

**Public Comments Received 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)**

Subject Public Submission

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Public Comments on Certification of Nations Whose Fishing Vessels Are Engaged in Illegal, Unreported, or Unregulated Fishing or Bycatch of Protected Living Marine Resources:=====

Title: Certification of Nations Whose Fishing Vessels Are Engaged in Illegal, Unreported, or Unregulated Fishing or Bycatch of Protected Living Marine Resources

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Comment Info: =====

General Comment:public commenton federal register of 6/11/07 vol 72 #111 pag 32052  
doc noaa 50 cfr part 300 id 042307D rin 0648-av51  
dkt 070514119-7120-01 illegal fishermen from other nations overfishing and illegal  
attention christopher rogers

perhaps they were just doing what american fishing profiteers do - and nobody is  
catching them and jailing them and fining them the way they should be. noaa  
prefers to sit on land and write papers to being out there to catch the bums.

i am all in favor of this and wonder why it has to wait until 2009 for implementation.  
will all the fish be gone by then - usually noaa waits until the fish are gone to take  
any action.

please catch the illegal american fishing profiteers too and jail them for five years  
minimum.

b. sachau





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July 25, 2007

Mr. Christopher Rogers  
Trade and Marine Stewardship Division  
Office of International Affairs  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MC 20910

RE: Certification of Nations Whose Fishing Vessels Are Engaged in Illegal,  
Unreported, or Unregulated Fishing or Bycatch of Protected Living  
Marine Resources

Dear Mr. Rogers,

I am writing to provide Bumble Bee Foods' comments on your Advance Notice of Proposed Rulemaking (Notice) [Docket No. 070514119-7120-01].

By way of background, Bumble Bee Foods was founded in 1899 when a handful of dedicated canners in Astoria, Oregon banded together as the Columbia River Packers Association to fish for and process salmon. Over the next 100 years Bumble Bee became a leader in canned tuna and salmon. In 2004, Bumble Bee entered into a reverse merger with Connors Bros., a Canadian company that is the world's largest producer of canned sardines and herring products. In 2005, Bumble Bee acquired Castleberry/Snow's and the Sara Lee shelf-stable meat business. Today our company is the largest shelf stable protein supplier in North America with brands such as Bumble Bee®, Clover Leaf®, Brunswick®, Beach Cliff®, King Oscar®, Castleberry's®, Snow's®, Orleans®, Sweet Sue® and Bryan®. We are a U.S.-based company with our headquarters and operations center located in San Diego, California and the majority of our production facilities are located in the U.S. Currently, we own and operate the last canned tuna production facility in the continental U.S. located in Santa Fe Springs, California, the last canned tuna processing plant in Mayaguez, Puerto Rico, one of the last two canned clam facilities located in Cape May, New Jersey and the last canned sardine production facility located in Prospect Harbor, Maine.

As you can see, Bumble Bee Foods has invested heavily in U.S. fishery production facilities. We employ thousands of workers in the U.S. and today Bumble Bee is the leading brand of canned seafood in North America and the largest brand of seafood in the U.S. To supply our tuna production facilities we purchase fish harvested from around the world by many different foreign fishing fleets. Because the import prohibitions and other trade sanctions contained in the Moratorium Protection Act have the potential to disrupt our supply chain and our ability to continue to operate our production facilities, we take this issue very seriously.





## Sustainability Policy

Bumble Bee Foods has incorporated a sustainability policy into all of our purchasing programs because the wise conservation and management of the world's fishery resources is critical to our future. We actively support global policies and management initiatives that ensure the long-term sustainability of fishery resources. We routinely work with government agencies from many countries and Regional Fisheries Management Organizations to ensure the existence of credible scientific programs that validate the health, sustainability and management of the species that we market.

IUU fishing undermines the proper stewardship of the resource and cripples responsible fishery management. As a company, we make every effort through our sustainability policy to ensure that we do not purchase fish that was harvested through IUU fishing.

## Regional Fishery Management Organizations (RFMO's)

Bumble Bee Foods supports the goal of the Moratorium Protection Act (Act) to improve the effectiveness of international fishery management organizations in the conservation and management of living marine resources. Because our company depends on steady, sustainable harvests of tuna and other species we actively promote sound conservation principles around the globe. Bumble Bee experts actively participate in the meetings of the IATTC, ICCAT, IOTC and the new WCPFC. The success of these RFMO's in properly managing the world's fishery resources is critical to the success of our industry.

Unfortunately, progress towards controlling and eliminating IUU fishing and reducing bycatch through these RFMO's is painfully slow in large part because they generally operate on a consensus basis. From our experience the United States has been a leader in the fight against IUU fishing and the Act will provide stronger tools to our negotiators. Even with these new tools, however, it is likely that many RFMO's will need to amend their conventions to impose stronger and more effective measures to fight against IUU. This process is cumbersome and could take a number of years.

## Identification of IUU Fishing

Section 609 of the Act requires the Secretary to identify and list a nation if fishing vessels of that nation are engaged in or have been engaged at any point during the preceding two years in IUU fishing. This identification step is intended to publicize those fishing fleets contributing to IUU fishing and to initiate diplomatic efforts toward curbing this activity. Unfortunately, as written the Act could result in the Secretary identifying a significant number of nations because almost every major fishing nation has fishermen who do not play by the rules. Even in the U.S. there are vessels that under report catches or fish illegally and a strict interpretation of the statute could result in nations like the U.S. being listed. We would hope that the proposed rules would clarify the extent or level of IUU fishing necessary in order for a nation to be identified by the Secretary. Moreover, documenting IUU fishing could be extremely costly and not particularly productive given the level or degree of IUU fishing. Therefore in developing any list we would strongly encourage the Secretary to focus on those countries with the highest degree of IUU fishing.





One significant hurdle to the effectiveness of the Act in curbing IUU fishing will be the European Commission (EC) and the fishing activities of member nations. In all of the RFMO's in which we participate, the EC delegation represents all of the fishing fleets of its member nations as opposed to each member nation having a vote and seat at the table. This arrangement has been a significant roadblock to the U.S. in advancing conservation initiatives because reaching consensus among the EU fishing nations is very difficult. It is well known that many of the fishing fleets represented by the EC are some of the worst offenders in terms of complying with international fishery rules. As you move forward in drafting proposed regulations, we strongly suggest that you make it clear that individual member countries of the Commission can be identified and certified.

Bumble Bee would also recommend that specific vessels, the fisheries in which they are engaged and their flag be identified and listed. This step would allow other nations as well as companies such as ours to focus efforts on specific vessels and vessel owners. Without this level of detail we are concerned that all fishing vessels flying the flag of an identified country will be incriminated as opposed to focusing attention on those vessels engaging in IUU fishing or in those fisheries where IUU fishing is prevalent.

#### Certification Process

After a nation is identified the Act requires the Secretary to make a positive or negative certification. A negative certification could lead to the denial of port privileges and a prohibition on the imports of fish and fish products from those countries. Because of the seriousness of these sanctions, we believe the proposed rules must be very clear and include specific criteria detailing the basis on which a certification is made. To achieve the desired results this process must be transparent.

The Act also provides the Secretary with the authority to establish a procedure for certification on a shipper-by-shipper or other basis for those vessels not engaged in IUU fishing. Bumble Bee requests that the proposed rule include such a process so that even if a nation is identified we could continue to import product caught by that nation's vessels that were not part of the IUU problem. Obviously companies like ours would need to document fish purchases but such a process would provide an incentive for vessels to follow the rules and not engage in IUU fishing.

#### Equivalent Conservation Measures

Section 610 of the Act also provides an identification and certification process for nations with fishing vessels engaged in fishing practices that result in bycatch of protected living marine resources. The purpose of this section is to reduce the level of bycatch of non-target species and to dissuade the use of — — harmful fishing gear. Like the sanctions associated with IUU fishing, this section provides the Secretary with the authority to impose import prohibitions on fish and fish products from certified nations. Our comments on the IUU process would also apply to these provisions.

#### Overall Approach/Trade Sanctions

Import prohibitions or trade sanctions are by their very nature controversial. As is often the case, the threat of sanctions is often more effective than the actual imposition. With the growing number of





global free trade agreements imposing trade sanctions is becoming increasingly difficult. As attractive as sanctions may sound, we believe they should only be used as a last result if at all.

In the fisheries world, the U.S. government has certified offending nations under the Pelly Amendment to the Fishermen's Protective Act of 1967. The Pelly Amendment—like the Moratorium Protection Act—authorizes the use but does not require import sanctions. Because the U.S. government is very reluctant to impose trade sanctions, the effectiveness of a Pelly Certification has been diluted over the years. Today a Pelly Certification is virtually meaningless. In light of our experiences with the Pelly Amendment, Bumble Bee strongly encourages a go slow approach as the agency moves forward on this important issue. Specifically we suggest that the proposed rules focus or put priority on those very clear situations where IUU fishing is rampant or bycatch of living marine resources is excessive. In other words, we would encourage the agency not to try and solve all of the world's IUU and bycatch problems at once but rather focus on the few most egregious situations. For the Act to work in reducing IUU fishing we believe the threats of sanctions must be real. The best way for the U.S. government to achieve success is to clearly demonstrate the most outrageous example of IUU fishing and to follow through with effective sanctions. To do otherwise we believe would relegate this new law to the status of the Pelly Amendment.

We would be pleased to provide you with any additional information that may help you in this important endeavor.

Respectfully,

A handwritten signature in cursive script, appearing to read "Chris Lischewski".

Christopher D. Lischewski  
President and CEO







Sent Monday, July 9, 2007 2:17 pm

To [0648-AV51@noaa.gov](mailto:0648-AV51@noaa.gov)

Cc

Bcc

Subject 0648-AV51

Certification of Nations Whose Fishing Vessels Are Engaged in Illegal, Unreported, or Unregulated Fishing or Bycatch of Protected Living Marine Resources.

The Bureau of Land Management appreciates the opportunity to review and provide comment regarding the subject ER 07/489. However, the BLM has no jurisdiction or authority with respect to the project, the agency does not have expertise or information relevant to the project, nor does the agency intend to submit comments regarding the project.

