the ICCAT forum. Under the Magnuson Act, "the Secretary shall provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation or quota." Under the ATCA, no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish to the U.S. agreed to pursuant to a recommendation of the Commission."

NOAA improperly interprets the terms "allocation or quota" to exclude the "fishing mortality levels" adopted by ICCAT for north Atlantic swordfish harvests (Attachment A). This occurred despite the fact that NOAA scientists have recommended that fishery management could be improved by calculating quota levels based on fishing mortality rate targets. NOAA also asserts that U.S. harvests can be reduced below those levels negotiated with other foreign nations.

PROPOSAL: Amend the references to allocations or quotas in Section 206 (c)(3)(K) of the ATCA (16 U.S.C. 971 d(c)(3)(K) and Section 304(f)(3)(E) of the MFCMA (16 U.S.C. 1854 (f)(3)(E) by adding the term "fishing mortality levels".

December 1, 1992

MEMORANDUM FOR: Maggie Hayes
FROM: M.M.
Mariam McCall
SUBJECT: MFCMA and ATCA -- quota language

An issue presented by the 1990 Amendments is the mandate to the Secretary on quotas or allocations authorized by relevant international fishery agreements. The amendment to the MFCMA requires that the Secretary "provide fishing vessels of the United States with a reasonable opportunity to harvest" an allocation or quota authorized under a relevant international fishery agreement. The requirement, however, under the amendment to the Tunas Act provides that no regulation promulgated by the Secretary under the authority of the Tunas Act "may have the effect of increasing or decreasing any allocation or quota of fish to the United States agreed to pursuant to a recommendation of the [ICCAT] Commission."

The legislative history reveals how this inconsistency occurred and gives credence to an agency interpretation that the Tunas Act provision is to be disregarded or read to be consistent with the MFCMA language because the inconsistency was unintentional. The Senate committee apparently passed a version of the bill that included identical language for both sections, the language now in the Tunas Act provision. The Senate staff subsequently changed the highly migratory species provision in response to comments by Senator Bentson and to ensure passage of the bill.¹ However, a concurrent change to the Tunas Act provision apparently was overlooked. Thus, the agency's interpretation that the "reasonable opportunity" language is the controlling language has support in the legislative history and would be consistent with Congressional intent.

Of course, the threshold determination is whether the recommendation involves a quota or allocation. The agency has

¹Senator Bentson wanted to retain the Secretary's flexibility to take appropriate action. In his October 11, 1990, floor statement, the Senator stated that he had been assured that "implicit in subsection E, and the Magnuson Act itself, is a strong presumption of conservation and balance, and that we are not tying the Secretary's hands by limiting any appropriate action he or she might deem necessary to meet conservation goal."

already determined that the 1990 swordfish recommendation made by ICCAT does not constitute a quota or allocation.² Future recommendations will require similar determinations.

²The relevant ICCAT recommendation is:

That the contracting Parties whose nationals have been actively fishing for swordfish in the North Atlantic take measures to reduce the fishing mortality of fish weighing more than 25 kg in the area north of five degrees North latitude by 15 percent from recent levels. The reduction in fishing mortality shall be determined by the catch in 1988 or may be a reduction of fishing effort that will result in the equivalent reduction of fishing mortality.

Species	Stock Structure (Management Unit)	1991 Total Catch (MT)	1991 USA Catch (MT)	1991 USA Percentage
Yellowfin Tuna	Entire Atlantic	197,100	5,800	2.9%
	East Atlantic	164,000	0	0%
	West Atlantic	33,100	5,800	17.5%
Bigeve Tuna	Entire Atlantic	69,500	933	1.3%
Skipjack Tuna	Entire Atlantic	194,800	774	.4%
	East Atlantic	163,500	0	0%
	West Atlantic	31,300	774	2.4%
Albacore Tuna	Entire Atlantic	51,500	344	.6%
	North Atlantic	24,700	344	1.3%
	South Atlantic	24,800	0	0%
	Mediterranean	2000	0	0%
Bluefin Tuna	Entire Atlantic	24,413	1,781	7.3%
	East Atlantic	5,276	0	0%
	Mediterranean	16,279	0	0%
	West Atlantic	2,858	1,781	62.3%
Blue Marlin	Entire Atlantic	2,683	217	8%
	North Atlantic	953	217	22.7%
	South Atlantic	1,730	0	0%
White Marlin	Entire Atlantic	1,382	48	3.4%
	North Atlantic	249	48	19.2%
	South Atlantic	1,133	0	0%
Sailfish	Entire Atlantic	1,555	40	2.5%
	East Atlantic	916	0	0%
	West Atlantic	639	40	6.2%
Swordfish	Entire Atlantic	37,637	4,255	11.3%
	North Atlantic	13,212	4,255	32.2%
	South Atlantic	11,484	0	0%
	Mediterranean	12,941	0	0%
Southern Bluefin	World Catch	13,362	0	0%
	South Atlantic	1,144	0	0%
Small Tunas:	Entire Atlantic	122,900	10,500	8.5%
Bonito	Entire Atlantic	28,700	400	1.4%
Black Skipjack	Entire Atlantic	24,000	0	0%
Frigate Tuna	Entire Atlantic	14,000	0	0%
Spotted Atlantic Mackerel	Entire Atlantic	18,000	4,200	23.3%
King Mackerel	Entire Atlantic	9,200	5,900	64.1%
Blackfin Tuna	Entire Atlantic	3,500	0	0%
Miscellaneous Others	Entire Atlantic	25,500	0	0%
Total Reported	Entire Atlantic	704,614	24,692	3.5%

Source: Report of the Standing Committee on Research and Statistics (SCRS) 10/26-11/6, 1992
 NMFS: National Report of the United States - 1992 October

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October 19, 1993

The Hon. Thomas J. Manton, Chairman
SUB-COMMITTEE ON FISHERIES MANAGEMENT
US HOUSE OF REPRESENTATIVES
COMMITTEE ON MERCHANT MARINE & FISHERIES
Room 1334
Longworth House Office Building
Washington, DC 20515-6230

RE: ATLANTIC TUNA CONVENTION ACT REAUTHORIZATION

Dear Congressman Manton and other
members of the House Sub-Committee
on Fisheries Management:

My name is Raymond D. Bogan and I am legal counsel for the United Boatmen of New Jersey and New York, which represents party and charter boat fishermen in the states of New Jersey and New York. I am also an advisor for the International Convention on the Conservation of Atlantic Tunas (ICCAT). Finally, my family has been involved in most aspects of the fishing industry for the last sixty-five (65) years. My testimony will concentrate on the effectiveness of the domestic management on highly migratory species, especially Atlantic Bluefin Tuna. As a prelude to my testimony, it is important to point out that the New York Bight region has suffered disproportionately from closures of the Atlantic Bluefin Tuna fishery. In that regard, we have suffered significant economic harm which has threatened the viability of a

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significant portion of this great historical fishery. (Please see attached Asbury Park Press article of October 18, 1993 and data sheet on number of vessels involved in the New Jersey highly migratory species fishery, 1991).

To a great extent, the mechanisms necessary to promulgate equitable regulations to carry out ICCAT recommendations are already in place. In particular, the act provides that "to the extent practicable, [the regulations effecting highly migratory species must] be consistent with fishery management plans prepared and implemented under the Magnuson Fishery Conservation and Management Act." (16 USC 971D(c)(1)). I will highlight the standards most pertinent to the regulations of these species, while particularly focusing on Atlantic Bluefin Tuna. I submit that the following recommendations would achieve equity while not compromising effective conservation and management.

The first standard set forth in Magnuson seeks to achieve optimum yield from each domestic fishery while preventing over fishing. Totally precluding certain regions from engaging in a fishery, or inhibiting that fishery by extremely short seasons or unpredictable closures, (both of which have been suffered disproportionately by the New Jersey/New York Bight region), results in a failure to achieve optimum yield. This is because the well established and significant portion of the party and charter boat industry from these two states which are engaged in this fishery add significantly to the overall benefit to the

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national economy. Moreover, the school and medium fishery long engaged in by this region provides a food source and great recreational opportunity for thousands of fishermen. Likewise, maximum sustainable yield in these fisheries must be considered in the context of the social and economic impact of closures and undue restrictions on this regional industry. More equitable and structured allocations and administration of bluefin allotments would result in a greater viability for this region's depressed fishery.

Basing management measures on the best scientific information available, pursuant to standard 2, implies that the NMFS should utilize more information available through the various user groups in compiling their data base. By long ignoring the voluminous data offered by user groups, with a collective millenia of marine experience, NMFS scientists have been able to effectively alienate every major user group while undermining any confidence in their data base and conclusions. Likewise, data supplied by the New Jersey Division is inadequately considered because it does not conform with NMFS practice. The discretion on the part of NMFS scientists, long exercised so as to preclude industry offered data, must be addressed and directed to consider this important data. Only then will the overall fishing community have any confidence in NMFS data, scientific conclusions, or management measures.

Standard Four provides that conservation and management

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measures shall not discriminate between residents of different states. Notwithstanding this standard, I respectfully submit that NMFS would agree that the results of their regulations have been quite discriminatory against our region. For example, this year the New England region's general category caught approximately six hundred tons of large medium and giant Atlantic Bluefin Tuna. The New Jersey region, which had been promised by NMFS several years ago a fifty ton regional allocation, this year has been allocated eight tons. As unfair as that allocation seems, it is exacerbated by the fact that the greater New York Bight area was totally shut out of the school bluefin tuna fishery as well as the large school, small medium fishery. In 1991, 1611 boats were involved in that fishery in New Jersey. Those fishing trips can never be made up, and the losses are irreparable. By tightening up the monitoring process, by creating "buffer" time periods in which statistical evaluations shall take place, and by more carefully examining and considering the historical fishery of this region, fisheries managers will be able to avoid discriminating against the residents of New Jersey and New York.

Without requiring a more strict compliance with the national standards in promulgating regulations of highly migratory species, especially bluefin tuna, certain regions will inevitably continue to suffer disproportionately under the present management scheme. Moreover, without mandating NMFS

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scientists to consider and pursue industry provided data, a weak data base will continue to be a problem and the entire fishing industry will continue to scoff at NMFS data.

