2008 ANNUAL REPORT TO CONGRESS
REGARDING

ATLANTIC
HIGHLY MIGRATORY SPECIES

Pursuant to the Atlantic Tunas Convention Act
of 1975 (16 U.S.C. 971 *et seq*.)

U.S. Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service

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2008 ANNUAL REPORT TO CONGRESS REGARDING ATLANTIC HIGHLY MIGRATORY SPECIES

REPORT REQUIREMENTS

The Atlantic Tunas Convention Act (ATCA) of 1975 (16 U.S.C. 971 *et seq*.) requires that the Secretary of Commerce prepare an annual report to the Congress that provides information on:

(1) Atlantic Highly Migratory Species (HMS) Catch & U.S. Imports - details for the previous 10-year period the catches and exports to the United States of highly migratory species (including tunas, swordfish, marlin, and sharks) from nations fishing on Atlantic stocks of such species that are subject to management by the International Commission for the Conservation of Atlantic Tunas (ICCAT);

(2) ICCAT Trade Sanctions - identifies those fishing nations whose harvests are inconsistent with conservation and management recommendations of the Commission;

(3) National Marine Fisheries Service Trade Monitoring Requirements - describes the reporting requirements established by the Secretary of Commerce to ensure that imported fish products are in compliance with all international management measures, including minimum size requirements, established by the Commission and other international fishery organizations to which the United States is a party; and

(4) National Marine Fisheries Service Actions in 2007 Pursuant to ATCA - describes the actions taken by the Secretary of Commerce in the prior year under section 971d of the ATCA.

REPORT CONTENTS

This report provides the required information for 2008, as follows:

(1) Atlantic HMS Catch & U.S. Imports - Tables detailing the previous 10-year period of catches and exports to the United States of highly migratory species from nations fishing on Atlantic stocks of such species subject to management by the Commission are provided in Appendix 1A (catches by species) and Appendix 1B (U.S. imports by species).

(2) ICCAT Trade Sanctions - The U.S. fisheries in the Atlantic Ocean for tuna and tuna-like species are managed by the National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS) under the authority of ATCA and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). ATCA authorizes the promulgation of regulations as may be necessary and appropriate to implement conservation and management recommendations adopted by ICCAT. Paragraph (c)(6) of Section 971d requires the Secretary to identify those nations whose fishing vessels are fishing, or have fished during the preceding calendar year, within the Convention area in a manner or under such circumstances that diminish the effectiveness of a conservation recommendation. No nations were so identified under ATCA in 2007. Potential identifications of fishing nations whose

harvests are inconsistent with conservation and management recommendations of the Commission are currently being considered for 2008. A list of any nations so identified will be published by July 1, 2008, as required under ATCA Section 971d (c) (6). Actions taken by the Secretary through NMFS in 2008 relative to this requirement will be reported in the 2009 Annual Report to the Congress.

Although no identifications have been made under ATCA authority in this reporting period, actions have been taken through ICCAT under its current trade measures resolution as well as its predecessors, and these multilateral actions are consistent with ATCA identification provisions. ICCAT's recommendations concerning this matter guide NMFS in rulemaking to impose or lift trade prohibitions. Background information on ICCAT actions in this regard is provided below.

Belize (ICCAT member since 2005)

ICCAT recommended a ban on bluefin tuna imports from Belize in 1996, swordfish imports in 1999, and bigeye tuna imports in 2000. NMFS implemented these recommendations on August 21, 1997 (62 FR 44422), December 12, 2000 (65 FR 77523), and November 20, 2002 (67 FR 70023), respectively. At the 2002 ICCAT meeting, efforts by Belize to control its fleet and address ICCAT concerns resulted in a recommendation to lift all trade restrictions by 2004 pending demonstrated progress. At the 2003 meeting, ICCAT finalized its recommendation to lift the bans, and NMFS implemented it on December 6, 2004 (69 FR 70396).

Bolivia (ICCAT non-member)

ICCAT recommended a ban on bigeye tuna imports from Bolivia in 2002, which NMFS implemented on December 6, 2004 (69 FR 70396). In 2007, ICCAT recommended that these sanctions be maintained.

Cambodia (ICCAT non-member)

ICCAT recommended a measure in 2000 to ban imports of bigeye tuna from Cambodia. NMFS implemented this ban in a final rule published on November 20, 2002 (67 FR 70023). ICCAT recommended lifting the ban in 2004, and NMFS lifted this ban, effective July 2, 2005, in a final rule published on May 17, 2005 (70 FR 28218). ICCAT once again identified Cambodia under its trade measures resolution in 2006 for diminishing the effectiveness of ICCAT. ICCAT maintained this identification at its 2007 meeting. The Commission will review this matter again in 2008 and may recommend new sanctions if Cambodia has not rectified the situation.