Thank you.

Peg Sorensen ^v^

Senior Planning Analyst, NEPA

Washington Office Division of Planning & Science Policy

Bureau of Land Management



Subject 0648-AV51 -- Government of Canada Comments RE: IUU Fishing or Bycatch of Protected Living Marine Resources

Attachments [LET -- G of C Comments on IUU 07-26-07.pdf](#)

483K

To: Christopher Rogers,  
Trade and Marine Stewardship Division,  
Office of International Affairs, NMFS.

Dear Mr. Rogers –

Please find attached the Government of Canada's comments on "Certification of Nations Whose Fishing Vessels Are Engaged in Illegal, Unreported, or Unregulated Fishing or Bycatch of Protected Living Marine Resources." ( Document: NOAA-2007-0430-0001; Docket NOAA-2007-0430). I hope that you find these comments helpful. The signed original will follow shortly.

Should you have any questions, or require any additional information, please do not hesitate to contact me.

Sincerely,

David Whorley

U.S. Relations Division  
Foreign Affairs and International Trade Canada



Mr. Christopher Rogers  
National Marine Fisheries Service  
Office of International Affairs  
Trade and Marine Stewardship Division  
1315 East-West Highway  
Silver Spring, MD  
20910

Dear Mr. Rogers:

On behalf of the Government of Canada, I would like to submit the following comments in response to the advance notice of proposed rulemaking for certification procedures to address illegal, unreported, or unregulated (IUU) fishing activities and bycatch of protected living marine resources pursuant to the *High Seas Driftnet Fishing Moratorium Protection Act (Moratorium Protection Act)*. The Government of Canada appreciates the efforts by Dr. Rebecca Lent, Director for International Affairs at the National Marine Fisheries Service, to bring to our attention the international provisions of the *Magnuson – Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA)*.

The Government of Canada commends the United States Government on the international provisions of the *MSRA*. The level of attention given to international fisheries issues in this legislation -- and IUU fishing and bycatch of protected living marine resources in particular -- complements the direction of the international community in seeking oceans management that contributes to sustainable fisheries and oceans' ecosystems.

The starting point for our comments is the definition of IUU contained in section 609 of the *MSRA*, which includes an element on fishing that has an adverse impact on seamounts, hydrothermal vents, and cold water corals in areas beyond national jurisdiction. We are concerned about including within a definition of IUU an element for which there is no international standard in place to direct and inform behaviour. For instance, while principles have been agreed upon in the United Nations General Assembly 2006 Sustainable Fisheries Resolution, there is still work to be done to effectively implement these principles through development of agreed standards defining vulnerable areas. It is our view that the lack of agreed standards increases the risk of ad-hoc responses based on application of these principles that will gravely affect the certification process. As well, since standards have not been developed, we anticipate that they will change with time as they are refined and this will also negatively affect the certification process.

We would suggest that a more suitable definition of IUU is the Food and Agriculture Organization's (FAO) definition contained in its International Plan of Action to Prevent, Deter and Eliminate IUU Fishing which represents international consensus. Concerns regarding the relationship between fishing and vulnerable areas could also be better addressed within the FAO where there is a process for developing guidelines on these matters. Through this process it may be possible to agree upon areas on the high seas, outside of Regional Fisheries Management Organizations (RFMOs), which are home to seamounts, cold water corals or hydrothermal vents.

The definition of a protected living marine resource is also quite broad. The Government of Canada would suggest that regulations related to section 610(a) of the Act be applied only to commercial fisheries. We believe this is more in line with the intention of the certification procedures and should be reflected as such.

The terms "effective" in reference to measures adopted by nations or RFMOs to address IUU or bycatch issues, and the determination of a "competent" RFMO in reference to potential information sources for use in certification are currently quite subjective and could prove problematic. The international community is currently working on defining standards for RFMO performance. An approach would be to support the development of agreed performance standards for RFMOs. Some work has been started in this area, supported by the United States for tuna RFMOs and by Canada for tuna RFMOs and also more generically through the model RFMO developed by independent experts as recommended by the High Seas Task Force. This approach would also be consistent with the recommendations on strengthening RFMOs agreed to at the United Nations Fish Stocks Agreement Review Conference in May 2006.

Since the certification procedures under sections 609(d) and 610(c) will look to nations themselves, it will also be important that the performance requirements be clear, consistently applied, and shared in a transparent way with all nations through ongoing dialogue. This would enable nations to self-assess against clearly established norms to ensure adherence. In particular, we would like to stress the need for clear and transparent guidelines on certification for nations, as they relate to bycatch issues. We believe that clarity on aspects such as the criteria to be used in certification of nations and fisheries, the length and validity of certification, and ensuring that the parameters considered for certification remain stable over time would be beneficial to all parties. To this end, we would note that officials from Fisheries and Oceans Canada have already held initial technical level discussions with their counterparts from the National Oceanic and Atmospheric Administration (NOAA) on cooperation to protect vulnerable marine turtles.

The Government of Canada is pleased to note that NOAA is encouraging comments on sources of information to be used in listing nations with vessels engaged in IUU fishing or bycatch of protected living marine resources. Though extensive information exists internationally on these issues, we believe it will be a challenge to find balanced and entirely accurate data. The Government of Canada would be very supportive of an approach that places a greater emphasis on information possessed or

undergone a peer-review process or been agreed upon through tribunals or some other legal mechanism while other sources will be unsubstantiated.

The *MSRA* represents a significant achievement and a step forward to deter the vessels that engage in IUU fishing and the bycatch of protected living marine resources and to deter the nations that habitually fail to put in place effective regulatory and management measures to end this behaviour by their fleets. We hope that the comments provided will be helpful in refining the approach of the United States in certifying nations whose vessels engage in these acts.

As a nation committed to the responsible management of fisheries and oceans, we have welcomed the opportunity to provide our viewpoint and urge NOAA to continue to consult with other nations on the international provisions of this legislation. The Government of Canada believes that such work will contribute to the success of the measures enacted within the *MSRA*.

Sincerely,



Michael Dawson  
Acting Director, U.S. Relations Division







SENT VIA EMAIL & FAX

July 26, 2007

Christopher Rogers  
Trade and Marine Stewardship Division  
Office of International Affairs  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910  
Fax: 301-713-9106  
Email: [0648-AV51@noaa.gov](mailto:0648-AV51@noaa.gov)

Re: 0648-AV51 Comments on Advance Notice of Proposed Rulemaking for Certification Procedures to Address Illegal, Unreported, or Unregulated Fishing Activities

Dear Christopher Roger,

On behalf of the Center for Biological Diversity ("the Center"), I respectfully submit these comments in response to the advance notice of proposed rulemaking for certification procedures to address illegal, unreported, or unregulated ("IUU") fishing activities and bycatch of protected living marine resources. 72 Fed. Reg. 32052 (June 11, 2007).

The Center is a non-profit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 35,000 members throughout the United States. The Center's Oceans Program aims to protect marine ecosystems in United States and international waters including efforts to ensure the effective implementation of the Magnuson-Stevens Act and other environmental laws.

The Center is pleased that the National Marine Fisheries Service ("NMFS") is taking steps to create certification procedures to address the problem of IUU fishing and fishing bycatch. The Magnuson-Stevens Act section 609 requires that NMFS establish such procedures to certify whether or not nations are taking appropriate corrective actions to address IUU fishing. 16 U.S.C. § 1826j. Compliance with this statutory mandate is essential because IUU fishing undermines U.S. and international efforts to conserve and manage marine resources.

IUU fishing is an important issue that deserves prompt action by NMFS. Here, the statutory framework is in place to address this problem, and now it is imperative that NMFS create the regulatory framework so that Congress' intent to address IUU fishing can come to fruition.



It is vital that NMFS develop these procedures for certification in a timely manner taking prompt action to create the procedures, solicit public comments, and finalize a rule. Additionally, following the timelines set by Congress, NMFS shall certify to Congress within 90 days of a final rule on certification procedures. 16 U.S.C. § 1826j(d)(1).

The Magnuson-Stevens Act requires that certification procedures comply with the Administrative Procedure Act rulemaking provisions, including providing for notice and comment on the certifications. 16 U.S.C. § 1826j(d)(1). NMFS' regulations to certify nations must provide for full public disclosure and participation in the certification process.

The goals of section 609 of the Magnuson-Stevens Act will only be met once NMFS has finalized a rule and has implemented the certification process. The Center supports the development of the certification procedure and looks forward to participating as an interested party throughout the process.

Most sincerely,

A handwritten signature in black ink, appearing to read 'Miyoko Sakashita', written in a cursive style.

Miyoko Sakashita  
Staff Attorney, Oceans Program  
miyoko@biologicaldiversity.org





**- COASTAL -  
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July 26, 2007

Mr. Christopher Rogers  
Trade and Marine Stewardship Division  
Office of International Affairs  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

Via e-mail: [0648-AV51@noaa.gov](mailto:0648-AV51@noaa.gov)

Re: Comments in Response to Advance Notice of Proposed Rulemaking concerning Illegal, Unreported, or Unregulated Fishing -- 72 Fed. Reg. 32052 (Docket No. 070514119-7120-01) (RIN 0648-AV51)

Dear Mr. Rogers,

Coastal Transportation, Inc. ("Coastal") is a Washington state corporation operating a fleet of eight U.S. flag vessels from Seattle to ports in Alaska transporting a variety of palletized cargoes. Our vessels are all documented under U.S. flag with registry, coastwise and fishery endorsements and all have Federal Fisheries Permits issued by the National Marine Fisheries Service Restricted Access Management Office in Juneau. A significant portion of our customers are involved in the fishing industry and all of our vessels operate as fish tender vessels under the authority of the Aleutian Trade Act. We have been providing service to communities in Western Alaska and to the fishing industry since our inception in 1984.