THE U.S. ROLE IN ICCAT

Generally speaking, it is fair to say for ICCAT participation to be in the best interest of the United States, the United States can not carry most of the conservation burden on it's shoulders. Magnuson provides that conservation and management measures should minimize, to the extent practicable, any disadvantage to the United States fishermen in relation to foreign competitors. While this provision may be meant to guide domestic regulation of these fisheries, this provision is particularly pertinent to the present management scheme under ICCAT. Strict interpretation of the two stock theory defended by our NMFS scientists is not only seriously raised into question by tagging results and other catch and effort patterns presently in place, it also acts to place practically the whole burden of bluefin tuna conservation on the United States and Canada. It should be made incumbent upon NMFS scientists to address and consider data although it may conflict with their conclusions and possibly support management measures which would eliminate the disadvantage to the United States fishermen.

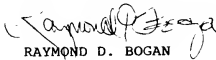
Likewise, the eight ton tolerance for school size bluefin tuna has not only devastated the recreational bluefin fishery

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from New York south, but it has compromised the intent of bluefin allocation which is to monitor schools. This school bluefin tuna fishery can provide more information with regard to stock size, migratory patterns, habits and other relevant information with regard to bluefin, than any other user group now engaged in this fishery either foreign or domestic. Supporting an increase in this eight percent (8%) tolerance would result in a greater monitoring ability and bolstering a traditional fishery now severely impacted by the present management regime.

Thus, stricter adherence to the national standards contained in the Magnuson Act and a greater consideration and openness to industry participation and contribution towards the scientific monitoring and data base, will result in greater compliance with the mandates of the ATCA and will cause less alienation between industry and NMFS. Most importantly, however, is that it would result in the greatest equity to all United States fishermen.

Respectfully submitted,



RAYMOND D. BOGAN

RDB/jmc
Enclosure

16 U.S.C. 1851

TITLE III -- NATIONAL FISHERY MANAGEMENT PROGRAM

SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT

(a) **IN GENERAL**--Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:

98-623

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

(2) Conservation and management measures shall be based upon the best scientific information available.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(5) Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

97-453

(b) **GUIDELINES**-- The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on the national standards, to assist in the development of fishery management plans.

16 U.S.C. 1802

(12) The term "foreign fishing" means fishing by a vessel other than a vessel of the United States.

(13) The term "high seas" means all waters beyond the territorial sea of the United States and beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States.

101-627

(14) The term "highly migratory species" means [species of tuna which, in the course of their life cycle, spawn and migrate over great distances in waters of the ocean.] tuna species, marlin (Tetrapturus spp. and Makaira spp.), oceanic sharks, sailfishes (Istiophorus spp.), and swordfish (Xiphias gladius).*

* The bracketed definition is in effect for section 102 until 1/1/92, and is then deleted; the underlined definition is in effect for other sections.

(15) The term "international fishery agreement" means any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party.

101-627

(16) The term "large-scale driftnet fishing" means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of one and one-half miles or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

(17) The term "Marine Fisheries Commission" means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific Marine Fisheries Commission.

101-627

(18) The term "migratory range" means the maximum area at a given time of the year within which fish of an anadromous species or stock thereof can be expected to be found, as determined on the basis of scale pattern analysis, tagging studies, or other reliable scientific information, except that the term does not include any part of such area which is in the waters of a foreign nation.

(19) The term "national standards" means the national standards for fishery conservation and management set forth in section 301.

101-627

(20) The term "observer" means any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits under this Act.

(21) The term "optimum", with respect to the yield from a fishery, means the amount of fish--

(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and

(B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.

Brielle out of the tuna sport fishery

It seems hard to believe that in less than 50 years, Brielle — once the Atlantic bluefin tuna sport fishing capital of the world — has been almost shut out of the fishery.

The school bluefin tuna fishery was closed by the government Sept. 21 even as the small fish were moving into Shere area waters and a handful of fish were caught. Trough at midnight, the fishery for large school and small medium tuna will close after two fish were caught yesterday.

And, finally, the giant tuna fishery has a short life expectancy. The National Marine Fisheries Service, after a series of errors announced that the western New York fishery will have a quota of eight tons this year.

The fishery opened Friday in the Mid. fish with the landing of a 330-pound bluefin by Dennis Glynn, Brielle, and John Bouranic, Point Pleasant, and as of last night there were only around five tons left in the quota.

Raymond Bogan, counsel to the United Boatmen of New Jersey and New York and a member of the International Commission for Conservation of Atlantic Tunas advisory committee, said balance and truth must be brought back into management of the species.

"I'm going to start working on it tonight," he said Friday after returning from an advisory committee meeting in Silver Spring, Md.

Bogan ran into tough going when he proposed that the recreational sector get more school fish. Commercial and preservation interests were adamantly opposed and had the votes to thwart him.

However, he sees some hope in the broader picture when the discussion centered on actual tuna numbers and the place of the United States in international management.

NMFS, which has used its "best scientific evidence" excuse to justify support of stronger regulations, has been bold numbers, is being challenged by

boat

...like a blue marlin," Colabella said. "Then it went deep and fought up and down."

There were only about 20 boats on the tuna grounds Friday, but there were probably 300 on Saturday and another big line yesterday.

Brad and Spurge Kosowski, Wall Township, had the tuna touch, though, bringing in a joint Friday and Saturday on their Sea Trial.

Their fish Friday weighed 880 pounds on the scales at Hoffman's Marina, and their fish Saturday weighed 800 pounds.

The largest fish caught Saturday was a 900-pounder that Jim Lehmann of Pompton Lakes caught at Graves' (Trentel) Cooper. The fish was fought for 15 minutes and had to be spliced to another outfit.

George Adam Lewis of Poststown, Pa., caught his Friday fish weighed 803 pounds on Hoffman's scales. It was taken by his father's George W. (Bert) boat, Capt. Bronze. Also on board that boat were Ron Pearson, also of Poststown, and Ed Town of Ocean Township.

The elder Lewis said he did not start fishing until 3 a.m. The fish was hooked at 5:05, and was whipped in 50 minutes.

"We'd rather fish from 3 on," Lewis said. "Everybody gets discouraged about that time if they have been out all day and it's a good time to fish."

"When we get out there we find

whining floating on top (from a drag net), and fish breakers," he said. "We hooked the fish, we let it run for long time so it swallowed the bait, and then went to work."

The largest tuna they caught previous to Saturday's fish was a 550-pounder taken two years ago.

Other giant tuna caught yesterday included a 695-pound fish taken by Paul Panaska while fishing on Herb Jones' Swartz. Tim Berk was the captain. Aboard were Gene Farrell, Robert Jav-Frost and Scott Bracco. All are from Brick Township. Art Schumann caught a 631-pound tuna on Capt. Joe McDonald's big Mac.

Capt. Ship Boyle docked at Hoff man's with a 219-pound tuna taken on his Lifesaver, and the Judy Lee docked with a 191-pound bluefin.

The bluefish have returned in earnest and Capt. Howard Bogan Jr. of the Jamaica, Brielle, and Chris Illich of the Golden Eagle, Belmar, reported good weekend action.

"The best area is 12 to 14 miles east of Brielle," Bogan said. "The fish weighed from 8 to 13 pounds and were taking on bait and jig."

Illich said action weighed on the 17th. Capt. Frank Bink and the Rattlesnake Friday and has been good.

"We weren't bagged up by 10 o'clock today, but let's say it was good fishing — very good," he said.

John Geiser is outdoor editor of the Asbury Park Press.



JOHN GEISER

"This is where the forecast is to be taken," Bogan said. "There are more tuna there than anywhere else, but the forecast and attention has to be directed at the eastern fishery."

Meanwhile, local tuna fishermen were directing their efforts at catching the few fish left to them over the weekend.

After Glynn and Donamic broke the record, Capt. Joe Colabella came through with the heaviest fish of the weekend — 1,028 pounds, two years after the state record set in 1981 by Royal Parsons.

Colabella anchored his Smokey Too in the Monster League area and the fish was hooked at 1:15. Bogan took the party of four. Brian Sweeney, Brielle, fish; Poronetti, Pompton Lakes; and Jenny Laurents and Preston Harrison, both of Trenton — an hour and 45 minutes to whip it on 130-pound tackle. Bob "Rhino" Tasak was the mate.

"At first the fish was up on top splashing — about 100 yards from the

C6 Asbury Park Press, Monday, Oct. 18, 1993

1991 DATA - NUMBER OF BOATS

CANYON and OFFSHORE	1,727
SHARK	1,284
SCHOOL BLUEFIN	1,161
GIANT BLUEFIN	845

MANY BOATS ARE INVOLVED IN MORE
THAN ONE FISHERY

NJ DIVISION OF FISH GAME & WILDLIFE

**Testimony Before the Subcommittee on Fisheries Management
of the
House Committee on Merchant Marine and Fisheries
Regarding
Reauthorization of the Atlantic Tunas Convention Act**

**Presented by Eric M. Hesse
Centerville, MA**

**Washington, D.C.
October 20, 1993**

Testimony Before the Subcommittee on Fisheries Management
Hearing on the Atlantic Tunas Convention Act
October 20, 1993

Mr. Chairman, my name is Eric Hesse and I am a commercial bluefin tuna fisherman from Centerville, Massachusetts and I also have a Masters of Science in environmental engineering from the University of Massachusetts at Amherst. I have been fishing bluefin tuna for 10 years and I am affiliated with Cape Quality Bluefin (a fishermen's cooperative marketing association), South Dennis. I have been a member of the Board of Directors of the East Coast Tuna Association since 1986. I appreciate this opportunity to share my views with the Subcommittee on necessary changes to the Atlantic Tunas Convention Act.

Our overall view is that the current system of highly migratory management with principle authority vested with the Secretary of Commerce is fundamentally sound. We do however, see a need for a limited number of important changes that are necessary to improve the overall process and enhance opportunities for participation and support from fishermen and the fishing communities. I will describe a number of these necessary changes in light of the existing crisis over the U.S. position for bluefin tuna at the upcoming ICCAT meeting. The four major points of my testimony are:

1. Authority for highly migratory species management must remain with the Secretary of Commerce;
2. Scientific assessment responsibility for Atlantic bluefin tuna must be transferred to Northeast Fisheries Center in Woods Hole in order to restore scientific integrity, balance and fishermen's confidence and trust in the scientific and management process. U.S. fishermen are doing much more than our fair share to conserve bluefin because Miami has politicized the science;
3. ATCA provision limiting disadvantaging of U.S. fishermen needs to be strengthened and "increasing or decreasing language expanded to include fishing mortality consideration;
4. Changes are required to allow establishment of FACA exempt planning teams and require important but minor technical revisions regarding data collection and timing of rulemaking.

