

**Comments Received at Public Meetings in
Response to Publication of an Advance Notice of
Proposed Rulemaking (ANPR) for Development
of Certification Procedures to Address Illegal,
Unreported, or Unregulated (IUU) Fishing and
Bycatch of Protected Living Marine Resources
Pursuant to the High Seas Driftnet Fishing
Moratorium Protection Act (Public Law 104-43)**

Advance Notice of Proposed Rulemaking Listening Session for the Certification Procedures for Illegal, Unreported, and Unregulated (IUU) Fishing and Bycatch of Protected Living Marine Resources

Silver Spring, MD

July 2, 2007

ATTENDEES

Katherine Groff – Humane Society International
Phil Kline – Greenpeace
Aaron Cengiz – Embassy of Chile
Sarah Thomas – Embassy of Chile
Vicki Cornish – Ocean Conservancy
Bob Gisiner – Marine Mammal Commission
Randi Thomas – U.S. Tuna Foundation (USTF)/National Fisheries Institute (NFI)
Kim Davis – World Wildlife Fund (WWF)
Stetson Tinkham – National Fisheries Institute (NFI)
Elizabeth Etrie – Department of State
Mark Stevens – National Environmental Trust (NET)
Marydele Donnelly – Caribbean Conservation Corporation (CCC)
Isabel Junkin – Ocean Conservancy
Augustin Servois – French Embassy
Arne Fuglvog – Senator Murkowski
Todd Bertosen – Senate Commerce Committee
Jeff Pike – Sher & Blackwell/Bumblebee
Emily Douce – National Environmental Trust (NET)

OVERVIEW PRESENTATION

Rebecca Lent, Director of the NOAA Fisheries Office of International Affairs, provided a presentation summarizing the following:

- Pertinent international provisions of the High Seas Fishing Moratorium Protection Act (Moratorium Protection Act), as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA);
- Advance Notice of Proposed Rulemaking (ANPR) on the certification procedures for illegal, unreported, and unregulated (IUU) fishing and bycatch of protected living marine resources (LMRs); and
- Questions for the public related to the ANPR in preparation for development of rulemaking.

Subsequently, Rebecca Lent solicited questions and comments from those in attendance and provided responses where appropriate.

QUESTIONS, COMMENTS, AND RESPONSES

NOTE: The notes below were taken by NMFS staff during the meeting and should not be construed as transcripts of the meeting. Every effort was made to summarize the verbal comments accurately.

Government Representative

Question/Comment: A request was made for clarification on the sources and types of information that will be used to make a determination that a nation's vessels are engaging in IUU fishing. A concern was raised about the credibility of information sources and a request was made that the agencies verify its information.

Response: NOAA Fisheries is evaluating what sources and types of information should be used and how we may need to verify the credibility of this information. A request was made for suggestions.

Non-Governmental Organization (NGO) Representative

Question/Comment: A question was raised regarding whether or not the agency is considering new information/data collection programs to fulfill the new international requirements of the MSRA over the long term to address data gaps.

Response: Depending on how the rule is proposed, NOAA Fisheries may be able to rely on information that we already have. In the cases where the agency already has information, then we would not have to expand our capabilities. NOAA Fisheries discussed how its Office of Law Enforcement would like to boost their enforcement capability.

Question/Comment: Comment was made that it is important for NOAA Fisheries to have analytical capability and sufficient data.

Response: NOAA Fisheries highlighted the fact that people and money are needed for the activities [required under the Moratorium Protection Act, as amended by MSRA]. The agency has to rely on the funding that is provided for these activities. Based on the available funding, we need to rely on secondary sources of information.

Industry Representative

Question/Comment: An industry representative urged NOAA Fisheries to look at: (1) the things we did right and the lessons learned from our experience under the High Seas Driftnet Fisheries Enforcement Act; and (2) synthesized information from the Coast Guard. Comment was made that NOAA Fisheries does not need to reinvent the wheel – there are people that have synthesis capability for information [that is gathered on fishing vessels].