Because of Coastal's long-time involvement in the fishing industry, we are particularly sensitive to the need for well-managed fisheries and the importance of addressing illegal, unreported and unregulated fishing activities (IUU fishing). We applaud the National Marine Fisheries Service/National Oceanic and Atmospheric Administration for seeking public participation through the above-referenced Advance Notice of Proposed Rulemaking and the public input sessions held around the country earlier this month. We appreciate the opportunity to comment on these important issues.

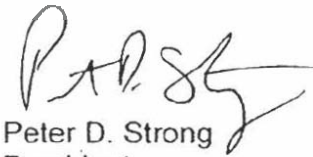
As you develop regulations to implement the statutory mandates regarding IUU fishing in the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 and related statutes, we urge you to give particular attention to the differences between foreign flag transport vessels without Federal Fisheries Permits and U.S. flag tender vessels that have Federal Fisheries Permits and transport frozen fish products. A copy of one of our permits is attached to these comments.

We believe that imposing sanctions on vessels that engage in IUU fishing, including the transportation of illegally caught fish, is an appropriate enforcement tool. However, to extend sanctions to U.S. flag vessels transporting fishery products under the authority of a Federal Fisheries Permit is over-reaching and would have no consequence on the IUU fishing activity. Sanctioning such vessels could have a potentially significant disruptive impact on domestic commerce, not only of frozen fish products, but other cargoes transported by these vessels.

Accordingly, as you develop this regulatory package, we strongly encourage you to exclude from the category of affected fishing industry vessels, those fish tender vessels that are documented under U.S. flag and that engage in domestic commerce in the United States and the Exclusive Economic Zone under the authority of a Federal Fisheries Permit.

Thank you for the opportunity to submit these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "P. D. Strong", written over a horizontal line.

Peter D. Strong  
President



Subject "0648-AV51" - Comments by the fisheries departement of the European Commission on the US consultation on IUU fishing

Attachments [26-07\\_reply\\_US\\_initiative.pdf](#)

20K

Please find attached comments from the Directorate-General for Fisheries and Maritime Affairs of the European Commission on the advance notice of proposed rulemaking on IUU fishing, published in the Federal Register dated 11 June 2007.

This document contains slight changes compared to the version handed over to the US administration by the representative of the European Commission during the presentation of the US initiative to fishery Attaches and Conselors which took place on 9th July in Silver Spring.

Best regards

*Gaël de Rotalier*

*"International policy and law of the sea" Unit*

*DG Fisheries and maritime affairs*

**US Advance notice of proposed rulemaking/request for comments (dated 11<sup>th</sup> June 2007)**

**Certification of Nations Whose Fishing Vessels Are Engaged in Illegal, Unreported, or Unregulated Fishing or Bycatch of Protected Living Marine Resources**

*The opinions expressed in this note represent the views of the General Directorate for fisheries and maritime affairs of the European Commission.*

- The present document only covers the question of the certification of nations whose fishing vessels are engaged in IUU fishing, and does not pertain to the issue of bycatch of protected living marine resources.
- The European Commission welcomes the initiative by the US administration to engage in a process for identifying and enacting sanctions towards fishing nations supporting IUU fishing. There is an international consensus to qualify IUU fishing as one of the most serious threats worldwide to the sustainability of fish stocks and to marine biodiversity. The continuation of those practices is to a large extent linked to the impunity enjoyed by illegal fishing operators whose vessels are registered in States hosting "Flags of non compliance".
- The US and the European Community have been supporting a firm stance against IUU fishing in international organisations (notably the FAO or the UN) and within Regional Fisheries Management Organisations. The European Commission wishes to intensify those multilateral efforts as IUU fishing is an international problem which requires an international answer. At the same time, the European Commission is reflecting on how to address situations where multilateral efforts fall short of addressing IUU fishing activities.
- In that context, the Commission intends to propose this autumn to the Member States of the European Community a new and ambitious strategy to combat IUU fishing. One of the avenues under consideration pertains to the possibility for the European Community to identify and sanction those States which do not meet their duties as Flag States under international law on conservation and management of fisheries resources. This reflection touches upon questions which are also at the heart of the initiative engaged by the US, and the European Commission believes that the European Community and the US could usefully work together on this issue. One of the points under examination within the Commission is the compatibility of this unilateral approach with the international rules governing fisheries and trade (WTO) matters.
- ~~As to the request by the US to provide comments on the "advanced notice of proposed rulemaking" under consideration, the European Commission considers that the criteria for identifying fishing nations whose vessels are engaged in IUU fishing should take account of:~~
  - a) the ratification of or accession of the States concerned to international fisheries instruments (and in particular the United Nations Convention on the Law of the Sea, the United Nations 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the

Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks and the FAO 1993 Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas);

- b) the status of the State concerned as party or cooperating non-party to Regional Fisheries Management Organisations, or its agreement to apply the conservation and management measures established by such organisations;
  - c) whether the State concerned has adopted and implemented the necessary legal and administrative instruments to ensure effective compliance with applicable laws, regulations or international conservation and management measures either as a flag state, port state, market state or coastal state;
  - d) the history, and the nature, circumstances, extent, and gravity of the IUU fishing activities and the involvement of the State's flagged vessels or nationals;
  - e) the record of the State concerned in relation to implementing effective enforcement measures in respect of vessels flying its flag and in respect of its nationals involved in IUU fishing activities;
  - f) any acts or omissions by the State concerned that may have diminished the effectiveness of applicable laws, regulations or international conservation and management measures.
- Sources of information should include reports from national and third country judicial and inspection authorities, catch data, trade information obtained from national statistics and other reliable sources, vessel registers and databases, Regional Fisheries Management Organisation catch documents or statistical document program and lists of IUU vessels adopted by Regional Fisheries Management Organisations as well as any other information obtained in the ports and on the fishing grounds.
  - Finally, on a slightly different matter, the European Commission notes that the **definition of "IUU fishing" in the US legislation** comprises notably "*fishing activity that has an adverse impact on seamounts, hydrothermal vents, and cold waters corals located beyond national jurisdiction, for which there are no applicable conservation and management measures or in areas with no applicable international fishery management organization or agreement*".  
The European Commission views the latest part of this definition as going beyond the definition of IUU fishing contained in the (non-binding) FAO Plan of Action to prevent, deter and eliminate IUU fishing (and notably point 3.3.2).  
It would be problematic if this definition could be interpreted as implying that all fishing activities likely to have an adverse impact on seamounts, hydrothermal vents and cold waters corals and carried out in high seas areas not covered by any international agreement should be considered as IUU fishing. Those vessels which are subject to conservation and management rules by their Flag State in the area considered can indeed not be considered as carrying out IUU fishing due to the sole



fact that they operate in high seas areas not covered by any international arrangements. Their activity is regulated by their Flag State and can therefore not be qualified as unregulated.

*General Directorate for Fisheries and Maritime affairs of the European Commission  
Directorate for External Policy and Markets  
26/07/2007*



Mr. Christopher Rogers  
Trade and Marine Stewardship Division  
Office of International Affairs  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, Md. 20910

26 July 2007

**RE: 72 FR 32052. Certification of Nations Whose Vessels Are Engaged in Illegal, Unreported, or Unregulated Fishing or Bycatch of Protected Living Marine Resources**

Dear Mr. Rogers,

On behalf of more than 10 million members and constituents of The Humane Society of the United States and Humane Society International (HSUS/HSI), I would like to provide comments on the Certification of Nations Whose Vessels are Engaged in Illegal, Unreported, or Unregulated Fishing or Bycatch of Protected Living Marine Resources (IUU Fisheries). HSUS/HSI supports strong penalties against nations whose fishers operate illegally.

For many years, HSUS/HSI have been ardent advocates for limits on catch and bycatch of marine species. In particular, we have long been advocates for elimination of bycatch of marine mammals both in U.S. and foreign fisheries. We have also supported strong limits on catch and bycatch of a number of species of sharks whose populations have been devastated by commercial fisheries. HSUS/HSI have long advocated internationally for protection of seabirds and endangered turtles and for elimination of wasteful "finning" of sharks. As such we strongly support penalties for IUU Fisheries.

The Federal Register Notice seeks comments on methods or criteria for information evaluation used to determine whether IUU activities are occurring (72 FR 32053) and expresses concern with the information's accessibility, transparency, specificity and susceptibility to alteration. Clearly the testimony of independent observers is a key method of documenting IUU activities and we believe that observer reports of IUU activities should be taken at face value. We strongly support the National Marine Fisheries Service's (NMFS) development of tamper-proof monitoring (e.g., video, VTR data) that can document fishing in areas that are closed or require modification of gear and practices. We urge the US to strongly advocate for regional management programs to require 100% observer coverage on all commercial fishing vessels. We encourage the use of those practices on non-U.S. vessels as well and substantial consideration of resulting evidence. These methods have been used successfully by U.S. fisheries.

The Federal Register Notice also seeks comments on sources of information to be used for determining certification of nations whose fisheries are engaged in IUU fishing. (72

FR 32054) We do not disagree with any of the sources of information or criteria that are listed in this section. We are however most supportive of the last criterion in the list, which states that “the identified nation has provided sufficient documentary evidence of corrective action taken to end IUU fishing or adoption of a regulatory program to end or reduce bycatch that is comparable to that of the United States...” The standard that is required of U.S. fisheries should be the minimum required of foreign fisheries, whose fleets often compete with our own for market share. For example, metrics such as that established for marine mammals under Section 118 of the Marine Mammal Protection Act should be used as a standard by which to measure impacts of fleets of other nations to assure that there is limited bycatch of marine mammals. Other Acts in the U.S. have similar metrics to assure limited impacts on stocks and metrics similar to those should be used to gauge impacts by foreign fleets as well. We also applaud and encourage transparency including publication of certification decisions in the Federal Register and opportunity for public comment on related actions.

But we have additional concerns not specifically addressed in the Federal Register notice. HSUS/HSI are concerned that the definition of protected living marine resources provided in the High Seas Driftnet Fishing Moratorium Protection Act (the Moratorium Protection Act) for use in the proposed certification procedures includes non-target fish, sea turtles and marine mammals but significantly omits seabirds.

