



REPORT TO CONGRESS

REPORT OF THE GULF OF MEXICO ILLEGAL, UNREPORTED, AND UNREGULATED FISHING SUBWORKING GROUP

*Developed pursuant to: Maritime Security and Fisheries Enforcement Act, 2019
(Public Law No. 116-92)*

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THE MARITIME SECURITY AND FISHERIES ENFORCEMENT ACT (PUBLIC LAW 116-92) INCLUDED THE FOLLOWING LANGUAGE:

SEC. 3554. GULF OF MEXICO ILLEGAL, UNREPORTED, AND UNREGULATED (IUU) FISHING SUBWORKING GROUP.

(a) *IN GENERAL.*—Not later than 90 days after the date of the enactment of this title, the Administrator of the National Oceanic and Atmospheric Administration, in coordination with the Commandant of the Coast Guard and the Secretary of State, shall establish a subworking group to address IUU fishing in the exclusive economic zone of the United States in the Gulf of Mexico.

(b) *FUNCTIONS.*—The subworking group established under subsection (a) shall identify—

(1) *Federal actions taken and policies established during the 5-year period immediately preceding the date of the enactment of this title with respect to IUU fishing in the exclusive economic zone of the United States in the Gulf of Mexico, including such actions and policies related to—*

(A) *the surveillance, interdiction, and prosecution of any foreign nationals engaged in such fishing; and*

(B) *the application of the provisions of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826d et seq.) to any relevant nation, including the status of any past or ongoing consultations and certification procedures;*

(2) *actions and policies, in addition to the actions and policies described in paragraph (1), each of the Federal agencies described in subsection (a) can take, using existing resources, to combat IUU fishing in the exclusive economic zone of the United States in the Gulf of Mexico; and*

(3) *any additional authorities that could assist each such agency in more effectively addressing such IUU fishing.*

(c) *REPORT.*—Not later than 1 year after the IUU Fishing Subworking Group is established under subsection (a), the group shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committee on Natural Resources of the House of Representatives that contains—

(1) *the findings identified pursuant to subsection (b); and (2) a timeline for each of the Federal agencies described in subsection (a) to implement each action or policy identified pursuant to subsection(b)(2).*

THIS REPORT RESPONDS TO THE ACT'S REQUIREMENT UNDER SEC. 3554.

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I. EXECUTIVE SUMMARY

This report is submitted in accordance with the Maritime Security and Fisheries Enforcement Act (Public Law 116-92; Maritime SAFE Act), which became law on December 20, 2019. Part II of this Act calls for the establishment of a collaborative interagency working group to strengthen maritime security and combat illegal, unreported, and unregulated (IUU) fishing. Section 3554 directs NOAA to establish a Gulf of Mexico IUU Fishing Subworking Group and to submit a report to Congress no later than one year after establishment. The subworking group members include representatives from the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of State (DOS), U.S. Coast Guard (USCG), U.S. Trade Representative (USTR), U.S. Department of Justice (DOJ), and the National Maritime Intelligence-Integration Office (NMIO).

This report details the longstanding issue of Mexican nationals operating out of fishing camps in Tamaulipas state, repeatedly entering the U.S. exclusive economic zone (EEZ) of the Gulf of Mexico via small boats, and fishing without authorization. As directed by the Maritime SAFE Act, this report describes past, present, and future federal actions and policies to address this persistent issue and reflects that resolution of this intractable problem resides with Mexico's political will and capacity to address the problem domestically.

II. FEDERAL ACTIONS TAKEN AND POLICIES ESTABLISHED RELATED TO THE SURVEILLANCE, INTERDICTION, AND PROSECUTION OF ANY FOREIGN NATIONALS ENGAGED IN IUU FISHING IN THE EEZ OF THE UNITED STATES IN THE GULF OF MEXICO

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) prohibits foreign fishing vessels from fishing in the U.S. exclusive economic zone without a permit. 16 U.S.C. § 1857 (2)(B). Currently, no Mexican vessels are authorized to fish in the U.S. EEZ. However, for at least the last 40 years, small open-hulled commercial fishing vessels from Mexico (commonly referred to as *lanchas*) have entered the U.S. EEZ off the coast of Texas and conducted illegal fishing, mostly for red snapper.

In the mid-1980s, NOAA typically responded to illegal lancha incursions to fish in the U.S. EEZ by issuing charging documents to both the owner and operator of the lancha, citing a violation of the Magnuson-Stevens Act and assessing a civil administrative penalty. In 1986, NOAA began initiation of forfeiture actions in U.S. District Court against lanchas seized by the USCG for operating illegally in the U.S. EEZ.