Question/Comment: The Monitoring, Control, and Surveillance (MCS) Network was highlighted as a good way to exchange information on IUU fishing vessels. A suggestion was made that the MCS network might provide a way for people to avoid transporting product on an IUU vessel, whereby the ship cannot offload its product.

Question/Comment: The industry representative reserved the right to comment on other topics.

NGO Representative

Question/Comment: One issue that was not discussed during the presentation was the issue of beneficial vessel ownership. An NGO representative asked whether or not authority is provided to approach vessels that have beneficial ownership. For example, if a ship is flagged in North Korea, but the captain is Spanish, when can the United States approach [board and inspect] this vessel? A suggestion was made to address this issue in the rulemaking.

Response: This is a new realm of international fisheries management. NOAA Fisheries explained that the agency is still examining its authority under the new legislation and would appreciate any suggestions on addressing this issue.

NGO Representative

Question/Comment: Comment was made by an NGO representative that their organization thinks the new legislation is exciting. They have been involved in bycatch reduction activities so they are looking closely at the new legislation to consider what it means. They asked if there is a way to communicate the incentives that are inherent in the legislation.

Response: NOAA Fisheries expressed its gratitude to those that work on capacity building and discussed how efforts have been undertaken to get information to countries on the new statutory requirements. NOAA Fisheries mentioned that it is working on cooperative programs and has taken the legislation as a new charge for capacity building. If the United States is actively engaged with other countries, then we can potentially avoid a negative certification. NOAA Fisheries also discussed how a multilateral, cooperative approach is the most effective approach and how the Office of International Affairs will continue to work in this manner.

Industry Representative

Question/Comment: An industry representative asked whether NOAA Fisheries could walk through some examples and state whether countries would be negatively certified under these scenarios.

First, the industry representative discussed the example of setting nets on dolphins and the bycatch of protected species. He asked whether the United States would identify nations that are setting nets on dolphins and negatively certify them. The industry representative also asked whether Japan would be identified since it is whaling – despite a moratorium on whaling – and undermining conservation measures. In addition, he mentioned how European Union (EU) vessels are continually overfishing their quota provided under the Northwest Atlantic Fisheries

Organization (NAFO). The industry representative asked whether EU vessels would be identified and negatively certified since these actions are not illegal or unreported and NAFO has no enforcement mechanism.

Response: NOAA Fisheries clarified that the agency could only speak generally since the proposed rule is still in development. According to NOAA Fisheries, the sense from Congress is that if there is an organization such as the Inter-American Tropical Tuna Commission (IATTC) that addresses the tuna-dolphin fishery with strict controls and a compliance committee, participation in this organization could be considered a multilateral effort that is working well. NOAA Fisheries pointed out that under IATTC, reported dolphin mortalities have declined and progress is being made.

TED [turtle excluder device] programs were highlighted as another measure NOAA Fisheries would consider. If TED programs have been implemented in a country, this will be evaluated when the United States makes a certification determination.

In response to the question regarding Japanese whaling and whether or not it would constitute actions worthy of a negative certification, NOAA Fisheries discussed that the Moratorium Protection Act addresses bycatch, not targeted species. Thus, the action of targeting whales is a different problem.

In response to the question raised about NAFO, NOAA Fisheries discussed how charges are sent to NAFO's standing committee, which goes through information on catch. The agency confirmed that NAFO has no enforcement powers. However, NOAA Fisheries explained that the United States may be able to work multilaterally to address these issues.

NOAA Fisheries pointed out that if countries are not positively certified, their products could be banned from being imported. The agency stated that the attendees' thoughts on these issues would be of interest.

Question/Comment: Generally, based on the way that NMFS defined IUU fishing, could violation of a conservation measure lead to identification of a nation?

Response: NOAA Fisheries mentioned that when we do this rulemaking, we may add to the IUU definition, and in this definition we may set thresholds. If the RFMO does not have the mechanism to address an overage, perhaps there could be recourse. NOAA Fisheries expressed appreciation for the question and requested any further comments be provided.

NGO Representative

Question/Comment: Since Congressional staff were present at the public meeting, an NGO representative directed questions at Congressional staff on the motivation behind the bycatch provisions in the Moratorium Protection Act, as amended by MSRA [section 610].

