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Via Electronic Filing

January 25, 2010

Carmen Suro-Bredie
Chairman, Trade Policy Staff Committee
Office of the United States Trade Representative
Washington, D.C.

**Re: Request for Comments on the Proposed Trans-Pacific Partnership Trade Agreement,
74 Fed. Reg. 66720 (December 16, 2009)**

Dear Ms. Suro-Bredie:

Oceana appreciates the opportunity to submit these comments on the proposed Trans-Pacific Partnership free trade agreement ("TPP").

Oceana is an international non-governmental organization dedicated to protecting and restoring the health of the oceans. Oceana's teams of professionals work in nearly every region of the world to produce policy changes to prevent the irreversible collapse of marine ecosystems. Oceana's global headquarters are in Washington, D.C. In the United States, Oceana also has offices in Alaska, California, Oregon, New York, and Massachusetts. Oceana has international offices in Brussels, Belgium; Madrid, Spain; Santiago, Chile; and Belize City, Belize. Oceana expects to expand further in Europe and Asia in the near future.

Trade liberalization can promote environmental degradation through the increased exploitation of natural resources. Such degradation is not always controlled by regulation or management. In response, there have been widespread calls to address such adverse environmental impacts in trade agreements. The Executive – Congressional Agreement of May 2007 set forth clear environmental objectives for trade agreements. The President's 2009 Trade Policy Agenda also recognized that trade policy can be a part of the tool kit of solutions for addressing international environmental challenges such as climate change and fisheries depletion.

Oceana looks forward to working with the United States towards its objective of producing a regional TPP trade agreement that addresses 21st century challenges and supporting an updated approach to trade that includes an enhanced and primary focus on environmental protection and conservation.

Oceana's comments specifically concern marine resources – a critical part of the global environment.

Fish populations, as well as other ocean wildlife, have been depleted to a fraction of their historical levels – and their disappearance is triggering cascading adverse effects not only on ocean ecosystems, but threaten a major food source and the livelihoods of the people who depend upon these resources. According to the United Nations Food and Agriculture Organization (FAO) more marine fish populations are overexploited and depleted than ever before. In fact, 80 percent of global fish stocks are classified as fully exploited, overexploited, depleted, or recovering from depletion.¹

Ocean resources previously have only received minimal attention in U.S. regional trade agreements. Yet all of the countries involved in the Trans-Pacific Partnership have strong marine interests.

The TPP provides the opportunity to incorporate resource sustainability directly into a trade agreement with provisions enforceable through dispute settlement. By accomplishing these goals in a TPP agreement, the United States and TPP countries would not only show leadership in addressing some of the severe problems of exploitation of the oceans but would also set high standards for future regional and multilateral agreements.

The proposed TPP free trade agreement presents a significant opportunity to implement the objectives of the President's trade agenda and use trade policy to address the mounting global environmental challenges facing the oceans.

Promoting Trade in Sustainable Marine Products

Four of the eight TPP countries are major marine fishing nations. The United States, Peru, Chile, and Vietnam are among the top 15 global producers by volume.² New Zealand and Australia are also significant producers and exporters of higher value fish.

The United States is the second largest importer of seafood in the world – close behind Japan – with imports of just over \$14 billion in 2008 compared to exports of more than \$4 billion.³ Chile and Vietnam were among the top seven largest exporters of seafood to the United States in 2008,⁴ with the United States consuming a significant share of both countries' seafood exports.

According to the FAO, “the maximum long-term potential of the world marine capture fisheries has been reached.”⁵ As a result, increased demand for wild capture fish cannot be met by increasing fishing effort without restoring fish populations and ensuring their ongoing sustainability. But sustainable fishing can only be achieved through compliance with effective fisheries management programs, by controlling illegal fishing and by limiting subsidies that not only distort trade but also undermine management efforts and lead to overfishing.

¹ FAO. The State of World Fisheries and Aquaculture – 2008. “Part 1: World Review of fisheries and aquaculture.” 2009. Rome. <http://ftp.fao.org/docrep/fao/011/i0250e/i0250e01.pdf>

² The State of World Fisheries and Aquaculture, 2008. FAO Fisheries and Aquaculture Department, Food and Agriculture Organization of the United Nations. Rome, 2009.

³ FAO Globefish. Retrieved 1/21/10. <http://www.globefish.org/dynamisk.php4?id=4713>

⁴ U.S. Department of Commerce, U.S. Census Bureau. Available from http://www.st.nmfs.noaa.gov/st1/fus/fus08/06_trade2008.pdf

⁵ FAO Marine Resources Service, Fishery Resource Division. Review of the state of the world marine fishery resources. FAO Fisheries Technical Paper. No. 457. (2005). Rome, FAO. Pp.235 [ftp://ftp.fao.org/docrep/fao/007/y5852e/y5852e00.pdf](http://ftp.fao.org/docrep/fao/007/y5852e/y5852e00.pdf).