Equatorial Guinea (ICCAT member since 1987)

ICCAT recommended a ban on bluefin tuna from Equatorial Guinea in 1999 and bigeye tuna (2000) imports. NMFS implemented these bans in final rules published by NMFS on December 12, 2000 (65 FR 77523) and November 20, 2002 (67 FR 70023), respectively. In

2004, ICCAT recommended lifting these bans, and NMFS implemented this recommendation, effective July 2, 2005, in a final rule published on May 17, 2005 (70 FR 28218).

Georgia (ICCAT non-member)

In 2003, ICCAT recommended banning imports of bigeye tuna from Georgia. NMFS implemented this sanction on December 6, 2004 (69 FR 70396). In 2007, ICCAT recommended that these sanctions be maintained.

Honduras (ICCAT member since 2001)

ICCAT recommended banning imports of bluefin tuna from Honduras in 1996, swordfish in 1999, and bigeye tuna in 2000. NMFS implemented these recommendations on August 21, 1997 (62 FR 44422), December 12, 2000 (65 FR 77523), and November 20, 2002 (67 FR 70023), respectively. Honduras became an ICCAT member in 2001 and, in recognition of its new status and progress in addressing problem fishing activities, ICCAT recommended lifting the bluefin tuna and swordfish bans. At the 2002 meeting, ICCAT recommended lifting the ban on bigeye tuna. NMFS implemented these recommendations on December 6, 2004 (69 FR 70396).

Sierra Leone (ICCAT non-member)

In 2002, ICCAT recommended banning imports of bluefin tuna, bigeye tuna, and swordfish from Sierra Leone. NMFS implemented these restrictions on December 6, 2004 (69 FR 70396). In 2004, ICCAT recommended lifting these trade restrictions and NMFS implemented this recommendation, effective July 2, 2005, in a final rule published on May 17, 2005 (70 FR 28218). ICCAT once again identified Sierra Leone under its trade measures resolution in 2006 for diminishing the effectiveness of ICCAT. ICCAT maintained this identification at its 2007 meeting. The Commission will review this matter again in 2008 and may recommend new sanctions if Sierra Leone has not rectified the situation.

St. Vincent and the Grenadines (ICCAT member since 2006)

ICCAT recommended banning imports of bigeye tuna from St. Vincent and the Grenadines at the 2000 meeting. NMFS published a rule implementing this ban on November 20, 2002 (67 FR 70023). Significant progress has been made with regard to implementation, monitoring, control, and surveillance of the fleet resulting in the 2002 decision by ICCAT to lift the ban imposed on bigeye tuna in January 2004. NMFS lifted the trade restriction on December 6, 2004 (69 FR 70396). St. Vincent and the Grenadines joined ICCAT during its 2006 Annual Meeting. The 2005 identification of St. Vincent and the Grenadines under the ICCAT trade measures resolution was revoked due to efforts by that country to address illegal, unreported, and unregulated (IUU) fishing by its fleet and its commitment to abide by ICCAT rules.

Togo (ICCAT non-member)

Given concerns about possible IUU activities in the Convention area and the fact that Togo has not been responsive to ICCAT communications seeking clarification of the situation, ICCAT identified Togo at its 2007 meeting under the trade measures recommendation for diminishing the effectiveness of ICCAT.

Other Countries:

In 2005, ICCAT identified or re-identified Cuba, Costa Rica, and Singapore under its trade measures resolution for diminishing the effectiveness of ICCAT. At its 2006 meeting, ICCAT reviewed the situation of these countries and revoked the identifications. Specifically, Singapore had responded to the Commission's concerns with regard to implementation of the statistical document program. Regarding Cuba and Costa Rica, no new evidence was available indicating fishing activity by their vessels in the Convention area.

At the 2007 annual meeting, ICCAT took additional steps to control and eliminate IUU fishing activities that are inconsistent with Convention directives. Specifically, ICCAT (1) amended its IUU vessel list measure by providing a process for incorporating vessels on other tuna Regional Fishery Management Organization (RFMO) IUU lists into the ICCAT list; (2) adopted operational data exchange protocols to support implementation of ICCAT's centralized vessel monitoring program, which is intended to facilitate at-sea inspections for vessels fishing eastern bluefin; and (3) adopted a catch documentation scheme for bluefin tuna that should improve overall data reporting. NMFS will implement ICCAT recommendations from the 2007 meeting through regulatory or non-regulatory means, as appropriate.