There was discussion of how the U.S. industry is continually forced to adhere to bycatch regulations. Accordingly, they bear the costs associated with these regulations, and pass them

onto consumers, which make U.S. products more expensive relative to foreign products that are competing in the market. The NGO representative affirmed that it wants to promote marine stewardship but recognizes that stewardship comes at a cost to the U.S. industry, which loses their market share in the United States in the face of foreign imports. The specific question was asked whether the Congressional staff present could help describe the goals that they want to achieve with the new language and whether or not they are concerned about World Trade Organization (WTO) violations.

Response: NOAA Fisheries discussed its interpretation that the pertinent section's title [section 610], "Equivalent Conservation Measures," indicated interest on the part of Congress in having nations implement conservation measures to address bycatch of protected LMRs that are equivalent to those in the United States, taking into account different conditions.

Congressional Staffer

Response: The Congressional staffer expressed support for having equal measures apply to U.S. and foreign fishermen alike and shared the concern that unilateral actions may lead to WTO violations. He expressed willingness to work with NOAA Fisheries to address issues as they arise and make changes when necessary.

The Congressional staffer discussed the strong support for the use of turtle excluder devices (TEDs) and the fact that there are problems with seabird bycatch in Alaska as justification for the language. He introduced another Congressional staffer present and asked him to provide feedback on why he believes the legislative language was necessary to address the issue of bycatch.

Congressional Staffer

Response: The Congressional staffer highlighted the fact that U.S. fishermen are competing with cheap imports while they have more regulations placed on them, including use of TEDs and streamerlines. He discussed how the U.S. industry is taking all these actions to address bycatch while the international community is not and mentioned that Congress would like to see these actions be taken across the board. He explained that Congress is trying to use the U.S. model in other countries.

The Congressional staffer stated that the bilateral process is important since fishermen will buy-into regulations if you make attempts to work with them.

Industry Representative

Question/Comment: An industry representative reported on a CITES-related meeting with various stakeholders that was organized to look at problems surrounding spiny lobster. He mentioned that some claim the fishery is not sustainable. The industry representative expressed concerns regarding the impact of IUU fishing and the lack of a regional approach. He discussed how the meeting participants thought they should use the IUU National Plan of Action's call for market-based measures to drive conservation. According to the industry representative, the

fishing industry is hearing from producers in Brazil and Belize that they are worried they won't have a job if the fishery collapses. The group came up with conservation measures such as regulating commonly used units (including the tail size) rather than minimum carapace size. The industry representative used this discussion to illustrate that there is a role for industry to play in addressing IUU fishing. He highlighted how the industry in the North Pacific drove the efforts towards addressing IUU fishing and bycatch, and said there are ways that the industry can be involved.

Response: NOAA Fisheries stated that the United States is a huge seafood consumer, so we're part of the problem. It mentioned how the United States would like countries to meet requirements, such as minimum size limits, and implement conservation measures.

NGO Representative

Question/Comment: According to one NGO representative, the problem is that pirates don't abide by the law. He recommended that certification procedures be vessel-specific, as well as nation-specific.

Question/Comment: The NGO representative mentioned that he'd seen port denials for offloading product [from an IUU-listed vessel]. He explicitly asked whether onloading product [from an IUU-listed vessel] would be addressed in this rulemaking.

Response: NOAA Fisheries discussed the important difference that MSRA [as it amends the Moratorium Protection Act] authorizes measures to address IUU fishing that are nation-based while RFMOs have vessel-based measures. To varying degrees, RFMOs have IUU vessel lists and measures to take when vessels come to a U.S. port. MSRA [as it amends the Moratorium Protection Act] does not specifically address RFMOs and black lists of IUU vessels. NOAA Fisheries pointed out this does not mean that we will not be sharing information on IUU vessels and it discussed how the agency is exploring the issue of blacklisted vessels to determine what actions can be taken by the United States.