The bycatch of seabirds, particularly albatrosses, in longline fishing operations worldwide is acknowledged as the most significant threat to many species' continued survival. The threat of longline fishing to seabirds has been acknowledged in the United Nations Food and Agriculture Organization's (FAO) International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries (IPOA-Seabirds). As recommended in the IPOA-Seabirds, a number of countries have developed and implemented their own National Plans of Actions for Reducing Incidental Catch of Seabirds in Longline Fisheries (NPOA-Seabirds). The vulnerability of albatross species globally has been recognized by the formation of the Agreement for the Conservation of Albatrosses and Petrels (ACAP), under the Convention for Migratory Species (CMS). ACAP has constituted a Seabird Bycatch Working Group in order to specifically study the effects of different fishing methods on albatross and petrel populations.

Most Regional Fisheries Management Organizations (RFMOs) whose area of responsibility coincides with albatross and petrel distributions have passed resolutions specifically aiming to reduce the level of interaction between fishing gear and seabirds, with varying degrees of success. It is estimated, for example, that approximately 10,000 albatrosses have been killed by the Japanese southern bluefin tuna fishing fleet each year since 1997, while the development and implementation of seabird mitigation measures in the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) have resulted in the number of reported seabird bycatch mortalities decreasing from 6589 in 1997 to 0 in 2006.

However, the incidence of IUU fishing is often associated with high levels of seabird interaction and mortality since the IUU fishers have no regard for the seabird avoidance

measures that legal operators are required to follow. The IUU fishers who target Patagonian toothfish in waters managed by CCAMLR are known to be responsible for extremely high levels of seabird bycatch, yet obviously the true number is unknown. These mainly Spanish IUU operators have been the subject of a separate petition for certification pursuant to the Pelly Amendment to the *Fishermen's Protective Act* by HSI and WWF last year (copy enclosed).

In summary, the bycatch of seabirds is recognized in a range of international fora as of equal significance to that of the other bycatch groups provided in the Moratorium Protection Act definition. In any certification procedures relating to bycatch of marine living resources it is imperative that seabirds are included in the range of protected species, since they are subject to bycatch in fishing activities at least to the same degree as non-target fish, sea turtles or marine mammals. Albatross and petrels are widely held to be the world's most endangered group of birds with 23 of the 24 species of albatross considered endangered or vulnerable with longline fishing the key threat according to the IUCN Red list of threatened species. Their omission would constitute a significant missed opportunity to address the irresponsible and unregulated fishing allowed by some governments that results in widespread high levels of seabird mortality and risks the continued survival of many species.

HSUS/HSI recommend that in addition to the proposed sources of information for certifying nations whose vessels are engaged in IUU fishing or bycatch of protected living marine resources, NMFS include sources relating to the landing and import of the illegal products and licensing of known illegal fishers. It is understood, for example, that a country such as Spain has been complicit in the continued illegal fishing of its nationals in CCAMLR waters by continuing to provide licenses to them and allowing them to land their illegal fish products. Any certification procedure would therefore benefit from including landing, import and licensing information in its data collection.

HSUS/HSI continue to support strict limits on bycatch of protected species and continue to advocate for objective means of ensuring compliance with international agreements. Thank you for your attention to our concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kitty Block', with a long horizontal line extending to the right.

Kitty Block  
Vice-President  
Humane Society International



The Honorable Carlos M. Gutierrez  
Office of the Secretary  
Room 5516  
U.S. Department of Commerce  
14th & Constitution Ave. NW  
Washington, D.C. 20230  
202-482-2000  
E-mail: CGutierrez@doc.gov

September 8, 2006

Dear Secretary,

**Petition to certify Spain pursuant to the Pelly Amendment to the U.S. Fishermen's Protective Act in relation to involvement of Spanish nationals in sea bass/toothfish poaching, undermining sustainable fisheries management in the Southern Ocean**

The undersigned organisations respectfully petition you, as Secretary of the relevant agency to certify that nationals of Spain are persistently and deliberately fishing in a manner that undermines the effectiveness of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) pursuant to the Pelly Amendment to the *U.S. Fishermen's Protective Act, 22 U.S.C 1978*.

We have enclosed copies of relevant documentation that we believe adequately establishes the dominant role of Spanish (and Chinese) nationals, both individuals and companies, in the overall Chilean Sea Bass (referred to herein as "toothfish") poaching effort which the CCAMLR Commission has established to be undermining the effectiveness of adopted CCAMLR Conservation Measures.

CCAMLR, of which the United States is a founding member nation, maintains a growing package of Conservation Measures designed to regulate fishing for toothfish (*Dissostichus spp*) and to minimise the threat such fishing poses to seabirds. These Measures are being systematically and deliberately undermined by well organised poaching operations. As the attached material clearly establishes:

- this illegal, unreported and unregulated (IUU) fishing effort is largely organised and conducted by a few Spanish nationals based on traditional networks of companies and individuals in Galicia in north-west Spain; while
- the servicing of this IUU fishing effort, including product purchase and subsequent processing and product sale, mainly in major centres in East Asia,

has principally been provided – and benefited from - by Pacific Andes, a major international network of fish trading companies head-quartered in Hong Kong, China.

*The high incidence of IUU fishing has not only had a detrimental effect on toothfish stocks, particularly in the Indian Ocean, it has impacted heavily on seabird populations to the extent that the future sustainability of both groups has been called into question. The continued lack of information from IUU fisheries undermines CCAMLR's conservation measures and severely complicates efforts to determine future toothfish stock trends in certain areas with any level of certainty.*

*CCAMLR website (as at 29/08/06)*

While the level of IUU activity in the CCAMLR convention area has reduced in recent years, it remains at a level that undermines toothfish management and continues to threaten seabirds.

*5.24 The Scientific Committee reiterated its conclusions of recent years that even these levels of IUU incidental mortality of seabirds were of substantial concern and likely unsustainable for some of the populations concerned (Annex 5, Appendix O, paragraph 105). The Commission was encouraged to continue to take action in respect of incidental mortality of seabirds caused by IUU fishing (Annex 5, Appendix O, paragraph 106).*

*Report of the Twenty-fourth meeting of the  
CCAMLR Scientific Committee (2005)*

The successful evasion of CCAMLR's Conservation Measures and exploitation of loopholes requires sophisticated, often active, complicity on the part of flag- and port- state officials in a number of countries other than Spain. Such complicity includes the failure of Spanish authorities to enforce domestic regulations making it an offence for Spanish nationals to breach or undermine management measures in force in other jurisdictions, including EEZs within the CCAMLR Area.

Available evidence points to varying levels of complicity on the part of officials in these and other government agencies in a number of CCAMLR member states, including Spain, Russia and Uruguay, along with a number of non-CCAMLR member states, including Indonesia, Singapore, Togo, St Vincent and Grenadines, and China.

The extent to which Spanish fishers and Chinese traders are able to build and maintain such networks is a matter of grave concern for all countries committed not only to the protection and sustainable use of the world's marine resources, but also to the effective exercise of sovereign jurisdiction in upholding and complying with international fishing, maritime and trade law.

There is currently an outstanding USA indictment against a Spanish national, Antonio Vidal Pego, and a Uruguayan corporation, for allegedly importing to the USA and conspiring to sell illegally possessed toothfish (refer US Department of Justice, press release, 28 September 2005 Annexure A). They are also both

charged with false labelling and obstructing justice. Antonio Vidal Pego continues to fish for toothfish in the CCAMLR Area legally under license from Spain, as well as in an IUU manner using vessels flagged to other countries, such as Uruguay and flag states of "convenience" such as Togo.

We believe that we have provided sufficient information to establish a *prima facie* case that Spain should be certified pursuant to the Pelly amendment insofar as they are responsible for organising, conducting and benefiting from:

- conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program, namely CCAMLR; and
- engaging in trade or taking which diminishes the effectiveness of any international program for endangered or threatened species, namely the Agreement for the Conservation of Albatrosses and Petrels (ACAP) which has recently entered into force.

We recognise there is less information available on China, but believe there should be significant pressure exerted via US notification of an intent to review the introduction of trade sanctions, should toothfish trading activities not be brought into line over the coming 12 months by China.

We urge you to certify such fact to the President, with the recommendation that the President make the necessary orders to ensure that adequate and effective trade sanctions are taken against Spain pending effective action being taken by Spain to adequately penalise, and permanently halt the involvement of, its nationals in IUU fishing in the CCAMLR Area . These trade sanctions should remain in place until such time as Spain has verifiably demonstrated that it has taken the necessary steps not only to stop but also to prevent recurrence of, involvement of their nationals in certified activities or benefiting from such activities.

An important Conservation Measure established by CCAMLR to better constrain IUU fishing for toothfish is the CCAMLR Catch Documentation Scheme (CDS). The CDS, as defined in CCAMLR Conservation Measure 10-05, became binding on all members on 7 May 2000. The CDS is designed to track toothfish landings (and subsequent trade flows of toothfish and derived toothfish products) from fishing activity in the Convention Area and (where voluntarily applied) in adjacent waters. This is to enable the Commission to identify the spatial origin of, and the originating harvester of, toothfish entering the markets of all Parties to the Scheme, and to determine whether toothfish in trade were caught in a manner that complied with CCAMLR's Conservation Measures and did not undermine them.

In addition to the CDS there are a number of other critical CCAMLR Conservation Measures, especially one to establish a centralised Vessel Satellite Monitoring System, and others (such as seasonal restrictions, fishing gear modifications etc) designed specifically to avoid seabird bycatch.

CCAMLR Conservation Measures are being undermined in three principal areas:



- exploitation of loopholes by nationals of countries participating in the CDS;
- avoidance of such participation; and
- sophisticated use of international law to minimise exposure to losses.