Under authority of sections 971d(c)(1) and (2) of ATCA, NMFS promulgated the trade-related regulations described above. Although no formal identifications have been made under ATCA section 971d(c)(6), the promulgation of regulations to implement ICCAT's trade sanction decisions is consistent with the requirement in ATCA to identify countries whose fishing vessels are fishing, or have fished during the preceding calendar year, within the Convention area in a manner or under such circumstances that diminish the effectiveness of a conservation recommendation. These actions are also consistent with the general U.S. policy that issues involving trade restrictions should be addressed in the appropriate international forum when possible so that the action has multilateral support. Additional information on the implementation of the ICCAT decisions and on the results of the 2008 ATCA identification review will be reported in the 2009 edition of this report.

(3) National Marine Fisheries Service Trade Monitoring Requirements - Under international agreements and domestic law, the United States implements recommendations of ICCAT and the Inter-American Tropical Tuna Commission (IATTC). Both ICCAT and IATTC have implemented a statistical document program for frozen bigeye tuna. In addition, ICCAT has implemented bluefin tuna and swordfish statistical document programs. Because import monitoring is comprehensive (i.e., imports of these fish from all oceans are monitored), the U.S.

programs also provide indirect support for the Indian Ocean Tuna Commission bigeye tuna trade monitoring program and the Commission for the Conservation of Southern Bluefin Tuna trade monitoring program. Trade information collected through these regional programs is used to ascertain which countries may be fishing in a manner that diminishes the effectiveness of international fisheries conservation and management measures.

The ICCAT recommendations and statistical documents for bluefin tuna, swordfish, and bigeye tuna were amended at the 2003 annual meeting. The amendments were necessary to address data deficiencies with respect to the placement of live bluefin tuna in cages, to account for consolidation or splitting of shipments for re-export, and to enable the identification of product harvested by vessels that are authorized by flag states, chartered by third parties, or designated by ICCAT as participating in illegal, unregulated or unreported fishing activities. The revised ICCAT documents are attached as Appendix 2 to this report.

NMFS promulgated regulations on November 17, 2004 (69 FR 67268), to implement these revised statistical document programs. Effective July 1, 2005, all dealers importing, exporting, or re-exporting bluefin tuna, swordfish, and frozen bigeye tuna must hold a Highly Migratory Species International Trade Permit (HMS ITP) and follow the required reporting procedures established at 50 C.F.R. part 300 Subpart M (sections 300.180 through 300.189). The HMS ITP is required to assist in U.S. implementation of international trade tracking programs, which help to address IUU fishing activities, improve conservation and management measures, and enhance the scientific evaluation of these stocks.

An import of any covered species that is presented to the United States as an "entry for consumption" must be accompanied by a correctly completed statistical document (and re-export certificate if applicable) from the country of export. If the product is consumed in the United States, the permit holder must complete the Import Section of the statistical document, and mail the original to NMFS. The shipment entry number assigned by U.S. Customs and Border Protection (CBP) must be noted at the top of the document.

If the product is re-exported from the United States, the U.S. importer must complete the Import Section of the statistical document. If the shipment remains intact (*i.e.*, is not subdivided), it can be exported with the original statistical document as completed by the importer, without need for another document or validation. A copy of this statistical document must be provided to NMFS. If the shipment is subdivided, a re-export certificate must be completed by the U.S. exporter, and validated. The original re-export certificate and the original statistical document must accompany the re-export. An individual re-export certificate is necessary for each sub-shipment, and a copy of the original statistical document may be used in the event more than one sub-shipment is exported. A copy of the re-export certificate and statistical document must be provided to NMFS.

Each export of a covered species from the United States must be accompanied by a complete statistical document. In order to be complete, the statistical document must be validated and numbered. Each statistical document accompanying an export, and each re-export certificate accompanying a re-export, must be validated and numbered by NMFS or an entity

authorized by NMFS. Statistical documents and re-export certificates for tagged bluefin tuna do not require validation. A copy of each validated statistical document must be provided to NMFS. The permit holder must retain a copy of the statistical document on file for two years.

All imports, exports, and re-exports must be recorded on the HMS Trade biweekly report and provided to NMFS within 10 days of the close of a biweekly reporting period. Copies of biweekly reports must be retained by permit holders for two years.