NOAA Fisheries pointed out that most of the vessels that are on IUU lists do not offload into our countries, and that the recent problem has been with cargo vessels. It was mentioned that the agency is dealing with this issue separately and there may be separate rules developed under our implementing legislation. NOAA Fisheries mentioned that it would look at RFMOs with statements that their conservation measures are subject to the laws of our countries and see what further action is needed. In the meantime, the agency has worked with nations to see that they have the information they need.

Question/Comment: The NGO representative asked when NOAA Fisheries plans to develop rules to address RFMO-listed IUU vessels.

Response: NOAA Fisheries pointed out that since this is a national issue, we would like to have national standards to address IUU-listed vessels. NOAA Fisheries stated that it would address this issue as soon as it can.

Industry Representative

Question/Comment: According to an industry representative, we have not made further progress [to address IUU fishing] because we have some due process concerns. He explained by saying just because I say that someone's vessel is engaging in IUU fishing, that information may not be sufficient to warrant an identification.

NGO Representative

Question/Comment: Under the MSRA, there is authority to create a list of States [whose vessels are engaged in IUU fishing], but there is not authority to create our own [U.S.] vessel list?

Response: NOAA Fisheries explained that although MSRA is nation-based, the United States may be able to create a separate IUU vessel list. The agency requested further thoughts from the meeting participants on this issue.

Industry Representative

Question/Comment: An industry representative asked what happens to vessels if RFMOs do not implement conservation measures and what would happen if other countries do not abide by their quota, such as quotas for yelloweye and bluefin.

Response: NOAA Fisheries stated that it would identify nations if their vessels were engaged in IUU fishing or bycatch of protected LMRs, and there would likely be a certification decision two years down the road.

Industry Representative

Question/Comment: An industry representative pointed out that the language in the MSRA [as it amends the Moratorium Protection Act] is not that different from the Pelly amendment. He asked whether NOAA Fisheries could provide an example of a country that would be on the "bad list" [i.e., identified and receive a negative certification].

Response: NOAA Fisheries stated that in most cases, there is an RFMO in place. We think that Congress wants us to use the multilateral process to address IUU fishing and bycatch of protected LMRs.

Question/Comment: The industry representative requested examples of nations that would be identified and negatively certified.

Response: NOAA Fisheries responded that it can think of activities – rather than countries – that would warrant identification and negative certification. To illustrate, the agency discussed that if U.S. fishermen have to use certain conservation measures, such as circle hooks, and foreign fishermen do not, the nation whose vessels are engaged in fishing practices that lead to bycatch of protected LMRs could be identified. NOAA Fisheries explained further that if the United States has repeatedly talked with and tried to reach out to an identified nation and progress is not

made, the identified nation could receive a negative certification and face restrictions on importation of its fishery products into U.S. ports.

NGO Representative

Question/Comment: One NGO representative discussed how this legislation should strengthen the multilateral process. However, concerns were expressed that the agency must ensure compliance with the multilateral process as not to undermine cooperative efforts with other nations. They were also concerned about compliance with the General Agreement on Tariffs and Trade (GATT).

Response: NOAA Fisheries stated that it will develop this rulemaking in coordination with representatives of the U.S. Trade Representative (USTR). Based on what NOAA Fisheries has heard from Congressional staff, Congress tried to write the legislation so that it would be GATT-compliant. NOAA Fisheries realizes that there could be some problems with GATT-compliance and that a case may be brought to the WTO against the United States.

NOAA Fisheries asked the Congressional representatives present if they wanted to comment.

Congressional Staffer

Question/Comment: The Congressional staffer stated that Congress would like to see the measures in the legislation enforced. There was recognition of the challenge and that there might be some cases where trade issues will arise. The Congressional staffer mentioned that this is a concern and we have got to work through it.

NGO Representative

Question/Comment: An NGO representative stated that bycatch reduction requires a multilateral approach. There is agreement that everyone must be involved so that the United States is not solely taking the lead with TEDs in international shrimp fisheries. Caution is needed – people are saying that certifications are not working. Everyone says that they have TEDs and the country is certified. Then, the U.S. team leaves the country and the TEDs come off. Unless countries can be convinced there is advantage to using bycatch gear, there won't be success. According to the NGO representative, they would like to reduce bycatch and recognize the need to work at international levels to address the problem. A statement was made that the United States needs to work with a community of nations and work with more RFMOs.