Highly Migratory Under Secretary of Commerce is Sound

Let me emphasize that the decision by Congress in 1990 to transfer highly migratory authority from the Regional Councils to the Secretary of Commerce was necessary and must be re-affirmed under reauthorization. Without question, substantial progress has been made in a short period of time to improve ICCAT and our domestic programs for bluefin tuna and swordfish since the passage of the 1990 Amendments and under Secretarial authority.

We hope that Congress will see through the "smoke" put forward by the few groups suggesting that authority be returned to the councils. We believe that their motivation and true intention by restoring authority to the councils is to deny adequate commercial fishery representation and thereby prevent balanced decision making on highly migratory issues. We do support a continuing important role for the councils because this regional system affords many individuals and organizations an effective voice in the process.

Recreational and other non-commercial interests now dominate the east coast councils and this situation prevents balanced decision making in any shared multiple council decision arena. For example, we believe that it would be difficult, if not impossible, to develop a multiple council voting procedure that would allow adequate representation for all groups. Our highly migratory commercial bluefin tuna, other tunas, swordfish and shark fisheries are economically important, employ tens of thousands of Americans and are traditional United States fisheries that must be adequately represented in the domestic management and international negotiation processes.

Transfer of Scientific Responsibility/Current Bluefin Crisis

Mr. Chairman, we have before us a major crisis regarding the U.S. bluefin position at the November ICCAT meeting this year. This crisis stems from the fact that our scientists from Miami have politicized the scientific process to a dangerous level -- one that now threatens Atlantic wide conservation of bluefin tuna and, for all practical purposes, would end significant U.S. participation in the bluefin fishery. I am attaching several important documents that provide evidence of this politicization of the ICCAT science as a result of the efforts of Miami scientists to protect

their controversial "two stock working hypothesis".

On behalf of more than 400 fishermen in our East Coast organization and more than 50 support industries, I am requesting that your Committee carefully investigate this matter. We hope that the investigation will include the inappropriate expenditure of U.S. government funds to send seven U.S. scientists to Madrid on a week long junket to carry out their crusade against the U.S. commercial bluefin fishery. The politics of the Miami scientists now threatens to result in a permanent disproportionate share of the burden of conserving Atlantic bluefin being forced upon U.S. fishermen. Here are the facts Mr. Chairman:

1. United States fishermen, since 1975, are doing more to conserve Atlantic bluefin tuna than fishermen from any other country in the world. It is important to note that U.S. fishermen began to voluntarily conserve bluefin even before ATCA was originally passed in 1975.

-- Since 1981 our bluefin quota has been reduced by 65% and our share of the Atlantic total catch of bluefin is now less than 3 1/2% (all western Atlantic catches now account for less than 7% of total);

-- U.S. fishermen comply with an absolute minimum size of 14 lbs; we have a restricted quota on fish below 66 lbs and we prohibit the sale of bluefin up to 70 inches or about a 150 lb bluefin;

-- U.S. fishermen also protect the Atlantic bluefin when they migrate through the known spawning grounds in the Gulf of Mexico.

2. These expensive conservation sacrifices by U.S. fishermen for bluefin are in stark contrast to the continuing situation on the eastern Atlantic and Mediterranean bluefin fishing grounds.

-- Since 1981 the reported catches of bluefin from the eastern Atlantic and Mediterranean fishing grounds have increased by more than 42%; ICCAT scientists continue to point out that catches from these grounds are known to be under-reported and some fishing countries do not provide any statistics on bluefin catches;

-- Eastern Atlantic and Mediterranean fishing countries have flagrantly violated the 1975 ICCAT agreement to cap fishing

mortality to recent levels with these increases in catch and effort;

-- The 1992 ICCAT Infractions Committee Report provides ample evidence that eastern Atlantic and Mediterranean fishing countries do not abide by the 1975 Atlantic wide minimum size of 14 lbs. Scientists now know that at least 3 million bluefin tuna under the minimum size are captured to support domestic cannery markets (it is interesting to note that all western fisheries for all sizes of bluefin have now been reduced by national regulations to catching about only 20,000 fish total);

-- Eastern Atlantic and Mediterranean countries continue to target spawning bluefin for the roe to support a luxury product market. This practice is reprehensible and an insult to western Atlantic fishermen given the extent of the conservation program here.

Mr. Chairman, it is our view that the totally unregulated and booming bluefin fisheries of the east (from the starting depressed condition of the early 1970's) can only be occurring and sustained as a result of the dramatic sacrifices of fishermen in the western Atlantic fishing grounds. In light of the stark contrast of the western fisheries being under exceptionally restrictive management and the eastern fisheries yet to feel the economic sting of basic conservation measures such as minimum size and quotas -- fishermen find the Miami position calling for another 50% reduction in our quota for the next ten years to be incomprehensible.

Under the Miami plan, the U.S. share of the total Atlantic catch will be reduced immediately to less than 1 1/2% and this figure will shrink as the eastern fisheries continues to prosper at our expense. It is important to recall the arbitrary justification for the original stock separation and imaginary stock dividing line first proposed by Bill Fox. The division of the Atlantic into east and west for stock assessment was by Parrack (under instructions by Bill Fox) in 1980 who noted:

"A separate analysis was required assuming a completely isolated West Atlantic population so that it was necessary to compile the catch under that assumption. Since longline catch per effort show a continuous distribution of fish across the Atlantic and mark-recapture data document frequent transatlantic movement (Brunenmeister 1979), the identification of catches from the hypothesized western stock was not obvious. Therefore, in order to define catches from a separate stock for analysis purposes, a geographical separation line approximately equidistant from eastern and

western continents was arbitrarily defined as beginning at 40°W 60°N and proceeding to 40°W 10°N...."

No one seems to be clear on how the line got moved from 40° to 45° in the first year but it is known that since 1982 protection of bluefin ends at 45°. We now know for example that in recent years Japanese fishermen catch from about 800 to nearly 1400 tons of bluefin from an area approximately 150 miles from the controversial line. These catches abutting the line exceed the Miami estimate of the replacement yield (i.e. 1200 mt) for the hypothesized western stock. These fish obviously belong to any western stock and in the light of these recent catches the arbitrary line now looks down right silly.

At the most recent U.S. ICCAT Advisory Committee meeting on October 14 and 15 a "straw poll" was taken on a number of relevant issues and revealed little support for current Miami positions. 18 (out of 20) of the U.S. ICCAT Advisors believe that the primary focus of U.S. policy needs to be the establishment of management measures on the eastern and Mediterranean fisheries that now account for more than 93% of the total Atlantic catch. 13 of the U.S. Advisors do not believe the hypothetical stock division has any merit. 14 of the U.S. Advisors will no longer support further reductions in the restrictive U.S. bluefin quota.

Mr. Chairman, I regret that we must call upon Congress in the reauthorization of the ATCA to transfer scientific assessment responsibilities from the Southeast Fisheries Center in Miami to the Northeast Fisheries Center in Woods Hole, Massachusetts. Fishermen throughout the Northeast have lost all confidence in the Miami scientists to objectively assess this resource. Fishermen are totally frustrated by the repeated rejection of our earnest attempts to participate in the scientific process and offer suggestions and evidence that might help Miami scientists uncover problems that cause their mathematical models to not reflect the condition of the resource. Our frustrations and existing levels of hostility are no doubt compounded by the pervasive arrogant attitude and public displays of contempt for the fishermen's point of view demonstrated by Miami "point" scientists.

It is a fact that the bulk of the U.S. bluefin fishery occurs north of New York and it is entirely appropriate and logical for the scientific assessment work to take place in the region where the fishery occurs.

Transferring the scientific assessment responsibilities to the Northeast would increase the opportunities for interaction of scientists with fishermen and the fishery and this can only benefit knowledge and understanding of the bluefin resource.

Increased Opportunities for Involvement of Affected Fishermen and other Constituencies

NOAA has only recently put forward a formal process for the development of long term highly migratory fishery management plans and required amendments. We also note that inadequate funds are provided for the NMFS Highly Migratory Species Division to execute its responsibility for timely and appropriate development of changes to existing rules governing the bluefin fisheries.

In the last two years, NMFS has been unable to complete the rulemaking process to implement regulatory changes affecting the current years fishery. We have advised the Agency repeatedly that this situation is grossly unfair to all affected fishermen and fishing businesses. In some cases fishermen are being forced to make business decisions related to selection of fishing categories before the rules of that category or even quota levels are finalized by NMFS. This is an unacceptable situation and we request that the Committee address this matter. We believe that Scoping meetings, public hearings and regulatory changes must be completed and finalized by May 15 or prior to the start of the bluefin fishing season each year.

We also note that the opportunities for frequent quality interaction with the regulatory agency are minimal and this results in inadequate understanding of Agency proposals, inability of the fishing community to constructively offer suggestions for timely improvement to the regulatory environment and, in general, poor relations between NMFS and the affected fishing community. Public hearings and Scoping meetings do not generally provide for useful interaction between the regulated public and the agency and this problem is exacerbated by inadequate funding preventing appropriate personnel from attending the few regional meetings.

We believe that the Committee should consider the recent suggestion of the Seafood Consumers and Producers Association, Inc. that authority be provided to NMFS (similar to authority provided to the regional councils)

"to create formal advisory panels, exempt from the Federal Advisory Committee Act (FACA), to provide recommendations to the agency....". We also support modifications to ATCA and Magnuson that directs the Secretary to appoint plan development teams to recommend plans for the Secretary's review and adoption. We support language developed by Bluewater Fishermen's Association for submission at this hearing with the addition of specific reference to inclusion of knowledgeable fishermen on any such highly migratory "planning teams".

Strengthen the ATCA Provision Against Disadvantaging U.S. Fishermen

One of the more controversial issues arising from the 1990 Amendments of ATCA and the Magnuson Act are the respective provisions dealing with the issue of highly migratory measures that place U.S. fishermen at a competitive disadvantage with foreign fishermen engaged in the same fisheries. Section 304(f) (3) (E) of the Magnuson Act and ATCA Section 6 (c) (3) are the relevant sections. We believe that the legislative history is clear that the language of these two sections was developed to achieve two principal U.S. fishery objectives and national policy.