Civil administrative prosecutions continued, in concert with lancha forfeitures, throughout the 1990s, but the vast majority were unsuccessful, usually because the respondents could not be served and, even when they were properly served, the penalties were not paid. The forfeiture actions, while more effective, failed to have any meaningful deterrent effect. As the number of lancha incursions continued to increase despite these enforcement actions, the United States shifted away from U.S. enforcement of lancha incursion cases toward promotion of bilateral cooperation and increased action by the Mexican Government to directly address the illegal

fishing activities of its citizens in the U.S. EEZ. By 1999, nearly all interdictions of lancha incursions into the U.S. EEZ resulted in the transfer of the lanchas, gear, and crew back to Mexico for flag state enforcement.

In 2005, after a series of bilateral discussions between the U.S. Government and the Government of Mexico, a procedure was developed for the handling of future lancha cases between the United States and Mexico that was focused on Mexican enforcement. After a lancha is interdicted illegally fishing in the U.S. EEZ, the USCG would seize the lancha, catch, and gear. The vessel was stored, the catch was returned to the sea or disposed of, and the crew was transferred to U.S. Immigration and Customs Enforcement (ICE) for repatriation to Mexico. Mexico was notified of our possession of the lancha and provided an opportunity to request the return of the lancha within a certain time period, after which the USCG was free to dispose of the lancha, fishing gear, and outboard motor. Mexico has yet to request the return of an interdicted lancha under this arrangement. Currently, it is standard practice to expeditiously repatriate the crew back to Mexico and destroy the lancha, fishing gear, and outboard motor. Case packages from the USCG interdictions are transmitted to the Mexican Government for prosecution at regular intervals.

The new process did not result in a measurable decrease in the level of U.S. EEZ incursions by Mexican lanchas. It further became clear that Mexico was, in fact, not taking any enforcement action related to the case packages transmitted by the USCG. Therefore, NOAA undertook a regulatory change to our regulations implementing the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act) to provide an additional mechanism to address this issue. This is more fully described in Section III below.

The USCG District Eight and Sector Corpus Christi units continue to assertively execute the U.S. EEZ incursion enforcement mission. In fiscal years 2019 and 2020, there were back-to-back record levels of interdictions of Mexican lancha vessels illegally fishing in the U.S. EEZ. The USCG interdicted nearly 140 lanchas in 2020 (double the number of 2019 interdictions). Recidivism among crew members is also a significant problem, with some crew members having been interdicted more than 25 times and nearly half having been interdicted more than five times (the average is seven times). Crew member interviews indicate they work for fishing camp or cooperative owners operating in the vicinity of the town of Playa Bagdad in the state of Tamaulipas, Mexico.

Improved tactics and procedures within USCG District Eight, and the introduction of the 154-foot Sentinel Class Cutter to maritime boundary line operations, are significant contributors to USCG operational success and will continue to be the cornerstone of counter-IUU fishing operations in the Gulf of Mexico. This cutter has proven itself to be a highly capable asset given its pursuit-capable cutter boat and advanced command and control systems. Notably, this cutter played a vital role in detection, interception, and interdiction of 26 percent of all illegal fishing incursions over the past three years. Additionally, USCG Sector Corpus Christi and District Eight Intelligence staffs are employing intelligence-driven air coverage and cutter patrolling to maximize effectiveness of their enforcement operations.

III. FEDERAL ACTIONS TAKEN AND POLICIES ESTABLISHED RELATED TO THE APPLICATION OF THE PROVISIONS OF THE HIGH SEAS DRIFTNET FISHING MORATORIUM PROTECTION ACT TO ANY RELEVANT NATION

While foreign fishing in the U.S. EEZ without authorization has been illegal since 1977, the definition of IUU fishing under the Moratorium Protection Act was revised in 2013 to explicitly include such activities (see 50 CFR Part 300 Subpart N)¹ and therefore to make them eligible for identification and certification under the Moratorium Protection Act process. Mexico was first identified under Section 609 of the Moratorium Protection Act for IUU fishing in the EEZ of the United States in the Gulf of Mexico in 2015.² Identification under the Moratorium Protection Act initiates a two-year consultation period to work with the identified country to resolve the activities for which it was identified. Following the consultation period, we either positively or negatively certify a nation, depending on whether or not it has addressed the activities for which it was identified.

Mexico was negatively certified in January 2017 for the activities for which it was identified in 2015.³ While Mexico had reportedly taken several actions to address the lancha incursions—including increasing surveillance patrols, curtailing engine subsidies, and initiating enforcement cases against those individuals involved in the lancha operations—those cases had not yet been resolved at the end of the 2015-2017 consultation period. Therefore, Mexico received a negative certification. As a result of the negative certification, Mexico was subject to denial of U.S. port privileges and potential import restrictions under the Moratorium Protection Act. As the only port where Mexican fishing vessels of this nature had a history of visiting, the implementation of this restriction was focused on the Port of Brownsville, Texas, although the restriction applied nationwide. No import restrictions on fish or fish products from Mexico were applied pursuant to the negative certification.