Response: NOAA Fisheries discussed the need to work with more RFMOs. As an example, it stated that the agency sent staff to the Indian Ocean Tuna Commission, which was very helpful. NOAA Fisheries pointed out that the language in the Moratorium Protection Act, as amended by MSRA, refers to RFMOs “to which the United States is a party”. That provides an incentive to be engaged.

NGO Representative

Question/Comment: Is this rulemaking going to cover international monitoring and compliance section [of the Moratorium Protection Act, as amended by MSRA]? The NGO representative discussed how this section addresses working cooperatively with nations to develop a list of IUU vessels and offering assets to help other countries. Will these activities be included?

Response: NOAA Fisheries stated that our Office of Law Enforcement is hiring extra people to expand the MCS network and have more agents. They will be part of the information gathering and capacity building efforts. The agency clarified that a list of IUU vessels will not be part of this particular rulemaking. Certification procedures are the only part of the Moratorium Protection Act that requires rulemaking.

NGO Representative

Question/Comment: An NGO representative highlighted the focus on RFMOs “to which the United States is a party” and asked where this language came from.

Response: NOAA Fisheries mentioned that this language comes directly from the Moratorium Protection Act. There was a mention of this provision related to RFMO membership and a statement was made that it is good for the United States to be at the table during international negotiations.

Question/Comment: An NGO representative stated that even though we cannot certify a state or apply trade measures because we’re not a member of an RFMO, we [the United States] is a consumer.

Response: The law states that to the extent we can, the United States needs to work multilaterally. NOAA Fisheries clarified that this law also applies to areas where there is no RFMO. The United States is still working to facilitate further collaboration.

NGO Representative

Question/Comment: When do you expect to have the rulemaking completed?

Response: NOAA Fisheries explained that the agency is going to be conducting an economic analysis and an environmental analysis, and it plans to hold more extensive public hearings upon development of a proposed rule. We hope to have a proposed rule available in the fall. Comments will be accepted through July 26th.

Once again, NOAA Fisheries explicitly requested that participants provide their comments. There will be a range of alternatives being developed and considered and the agency will have to conduct the right analyses and make sure that we have the right options.

Advance Notice of Proposed Rulemaking Listening Session for the Certification Procedures for Illegal, Unreported, and Unregulated (IUU) Fishing and Bycatch of Protected Living Marine Resources

Seattle, WA
July 5, 2007

ATTENDEES:

Joe Plesha – Trident Seafoods
Wayne Bouck – Coastal Transportation
Paul MacGregor – At-Sea Processors
John Henderschedt – Premier Pacific Seafoods
Jan Jacobs – American Seafoods
Merle Knapp – Glacier Fish Company
Joe Bersch – Supreme Alaska
Marc Wells – Arctic Storm
Marcy Wescoch – Arctic Storm

OVERVIEW PRESENTATION

Christopher Rogers, NOAA Fisheries Office of International Affairs, provided a presentation summarizing the following:

- Pertinent international provisions of the High Seas Fishing Moratorium Protection Act (Moratorium Protection Act), as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA);
- Advance Notice of Proposed Rulemaking (ANPR) on the certification procedures for illegal, unreported, and unregulated (IUU) fishing and bycatch of protected living marine resources; and
- Questions for the public related to the ANPR in preparation for development of rulemaking.

Subsequently, Chris opened the floor up for questions and comments and provided responses.

QUESTIONS, COMMENTS, AND RESPONSES

NOTE: The notes below were taken by NMFS staff during the meeting and should not be construed as transcripts of the meeting. Every effort was made to summarize the verbal comments accurately.

Industry Representative

Question/Comment: An industry representative asked about the definition of “bycatch.” A comment was made that the term seems to be used in different contexts. A question was raised

whether living marine resources (LMRs) as bycatch are different from the generic definition of bycatch.