The first objective was to recognize that international agreements are best negotiated from a position of equality, national credibility, strong and un-politicized scientific evidence and mutual respect for each member nation's unique fishery conservation perspective. Congress also recognized that unilateral fishing restrictions, to the extent that they contribute to a conservation goal, reduce the incentive for timely international agreements to jointly conserve the resource. Whatever short or long term benefits result from unilateral management are shared by the international fishery while the costs are borne singly by only the implementing nation. The notion that unilateral restrictions facilitate international agreements by "setting an example" or "showing commitment and resolve to the fishery problem" is recognized as an essentially bankrupt negotiating stratagem given the realities of the effects of unilateral actions. Congress never intended to sacrifice the interests of U.S. fishermen and support industries to prod international management.

The second objective was to assure that U.S. fishermen be held to the same standard of implementation and interpretation of the international agreement/program as other participants in the fishery. This objective

requires a determination of the formal ICCAT expectations and practices as evidenced by the actions of the ICCAT community of participating nations. The language in question was not intended to infringe on the Congressional imperative that **U.S. fishermen be held accountable to the same standards of interpretation, performance and compliance with the international agreement by all ICCAT nations.**

Numerous Congressional statements are available to indicate that the intent was that U.S. fishermen should not be required to share a disproportionate conservation burden. Senator Kerry stated "U.S. fishermen should not have to endure severe restrictions while other nations continue to harvest the very same stock of fish" (136 Cong. Rec. S 14967). Cong. Studds stated that "these (international) agreements should provide for an equitable sharing of responsibility for conservation among the nations involved." (136 Cong. Rec. H. 11889). Cong. Jones stated that domestic measures "should not be inequitable or unreasonable when compared to those that are required of fishermen from other fishing nations." (136 Cong. Rec. H. 12402). Cong. Saxton provided the compelling rationale against greater unilateral restrictions when he stated that:

"Effective management for highly migratory species must involve and coordinate efforts over the entire range of the species and include all harvesting nations. Otherwise, conservation efforts of our domestic fishermen will only result in protection of the species while in U.S. waters and would eliminate any incentive for other nations to cooperate or adopt equal measures. Such a situation is unfair and unacceptable." (136 Cong. Rec. H. 11890).

The new language in ATCA was emphatically not a rejection of past U.S. management practices. To the contrary, it was a rejection of unilateralism and premised on the continuation of past practices, consistent with the longstanding approach of ICCAT and the desire not to disadvantage U.S. harvesters vis a vis their foreign competitors.

With all of the above in mind and in the event that the Committee entertains suggestions to change the existing language of the relevant ATCA section we would propose the following revision to ATCA Section 6 (c) (3) to read as follows:

"The regulations required to be promulgated under paragraph (1) of this subsection may...(A) through (E); except that no regulation

promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish to the United States pursuant to a recommendation of the Commission, be more restrictive than those measures agreed to internationally or otherwise have the effect of disadvantaging United States fishermen in relation to foreign competitors."

We also support the proposal of Bluewater Fishermen's Association that the terms "allocation or quota" in the above Section should include international fishery agreements based on "fishing mortality levels".

Atlantic Bluefin Permitting and Reporting Requirements

Finally, we note that NMFS has expressed its intention to permit anglers fishing for Atlantic bluefin tuna and we fully support this long overdue requirement. However, we believe that the agency will continue to resist the implementation of catch and landing reporting requirements on all sectors of the fishery including the angling community. We strongly urge the Subcommittee on Fisheries Management to include in the reauthorization of ATCA direction to the agency that reporting requirements be applied fairly to all user of this valuable resource.

We believe that fishing for Atlantic bluefin is a privilege extended to all citizens of the United States and that the minimum obligations of securing a fishery permit and appropriate reporting forms are reasonable to allow proper management and conservation of the fishery. Continuation of questionable, controversial and labor intensive surveys are no longer justifiable to assure our national compliance with the international bluefin quota conservation program.

Attachments:

1. October 14, 1993 East Coast Tuna Press Release
2. October 11, 1993 Letter to Dr. James Baker, NOAA Administrator
3. September 24, 1993 Letter to Doug Hall (see comments on tracking Angling Category catches)
4. October 7, 1993 New England Congressional Delegation Letter
5. Figure 1. Total Atlantic Bluefin Catch 1970-92 (with Miami Plan for Catches to the year 2,000)
6. Coalition of United States Bluefin Tuna User groups

EAST COAST TUNA ASSOCIATION

P.O. Box 447, Salem, N.H. 03079
 (603) 898-8862 FAX 898-2026

Press Release**October 14, 1993**

The East Coast Tuna Association believes that the 1993 draft report of the Bluefin Working Group, dominated by scientists from Miami, is incomplete due to the failure to adequately address and consider the impacts of substantial catches coming from within 150 miles of the arbitrary 45° dividing line currently used to support the "two stock working hypothesis". Therefore, the draft report findings, especially those related to the estimates of stock size for the hypothetical western component and replacement yield are invalid and should not be used as a basis for establishing or recommending the U.S. policy position at ICCAT in November. The Bluefin Working Group must reconvene prior to the SCRS meeting in late October and incorporate the bluefin catches from western Atlantic contiguous fisheries. We believe that the controversial line must either be eliminated or, at least, appropriately shifted to the east.

BLUEFIN TUNA FACTS

1. U.S. fishermen now catch **less** than 3% of the total Atlantic bluefin catch;
2. U.S. fishermen have had our quota **reduced** by 65% since 1981 while Europe and Mediterranean fisheries have **increased catches** of bluefin by 41%. Bluefin fisheries in the western Atlantic are now restricted to a small catch of about 20,000 fish while about 4 million or more are caught in the unrestricted fisheries in the Atlantic and Mediterranean;
3. U.S. has strict enforcement of protection of small bluefin tunas while eastern Atlantic fishing nations catch two to three million baby bluefins every year;
4. U.S. fishermen protect bluefin when they migrate through Gulf of Mexico while east Atlantic and Mediterranean nations target spawning bluefin for luxury roe product;
5. U.S. minimum size is four times larger than the minimum size flagrantly violated in East;
6. U.S. fishery, each year, is shut down at the height of the season when fish are abundant and most valuable and whereupon their annual migrations across the Atlantic subject them to unrestricted fishing in the unregulated eastern fisheries;
7. All U.S. bluefin fishermen do more to conserve bluefin than fishermen from any other country in the world and we are no longer going to carry alone the burden of conserving Atlantic bluefin tuna. We demand that our Gov't and scientists stop offering up our fishery for unilateral quota cuts. The new U.S. policy must be based on a fair and equitable distribution of the conservation burden for Atlantic tuna. We will not support further bluefin foreign aid for the eastern Atlantic and Mediterranean fishing nations.

East Coast Tuna Association

P.O. Box 447, Salem, N.H. 03079
Tel (603)898-8862 Fax 898-2026

October 11, 1993

Dr. James Baker, Under Secretary of
Commerce for Oceans and Atmosphere
Herbert Clark Hoover Building
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Dr. Baker:

I apologize in advance for the length of this letter but a \$32 million a year U.S. bluefin tuna export industry is at stake. You have the authority to restore a balanced U.S. bluefin policy and you bear the heavy responsibility for any economic calamity that results from your Agency's 1994 bluefin rulemaking. President Clinton, as a candidate, promised to "change" the way government does its business and we have yet to see this from NOAA.

The report of the ICCAT Bluefin Working Group is out and the results are as we expected. You will recall that in our September 16 meeting and, more recently in my September 27 letter to you, we expressed fear that the seven Miami scientists would dominate and produce an unbalanced assessment of the status of the Atlantic bluefin stock in the western Atlantic. With the seven Miami scientists pressing three from Canada and three from Japan, our fears have been realized. This assessment, if believed, forecasts a maximum catch of 1200 MT for the next ten years if the stock is to have a 50% chance of not declining. Such a catch restriction would cut back U.S. access to the resource another 50% and, for all practical purposes, end the commercial fishery and ruin the existing bluefin recreational and commercial fishing infrastructures.

If we thought the assessment were reasonably correct ECTA would support wholeheartedly whatever measures were necessary to properly manage the stock. However, there are too many other indicators that convince us the assessment is wrong and not at all reflective of the condition of the resource. These include the obvious abundance of fish based on our pilots aerial census and visual observations of our fishermen; the fact that the quotas in all categories were reached in record time (meaning either a great deal more fishing effort this year

Dr. James Baker

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October 11, 1993

which there was not, or the catch per unit effort is up again); and the fact that an analysis of the tagging program carried out by Canada the last three years indicates a total mortality rate for giants that is considerably lower than predicted by the assessment.

However, this letter is not the place to reexamine the assessment. Our concern is that once again U.S. fishermen are being called upon to sacrifice so that others can reap the harvest. In this latest instance we are threatened with a 50% cut in quota (representing at least \$15 million in exports to Japan) and at the same time Japanese fishermen are allowed to take three times their share of the bluefin quota in a contiguous fishery that exposes the silliness of drawing an arbitrary stock dividing line.

What is it going to take to get Miami scientists and NOAA to step back and look at the big picture? Something is wrong and unfair. The western fisheries were cut 55% during the 80's and the eastern Atlantic and Mediterranean catches increased by 31%. The western fisheries were cut another 10% for 1992/93 and the eastern Atlantic and Mediterranean increased by another 11% for 1992. The eastern Atlantic and Mediterranean fisheries now account for more than 93% of the total catch and the proposal from Miami is to slash the western fisheries by another 50% for 10 more years? A management strategy for Atlantic bluefin that relies on a maximum of 3 1/2% of the total catch (i.e. the new western quota) being constrained by a minimum size and spawning area protection is not conservative or balanced.

This is the unfortunate reality of how ICCAT manages bluefin to accommodate the controversial two stock working hypothesis. ICCAT over the years, and for mainly political reasons, has gone from managing bluefin in the Atlantic on a single stock basis to one of considering there may be separate stocks in the east and west with mixing sufficiently limited to allow these stocks to be managed on a separate basis. The division of the Atlantic into east and west for stock assessment was by Parrack (under instructions by Bill Fox) in 1980 who noted:

"A separate analysis was required assuming a completely isolated West Atlantic population so that it was necessary to compile the catch under that assumption. Since longline catch per effort show a continuous distribution of fish across the Atlantic and mark-recapture data document frequent transatlantic movement (Brunenmeister 1979), the identification of catches from the hypothesized western stock was not obvious. Therefore, in order to define catches from a separate stock for analysis

purposes, a geographical separation line approximately equidistant from eastern and western continents was arbitrarily defined as beginning at 40°W 60°N and proceeding to 40°W 10°N...."