The chief tactic used by toothfish poachers in exploiting such loopholes has been not only to falsely declare fish as coming from (for example) FAO Statistical Areas 51 & 57 outside the CCAMLR area when filling in CDS landing information forms, but also to undertake sophisticated tampering of VMS equipment, throughout voyages of several months duration, so as to generate bogus records of satellite-based vessel monitoring. The evidence of this tampering was demonstrated conclusively by Australian authorities in reports to CCAMLR in 2001 in respect of the fishing vessels Arvisa and Dorita and, again, in 2004, in respect of the Viarsa. It is widely accepted that all three vessels are beneficially owned and controlled by Antonio Vidal Pego, a Spanish national.

The USA is to be congratulated for promptly regulating to forbid imports of toothfish from FAO Areas 51 and 57 when the enormous size of this loophole was first brought to the attention of CCAMLR member states so that US markets, at least, remain closed to toothfish products of dubious provenance via this loophole.

There are other mechanisms used by the poachers to avoid regulations for Chilean Sea Bass product entering the US marketplace, including direct “false declarations” on import documentation, “laundering” of illegal product by mixing it with legal product in the processing establishments, and use of international legal loopholes to register vessels to countries which are non-CCAMLR members and sell catches into China without CCAMLR CDS documentation.

Flag of convenience activity involves registering toothfish fishing vessels to non-CCAMLR member countries which, in turn, facilitates the beneficial owners’ (in this instance, Spanish nationals) operations within the CCAMLR region, as the flags of convenience are from countries not bound by CCAMLR Conservation Measures, and so the vessels can fish freely.

To frustrate apprehension and identification, the nationals also utilise complex corporate structures with “front company corporations” in these flag states of convenience. This is how States such as Togo, Equatorial Guinea and St Vincent and Grenadines, have become involved with their vessels being in breach of CCAMLR conservation measures. Generally, these states have limited enforcement capacity, and often limited willingness, to adequately control vessels registered to their country. They facilitate continuation of fishing practices which undermine the international Convention of CCAMLR.

Seabird mitigation strategies and devices play a vital role in conserving seabird populations in CCAMLR waters. Extensive efforts by CCAMLR governments and licenced fishers has resulted in a remarkable 99% reduction in the incidental mortality of endangered albatrosses and other seabirds attributable to licenced fishing activity. Such mitigation efforts are only required of licenced operators from Member States of CCAMLR.

Those operators using flags of convenience do not use these seabird mitigation measures. In not using seabird bycatch mitigation devices, IUU fishers are also seriously undermining CCAMLR's conservation measures to conserve seabirds, including highly endangered species of albatross and petrel.

Indeed, such longlining by IUU fishers is identified as the key threatening process responsible for the endangered and declining conservation status of many southern hemisphere populations of albatrosses and petrels. CCAMLR scientists have estimated that IUU fishing in the CCAMLR Area over the last decade has killed hundreds of thousands of seabirds.

The successful exploitation of such loopholes requires sophisticated, often active, complicity on the part of flag state officials. As evidence we attach an IUU Vessel Red List prepared by the Antarctic and Southern Ocean Coalition ([www.asoc.org](http://www.asoc.org)) Annexure B and the official IUU Vessel lists maintained by the CCAMLR Secretariat [www.ccamlr.org](http://www.ccamlr.org)) Annexure C. We also attach a table we have compiled of known IUU activity between January 2004 and January 2006 (Annexure D). It is clear that the many flags of convenience are being "used" by IUU operators to evade CCAMLR rules.

We also attach for your information documentation prepared by the Coalition of Legal Toothfish Operators (COLTO – see [www.colto.org](http://www.colto.org)) detailing the findings of their investigations into IUU fishing for Patagonian toothfish. The documentation involves:

- *The Alphabet Boats: a case study of toothfish poaching in the Southern Ocean*, published in 2002, first exposing the strategic and controlling role of Hong-Kong-based fish trading company, Pacific Andes, in the overall toothfish poaching effort Annexure E; and
- *Rogues Gallery: the new face of IUU fishing for toothfish*, published in 2003, detailing the extent to which the Spanish fishers themselves were now organised into risk-minimising business syndicates Annexure F.

It has been notable - and regarded as far from coincidental - in recent years, that a large number of apparently independent toothfish poachers had flagged their vessels to Uruguay or Russia, both being CCAMLR member states with alarmingly poor control over agencies responsible for the exercise of flag and/or port state control. Since much was made of this inappropriate exercise of sovereign control by CCAMLR members at the 2004 CCAMLR meeting, the Spanish nationals involved ~~in the toothfish poaching effort have subsequently reflagged their vessels to a~~ number of other states.

These members of the poaching and trading syndicates continue to demonstrate their ability to cultivate relationships with government officials willing to assist their fishing and trading activities, not only in Russia and Uruguay but also in a range of other 'flag of convenience' and 'open port' states.

Official complicity can involve practices such as:

- issuing Dissostichus Catch Documents for toothfish landed from known IUU fishing effort;
- accepting fake VMS traces and/or collaborating in generating fake traces;
- certifying landings of IUU catches in both home and foreign ports; and
- allowing transfer pricing of product (ie re-coding lower sales values for fish to avoid taxes in the flag state).

The prompt use of the Pelly amendment provides an excellent and timely opportunity for the USA to express its concern to Spain about its responsibility not only to ensure that individuals and companies under its sovereign jurisdiction are effectively controlled, but also to ensure that such control is exercised to ensure compliance with international law and international agreements, and to punish non-compliance.

#### **In summary**

For the above reasons, we believe that the President of the United States of America should impose significant trade sanctions against Spain until such time as Spain has convincingly demonstrated that it has effectively and enduringly prevented its nationals from engaging in IUU fishing for toothfish, from trading in fish and fish products derived from such IUU fishing, or from benefiting from such fishing or trading.

We are aware that the threat of sanctions under the Pelly Amendment has been used successfully to bring both Japan and the Soviet Union into compliance with International Whaling Commission decisions. It has also been used to convince Japan to withdraw its reservation to the Appendix 1 listing of Hawksbill sea turtle under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

The 24 species of albatross and petrels are the most endangered group of birds on the planet and the Pelly Amendment presents the United States with an opportunity not only to have a serious impact on those principally - and knowingly - involved in driving them towards extinction, but also to provide significant assistance to CCAMLR's struggling fisheries conservation and enforcement regime. We strongly urge you to use it.

Finally, we suggest that you immediately provide notification to the public in the Federal Register that you have received this petition and that you are soliciting ~~comments from the public, that you will formally consult with Spain and China to obtain their views, and that you will make a determination concerning certification by a specific date.~~ Ideally, the Department of Commerce would also provide a range of possible sanctions on which the public might comment in this Federal Register notice. If the Department of Commerce is not prepared to publish a range of possible sanctions immediately, we would urge you to issue a second Federal Register notice once public comments on the appropriateness of certification and possible sanctions have been received.

For further information, please contact Alistair Graham consultant to Humane Society International and World Wide Fund for Nature (International) ph: +61 3 6234 3552 fax: +61 3 6231 2491; e-mail: alistairgraham1@bigpond.com.

We thank you for your attention to this serious matter for Antarctic marine conservation and look forward to your taking prompt and appropriate action.

Yours sincerely,



Patricia A. Forkan  
President, Humane Society International  
Senior Vice President, The Humane Society of the United States



Scott Burns  
Director, Marine Conservation Program  
WWF-US  
On Behalf of WWF-International

Cc: Director  
Division of Polar Affairs  
Office of Oceans Affairs, Room 580  
US Department of State  
Washington, D.C. 20520  
USA



26 July 2007

Mr. Christopher Rogers  
Trade and Marine Stewardship Division  
Office of International Affairs  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

Dear Mr. Rogers,

I am writing in response to a request for comments with respect of an advance notice of proposed rulemaking to develop certification procedures to address illegal, unreported, or unregulated (IUU) fishing activities and bycatch of protected living marine resources pursuant to the High Seas Driftnet Fishing Moratorium Protection Act, as announced in the Federal Register on Monday, June 11, 2007.

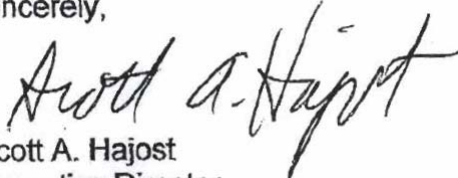
IUCN – the World Conservation Union on behalf of the World Bank's PROFISH Partnership Programme has developed a Global List of Irresponsible Vessels, which was drawn from information publicly available on the web sites of certain Regional Fisheries Management Organizations (RFMOs). However, as a result of certain legal considerations that remain to be resolved, IUCN has not as yet been in a position to publish the Global List that it developed. IUCN has been in consultation with the Secretariat for the International Monitoring, Control and Surveillance (MCS) Network for Fisheries Related Activities, currently hosted by NOAA, to discuss whether the MCS Network might be in a position to host such a list.

In the course of this work, IUCN researched the development of the RFMO lists. We found that information posted on these RFMO lists was usually collected by parties and forwarded to the appropriate RFMO secretariat which made the information available to a sub-body of the organization. The sub-body then made a determination of whether to put forward the name of the vessel. If the name was put forward, the relevant RFMO Commission at its annual meeting then decided whether to include the vessel on a negative list. If the decision was to include the vessel on the list, the Secretariat then posted the information on the Commission's website.

From this perspective, IUCN supports *inter alia* the use of information from RFMO web sites with respect of vessels that have been identified as having engaged in IUU fishing. IUCN also supports the collection of information for certification as described in the Federal Register notice with respect of non-compliance with measures that have been recommended by the United Nations. With respect of certification of nations whose vessels engaged in IUU fishing, IUCN urges consideration of certification both for nations whose vessels flying their flag have been found to have engaged in IUU fishing and also for nations whose nationals where known are beneficial owners of such vessels even if such vessels fly the flag of another nation. IUCN also supports the proposed effects of certification as described in the Federal Register notice of June 11, 2007.

Thank you very much for the opportunity to comment on this notice.

Sincerely,

A handwritten signature in black ink that reads "Scott A. Hajost". The signature is written in a cursive style with a large, sweeping initial 'S'.