Response: NOAA Fisheries explained that the Magnuson-Stevens Fishery Conservation and Management Act (MSA) defines bycatch as fish that are harvested in a fishery, but which are not retained for resale or personal use. In contrast, protected LMRs are defined in the High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act), as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA), as non-target fish, sea turtles, or marine mammals that are protected under U.S. law or international agreement. With the exception of sharks, protected LMRs do not include species that are managed under the Magnuson-Stevens Fishery Conservation and Management Act, Atlantic Tunas Convention Act, or any international fishery management agreement.

NOAA Fisheries acknowledged that there is some ambiguity given the language of the two Acts and, in the proposed rule, will endeavor to clarify the definition of bycatch for the purposes of certification.

Question/Comment: An industry representative asked whether or not the definition [of protected LMRs in the Moratorium Protection Act] changes the definition of bycatch in the MSA.

Response: NOAA Fisheries responded that the Magnuson-Stevens Act definition does not change.

Question/Comment: An industry representative asked which U.S. standards would be held as the standards for foreign nations [with respect to Section 610 of the Moratorium Protection Act, as amended by the MSRA]. Specifically, given various regional management plans, they asked whether nations would be held to U.S. standards for bycatch reduction in Alaska or New England.

Response: NOAA Fisheries stated that they would look at the species of concern, the particular situation of the fishery, and take into account different conditions, if appropriate, when determining whether a nation should be certified under the Moratorium Protection Act.

Industry Representative

Question/Comment: An industry representative asked how vessels would be treated if an RFMO lists those vessels as engaging in IUU fishing.

Response: NOAA Fisheries stated that it will address port access issues for vessels on an IUU list in a separate rulemaking, but would consider the activities of IUU listed vessels when making certification decisions for the flag nation.

Industry Representative

Question/Comment: An industry representative asked how the agency intends to identify specific vessels with specific nations.

Response: NOAA Fisheries explained that it would associate the vessel with the flag of the nation, if the vessel is legitimately flagged. The agency stated that it understands the issues of flags of convenience and that beneficial owners may be of a different nationality, and noted the importance of engaging both the beneficial owner and flag country in dealing with transnational problems. NOAA Fisheries recognizes it is necessary to decrease the incentives for beneficial owners.

Industry Representative

Question/Comment: An industry representative noted that denying an IUU listed vessel port entry could penalize legal product and asked if there was any way to allow legal product into the market.

Response: NOAA Fisheries explained that it does not want to penalize U.S. companies that ship legal fishery products. However, the agency will be addressing this issue of port access in a separate rulemaking.

Industry Representative

Question/Comment: A comment was made by an industry representative that the system rises or falls based on if everyone buys into U.S. standards.

Response: NOAA Fisheries concurred with this statement, but explained that the agency will be working together with other nations under the cooperation and assistance provisions of the Act. Ultimately, a positive certification will be necessary to maintain access to the U.S. market.

NOAA Staff

Question/Comment: A NOAA staff person asked whether lists of IUU vessels are published by Regional Fishery Management Organizations (RFMOs).

Response: NOAA Fisheries responded that the pertinent RFMOs do publish IUU lists. The website for the NOAA Fisheries Office of International Affairs has links to these international organizations. NOAA Fisheries also mentioned that development of a web accessible “global list” of IUU vessels is a possibility and that such a global list is encouraged by the Act.

Industry Representative

Question/Comment: An industry representative asked what would happen if you inadvertently put cargo on a ship that gets subsequently listed as an IUU vessel, or if you did not know the vessel was listed as engaging in IUU fishing. The industry representative also asked about a nation like Japan if it is not a member of an RFMO that lists vessels engaging in IUU fishing; would an IUU-listed vessel be denied port entry into Japan?

Response: According to NOAA Fisheries, the restriction on domestic trade is effective on the date of the prohibition, though the procedure could allow for delayed effectiveness for cargo already in transit. Thus, if cargo is already on board a vessel before it is listed as an IUU vessel, then it could be eligible to import the product into the United States. The Act also does make provisions for alternative certification procedures to be applied on a shipment-by-shipment basis. The United States does not have control over Japan's, or any other nation's importation requirements, but the United States will seek fair and equitable access to markets by working bilaterally. NOAA Fisheries stated that it will work worldwide to try and make rules consistent.