As you can see the original placement of the line at 40° in 1980 was arbitrary and without any biological basis or by reason of the location of fishing areas. The next reference to the line in the ICCAT literature is found in the management recommendations of "Panel 2 on Bluefin" (ICCAT 1982) where the line was moved west to 45° without a documented reason. Here the line has remained.

The result of dividing the ocean by this line is that catches west of the line are counted as coming out of the western "Stock", those east of the line from the eastern "Stock". Since all the U.S. and Canadian catches are in our EEZ's they fall into the western stock. Japan, on the other hand, has a high seas longline fishery. Beginning about 1985 the Japan fleet began to shift their traditional fishing operations off the U.S. and Canadian coasts east because of the restrictive western quota. By 1988, substantial catches were coming from the area just east of 45°W. In the past three years these catches have increased to the point where they exceeded the estimated replacement yield for the entire western stock, and were triple the allowed Japan quota for the west. About two-thirds of this Japanese catch is taken less than 150 miles from the line (i.e. about a one day leisurely swim for bluefins), assuming that the reported positions of the catches are accurate.

The tragedy and absurdity of this situation is apparent unless there is no real concern for true bluefin conservation and fairness. Because of a political boundary, catches of bluefin are assigned to an unregulated eastern hypothetical stock when common sense and prudence tells us these catches, which are very large, have to be considered in any assessment of the western stock (as long as we are going to continue this political game with two "hypothetical stocks"). We are disturbed (not surprized) that our Miami scientists are not concerned about this and that the Working Group, under Miami's grip, did not include these catches in the assessment. We ask you what is the motivation for Miami's strict insistence on concentration on the mechanics of an assessment of catches west of 45°W in light of this obvious problem?

Before we can accept the need for additional unilateral sacrifice that will

Dr. James Baker

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October 11, 1983

only increase benefits to nations fishing east of 45°W, we request that you see to it that three things be done:

1. The SCRS Bluefin Working Group can reconvene prior to the SCRS plenary session that begins on October 28 and consider as best they can in the time available and with the information at hand, whether or not these Japanese catches, if counted as coming from the west, would change the SCRS thinking about recommendations for the west. If Miami scientists or Bill Fox suggests that this issue has either been addressed or would not matter much, they are not speaking the truth. **Our preliminary runs of the stock assessment incorporating these catches shows substantial impact on the hypothetical western stock.** Miami scientists cannot be allowed to stall on this issue any longer;


2. The SCRS Working Group consider the biological basis for dividing the Atlantic at 45° W for stock assessment purposes and;

3. Depending on the agreed upon outcome, the U.S. assert a position at ICCAT that calls for either an intersessional meeting of the SCRS or a special working group meeting before next year's SCRS regular session to consider the scientific basis for accepting the two stock hypothesis.

If NOAA is serious about fair and long term conservation of Atlantic bluefin tuna than the U.S. must continue to lead and get these matters addressed. A stroke of your pen and the U.S. traditional bluefin fishery and a \$32 million a year industry becomes history, but it may not mean a darn thing for the bluefin unless these issues are first addressed.

If you need additional information supporting any of the statements and facts included in this letter, please call me and I will be happy to meet with you.

Sincerely,


Richard P. Ruais
Executive Director

MORE

Dr. James Baker

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October 11, 1993

P.S. Although you may find the overall NOAA budget somewhat constraining, I can assure you that there is no limit to the resources of the Southeast Fisheries Center when the subject matter is possible bluefin tuna quota reductions for our commercial fisheries here in the western Atlantic. I am sure they could even fund the travel of an additional personal representative from your office to the Madrid meeting. Maybe they could send just 6 scientists to the new meeting.

cc: Senator George Mitchell
Senator John Kerry
Senator Ted Kennedy
Senator Bill Cohen
Congressman Gerry Studds
Congressman Barney Frank
Mr. Douglas K. Hall
U.S. ICCAT Commissioners
U.S. ICCAT Advisory Committee

EAST COAST TUNA ASSOCIATION

P.O. Box 447, Salem, N.H. 03079
(603) 898-8862 FAX 898-2026
URGENT FACSIMILE

September 24, 1993

Mr. Douglas K. Hall
Assistant Secretary
National Oceanic and Atmospheric Administration
14th & Constitution Avenue, N.W. Room 5804
Washington, D.C. 20230

Dear Mr. Hall:

This letter is to draw your immediate attention to an urgent situation involving the giant bluefin tuna fishery in New England. Once again, the General Category tuna fishery has been shut down in a manner that has needlessly imposed extra economic losses to fishermen, fish dealers and other businesses that support the fishery. These additional losses result directly from the lack of timely notice of an impending closure to all fishermen and dealers. The closure at midnight September 23 was announced only 30 hours before implementation. This is totally inadequate notice given normal business demands of maintaining adequate supplies of bait, tackle and keeping the right number of people employed to service the fleet and to handle, process and ship the product.

On September 10 the NMFS released figures indicating that 372 mt of quota had been caught as of that date and this figure provided most in the fishery with a false assurance that the quota would not be reached until early October when the expected reallocation could occur. We now have been told that this September 10 account of the status of the General Category was incorrect because the Agency was substantially behind because of staff vacations and other personnel matters. It is totally unacceptable that a 32 million dollar a year fishery employing tens of thousands of people can be jeopardized by such mismanagement. Bluefin tuna fish dealers have supported the implementation of a fax reporting system to eliminate lags in quota accounting and provide for reasonable business planning through proper management practices.

We do not believe that the season for the General Category is over and any existing projections of catch rates in the Angling Category are not valid. With the General Category now prematurely closed we expect that the catch of small mediums and large schoolies will drop precipitously. High catches to date of this size fish have resulted, in part, from thousands of trips directed for the valuable giants. As of September 13 some 120 mt of quota remained in this category. We urge you in the strongest terms possible to demand accurate tracking of the Angling Category catches over the next several days and, at the earliest possible date, that you make some of this unused U.S. quota available to reopen our valuable giant fisheries. The Atlantic Tunas Convention Act requires no less under the mandate to assure a reasonable opportunity for all U.S. fishermen to catch the ICCAT conservation quota.

This current crisis again points out the disproportionate burden that all U.S. fishermen share in conserving Atlantic bluefin tuna. The U.S. accounts for less than 6% of the total catch of Atlantic bluefin, we have the highest minimum fish size in the Atlantic, we protect the bluefin while they spawn in our waters and all of these painful economic conservation sacrifices continue to

Mr. Douglas Hall

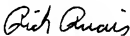
- 2 -

September 24, 1993

support an unrestricted bluefin bonanza in the Eastern Atlantic and Mediterranean Sea. The only solution to these premature, economically devastating closures is for the U.S. to insist that other fishing nations join in the conservation program for Atlantic bluefin. The first step in this process must take place this November at ICCAT with the U.S. insisting upon compliance with the 1981 regulations Atlantic wide and demanding the restoration of the illegitimate 1991 additional 10% quota cut on U.S. fishermen.

The current situation of all U.S. bluefin tuna fishing groups doing more than their fair share to conserve Atlantic bluefin is not sustainable and with these ever increasing premature closures the situation remains extremely volatile. On behalf of thousands of citizens involved and affected by this management program we request your personal intervention and attention to this matter. I will be calling you shortly to discuss this matter further and explore alternatives for rapid reopening of our fisheries.

Sincerely,



Richard P. Ruais
Executive Director

cc: New England Congressional Delegation

The Honorable Ronald H. Brown
 October 7, 1993
 Page Two

Atlantic harvests have been reduced by 68%; catches in the east have increased by 31%. Even more disturbing is the report of the 1992 ICCAT Infractions Committee that, at the very least, some 2-3 million fish under the 14 pound international minimum size established by ICCAT are taken each year in the Mediterranean and Eastern Atlantic.

Whether you agree or not with the "two stock working hypothesis" of this highly migratory species currently used by ICCAT to establish distinct management recommendations for the Western and Eastern Atlantic, even the most conservative estimates of a 3% crossover between the stocks would indicate that this continued overharvest in the east will have an adverse impact on western stocks. In addition, it makes it difficult for fishermen who harvest western stocks to accept more and more reductions while their foreign counterparts prosper. For these reasons, it is our view that the U.S. delegation to ICCAT should vigorously pursue a 1993 ICCAT agreement which ensures, at a minimum, that nations fishing in the Eastern Atlantic and Mediterranean comply with the original 1975 ICCAT agreement which called for a 14 pound minimum size and a cap on fishing effort. For almost 20 years, neither of these provisions has been adhered to.

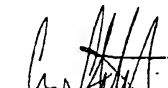
The current ICCAT program that focuses conservation measures entirely on the Western Atlantic, where only 12% of the Atlantic-wide bluefin catch occurs, is unbalanced and inefficient. Major resource gains could be achieved if the spirit of improved conservation and management was extended to the Eastern Atlantic and Mediterranean. We recognize that this presents a formidable challenge to the U.S. delegation, but we believe that it is one that is essential to ICCAT's goal of long-term conservation of the resource and to ensure fairness to fishermen from all countries that benefit from valuable bluefin fisheries.

We look forward to working with you and the U.S. Commissioners to improve the ICCAT conservation program for Atlantic bluefin tuna and thank you for your consideration in this matter.