Oceana urges the United States to pursue a marine environment agreement in the TPP to promote the sustainable trade and management of ocean resources. Such an agreement would address harmful subsidies for fishing, protect shark populations, combat seafood fraud and illegal fishing, improve fisheries management and the ability to preserve living marine resources, and improve compliance with domestic and international programs and agreements.

Reducing Harmful Fishing Subsidies

The scope and magnitude of fisheries subsidies and their impacts on overcapacity and overfishing are so significant that global subsidy reform is one of the greatest actions that can be taken to protect the oceans.

An estimated \$20 billion in capacity-increasing subsidies go to the global fishing sector each year, representing approximately 25 percent of the value of total catch.⁶ The intensity of these subsidies is greater than the intensity of global subsidies to agriculture. These subsidies promote activity beyond that which would otherwise be economically possible.

Government subsidies have led to pervasive excess capacity in the global fishing fleet, while ongoing government support for fishing ensures that overcapacity is maintained. Such subsidies, and the activity they enable, result in overexploited fish populations, undermine fishing control programs, and prevent depleted fish populations from recovering. Some subsidies, such as those that enable high seas bottom trawling, support the destruction of valuable marine habitats.

The agreement of world trade ministers in Hong Kong in 2005 to “strengthen disciplines on subsidies in the fisheries sector, including through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and overfishing” is an ambitious and commendable commitment to resource sustainability in the context of a trade negotiation.

The majority of the countries in the TPP have taken active positions that fishing subsidies must be addressed in the WTO Doha round negotiations. In formal WTO papers, the United States, Australia, and New Zealand, and separately Chile and Peru as part of a group of Latin American countries, have all reaffirmed a strong commitment towards reducing subsidies to ensure the sustainability of fisheries resources.

It is important to note that subsidies in the TPP countries could support fishing activity that may otherwise become uncompetitive as a result of tariff reduction under a TPP agreement. An agreement that addresses barriers to trade in seafood is likely to lead to an overall expansion of capacity and fishing in response to market opening. As a result, any reduction of tariffs or non-tariff barriers associated with fisheries products under a TPP – without efforts to curtail fishing subsidies – would be a net loss for the ocean environment.

⁶ Sumaila, U.R. and D. Pauly (Editors) 2006. Catching More Bait: A Bottom-up Re-estimation of Global Fisheries Subsidies. Fisheries Centre Research Reports Vol. 14(6) 114 pp [www.fisheries.ubc.ca/publications/reports/fcrr.php].

Accordingly, TPP negotiations should address ways to limit fisheries subsidies, particularly those that already are provided to fisheries suffering from overcapacity or overfishing. TPP countries could further agree to support and advance multilateral efforts on fisheries subsidies, including efforts in the World Trade Organization.

Ensuring Sustainable Shark Populations

Sharks are found in nearly every ocean and play a vital role in maintaining the health of marine ecosystems. Sharks are utilized for a number of products and are a critical food source for many people in developing countries. Sharks are also an important revenue source for dive tourism.

However, as other fish populations rapidly diminish due to overfishing and global demand for shark products continues to rise, sharks are increasingly targeted. According to the UN Food and Agriculture Organization (FAO), more than half of the highly migratory oceanic sharks are considered overexploited or depleted. Globally, three-fourths of the oceanic pelagic sharks and rays have an increased risk of extinction as a result of overfishing.⁷ Sharks are especially vulnerable to pressure from human activities because of their slow growth and low reproductive potential.

Sharks are directly relevant to all of the TPP countries and trade in the Pacific. The United States, New Zealand, Australia, Peru, Chile, and Singapore all have formally reported landings of sharks and closely-related species.⁸ While Vietnam and Brunei have both reported fish landings to the FAO in recent years, they have not reported landings of sharks.⁹ However, other sources confirm that shark fisheries exist in Vietnam.¹⁰ Brunei has both commercial fisheries and recreational fisheries, and therefore most likely also catches sharks. However, it should be noted that Brunei currently limits fishing in the area spanning from the shoreline to three nautical miles to individual, small-scale fishing.¹¹

International trade of shark fins is a major driver of the worldwide depletion of shark populations. Shark fins are one of the world's most expensive marine products and the market for fins continues to grow with increasing global affluence. Each year tens of millions of sharks are killed solely for their fins. The common and wasteful practice of "shark finning," which involves cutting off the fins and discarding the shark at sea, now occurs in all regions of the globe.