Port restrictions remained in place until Mexico received a positive certification in April 2018. Mexico received a positive certification after providing documentary evidence that it brought charges against lancha vessel crews and owners, including fishing cooperatives, under its General Law of Sustainable Fishing and Aquaculture, which states that it is an infraction to conduct fishing in waters of a foreign jurisdiction without a permit. Each violation assessed a fine between approximately 35,500 and 40,000 USD, for a total of approximately 2,780,000 USD.⁴

At the same time that Mexico received a negative certification in January 2017, it was also identified again for IUU fishing because of continued incursions.⁵ Mexico was positively

¹ [78 Federal Register 3338, January 16, 2013](#)

² [Improving International Fisheries Management Report to Congress Pursuant to Section 403\(a\) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, February 2015](#)

³ [Improving International Fisheries Management Report to Congress Pursuant to Section 403\(a\) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, January 2017](#)

⁴ [Addendum to the Biennial Report to Congress Pursuant to Section 403\(a\) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 Positive Certification Determination for Mexico's 2015 IUU Fishing Identification, April 2018](#)

⁵ [Improving International Fisheries Management Report to Congress Pursuant to Section 403\(a\) of the](#)

certified in September 2019 for the IUU fishing activities it was identified for in 2017, but was once again identified for IUU fishing because of continued incursions.⁶ The positive certification was based on the information provided by Mexico showing there was progress in initiating and charging enforcement cases against those individuals involved in the lancha operations, and in increasing surveillance patrols and curtailing engine and gas subsidies. However, since the lancha incursions continued, Mexico was again identified. Despite the repeated identifications of Mexico for the same activities and, despite increased levels of engagement and action by the Mexican Government, there has been a lack of progress in resolving the underlying problem of continued lancha incursions into the U.S. EEZ. Therefore, in the 2019 identification, the United States outlined a series of activities that it deemed necessary to address this ongoing problem, including the following:

- Mexico's cooperation in facilitating the safe and expedient transfer of Mexican nationals apprehended by the USCG for fishing illegally in U.S. waters to the appropriate Mexican authorities, including at-sea transfers where appropriate.
- Increased Mexican law enforcement presence in the shoreside areas used by lancha camps from which illegal fishing activity originates.
- Mexico's efforts to improve monitoring and control of the entire small-scale fleet, including through enforcement of its domestic vessel registry laws.
- Increased information sharing to support USCG interdiction of lanchas operating in the U.S. EEZ (e.g., notification of northbound lanchas, vessel positional data, such as from AIS or VMS sources, etc.).
- Increased patrols, at least monthly, by Mexican law enforcement authorities along the maritime boundary in the Gulf of Mexico to deter northbound lanchas.
- Mexico's participation in regular planning meetings with the USCG and NOAA Office of Law Enforcement to coordinate the operational actions and information sharing to deter and detect northbound lanchas.
- Mexico's efforts to ensure the snapper (*Lutjanidae* spp.) it exports was legally harvested by the authorized fleet of small-scale fishermen, as well as to support NMFS' efforts to identify and prevent the importation of illegally harvested fish.
- Mexico's continued efforts to prosecute and fine the Mexican nationals found guilty of fishing in U.S. waters, as well as efforts to improve the efficacy of such enforcement actions in preventing recidivism.

In addition, the United States made clear that the most important factors in making its certification determination in 2021 would be a measurable reduction in the number of Mexican

[Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, January 2017](#)

⁶ [Improving International Fisheries Management Report to Congress developed pursuant to Section 403\(a\) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, September 2019](#)

lancha incursions into U.S. waters and in the number of repeat offenders. Such a reduction would likely be as a result of the recommended efforts described above, and any other efforts needed to demonstrate that Mexico is taking the necessary steps to curtail the illegal fishing activities of its vessels. Consultations are currently ongoing for the certification decision to be made in the next report to Congress, due June 2021.

IV. ACTIONS AND POLICIES THAT NOAA, DOS, AND USCG CAN TAKE, USING EXISTING RESOURCES, TO COMBAT IUU FISHING IN THE U.S. EEZ IN THE GULF OF MEXICO

When taking into account the long history of this issue and the various actions taken by the U.S. Government to address the issue, it is apparent that direct federal actions and policies against the lancha vessels and crew themselves have done little to address the root cause of the problem. The overarching issue is Mexico's lack of willingness or ability to control a small but determined segment of Mexican nationals intent on illegally fishing in the U.S. EEZ. We note with concern the security situation in the Mexican state of Tamaulipas that resulted in the State Department issuing an advisory advising U.S. persons not to travel there due to crime and kidnapping.⁷ As is often the case, maritime governance issues stem from governance issues ashore. While sympathetic to the security challenges faced in Mexico, the United States will insist that our sovereign rights be respected. It is clear to us that the solution to this intractable problem lies with the Government of Mexico. As such, our most recent IUU fishing identification and certification process for Mexico focuses on a broad range of actions incumbent on the Government of Mexico to perform if it wishes to continue to utilize U.S. ports and maintain access to our seafood market.