Sincerely,

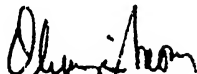


George J. Mitchell
 United States Senate



Gerry Studds
 Member of Congress

The Honorable Ronald H. Brown
 October 7, 1993
 Page Three



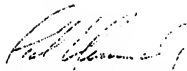
Olympia J. Snowe
 Member of Congress



Thomas H. Andrews
 Member of Congress



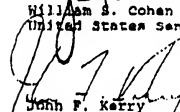
Barney Frank
 Member of Congress



Edward M. Kennedy
 United States Senate



William S. Cohen
 United States Senate



John F. Kerry
 United States Senate

cc: Mr. Carmen Blondin
 Mr. Michael Montgomery
 Mr. Lee Waddig

THOUSAND METRIC TONS

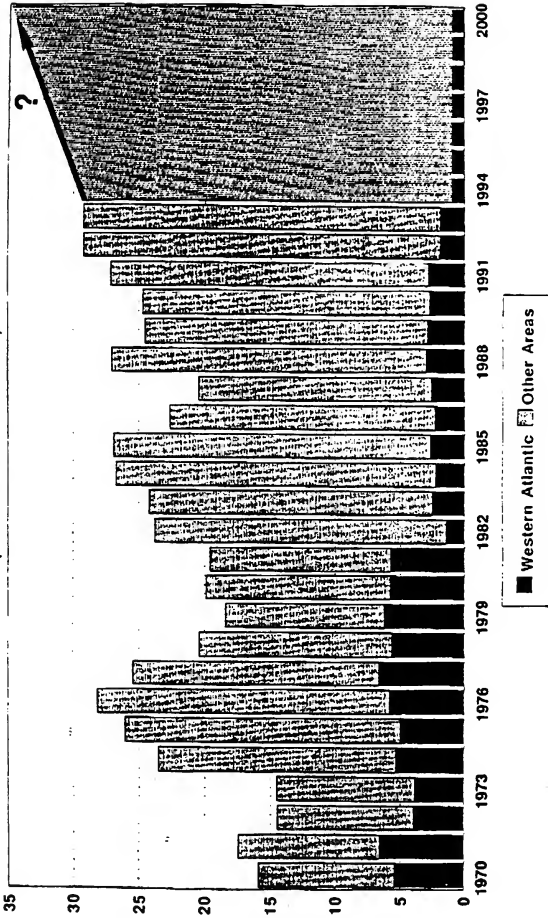


Figure 1: Total Catch Atlantic Bluefin Tuna
(with Western Atlantic defined)

COALITION OF UNITED STATES
BLUEFIN TUNA USER GROUPS

As a direct result of increasing regulatory restriction, heightened environmental group involvement, and deepening industry frustration, representatives of U.S. Atlantic bluefin tuna user groups met in New York City to discuss the issues and seek common ground. A series of resolutions were passed unanimously and all groups agreed to bring the discussion points to their respective Executive Boards for formal consideration and action.

1. Highly migratory species require international cooperation for conservation and management and the Coalition supports U.S. participation in ICCAT through the U.S. ICCAT Commissioners and U.S. Delegation.
2. The Coalition does not support, at this time, further reductions in the U.S. bluefin quota or a CITES listing. The U.S. fishery for Atlantic bluefin tuna has been under strict conservation regulations since 1982. This has resulted in significant quota reductions on all U.S. user groups while, at the same time, east Atlantic and Mediterranean nations have substantially increased their catch over the past decade.
3. The Coalition has concerns over the quality of data on which NMFS is basing their management decisions. The 1991 finding of ICCAT scientists found below represents the best scientific information available on the status of bluefin.

*The 1991 assessment shows clearly that the ICCAT management strategy has been of benefit to the stock, that there are encouraging signs that the numbers of fish up to age 9 are now stable and that there is some evidence of a limited increase in numbers. The stock is not endangered, as the process of stabilization shows. The stock is expected to continue to respond, even under recent catch levels, and the actions being taken by ICCAT member countries for 1992 and the future will speed and increase the probability of the process.

The process towards bluefin resource conservation identified by the latest assessment has been achieved strictly at the expense of fishermen from the United States, Canada, and Japan fishing in the western Atlantic fishing grounds. The United States fishery accounts for a very small portion (less than 6%) of the total catch of Atlantic bluefin.

4. The Coalition believes that U.S. policy for the November 1993 ICCAT meeting should be to achieve conservation

CAACC and JCAA both abstained on the CITES aspect of Resolution

2.

COALITION OF UNITED STATES
BLUEFIN TUNA USER GROUPS

measures for the eastern Atlantic and Mediterranean bluefin fisheries. The official U.S. policy should be published 60 days before the meeting.

The 1992 ICCAT Infractions Committee found that contrary to the 1975 and 1981 ICCAT scientific advice, nations in the eastern Atlantic and Mediterranean did not implement restrictions to cap fishing mortality or implement a 14 lb. minimum size. In 1991 more than 7113 mt of bluefin under the ICCAT 14 lb. minimum size was caught in the East (i.e., well over 2 million bluefin tuna are being caught annually under the minimum size alone). The eastern Atlantic and Mediterranean fisheries now account for the most significant part (over 88%) of the total catch of Atlantic bluefin.

The Coalition believes that the 1993 policy must include a strong recommendation to improve the bluefin tagging data base to allow a better understanding of stock structure. Current estimates of intermixing may grossly underestimate the real rate due to non-participation of nations that rim the Mediterranean Sea and eastern Atlantic. There is evidence that fishermen from certain eastern Atlantic and Mediterranean nations now actively resist development of an adequate tagging data base to avoid management restrictions.

5. The Coalition urges that the State Department, U.S. Trade Representative Office and NMFS immediately establish a Task Force to determine points of leverage with European and Mediterranean Sea countries (ICCAT Member and Non-Member Nations alike) to achieve an agreement on conservation measures in the eastern Atlantic and Mediterranean Seas. The Report of the Task Force should be available for review by the U.S. ICCAT Advisory Committee prior to the November meeting.
6. ICCAT must take steps to eliminate reflagging of vessels to avoid conservation measures and to eliminate substantial bluefin catches by non-ICCAT member nations. We support the attached joint resolution on the issue of reflagging.
7. The Coalition recommends that the U.S. federal ICCAT Commissioner be a non-political appointment given the substantive requirements of the job and the need for continuity. The recreational and commercial ICCAT Commissioners should be from the eastern portion of the United States.

COALITION OF UNITED STATES BLUEFIN TUNA USER GROUPS

8. The Coalition recommends a fishing vessel observer program for vessels fishing for highly migratory species. We further recommend that these observer jobs qualify under President Clinton's student loan work off program.
9. The Coalition recommends a review by NMFS of the 8% quota for the Angling Category, recognized as a historical user of the resource. NMFS should investigate the 8% vis a vis the fact that Canada and Japan do not fully utilize the ICCAT tolerance in fish under 66 pounds. The Coalition is discussing the possibility of a 50/50 split in the annual unused portion of the small medium/large schoolie category. 50% of the allocation could be provided to the Angling Category in the form of fish under 66 pounds and the remaining 50% transferred to giant quota categories.

In conclusion, further reductions to any and all segments of the U.S. bluefin fishery would have additional severe economic impacts on U.S. fishermen and associated businesses and such reductions would also be counterproductive to achieving long term Atlantic wide bluefin conservation. The Coalition believes that long term equitable conservation and management of highly migratory resources requires participation of all nations with substantial fisheries on bluefin. ICCAT must begin to achieve bluefin conservation and management on the fisheries accounting for more than 88% of the catch of Atlantic bluefin. Modest reductions on the major fisheries can produce huge conservation gains for the entire stock of Atlantic bluefin.

10. The Coalition recommends that Congress provide adequate funds to NMFS and State Department for management of highly migratory species.

Attending the May meeting were Ray Bogan (United Boatman's Association, N.J.), John Meyer (Jersey Coast Anglers Association), Phil Kozar (National Fishing Association), Dave Preble (R.I. Party and Charter Boat Association), Joe McBride, (Montauk Boatman's and Captain's Association), Rich Ruels (East Coast Tuna Association), Stephen Sloan (Confederation of Associations of Atlantic Charterboats and Captains), Peter Weiss and Bill Dagnan (General Category Tuna Association).

A finalized signature sheet will be attached.

COALITION OF UNITED STATES
BLUEFIN TUNA USER GROUPS

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2. Stephen Sloan

Stephen Sloan, Confederation of Associations of Atlantic Charterboats & Captains
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3. Richard P. Rusis

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Testimony of the Center for Marine Conservation
Before the
House Subcommittee on Fisheries
October 20, 1993

Good morning Mr. Chairman and Members of the Committee. My name is Suzanne Iudicello. I am general counsel for the Center for Marine Conservation (CMC), a science based advocacy organization dedicated to conserving the diversity and integrity of the oceans. We appreciate your invitation and the opportunity to present testimony about marine fisheries management today on behalf of ourselves and our colleagues in *ICCAT Watch*, a joint initiative of World Wildlife Fund, the National Audubon Society, and CMC, created last year to increase public scrutiny on the International Commission on the Conservation of Atlantic Tunas (ICCAT).

You have asked for our comments on several aspects of the implementation of the Atlantic Tunas Convention Act (ATCA): the effectiveness of domestic management of highly migratory species, the U.S. role ICCAT, and recommendations for legislative changes to the ATCA. Our proposals for change in the management of highly migratory species were developed by the *Marine Fish Conservation Network*, a coalition of more than 30 conservation organizations and commercial and recreational fishing groups. A list of the groups endorsing these proposals is attached to this statement.

In brief answer to your invitation, we offer the following:

- 1) The transfer of management of highly migratory species from the Fishery Management Councils in 1990 has, in its implementation, shut out the public participation that has been the cornerstone of fishery management since the Magnuson Act was enacted in 1976, and has rendered the Magnuson Act irrelevant to the management of tunas and swordfish.
- 2) Rather than assert its leadership at ICCAT, the U.S. has abrogated its own fishery conservation goals to an international regime that has proven unable to stop the decline of the species under its jurisdiction.
- 3) The Magnuson Act must be amended to allow domestic fishery management actions for large pelagic fishes (the so-called "highly migratory species") to be more restrictive than those recommended by international agreement, when such action is deemed necessary to achieve U.S. conservation and management goals. Additionally, we recommend that Congress return management responsibility for large pelagics to the Atlantic Fishery Management Councils.

1. Highly Migratory Species Management Remains Too Little, Too Late

Despite the significant new authority provided by Congress in the 1990 Fishery Conservation Amendments, the National Marine Fisheries Service (NMFS) has been slow to implement its authority and to develop fishery management plans (FMP) for highly migratory species. (Plans developed by the Fishery Management Councils include billfish (1988) and swordfish (1985)). It must be noted, however, that since enactment of the 1990 Amendments, efforts by the Secretary of Commerce to exercise responsible management over highly migratory species have been significantly curtailed by Congress' failure to appropriate the necessary level of funds for the Highly Migratory Species Unit within NMFS. In FY 1994, for example, other than base funding and \$700,000 for East Coast observers, no new money was provided for the data collection, research and management needed to keep pace with increased responsibility.

Lack of funding, however, is not solely responsible for shortcomings. After a three-year delay, a FMP for sharks was released this past spring. A plan for bluefin tuna remains in the future. In May, 1992, a year and a half after the 1990 amendments, the agency published its proposed process for implementing the provisions of the Act concerning the management of highly migratory species in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. Just last month--nearly a year later and 30 months since the 1990 Amendments--the agency published its final process while the amount of time taken was troublesome, we also were dismayed to find that many of the concerns we expressed about the initial approach remain.