Industry Representative

Question/Comment: An industry representative asked whether the Food and Agriculture Organization (FAO) of the United Nations is looking at these issues.

Response: NOAA Fisheries responded that FAO is actively looking at the issues of port state controls and global vessel lists.

Industry Representative

Question/Comment: A question was asked whether it would make more sense to go after vessel operators themselves. This would get the agency past the issue of flags and get to the decision maker.

Response: To the extent they are able, NOAA Fisheries explained that it will determine who is at fault and consider appropriate actions against flag nations, vessel operators, and beneficial owners.

Industry Representative

Question/Comment: An industry representative pointed out that capital moves. Therefore, the program must focus on specific operators, rather than nations. Otherwise, the program put in place by NOAA Fisheries will create trade barriers.

Response: NOAA Fisheries explained some RFMOs publish an authorized vessel list and an IUU vessel list. However, the agency pointed out that all things can change – owners, operators, and vessels. NOAA Fisheries suggested that FAO may be better able than regional bodies to deal with some aspects of IUU fishing since vessel owners and operators change and may transfer the vessel from one ocean area to another.

Industry Representative

Question/Comment: A comment was made by an industry representative that IUU fishing vessels are costing us money and sales. He explained how industry is at the mercy of vessel operators, even if the operator knew he was using an IUU vessel.

Industry Representative

Question/Comment: Another industry representative stated that it is best to make sure that IUU vessels do not take on fishery products in the United States.

Industry Representative

Question/Comment: A question was posed whether the partial offload of legal product [from an IUU vessel] will be going through a separate rulemaking. Can we carry that through for other countries?

Response: NOAA Fisheries stated that this sounds reasonable, but we need to look at whether such allowances would diminish the effectiveness of the intended disincentive to the vessel owner or operator.

Industry Representative

Question/Comment: But the operator will have already been paid.

Industry Representative

Question/Comment: One industry representative surmised that there would be contracts between parties in the future requiring acknowledgment that the shipper will not use a vessel on an IUU list before it is allowed to carry cargo.

Industry Representative

Question/Comment: A question was posed regarding how the United States will make a final decision [whether to impose trade sanctions] if the identified nation disagrees with the U.S. certification about its measures to reduce bycatch.

Response: NOAA Fisheries stated that the agency will need to see what options exist through the rulemaking. The agency suggested that perhaps the process to be developed could be similar to a Biological Opinion in determining likelihood of jeopardy under the Endangered Species Act (ESA). In that way, a standard applicable to U.S. fisheries could be applied to foreign fisheries, taking into account different conditions if warranted.

Question/Comment: The industry representative asked whether the United States could be subject to litigation [if trade sanctions are imposed].

Response: NOAA Fisheries responded yes and explained that a suit could be brought in domestic court regarding certification decisions or at the World Trade Organization regarding trade restrictive measures.

Industry Representative

Question/Comment: An industry representative responded to the statement made earlier by NOAA Fisheries regarding bycatch certification procedures by noting that there are not enough personnel to handle a Biological Opinion-type process and standards for protected species, if such a process were to be applied to foreign fisheries.

Response: NOAA Fisheries acknowledged that staffing resources could be a constraint on applying such a process but this could be addressed through a plan to phase in the certification process by prioritizing fisheries with protected LMR bycatch.

Industry Representative

Question/Comment: A comment was made by an industry representative that the new provisions sound like “buyer beware.”

Response: NOAA Fisheries concurred, but stated that a more centralized system and transparent process for identifying IUU vessels could assist the industry in making business arrangements.

Advance Notice of Proposed Rulemaking Listening Session for the Certification Procedures for Illegal, Unreported, and Unregulated (IUU) Fishing and Bycatch of Protected Living Marine Resources

Long Beach, CA

July 5, 2007

ATTENDEES

John Zuanich – Del Monte Foods/StarKist Brands, Sr. Manager, Latin America Tuna Operations/Procurement/Sales

OVERVIEW PRESENTATION

Rebecca Lent, Director of the NOAA Fisheries Office of International Affairs, provided a presentation summarizing the following:

- Pertinent international provisions of the High Seas Fishing Moratorium Protection Act (Moratorium Protection Act), as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA);
- Advance Notice of Proposed Rulemaking (ANPR) on the certification procedures for illegal, unreported, and unregulated (IUU) fishing and bycatch of protected living marine resources; and
- Questions for the public related to the ANPR in preparation for development of rulemaking.