U.S. law already prohibits shark finning. The United States continues to make significant contributions towards improved domestic and international shark conservation. In 2009, the House of Representatives passed the Shark Conservation Act (H.R. 81) to strengthen domestic laws on shark finning. Similar legislation is now pending final approval by the U.S. Senate. The United States is also currently sponsoring proposals for the Convention on International Trade

⁷ Dulvy, N. et al. You can swim but you can't hide: the global status and conservation of oceanic pelagic sharks and rays. May 22, 2008. *Aquatic Conservation: Marine and Freshwater Ecosystems*. Vol. 18, Issue 5, pp. 459-482.

⁸ Based on 2007 Global Capture Production of Sharks, Rays and Chimaeras as reported to the FAO.

⁹ Global Capture Production 1950-2007 as reported to the FAO.

¹⁰ Southeast Asian Fisheries Development Center (SEAFDEC).

¹¹ The Government of Brunei Darussalam Official Website. <http://www.fisheries.gov.bn/whatsnew/whatsnew2007-03-09ae.htm>. Retrieved 1/25/2010.

in Endangered Species (CITES) to ensure the legal and sustainable trade of six vulnerable shark species.

Sharks are inadequately managed in most areas of the world, with many countries failing to protect sharks at all. Data about shark catches, landings, and trade is poor and in the information few countries identify sharks at the species level.

In 1999, the United Nations Food and Agriculture Organization's Committee of Fisheries adopted the International Plan of Action for Conservation and Management of Sharks (IPOA-Sharks) to improve shark conservation and management. While the IPOA is a voluntary agreement, it encourages all fishing nations and regional fisheries management organizations to regularly assess their shark populations and to develop and implement their own national plan of action (NPOA) by 2001. All of the TPP countries have reported starting a NPOA for sharks.¹² However, the United States and Australia are the only that have finalized and adopted their NPOA.¹³

The TPP provides an opportunity to promote the sustainable trade and management of sharks through the following:

- Supporting and strengthening measures related to shark finning, particularly requirements for sharks to be "landed whole" with the fins naturally attached to the bodies. This is necessary to improve the capability for shark identification and data collection and the sustainable production of shark products.
- Supporting and improving monitoring of shark production and trade. This includes improved identification of shark fins and related technology (e.g. DNA testing), fisheries data collection of species specific information, improved trade monitoring systems and enforcement, and capacity building and technical assistance.
- Encouraging and supporting the development and implementation of national plans of action for sharks.

Combating Seafood Fraud

Seafood is highly traded on global markets and is particularly vulnerable to fraud. Fraud consists of misrepresenting a traded product to sell at a higher price, market unpopular species, elude regulations and laws, or launder illegal fish. Seafood fraud can severely undermine fisheries enforcement by bringing illegally-caught fish into the international market. The TPP is an important opportunity to address seafood fraud and protect the economies and marine ecosystems across the Pacific region.

¹² Cavanagh, Rachel D., Sarah L. Fowler and Merry D. Camhi. "Pelagic Sharks and the FAO International Plan of Action for the Conservation and Management of Sharks." *Sharks of the Open Ocean*. Ed. Merry D. Camhi, Ellen K. Pikitch and Elizabeth A. Babcock. Oxford: Blackwell Publishing Ltd, 2008. Pages 478-492.

¹³ Based on postings to the FAO website (<http://www.fao.org/fishery/ipoa-sharks/npoa/en>) as of 1/19/10.

The TPP can strengthen the ability of countries to combat illegal, unreported and unregulated (IUU) fishing activities. Illegal fishing activity is increasingly pervasive and has reached significant economic levels. The global illegal catch of fish is estimated to be between 11 and 26 million metric tons a year, worth \$10 billion to \$23.5 billion annually.¹⁴ In comparison, the value of the legal reported world catch was \$91 billion in 2006.¹⁵

The main drivers of IUU fishing include overcapacity, high demand and prices, limited monitoring, ineffective sanctions, poor fisheries management, and weak economic and social conditions. Even where there is adequate management, illegal fishing can still be pervasive and compromise sustainable fisheries.

IUU fishing can be combated by addressing its main causes – in broad terms, by limiting demand and markets for IUU fish and by improving fisheries management and fishing incomes. Other approaches focus on strengthening sanctions against vessels and countries engaged in IUU fishing.

Extensive international efforts have recently been made to combat illegal fishing. The FAO has developed an international plan of action to address IUU fishing. Regional fisheries management organizations, including the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the Western and Central Pacific Fisheries Commission, and the Inter-American Tropical Tuna Commission have adopted measures that include the closure of ports or markets to vessels that have been identified as having engaged in IUU fishing activities.