We found that the highly migratory process proposal did not cover the scope of responsibilities set out in the 1990 Amendments which provided:

[t]he Magnuson Act, at 16 U.S.C. 1854(f)(3), requires that the Secretary undertake the following three major categories of action regarding the conservation and management of highly migratory species:

1. Identification of research and information priorities, including observer requirements and necessary data collection and analysis;
2. Preparation and amendment of FMPs; and
3. Diligent pursuit, through international management entities (such as ICCAT), of international fishery management measures. (58 Fed Reg 4996 (Sept. 24, 1993))

NMFS addressed only the second category of actions.

NMFS also declined to clarify the relationship between the FCMA and the ATCA in terms of implementing ICCAT recommendations in situations where an FMP is not developed for the subject species. The NMFS implementing process provides that abbreviated procedures provided for under ATCA "...will be used to implement ICCAT recommendations for an interim period until FMPs are prepared for all the HMS designated by the Magnuson Act..." (58 Fed Reg 49971 (Sept. 24, 1993)). Our recommendation suggested this should be clarified to provide that the abbreviated process would be used only for those fisheries for which an FMP had not been developed. We also pointed out that this did not relieve the agency from the procedural requirements of the National Environmental Policy Act (NEPA), but in the final rule, the agency did not sufficiently incorporate the requirements of NEPA with regard to timing and public review.

With regard to NMFS's management of specific highly migratory species under the 1990 Amendments, we would highlight for the Subcommittee the agency record on three species--Atlantic bluefin tuna, Western Atlantic swordfish, and Atlantic sharks--as compared to prior work by the Fishery Management Councils on other billfish.

- **Atlantic Bluefin Tuna.** The National Audubon Society, World Wildlife Fund and the Center for Marine Conservation are on record--through *ICCAT Watch* and other forums--in support of a 50 percent reduction in current harvest levels. We will continue to advocate that action with the Administration and at the International Convention on the Conservation of Atlantic Tunas (ICCAT). We are dismayed over the reluctance of the international authority to confront the 90 percent decline in the spawning population of the western Atlantic bluefin since 1975. It has recently been estimated by the NMFS that had the ICCAT Commission not raised the quota in 1983, the adult breeding population would now be approximately 3.4 times today's population and would be increasing.

According to the latest bluefin analysis, October 1993, by the ICCAT Standing Committee on Research and Statistics (SCRS), it is estimated that the "current exploitable biomass of western Atlantic bluefin is between 8% and 26% of the level estimated for 1975with recent exploitable biomass ...between 6% and 12% of that which could produce MSY." The report concludes that catches at the 1992 level are likely to result in continued decline in spawning population biomass. The 1993 analysis also found that the encouraging

signs noted in 1991 were no longer supportable. Of particular note in this report is the fact that it projected that even under a zero catch scenario, by the year 2002 the populations would still be well below the MSY level.

Yet in the face of these alarming facts, the U.S. has refused to act in our EEZ, on behalf of bluefin under our jurisdiction, to pursue even those limited, non-quota conservation measures that are allowed by the ATCA and could have supplemented the international quota regime for bluefin. U.S. domestic regulations could have served to supplement the international allocation with non-quota measures such as time and area closures, but stopped far short of even the minimal flexibility provided in the 1990 Amendments.

Finally, we are concerned that the NMFS has been slow to develop a Fishery Management Plan for bluefin tuna under the authority Congress provided in 1990. We understand that the preparation of this plan will not begin until late this year or early in 1994.

- **Western Atlantic Swordfish.** The status of swordfish stocks is undisputedly in decline and getting worse. These stocks are still being managed under the FMP developed by the five regional fishery management councils, in accordance with the transfer of management authority to the Secretary in the 1990 Amendments. The swordfish biomass is estimated by ICCAT to be 16% below that which is necessary to produce MSY. The 1993 assessment continues to reflect that the populations are still overexploited and below the level needed to produce MSY. The average size fish is now well below the size at sexual maturity.

The scarcity of fish is evident in the catch statistics, as well. In 1991, U.S. fishermen reported landings of 700,000 pounds below the quota. Yet in 1992, the NMFS increased the total allowable catch, admitting in its final rule that the increase did not reflect any change in the status of the stock. By raising the catch quota, not only has the agency increased fishing pressure on a severely overfished resource, but it undermines our ability to persuade ICCAT to adopt the 50% reduction in mortality that has been recommended by its own scientific committees. Despite the increased quota, however, in 1992 U.S. fishermen caught only 76 percent of what was allowed.

One primary criticism of both the international and domestic management regime is the fact that both rely primarily upon a minimum size limit, rather than implementing "variable season closures" as recommended by the Fishery Management Councils in the withdrawn 1990 amendments to the Swordfish Fishery Management Plan, or relying upon "time and area closures" as authorized within the 1990 ICCAT recommendations. The 1990 Amendments provided the agency with the authority to manage highly migratory species under the conservation requirements of the FCMA, but the ambiguity about the relationship between the ATCA and the FCMA continues to provide the agency a means to opt for regulating under the least conservative regime rather than choosing the most risk averse approach to managing this declining resource.

- **Sharks.** Despite the history of delays in developing the Atlantic Shark Fishery Management Plan, NMFS has closely monitored shark landings and promptly closed fisheries once quotas were reached since the plan's April implementation. Meanwhile, the management team appointed to improve the shark plan has been unable to act as decisively.

Shark species at greatest risk from overfishing include tiger, dusky, bull, blacktip, and sandbar sharks, all part of the plan's "large coastal" grouping. On July 1, after an initial closure in May, the large coastal shark fishery reopened and the second semi-annual quota was reached in just a month. The fishery was closed promptly and will remain so until January, 1994. It is hoped the break from intense fishing pressure will aid the recovery of severely depleted populations.

In the meantime, the Operations Team (OT) charged with monitoring and amending the shark plan met for the first time in July. This team, made up of NMFS officials, scientists, and economists, as well as representatives from the affected Fishery Management

Councils and Fishery Advisory Committees, took a positive step by discussing seriously at its first meeting a "no harvest" recommendation for certain rare species, particularly whale and basking sharks.

On the other hand, management under this type of team approach may prove problematic. The team is bound by federal regulations from actually voting on controversial issues, which could further stall unresolved, tough decisions. Specific responsibilities and procedures for the team have yet to be defined, and it is unclear how often they will meet or how their work will be received by the Secretary of Commerce. In addition, due to legal limitations on appointments, balanced representation from all interest groups has not been achieved. Whether the team can be effective in improving the shark FMP remains to be seen.

Comments on the plan's interim regulations were accepted until June 25 and final decisions are expected this week. Among our recommendations were a reduction in annual commercial quotas and recreational bag limits for large coastal and pelagic species groups, a quota for small coastal sharks, a mechanism to incorporate fishery-independent data to improve stock assessments and estimates of maximum sustainable yield, a mandatory dealer permitting and reporting program, and continuation of the current regulations prohibiting finning.

- **Billfish.** The four primary "billfish" caught within the Atlantic include the blue marlin, the white marlin, sailfish, and the swordfish (addressed and managed separately). According to ICCAT's 1992 SCRS report both the blue marlin and the white marlin are overexploited. This 1992 report removed the long used excuse that more scientific assessment of billfish was needed before management recommendations could be made. The 1993 SCRS report for sailfish, which was released this month, reflects that the Atlantic sailfish is also fully exploited, at a minimum.

Today, excluding the targeted swordfish industry, ninety percent of today's commercial exploitation of billfish is as a bycatch of the longlining industry. The Atlantic billfish bycatch fishery is now comprised of approximately fourteen countries which in 1991 commercially caught and sold a reported 3674 mt. The entire recreation takes for the entire Atlantic for 1991 amounted to only 4% of all commercial takes within the same area.

The Atlantic recreation billfish industry is comprised of anglers, captains, and crews from approximately fourteen countries, with the U.S. having the largest contingent of fishers. Within the U.S., recreational catching of billfish is a traditional use, and differs from many other forms of fishing in that it is primarily a non-consumptive fishery that is driven by the quest for the "uncommon event." That is, the experience is the basis of the value, not the food value of the flesh, or a combination of the two. While primarily a non-consumptive industry, its economic contribution is significant; a recent report in Salt Water Sportsman reveals that "tournament fishermen pumped \$164 million--excluding tournament fees (estimated to be over \$20 million in 1988)--into local economies in pursuit of billfishing in the western Atlantic in 1990."

In contrast to the secretarial management of bluefin, swordfish and sharks, the five Atlantic fishery management councils should be commended for taking affirmative steps in 1988 with the approval of the Atlantic Billfish Management Plan and implementing regulations. These regulations applied to billfish caught within the U.S. EEZ and those caught beyond this zone, but possessed shoreward of the outer boundary of the EEZ of the Atlantic, Gulf of Mexico, and the Caribbean Sea. The plan begins with the recognition that because of the migratory nature of these fish, management measures must be applied throughout their range and recommends an international plan to complement the FMP. The reach of the plan beyond our EEZ has withstood legal challenge, and should serve as a model for U.S. management of highly migratory species.

The amended FCMA provides that the Billfish Management Plan, as with all plans for highly migratory species, shall remain in effect until a new plan is released by the Secretary

of Commerce. We encourage the Secretary to retain the present regulations if and when a new Plan is issued.

In conclusion, the worthy goals of the highly migratory species provisions of the 1990 Amendments remain illusory. At the time of passage, the record of the Floor debate should have made clear the intent of the authors of this provision that neither it nor the ATCA would "undermine the Secretary's authority to take necessary action to protect the fishery resources placed under his or her care through the Magnuson Act." In our view, that intent has yet to be realized. In our efforts to encourage domestic, non-allocation conservation measures for highly migratory species such as swordfish and bluefin tuna, we have been thwarted repeatedly because the agency continues to hide behind the veil of its perceived international mandate, a mandate that results in the lowest common management denominator.

2. The U.S. must assume a leadership role at ICCAT.

The U.S. could enhance its leadership in ICCAT through four actions: by naming new US commissioners to replace the holdover incumbents, by insisting on management in adherence with credible science, by continuing to call for strong conservation measures, and by promoting the inclusion of NGOs as observers to ICCAT proceedings.

The present commissioners have presided over the demise of the Atlantic bluefin tuna and have failed to inspire the commission to operate within its legal mandate to manage for maximum sustainable yield. We believe the time has come for ICCAT to set a new course towards species recovery, and it will take a new U.S. captain and crew to make that happen.