QUESTIONS, COMMENTS, AND RESPONSES

NOTE: The notes below were taken by NMFS staff during the meeting and should not be construed as transcripts of the meeting. Every effort was made to summarize the verbal comments accurately.

NOAA Fisheries

Question/Comment: What happens in the situation when other countries have measures that are not congruent with ours; what will we do? For example, under the Agreement on the International Dolphin Conservation Program (AIDCP), “dolphin-safe” tuna is one definition and the United States has another definition. Do we identify all of those nations [that do not follow the U.S. definition]?

Response: NOAA Fisheries stated that in the case of tuna managed under the AIDCP, these fisheries may not be subject to sanctions under the MSRA since we have a multilateral process in place.

NOAA Fisheries

Question/Comment: If the United States imposed sanctions on these countries, it would be a snub to such nations. We are trying to do everything we can to help them. We have to be careful.

Response: NOAA Fisheries explained that if a nation is party to an agreement (such as AIDCP), comparable measures to those in the United States are required under such agreement, and the nation has implemented these measures, the nation may not be identified.

NOAA General Counsel for Fisheries

Question/Comment: I'm not sure that the "dolphin-safe tuna" label is a good standard to look at since it is a labeling standard. How are we likely to interpret "illegal" [for purposes of IUU fishing]? How is this applicable to fishing activities? Would the U.S. standard be applied to other nations under this Act?

Response: NOAA Fisheries explained that the definition of IUU fishing was published in the Federal Register, as required under the MSRA, and Congress is requiring the agency to develop certification procedures through rulemaking. The certification procedures will address how the United States will apply its standards to fishing activities of other nations. NOAA Fisheries stated that the agency will need to set up thresholds for what activities are considered illegal.

Question/Comment: If there was a violation under the International Whaling Commission (IWC), would this be illegal?

Response: NOAA Fisheries explained that it is still going through the language in the MSRA and some of these questions have not yet been answered.

NOAA Fisheries

Question/Comment: If you are going to be negatively certifying countries, does this produce a disincentive for nations to work with us?

Response: NOAA Fisheries stated that it would like to help bring countries to the table to address IUU fishing and bycatch of protected LMRs and emphasized that we look forward to receiving comments on these issues.

Industry Representative

Question/Comment: When this goes into effect, is everyone on the good list until they are proven bad?

Response: NOAA Fisheries stated that Congress wants the agency to provide a list of nations whose vessels are engaged in IUU fishing or bycatch of protected LMRs and tell them

everything that we are going to do with this country to address such activities. Within 90 days of promulgating a final rule that outlines procedures to certify whether identified nations are taking appropriate corrective action or not, the United States must certify these identified nations either positively or negatively.

Industry Representative

Question/Comment: I've heard that there are countries engaged in high seas driftnet fishing. But there could be one nation's flag, a captain from another country, and crew of another nationality. It might be tough to do anything to stop this activity. If there is an international agreement in place, how does this pertain?

Response: NOAA Fisheries discussed the problem of flags of convenience and beneficial ownership of foreign vessels. There was an explanation of how the MSRA has nation-based measures to address IUU fishing, whereas RFMOs have vessel-based measures.

NOAA Enforcement

Question/Comment: My guess is that I can name seven flag nations that will be on list of identified nations. The nation will come forward and say that they have delisted the vessels that have been engaged in illegal activities. That will be their response. I think the first move is that you'll have to find those nations [whose vessels are engaged in IUU fishing or bycatch of protected LMRs], list them at once, and block out this list. You're going to have some good evidence, but it will take 20 years to get all the flags that you need.

Response: NOAA Fisheries expressed the sentiment that it shares concerns about the problem of flag hopping. The agency asked for input and ideas on how best to address these problems.