Where necessary and appropriate, NMFS has requested that specific tariff codes be established to determine the level of imports by species and product type (e.g., processed swordfish imports versus whole fish). NMFS has a Memorandum of Understanding with U.S. Customs and Border Protection (CBP) of the Department of Homeland Security that provides NMFS with monthly access to import data on an individual entry level. In addition, NMFS is exploring other ways to improve data collection on imports of highly migratory species for fishery monitoring purposes. To this end, NMFS has recently taken steps to become a Participating Government Agency in the International Trade Data System (ITDS). NMFS is working with CBP staff to achieve full integration in ITDS by 2008.

Trade data collected under the ICCAT Bluefin Tuna Statistical Document Program, the ICCAT Swordfish Statistical Document Program, and the ICCAT and IATTC Bigeye Tuna Statistical Document Programs are presented in detail in Appendix 2. (Note: As noted above, in November 2007, ICCAT adopted a measure that replaced its bluefin tuna statistical document program with a catch documentation scheme. Rulemaking to implement this new program is expected to be completed in 2008 and future versions of this report to Congress will include information collected under that program.)

(4) National Marine Fisheries Service Actions in 2007 Pursuant to ATCA - Paragraph 1 of Section 971d(c) of the ATCA charges the Secretary with the promulgation of regulations as may be necessary and appropriate to carry out recommendations adopted by ICCAT and accepted by the United States. The procedures to be used when promulgating such recommendations are specified in Paragraph 2. Paragraph 3 specifies the types of management measures which may be promulgated, such as requiring fishermen to obtain permits, to carry observers, etc. Paragraphs 4 and 5 provide for the promulgation of regulations that would allow the United States to prohibit the import of fish covered by the ICCAT Convention under certain circumstances. Paragraph 6 pertains to the identification of nations whose vessels are fishing or have fished in a manner that diminishes the effectiveness of ICCAT recommendations.

Copies of the *Federal Register* notices for final regulations relative to Atlantic highly migratory species that were published in 2007 are included in Appendix 3.

A description of actions taken under paragraph 6 of ATCA Section 971d is discussed under Section 2 of this report.

Appendix 1A

CATCHES BY SPECIES
(All harvesters reporting to ICCAT)

The following tables are from the 2007 report of the Standing Committee on Research and Statistics, submitted to ICCAT in October 2007. The tables are organized by species and detail reported catches from dates ranging between 1982 to 2006 by nations fishing on Atlantic stocks of such species subject to management by ICCAT. The catch figures are listed by region, gear type, and country. The SCRS report is available at http://www.iccat.es.

Appendix 1B

U.S. IMPORTS BY SPECIES

The following tables provide the 10-year period of United States imports of highly migratory species from nations fishing on Atlantic stocks of such species subject to management by ICCAT. The information in the tables is taken from U.S. Bureau of Census data and can be found at http://www.st.nmfs.noaa.gov/st1/trade/index.html. Under the current import data collection and reporting system, it is not possible to distinguish the geographic origin of fish; therefore, the tables also include U.S. imports from waters other than the Atlantic Ocean. In addition, no import tables are available regarding any billfish species (white marlin, blue marlin, sailfish, or spearfish) because the amount of U.S. imports is insignificant. The tables are organized in three sections: tunas, swordfish, and sharks.

Appendix 2

TRADE REPORTING REQUIREMENTS

This appendix includes the 2003 ICCAT Recommendation for the revised Bluefin Tuna, Bigeye Tuna, and Swordfish Statistical Documents and the 2007 Recommendation for the Bluefin Tuna Catch Documentation Scheme. ICCAT recommendations are available at http://www.iccat.es. Also included in this Appendix are the Bluefin Tuna Statistical Document (BSD) report submitted by the United States to ICCAT for the 2006 calendar year, the Swordfish Statistical Document report submitted by the United States to ICCAT for the 2006 calendar year, and the Bigeye Tuna Statistical Document report submitted by the United States to ICCAT for the 2006 calendar year. These reports are submitted annually to ICCAT.

Appendix 3

ATCA REGULATIONS PUBLISHED IN 2007

This appendix includes U.S. regulations promulgated in 2007 in compliance with and under the authority of Section 6 (971d) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 et seq.). For the complete text of the U.S. Code of Federal Regulations (CFR) relating to ICCAT species, please refer to the website http://www.gpoaccess.gov/cfr/index.html and select Code of Federal Regulations.