The November meeting will be the last opportunity, prior to the 1994 CITES meeting, for the Commission to take vital action to conserve and restore the severely depleted western Atlantic population of bluefin tuna. Because the U.S. is one of the three principal countries fishing for bluefin tuna in the west Atlantic, the U.S. position and the U.S. commissioners' negotiating strategy will be key to the success or failure of the commission's deliberations.

The Commission's management frequently goes against the advice of its scientists and does not reflect the available scientific information. The American Fisheries Society, the oldest, most-well respected body of fisheries scientists, has concluded that ICCAT's current management of bluefin poses unacceptable risk. Whether from the conservation side, where the numbers are challenged as too optimistic, or the fishing side, where they are ballyhooed as too pessimistic, confidence in the numbers is absent. The U.S. could, by insisting on improved stock assessments, including mechanisms for gathering fishery-independent information, set the standard for acquisition of better data about the status of fish populations under ICCAT's jurisdiction. Enhanced information would in turn provide the basis from which to challenge the body's continued practice of ignoring its own scientific advisors.

The U.S. should continue its call for reduced quotas, for aggressive monitoring of trade in fish caught by non-ICCAT nations, heightened scrutiny on the prevalence of infractions of ICCAT measures, and should recommend a moratorium on trade with nations that are not parties to the Convention.

Finally, ICCAT's exclusion of NGOs is contrary to policies followed by other international organizations and flies in the face of recommendations made at the UN Conference on Environment and Development and the UN Conference on Straddling Stocks and Highly Migratory Fish Species. It sends a signal to the world that the commission is trying to hide from public scrutiny. The U.S., with its tradition of open process, should take the lead in advocating the participation of NGOs as observers at ICCAT meetings. It is through public oversight that decision-making becomes accountable. It is time for ICCAT to shed its cloak of secrecy.

3. Recommendations of the Marine Fish Conservation Network for Changes to the FCMA and ATCA

Despite having jurisdiction over Atlantic tuna and billfish since 1969, ICCAT has not acted to prevent overfishing of bluefin tuna, swordfish and marlin. Current ICCAT management plans for bluefin and swordfish are inadequate to rebuild these fisheries. Yet the Magnuson Act, as amended in 1990, forbids U.S. regulations from being more restrictive than those measures agreed to at ICCAT, even when those measures are ineffective.

The Act itself recognizes that international management measures alone are not effective [§2(a)(4)]. Moreover, restricting the scope of conservation and management measures promulgated under the Magnuson Act is wholly inconsistent with other U.S. law, is unique among ICCAT treaty nations, and undermines U.S. authority to properly manage our own fisheries in our own waters. In effect, handcuffing domestic regulations to ICCAT makes the Magnuson Act irrelevant to the management of large pelagic fishes in the Atlantic.

The transfer of domestic management of Atlantic highly migratory species from the Regional Councils to the Secretary, also by amendment in 1990, is inconsistent with the management system devised by Congress for all other species under U.S. jurisdiction, as well as the Act's stated policy of assuring that conservation and management measures involve and are responsive to the needs of interested and affected citizens. [§2(c)(3)] Denying the Atlantic Councils management of these important fisheries has significantly reduced public input into the management process and accountability of fishery managers to the public. As a result, it has seriously eroded public confidence in management decisions.

For these reasons, the Marine Fish Conservation Network urges Congress to:

- repeal language added in the Fishery Conservation Amendments of 1990 limiting domestic authority over highly migratory species to implementing international recommendations, along with the repeal of similar language added to the Atlantic Tunas Convention Act in 1990;
- repeal language transferring U.S. authority from the Atlantic Councils to the Secretary, at the same time amending the Act to facilitate preparation of multi-Council plans;
- strengthen the U.S. posture in international negotiations by designating the Director of the National Marine Fisheries Service as head of the U.S. delegation to ICCAT; and
- amend the Atlantic Tunas Convention Act (16 U.S.C. 971) to prohibit appointment as Commissioners individuals who have a direct financial stake in the fisheries under the Commission's jurisdiction.

Specific legislative language on each of these points is included as a supplement to this testimony.

While we do not expect that each of these notions will be met with enthusiasm, we have been gratified by the common ground we share with those segments of the industry with whom we have met to share our concerns. We are committed to continuing that dialogue. We also look forward to working with you as you undertake your own deliberations on the reauthorization of the FCMA.

Thank you again. I would be happy to answer any questions you or other members of the Subcommittee may have.

103D CONGRESS
1ST SESSION

H. R. 779

To reauthorize the Atlantic Tunas Convention Act of 1976.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 1993

Mr. MANTON (for himself, Mr. STUDDS, and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To reauthorize the Atlantic Tunas Convention Act of 1976.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. REAUTHORIZATION OF ATLANTIC TUNAS CON-**
4 **VENTION ACT OF 1976.**

5 Section 10 of the Atlantic Tunas Convention Act of
6 1976 (16 U.S.C. 971h) is amended by striking "1989,"
7 and all that follows through the end of the section and
8 inserting the following: "1993, 1994, 1995, 1996, and
9 1997."

○

Sport Fishing Institute



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November 1, 1993

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The Honorable Thomas J. Manton, Chairman
Subcommittee on Fisheries Management
Committee on Merchant Marine and Fisheries
513 Ford House Office Building
Washington, DC 20515

Dear Chairman Manton:

The Sport Fishing Institute (SFI) is pleased to provide this testimony on reauthorization of the Atlantic Tuna Conventions Act (ATCA). Since 1949, SFI has served the fisheries conservation needs of the \$24 billion sport fishing industry and over 50 million American anglers.

For over two decades, the conservation community has watched as one of the most majestic fishes to swim our oceans has slowly succumbed to the pressures of intense exploitation. Despite conservation measures offered by the International Commission for the Conservation of Atlantic Tuna (ICCAT), the western Atlantic bluefin tuna, renowned for its fighting ability and delicate tasting flesh, continues its race towards oblivion. Now, ICCAT's Standing Committee on Research and Statistics tells us that even halving the bluefin quota will not result in stock recovery, and in fact will only provide a 50-50 chance of halting stock decline. Our current road runs straight ahead to stock collapse and an abrupt end for a recreationally and commercially valuable fishery.

The United States has not been tremendously successful in dealings with ICCAT regarding the western Atlantic bluefin tuna. As a minor fishing nation with respect to all species covered by ICCAT, the U.S. does not have great influence in ICCAT deliberations. The U.S. does not link fishery issues to foreign policy to the extent that some other ICCAT members do. The net result within ICCAT is the U.S. must face ad hoc coalition of nations who place greater importance on fishery issues. It would take vigorous U.S. effort and leadership to become a major influence on ICCAT deliberations.

The entire problem does not lie with ICCAT. The U.S. delegation (commissioners and advisory committee) has not always been responsive to national interests.

FISHERMAN OF THE YEAR AWARD RECIPIENTS: President George Bush, 1986 • Senator Malcolm Wallop and Senator John Breaux 1987 • Frank Dunkle 1988 • Ray Scott, 1989 • General Chuck Yeager, 1990 • Curt Gowdy 1991 • John L. Morris 1992 • F Dale Robertson 1993

Chairman Thomas J. Manton
November 1, 1993
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For example, they ignored the 1990 NMFS recommendation that the U.S. reduce the catch of western bluefin tuna to as near zero as possible. Conservation has not been high on the delegation's agenda.

There is little competition for the price commercially-caught bluefin tuna fetches in Japan; over two-thirds of the total U.S. catch (by weight) of tuna is exported to Japanese markets, which have paid outrageous prices of over \$30,000 for a single tuna. That dramatically demonstrates unacceptable conspicuous consumption that has little concern for resource conservation. It has only motivated greed. The political realities of ICCAT, coupled with the weak stance and representation to ICCAT by the United States delegation, translates into a bleak future for bluefin.

Tuna stocks are now at such a devastated level that drastic action must be taken immediately to halt all bluefin fishing. It should not take a complete stock collapse to spur us to reassess our flawed policies; the time is here for action and for U.S. leadership internationally.

Unfortunately, the U.S. has not taken a leadership stance; rather, it has yielded its conservation authority to an international commission where it has little influence. Under ATCA, the U.S. cannot implement a quota more stringent than that proposed by ICCAT. Despite the widespread recognition that ICCAT has allowed continuing plunder of the seas, the U.S. has adopted a policy of limiting our conservation actions by ICCAT decisions. The U.S. has legislatively guaranteed that our nation will pillage the resource to the extent that ICCAT will allow, regardless of national needs or regional differences in stocks.

Europeans and Japanese may plunder the eastern stock of Atlantic bluefin tuna, but the United States should certainly show leadership, both in ICCAT and by example, for conservation of the western stock. Immediate strong conservation measures can help restore the stock and permit for vibrant, sustainable recreational and commercial fisheries in the future. Further delay will only push bluefin closer to -- and perhaps over -- the brink.

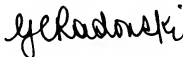
Certain actions can go far toward improving the conservation of western Atlantic bluefin tuna. First, the United States should reclaim our authority over our own conservation programs by deleting the ATCA provisions prohibiting quotas more stringent than ICCAT's. Secondly, the United States delegation to ICCAT should act as a vigorous advocate for bluefin conservation (much the same can be said for swordfish). The U.S. should consider using sanctions (e.g., under the Pelly amendment) to encourage other nations to improve their conservation practices.

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November 1, 1993
Page Three

We applaud the general thrust of Congressman Studd's resolution, H. Con. Res. 169. The United States should assert its leadership role in international fisheries conservation, and use the tools Congress has provided to influence other nations. The proposal to establish a buffer zone along the "dividing line" between eastern and western stocks is also appropriate, working to ensure that other fishing nations do not undercut our efforts to conserve the western bluefin stock. We do feel that the provision calling for reevaluation of the two-stock theory is unnecessary at this time; the scientific consensus behind the two-stock view is truly beyond question. Otherwise, we remain supportive of the resolution.

We urge the committee to set an example of leadership on fisheries conservation by supporting Congressman Studd's resolution and amending ATCA to remove the limits on U.S. authority to take necessary conservation measures. We look forward to working with the committee to craft legislation which can provide the guidance needed for the U.S. to assume its proper role as a leader for international fisheries conservation.

Sincerely,



Gilbert C. Radonski
President

/GCR/dmr#4/manton.n01

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