Notwithstanding the challenges for Mexico to address the root causes of this problem, there are some domestic actions that may help mitigate some of the impacts on the United States. In addition to sustained enforcement presence on the maritime boundary line, the executive branch is considering a possible biometrics collection pilot program to confirm identities of interdicted lancha crews, increase officer safety, and determine whether lancha crew members are wanted in the United States for other criminal activities. Currently, the USCG collects biometrics under two interagency-approved sets of business rules: Collection of Biometrics At Sea by the U.S. Coast Guard in Maritime Migration Events, and Biometrics At Sea Business Rules: Western Hemisphere Transit Zone for counterdrug operations. The USCG anticipates the biometrics pilot program would be able to start before the end of fiscal year 2021.

In addition, NOAA's Office of Law Enforcement is in the process of hiring additional enforcement personnel to be stationed near the U.S./Mexico border. These additional personnel will supplement NOAA's ability to monitor imported seafood and wildlife products coming into the United States from, or through, Mexico, providing an added layer of surveillance in U.S. efforts to stop IUU fish or fish products from entering our borders.

⁷ <https://travel.state.gov/content/travel/en/international-travel/International-Travel-Country-Information-Pages/Mexico.html>

V. ADDITIONAL AUTHORITIES THAT COULD ASSIST NOAA, DOS, AND THE USCG IN MORE EFFECTIVELY ADDRESSING SUCH IUU FISHING

There are no additional authorities required to assist NOAA, DOS, and the USCG in combating Gulf of Mexico IUU fishing in the U.S. EEZ. Relevant criminal and civil authorities already exist under the Magnuson-Stevens Act and the Lacey Act, but as discussed above are not a viable path to deter this activity. We also have the needed authority under the Moratorium Protection Act to take further action against the Government of Mexico to encourage it to take action to address this continued unlawful action by its citizens. Any solution to this intractable problem resides with Mexico's political will and capacity to address the problem domestically.

VI. TIMELINE FOR IDENTIFIED ACTIONS

If it is decided to proceed with a biometrics pilot program, the USCG anticipates it could initiate the pilot program before the end of fiscal year 2021.

NOAA issued tentative job offers to applicants for some of the additional positions in March 2021. Additional hires are also planned. Actual start dates for these personnel will depend on individual training needs and prior experience. In some cases, it could take 12 months or more to complete required training and orientation programs, in part due to COVID-related backlogs in training slots.

VII. ADDITIONAL OPPORTUNITIES IDENTIFIED BY THE SUBWORKING GROUP

The interagency subworking group participation was not limited to NOAA, USCG, and DOS. As such, other agencies, or components of the Executive Office of the President (EOP) may assist in addressing these issues.

Actions of the United States Trade Representative

In addition to any actions NOAA, DOS, and the USCG could take, USTR could, as appropriate, engage with Mexico on IUU fishing issues in the Gulf of Mexico in the context of the United States-Mexico-Canada Agreement (USMCA). The USMCA entered into force on July 1, 2020, and includes an environment chapter. The USMCA environment chapter advances environmental protection with new, enforceable commitments, including to safeguard marine environments from environmental challenges and threats such as illegal fishing, harmful fisheries subsidies, and marine litter. The USMCA also establishes an Environment Committee composed of senior government representatives of the USMCA Parties, or their designees, to which Parties may raise and seek to resolve concerns regarding implementation of environment chapter obligations.

The USMCA environment chapter requires the Parties to effectively enforce their environmental laws and promotes the protection of coastal and marine environments, including through commitments to improve sustainable fisheries management, address IUU fishing, and prohibit

harmful fisheries subsidies. Recognizing the importance of concerted international action to address IUU fishing, the USMCA includes commitments to take actions to combat IUU fishing, and provides opportunities for enhanced environmental cooperation and capacity building in order to strengthen USMCA countries' abilities to combat IUU fishing. Thus, the USMCA provides an additional forum to engage with Mexico on this issue and presents an opportunity to reduce levels of IUU fishing.

The USMCA implementing legislation provided for the establishment of the Interagency Environment Committee on Monitoring and Enforcement (IECME). The IECME meets regularly to discuss key environmental issues. The IECME has also formed an interagency subworking group on fisheries issues, which has met to discuss a number of matters, including IUU fishing in the Gulf of Mexico. As Chair of the IECME, USTR will continue to work with the interagency subworking group to monitor and seek to address IUU fishing in the Gulf of Mexico.