Scott A. Hajost  
Executive Director





July 26, 2007

Dr. Christopher Rogers  
Trade and Marine Stewardship Division  
Office of International Affairs - NMFS  
1315 East-West Highway  
Silver Spring, MD 20910



**Re: Comments on Rulemaking for MSRA on Certification of Nations for IUU or Bycatch**

NET welcomes the opportunity to provide comments regarding **Certification of Nations Whose Fishing Vessels Are Engaged in Illegal, Unreported, or Unregulated Fishing or Bycatch of Protected Living Marine Resources** at 72 FR E7-11254 pursuant to the Moratorium Protection Act (Public Law 104043) as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (Public Law 109-479) (MSRA). NET's comments will focus on vessels engaged in illegal, unreported, or unregulated fishing.

**General Comments**

The Alaska Journal of Commerce recently reported that the cargo vessel *Seedleaf*, which appears on the IUU Vessel list of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), was in Dutch Harbor, Alaska to load millions of dollars worth of Alaska pollock for transport. Clearly, *Seedleaf* is suffering no consequences for its history of transporting illegally caught fish, and is currently making money from U.S. fisheries. This is the second time this year that *Seedleaf* has been in Dutch Harbor to load up with pollock. NOAA has failed to implement CCAMLR regulations in time to prevent *Seedleaf* from profiting from U.S. fisheries, but we hope that this rulemaking is an opportunity to prevent IUU vessels from doing business in the U.S.

Through Congress' leadership in enacting the new MSA amendments calling for trade sanctions on nations whose vessels engage in IUU fishing, the US is now perfectly positioned to attain a leadership role in implementing practices to combat IUU fishing. The Act provides an important new set of tools to attack the problem. By bringing to bear the power of the United States market, the Act's IUU provisions could become a potent weapon in the arsenal arrayed against IUU fishing.

If the Administration is serious in its interest to establish a program that will act as a true deterrent, we urge the administration to pick the clearest case of a country's IUU fishing vessels trying to bring their product into our ports to use as a case study to ensure that the final regulations are structured in a manner that can result in a quick win after the regulations go into place and we can publicize it far and wide. Aggressive implementation will be the most effective deterrent. The IUU fishing fleets globally need to feel that if they come to the US that there is a strong chance they will get caught.

With this background in mind, we recommend NMFS propose bold and innovative regulations that unleash the power of the US market against IUU fishing. Specific recommendations follow.

**Identification and Certification of States for IUU Fishing**

When considering whether to positively certify a State that adequately controls its vessels to prevent IUU fishing, or to negatively certify a State that does not, NET urges NMFS to consider the following:

- Existence of adequate port-state controls in place to identify IUU vessels and catch before offloading, including application to transshipments, and ensure compliance with closures and limits.
- Adequate monitoring of flagged vessels, including use of Vessel Monitoring Systems and/or GPS.
- Adequate enforcement of fishing regulations against flagged vessels at sea and port and prosecution of violators
- Adequate enforcement and penalty measures sufficient to serve as a deterrent to IUU fishing including: significant fines; confiscation of gear, catch, shipments and vessels; revocation of licenses, etc.
- Participation in listing fishing vessels on international positive and negative vessel lists of RFMOs and FAO and refusal to license vessels on negative or IUU lists or to allow them to benefit from public funding.
- Completeness, accuracy and transparency of vessel records and landing documentation and full reporting of catch and landing
- Use of on-board observers to verify records of catch and discards
- Compliance with local laws and regulations
- Existence of legislation regulations including implementation of RFMO measures and regulations applying to operation of fishing vessels in areas outside national jurisdiction and to trans-shipment of product at sea.
- Collaboration with other governments in enforcement, apprehension and prosecution of those engaged in IUU.
- Participation in international and bilateral technical assistance and capacity building programs to address IUU either as a donor or a recipient.
- Transparency of country's measures, regulations and openness to stakeholder engagement.
- Country participation in RFMOs where its vessels fish, as well as cooperation with relevant international agreements and organizations.
- Whether country has implemented a National Plan of Action to Prevent, Deter and Eliminate IUU Fishing consistent with the FAO International Plan of Action
- Traceability of chain of custody and supply of fish products from country in question.

### **OTHER ISSUES**

**Definition of IUU** – As required by Section 403 of the MSRA of 2006, NMFS published a definition of IUU Fishing for the purposes of the Act at FR Doc. 07-1830 §300.201 that was exactly as set forth in section 403 of the MSRA. The notice continues that NMFS “if needed, may promulgate additional implementing regulations for the definition of ‘illegal, unreported, or unregulated’ fishing as that procedure is developed.”

Portions of the imported definition probably do not provide an adequate legal basis on which to base a certification. Part (B) of the definition includes “overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management

measures... that has adverse impacts on such stocks.” “Overfishing” is not only vague, but extremely difficult to identify. Overfishing is an aggregate, fleet wide phenomenon, and “adverse impacts” to fish stocks are generally measurable over a period of multiple generations. Thus any single vessel is unlikely to “overfish” a stock, and determining when a nation’s vessels cross the threshold to “overfishing” is extremely problematic. As this provision is intended to apply in cases where there is no competent RFMO and thus no source of agreed-upon conservation and management measures, it would likely never be an acceptable standard upon which solely to base a certification, and therefore adds little of practical value unless a more specific basis for certification is inserted into the rule.

The IUU definition also leaves a gaping hole in its coverage: fisheries for which RFMO treaties exist, but to which the U.S. is not a party. This exclusion is presumably intentional and may be justifiable on several grounds to not require all such cases to be included. Nevertheless, the exclusion potentially undermines the intention of the statute. For example, if the U.S. had not ratified the Western and Central Pacific Fisheries Convention (WCPFC) as it recently has, although the U.S. was supportive of the WCPFC’s management measures, the huge fisheries of the western and central Pacific, even though shared by the U.S., would have been exempt from certification under the proposed rule. While situations may exist where the measures of an RFMO should not form the basis for certification, in other cases the U.S. may be called upon and interested in supporting the measures of an RFMO to which it is not a party. In some instances, the U.S. may not be a party because it does not participate in those fisheries, but it may still be an importer of fish from that RFMO’s management area and therefore have a role to play in control of IUU for that region. Without inclusion of such a category in the certification procedures, the rule lacks a mechanism for addressing a potentially significant segment of IUU fishing. NMFS should consider reserving the possibility of also considering information from instances of “fishing activities that violate conservation and management measures required under an international fishery management agreement to which the U.S. is not a party” for the purposes of certification for IUU.

An additional category of potential IUU fishing that is also missing in the definition is those overexploited fish stocks that the U.S. does not share and are not managed under an RFMO. Although lack of U.S. material interest in such fish stocks may justify omitting them, especially from the trade provisions, the certification procedures for IUU fishing would be more coherent if they were to allow for the inclusion of such stocks. As above, situations may also exist where the U.S. does not participate in these fisheries, but is an importer and therefore has an interest in the stocks. The global nature of the IUU problem also suggests the importance of global monitoring and enforcement. In this statute and rule, as well as in international usage, the term “IUU” refers to “illegal, unregulated *or* unreported fishing.” By that common understanding, only one of the three identifiers is required, and therefore fishing that is unregulated is IUU. Fishing for stocks that are not managed by an RFMO or within a country’s EEZ could rightfully be considered IUU and therefore applicable under this statute.

**Mitigation Measures** – The universe of measures for combating IUU fishing is not static, but rapidly evolving. Fisheries managers are engaging in the evaluation and analysis of improving existing measures and developing new ones and analyzing their relative effectiveness. In collecting information for the biannual report to Congress, NMFS should maintain a list and description of IUU control measures being tested and discussed in both the US and in other countries. This could be included in the annual report to Congress. It could also provide a reference tool for future reports to Congress and for measures to consider in certifying countries. As measures are constantly being improved and new ones developed and tested, the issues related to certification of countries will continue to evolve as new ones arise. Some flexibility and

adaptive management measures should be built into the procedures to accommodate the changing nature of tools to fight IUU fishing.

**Opportunities for Foreign Assistance** – The tenor of this statute is being perceived internationally as quite threatening, especially to developing countries lacking the capacity for meeting the standards it sets and by industry that does business in these countries. While the potential implications of this legislation should cause countries to be concerned about whether or not they are doing enough to prevent IUU, it also provides some positive opportunities for technical assistance and capacity-building. Section 610 (d) provides for international cooperation and assistance and constructively addressing the problems of IUU and bycatch. Additionally, NGOs are available for technical assistance and capacity-building. By clearly spelling out expectations, this statute can provide some assurance and protection for those flag states that are operating responsibly to the best of their ability. The process also will be valuable for collecting vast amounts of data that can contribute globally to reducing IUU fishing, as well as to other fisheries and ecosystem management. To the extent possible, the rulemaking should attempt to convey the positive aspects of these procedures clearly.

Thank you for considering these comments.

Sincerely,

A handwritten signature in black ink that reads "Mark A Stevens". The signature is written in a cursive, slightly slanted style.

Mark Stevens  
Campaign Manager



**COMMENTS OF THE NATIONAL FISHERIES INSTITUTE / U.S. TUNA FOUNDATION**

**DOCKET NUMBER: 070514119-7120-01**

NOAA Fisheries Advance Notice of Proposed Rulemaking and request for comments:

**“CERTIFICATION OF NATIONS WHOSE FISHING VESSELS ARE ENGAGED IN ILLEGAL, UNREPORTED, OR UNREGULATED FISHING OR BYCATCH OF PROTECTED LIVING MARINE RESOURCES”**

**General suggestion.** The United Nations Food and Agriculture Organization’s International Plan of Action (IPOA) to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IUU) provides detailed guidance that should be of use in implementing the requirements of the Moratorium Protection Act (hereinafter referred to as, “the Act”). In addition, the U.S. implementation of the IPOA, our National Plan of Action for dealing with IUU fishing contains a detailed appendix that lists a number of tasks that the U.S. should carry out in order to ensure that we are following the IPOA. A review of these documents should be used for implementing the Act.