Other activities include the development by countries of national plans of action to control IUU fishing, the FAO-led negotiations towards a Port State Agreement and discussions among FAO members of the merits of developing a global database of all fishing vessels.¹⁶

The United States has responded to the threat of illegal fishing through provisions of the Magnuson Stevens Act. These provisions include import prohibitions and other measures to enforce compliance with internationally established catch limits and to prevent the trade of fish caught by vessels identified as engaging in IUU fishing.

The TPP can advance important protections against IUU fishing and seafood fraud through the following:

- Obtaining commitments from TPP countries to adopt, implement and enforce the provisions of existing agreements relating to IUU vessels and activities
- Improving the capacity of TPP countries to monitor illegal fishing and pursue offenders and sharing best practices for the development of national plans of action

¹⁴ Agnew DJ, Pearce J, Pramod G, Peatman T, Watson R, et al. (2009) Estimating the Worldwide Extent of Illegal Fishing. PLoS ONE 4(2): e4570. doi:10.1371/journal.pone.0004570.

¹⁵ FAO. The State of World Fisheries and Aquaculture – 2008. “Part 1: World Review of fisheries and aquaculture.” 2009. Rome. <http://ftp.fao.org/docrep/fao/011/i0250e/i0250e01.pdf>.

¹⁶ Davies, S. & P. E. Bergh. “Will You Be Eating Illegal Fish for Dinner Tonight?” in From Hook to Plate: The State of Marine Fisheries. Eds. Richard Bourne and Mark Collins. The Commonwealth Foundation. London. 2009.

- Taking action to identify and keep illegal and inaccurately described seafood from entering the stream of commerce
- Enhancing sanctions against IUU fishing

Promoting Responsible Fishing

While all of the TPP countries have some form of management programs, a number of them must be strengthened to become effective. To ensure that increased trade under a TPP does not result in the over-exploitation of fisheries, a TPP free trade agreement should include measures to improve fisheries management programs and increase participation in relevant regional fisheries management agreements and multilateral environmental agreements.

Not all TPP countries have acceded to these agreements. For example, Vietnam, Peru, Chile, Singapore and Brunei have not yet signed the 1995 United Nations Fish Stocks Agreement, which is critical for the management of highly migratory and straddling fish stocks.

The TPP also offers the opportunity to strengthen the capacity of TPP member countries to protect other living marine resources, such as sea turtles and corals. The non-targeted catch of species in fishing activities and habitat destruction are major threats to living marine resources. Some species, such as corals, are also directly targeted for trade. The United States is currently sponsoring proposals for the Convention on International Trade in Endangered Species (CITES) to ensure the legal and sustainable trade of 31 species of red and pink corals.

U.S. law also contains provisions to promote the sustainable catch and trade of protected living marine resources, including through the use of bycatch mitigation technology and increased participation in fisheries management agreements and multilateral environmental agreements such as the Inter-American Convention on Sea Turtles.

The TPP provides the opportunity to advance measures to improve fisheries management programs and the ability to protect living marine resources, such as through capacity building, and increased participation in relevant regional fisheries management agreements and multilateral environmental agreements.

Enforcement of Environmental Obligations

To ensure the sustainable use of ocean resources, the TPP agreement should include specific measures to promote the effective enforcement of obligations under domestic fisheries management programs, regional fisheries management organizations and multilateral environmental agreements, including CITES.

In addition, while the United States has successfully defended its border measures, it is important that these not be undermined in practice in the implementation of a new trade agreement. It is essential that U.S. regulations and enforcement measures that support sustainable fishing and protection of marine life, including the Magnuson Stevens Act, the Marine Mammal Protection Act and the Endangered Species Act, not be limited by a TPP trade agreement. A TPP free trade agreement that addresses the need for sustainable practices

should strengthen trade in sustainable seafood and reduce the need for domestically-initiated enforcement against bad actors.

Conclusion

The challenges facing the oceans are enormous, but Oceana is optimistic that we can make progress in overcoming them. The depletion of the oceans is one of the world's most critical environmental problems. A TPP agreement that helps to resolve environmental problems rather than contribute to them would be a tremendous accomplishment. The TPP has the opportunity to improve ocean conservation while expanding trade with a marine environment agreement that includes obligations and commitments towards the following:

- Addressing subsidies that contribute to overcapacity or overfishing
- Ensuring the sustainable trade and management of sharks
- Combating IUU fishing and keeping illegal and inaccurately described seafood products from entering the international marketplace
- Improving fisheries management programs, participation in relevant regional fisheries agreements and multilateral environmental agreements, and the ability to protect living marine resources, such as sea turtles and corals
- Promoting the effective enforcement of existing obligations under domestic fisheries management programs, regional fisheries management organizations, and multilateral environmental agreements

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Hirshfield', with a long horizontal flourish extending to the right.

Michael F. Hirshfield, Ph.D.
Senior Vice President and Chief Scientist