**Information collection.** The Act suggests a number of sources through which information on IUU fishing and take of protected species might be obtained. A consistent, objective review body should be established to review allegations of IUU fishing and related matters. False allegations of IUU fishing to legitimate operations could result in financial losses, prosecution or economic. Therefore, “quality control” mechanisms for collected information should be carefully evaluated.

**Information analysis.** In planning implementation of the Act, please consider “lessons learned” from the Italy driftnet case in the Court of International Trade (CIT). In particular, consider the “reason to believe” standard. It is possible that some could see the Act as a way to disadvantage their competitors by accusing them of IUU fishing (or harvesting protected species) just to tie them up in legal proceedings. The CIT rulings provide judicial interpretation of the “reason to believe” standard, which might be instructive to drafters of procedures for implementing this statute.

In the Pacific salmon fishery five years ago, despite comprehensive law enforcement surveillance coverage of salmon “grazing” areas of the North Pacific Ocean, there were allegations that a “wall” of Asian-flagged vessels was harvesting U.S.-origin fish just outside the U.S. EEZ. While available surveillance information indicated that this just was not the case, there was continued pressure on government officials to stop the fishery. Perhaps one evaluation criterion might be that any observation of IUU fishing or protected species harvesting should be corroborated by a U.S. or foreign government source.

**One-stop “clearinghouse.”** Public “fact-finding” meetings in Washington, Long Beach and Seattle have brought out the expectation of industry that there will be one place,

preferably operated by a government (although other international organizations, such as the FAO could do it), to which the international community could come (via unclassified Internet) for definitive information on vessels legally placed on negative lists by Regional Fisheries Management Organizations (RFMOs). The Joint Tuna Regional Fisheries Management Organization meetings held earlier this year in Kobe, Japan, envisioned such a collaborative process.

**“Harmonized” standards for decisions to place a vessel on a negative list.** As RFMO reform goes forward, it would be very useful to work towards one set of criteria which would warrant placing a fishing vessel or transport vessel on an RFMO negative list.

**Certification process.** The Act requires that after a nation is identified as having vessels that engage in IUU fishing, a positive or negative certification must be made on whether a nation is taking action to stop IUU fishing. A negative certification could lead to significant economic implications for the nation as well as US importers of fish or fishery products from that nation. However, there could be vessels that from that nation that do not conduct IUU fishing and are complying with all relevant regulations. In this case, the Act calls for establishment of procedure for certification on a shipper-by-shipper or other basis for those vessels not engaged in IUU fishing. It is imperative that those procedures be developed at the same time as identification and certification of nations process is being developed. Fishery products from legitimate operations should not be denied entry.

**Comment.** The Act provides important new tools in the long struggle to prevent, deter and eliminate IUU fishing and harvesting of protected species. Past experience with unilateral application of U.S. domestic law in similar circumstances shows that many of our partners see this as a rather crude form of “extraterritoriality.” The next comments are offered to suggest that the government make every effort to take a balanced approach to the implementation of these provisions of 16 U.S.C. That balance should be struck between genuine offers of capacity-building assistance, working with a range of appropriate partners, on the one hand, and the trade restrictions and other penalties for which the Act provides on the other hand.

**Capacity building.** The intent of Congress, in directing the Secretary of Commerce to undertake the reporting and certification steps described in Public Law 109-479, was clearly to assist in ending the global fisheries sustainability problems caused by illegal, unreported and unregulated fishing. The legislation, as codified in 16 U.S.C. Section 1826 and related sections, clearly sets out penalties that can be imposed by the United States in the event that vessels or nationals of our trading partners do not take adequate steps to end IUU fishing and to avoid the take of protected non-target species. In our view, the time has come to use both the penalties provided by the 2006 Magnuson-Stevens Reauthorization Act and the incentives, such as capacity building, to achieve the intent of Congress.

**Fresh view of how to fund and coordinate capacity-building.** The U.S. government should make a concerted effort, including through the appropriations process, to clarify

roles and to maximize interagency cooperation, in order to make best use of available resources for building capacity for sustainable fisheries. At the national level in the United States alone, USAID, State, Commerce (NOAA), Interior (USFWS), USDA, FDA, USCG, Navy, and many other agencies are currently engaged in elements of capacity-building. Coordination among agencies and across Congressional Committee lines is complex and difficult. As a result, efforts are fragmented, uncoordinated and ineffective. In addition, many non-governmental organizations have undertaken fisheries capacity-building efforts. Industry groups are also facilitating and conducting capacity-building. Intergovernmental organizations such as the FAO, OECD, UNEP, the GEF and others also fund and carry out capacity-building. An effective, enlightened approach would see coordination of assistance across all these agencies.

**Carrot, not just stick.** If trade sanctions are the “stick” used to bring about the end of IUU fishing and non-target harvest of protected species, so capacity-building should become the “carrot” through which developing countries are brought into compliance with international norms. The IPOA IUU (Article V) provides ideas on the types of capacity building developing states might need.

**Iterative approach.** In all such outreach efforts, there is no single “magic bullet” solution to IUU and related problems. It will be important, therefore, to establish baseline data against which to measure the success of capacity-building efforts. This may be a complex task, but every capacity-building project proposal should contain provisions for (1) measuring capacity at the start of the project and (2) measuring the incremental change resulting from the project. If success begets success, there must be a way to measure success. By showing those who fund these types of projects the progress made at each step, it will be easier to demonstrate the need for additional assistance later. To avoid the “I thought we just funded that” reaction from donors, we must begin to quantify results from the start.

**Integrated but incremental, approach.** Finally, recent work between industry groups in the U.S. and counterparts in several “wider Caribbean” States suggests that capacity-building may also require coordination and incremental progress between and among neighboring countries. Again, there is no “one size fits all” solution. We need to move forward in an even-handed and well-planned manner. The complexities of seeking to move the entire globe forward all at once suggests that it might be prudent to lay out a schedule that focused on one region at a time, as resources permit. This could be used to request additional resources, if faster progress was desired.

**Reality check.** These comments largely reflect what could be done (and what should be done) if resources were available to accomplish the suggestions made above. This is a time of resource constraints, not abundance. Therefore, perhaps these comments suggest mechanisms through which work can be prioritized, coordinated and carried out with the best use of the funds (and outside resources) that are available. If, as fisheries scientists say, we have the tools to implement ecosystem based management, then surely we have the tools to coordinate capacity-building to end IUU fishing.





The Natural Resources Defense Council \* Oceana

Christopher Rogers  
Trade and Marine Stewardship Division  
Office of International Affairs  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, Maryland 20910

By electronic mail

July 26, 2007

Dear Sir:

The Natural Resources Defense Council and Oceana welcome the opportunity to provide comments on the development of proposed regulations to implement the provisions of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, (P.L. 109-479, hereafter “the Act”) that address illegal, unreported and unregulated (“IUU”) fishing (72 F.R. 32052 et seq).

IUU fishing poses serious and pernicious threats to commercially, recreationally and ecologically important fish populations and the ecosystems that support them around the world. IUU fishing affects target stocks and ecosystems directly, and profoundly undermines efforts by international management authorities to manage fishing capacity, reduce authorized catches to sustainable levels, impose controls on gear and protect the marine environment. IUU fishing has proven extremely resistant to effective control, despite the adoption of various international instruments over the last decade.

Many fish populations subject to IUU fishing are important to the United States, including tuna, swordfish, sharks, marlin, salmon, pollock, cod and others. Many ecologically valuable marine species important to the US, including deep sea corals, seabirds, turtles and marine mammals, also suffer significant harm from IUU fishing.

The economic cost of IUU fishing is extremely high. Recent studies put the worldwide value of IUU catches at between \$4 billion and \$9 billion a year.<sup>1</sup> Moreover, nations whose fleets conduct IUU fishing enjoy an unfair competitive advantage over United States fishermen, who must comply with the conservation and management requirements of the Magnuson-Stevens Act and other laws.

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<sup>1</sup> “Closing the Net: Stopping illegal fishing on the high seas.” Final Report of the Ministerially-led Task Force on IUU Fishing on the High Seas (hereafter, “HSTF Report”), March 2006 at 1.

Numerous international conferences and meetings have been held on IUU fishing over the last decade. Various instruments, both legally binding (e.g., the Fish Stocks Agreement, the Compliance Agreement) and voluntary (IPOA-IUU) have been negotiated. But while some progress has been made, IUU fishing remains enormously profitable and therefore highly resistant to control.

The Ministerially-led High Seas Task Force concluded that “IUU fishing is, first and foremost, an economic activity which is likely to continue as long as the rewards are there.”<sup>2</sup> The Task Force went on to recommend measures that target the economic foundation of IUU by applying restrictions on trade in IUU product and denying access to ports of IUU vessels.

The Act takes important steps toward implementing these recommendations. By bringing to bear the power of the United States market, the Act’s IUU provisions could become a potent weapon in the arsenal arrayed against IUU fishing. Whether that occurs however, will depend on the strength of the regulations the National Marine Fisheries Service (“NMFS”) adopts to implement the new law, and the vigor with which the State Department and NMFS engage their counterparts in other nations to build consensus for similar measures in other large importing nations.

Support for strong measures to address IUU fishing spans the political spectrum. An unusually diverse set of interests -- the commercial and recreational fishing industries as well as the conservation community – support effective port state controls. This unusually broad support for action should spur NMFS to be aggressive and creative in developing proposed regulations.

By doing so, the United States can set an example for other countries to follow. Already the European Union has expressed interest in following the lead of the US in adopting measures similar to those to address IUU fishing in the Act. If both the EU and the US, representing two of the largest fish importing economies, were to adopt strong parallel measures, the effect on IUU fishing could be profound.

With this background in mind, we recommend NMFS propose bold and innovative regulations that unleash the power of the US market against IUU fishing. Specific recommendations follow.

## A. Mandatory rulemaking

### 1. Section 609

Section 609 requires the Secretary to identify and list any nation whose vessels are engaged or have engaged in IUU fishing and either 1) the relevant international fishery management organization has failed to implement effective measures to end the IUU activity, or the nation is not party to or cooperate with the organization, or 2) no international fishery management organization with the mandate to regulate the fishing in

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<sup>2</sup> HSTF Report at 20.

question exists. Once such nations are identified, the United States is required to 1) close US ports to any vessel of the identified nation, 2) prohibit the importation of certain fish and fish products from those nations, excepting such products that the Secretary determines have been caught by vessels that are not themselves engaged in IUU fishing, and 3) impose other economic sanctions if actions taken pursuant to (1) and (2) above are not successful in stopping IUU fishing.<sup>3</sup>

In implementing this section, NMFS needs to propose clear and detailed rules that spell out:

1. How the Secretary will determine whether vessels are engaging in IUU fishing. We recommend that NMFS propose a scheme by which it will monitor IUU fishing comprehensively. The scheme should include mechanisms for accepting information about vessel non-compliance from other nations, relevant RFMOs, NGOs and third parties, as well as from legal fishing vessels. Fishing has become a globalized business, with IUU blacklisted vessels often moving from one part of the globe to another to sell pirated catch. The US will need to gather, process and disseminate piracy intelligence worldwide in order to effectively block IUU-caught fish and vessels from US ports.
2. What specifically constitute “effective measures” that international fishery management organizations need to adopt in order to avert an identification under Section 609. We recommend that such measures include requirements for VMS on every vessel, development and maintenance of blacklists of vessels and vessel owners, adoption of multilaterally agreed catch documentation schemes, trade measures and port state control schemes consistent with FAO’s Model Scheme (some of these overlap).
3. What constitutes “appropriate corrective action” with respect to identifying and remedying offending activities of their fishing vessels and what kind of documentary evidence of such action will be accepted as sufficient to de-list a nation that has been certify as engaging in IUU fishing.
4. How the Secretary will identify fish or fish products caught by vessels engaged in IUU fishing in cases where there is no applicable international fishery agreement.
5. How the Secretary will implement traceability mechanisms that will enable the United States to track fish and fish products that were caught illegally as they move through the transshipment process, to avoid the problem of “laundering” IUU products through third party vessels.

## 2. Section 608

Section 608 (1)(A) requires the Secretary, in consultation with the Secretary of State and relevant fishery management councils to take action to improve the effectiveness of international fishery management organizations in conserving and managing fish stocks

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<sup>3</sup> Report of the Committee on Commerce, Science and Transportation on S. 2012, April 4, 2006 at 46-47.

under their jurisdiction. While this provision is mandatory, it offers the US flexibility in determining how to carry out the mandate for action. We recommend the Secretary lay out a timetable and specific activities that will be undertaken to achieve each of the required improvements in each of the regional international fishery management organizations that the US is party to, is cooperating with, or helping to establish.

#### B. Getting the word out

The purpose of the Act's provisions on IUU fishing is to deny economic advantages to nations and fishermen engaged in IUU practices. Only the creation and implementation of a worldwide system of port controls can effectively deny markets to pirated fish. The more widely the new US rules are explained and the sanctions described, and the more assertively the US seeks to share enforcement data among RFMOs, other nations and the public, the more effective the rules will be in deterring piracy and encouraging effective enforcement by other nations. Therefore, the US should build into the rulemaking effort a concerted public education campaign in which US officials present the new anti-piracy restrictions in international fora and seek to promote them as best practices for other port states to adopt.

#### C. WTO compliance

Aggressive enforcement of import prohibitions against nations failing to control IUU fishing (as opposed to import prohibitions against specific IUU vessels) may raise new international trade issues. The U.S. should work with like-minded nations and international bodies to explain and promote the Act's new requirements as consistent with WTO rules, which allow for environmental considerations to support trade restrictions in contexts like this where there is widespread acceptance of the environmental threats posed by IUU fishing and the type of trade limit proposed as a way to remedy it.

The Act's 2006 amendments give the US express tools to carry out the sort of effective IUU fishing deterrence measures deemed essential by the UN, the High Seas Task Force and numerous other FAO and academic recommendations, and they merit acceptance as standard practice under international law. By proactively working in RFMOs, the UN, and FAO, the US can prevent WTO problems and strengthen international law and practices to safeguard fisheries.

Thank you for considering these comments.

Lisa Speer  
Natural Resources Defense Council

Jim Ayers  
Oceana



Two issues I bring to your attention

1. Allowing blacklisted vessels into American Ports and then having to give out 'warnings' to seafood processors/exporters not to ship any product on those vessels as it is currently handled seems to me to be putting the cart before the horse. If USA banned these vessels from entering USA ports then the issue would not have led to regular exporters getting themselves in a jam as recently occurred

2. A strict policy regarding the naming of fish is required - not only in USA but in every other country. The FAO Guidelines relating to IUU species also misses this point. In Australia we are having similar issues but we hope to overcome these shortly. Let's just say that a "pirate" or Illegal vessel catches Patagonian Toothfish (or as it is marketed in USA, Chilean Sea Bass) and it somehow drops that cargo into a SEAsian port. The cartons can get changed to show the species being - lets say 'Canadian Snowfish' (as there has been recorded in Australia) and that is exported to USA

Canadian Snowfish is not a listed species anywhere cause it does not exist but no one at border control is looking for fish name issues so unless it is picked up randomly it will pass thru border control and into the market place.

If it was labelled correctly then presumably the product would need to have specific certs with it

Fish Name protocols are an important ingredient to this issue - they have been by-passed previously

Hope this is of some help

Regards

Roy Palmer

Chairman - Australian Fish Name Committee c/o Seafood Services Australia Ltd

Brisbane, Australia





Subject 0648-AV51

Attachments

[image001.gif](#)

1K [WWF Comments Re MSRA 0648-AV51-7-26-07.doc](#) 100K

Please accept these comments from WWF for the proposed rulemaking regarding *Certification of Nations Whose Fishing Vessels Are Engaged in Illegal, Unreported, or Unregulated Fishing or Bycatch of Protected Living Marine Resources* pursuant to the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 – RIN 0648-AV51.

We will also send a hard copy of these comments by mail.

Thank you,

Kimberly Davis  
World Wildlife Fund

**World Wildlife Fund**  
1250 24<sup>th</sup> St. NW  
Washington, DC 20037-1193

Main Phone: 202-293-4800  
Fax: 202-778-9747

[Worldwildlife.org](http://Worldwildlife.org)

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Submitted by Dorothy C. Zbicz on behalf of Kimberly Davis/ World Wildlife Fund

7/30/2007



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*Submitted by Email [0648-AV51@noaa.gov](mailto:0648-AV51@noaa.gov)*

July 26, 2007

Dr. Christopher Rogers  
Trade and Marine Stewardship Division  
Office of International Affairs - NMFS  
1315 East-West Highway  
Silver Spring, MD 20910

**Re: WWF Comments on Rulemaking for MSRA on Certification of Nations for IUU or Bycatch - 0648-AV51**

NMFS has requested public comments for the proposed rulemaking regarding *Certification of Nations Whose Fishing Vessels Are Engaged in Illegal, Unreported, or Unregulated Fishing or Bycatch of Protected Living Marine Resources* at 72 FR E7-11254 pursuant to the Moratorium Protection Act (Public Law 104043) as amended by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (Public Law 109-479) (MSRA). WWF would like to register the following comments.

### **INFORMATION FOR IDENTIFICATION AND CERTIFICATION**

#### **1. Other sources of information that NMFS should consider in Identification and/or Certification of Nations**

##### **For Bycatch and IUU**

- Fishing vessel records
- Reports of on-board observers on fisheries vessels  
Governmental and international fisheries enforcement agencies
- Marine Stewardship Council records, reports and certifications and those of other fisheries sustainability certification programs

### **For Bycatch**

- IUCN Species Survival Commission <http://www.iucn.org/themes/ssc/sgs/sgs.htm>  
Marine Turtle Specialist Group; Shark Specialist Group
- Species Survival Network - <http://www.ssn.org/>
- Sea Turtle Network - <http://www.tortugamarina.org/content/view/186/1/lang,en/>
- International Fishers Forum - <http://www.fishersforum.net/>
- Industry codes regarding bycatch
- FAO Committee on Fisheries

### **For IUU**

- OECD High Seas Task Force  
IMO/ Lloyds, insurance registries
- Network of Tuna Agencies and Programs – [www.tuna-org.org](http://www.tuna-org.org)  
Transshipment vessel workers and owners
- Dockworkers and port-side customs officials and enforcement agents
- International Monitoring, Control and Surveillance Network for Fisheries

## **2. Other types of information to be considered for Identification or Certification**

Government reports on bycatch and IUU activities

NGO reports and publications

- Vessel registries from governments, RFMOs, insurance companies
- Reports and testimony from off-loading facilities, transshipment vessel workers and fish importers
- Reports from port-side customs officials and fisheries enforcement agents
- Satellite imagery and GPS records to identify fishing in closed areas
- Recent research on new developments in IUU and bycatch mitigation including: newly identified measures; evaluation of effectiveness of different measures and comparative analyses.

## **3. Other considerations NMFS should take into account when evaluating sources/ types of information**

- Corroboration of testimony and evidence from multiple sources
- Historical record of the vessels regarding bycatch or IUU
- Amount of information available on specific vessels, countries
- Number of bycatch or IUU fishing instances observed and amount of take involved – one or two instances, or multiple reports from several sources of many cases
- Type of rigging and gear onboard vessels at time of activity and what activities were permitted for that region at that time by the appropriate coastal state or RFMO.
- Relative difficulty of obtaining relevant information in the given situation/ country and risk to those providing the information

- The range of new IUU and bycatch mitigation measures constantly being developed and improved and research being undertaken to evaluate their effectiveness in different situations and combinations

## CERTIFICATION PROCEDURES

Other issues related to Certification that NMFS should consider.

### BYCATCH - Other Issues Related to Certification to Consider

- Whether the government requires and uses on-board observers in the relevant fisheries with recording of all bycatch
- Whether vessel records fully include all bycatch by number and species (and whether this is required by regulations)
- Whether country has implemented a National Plan of Action for Sharks, Turtles consistent with the FAO International Plans of Action  
Whether a country has fisheries certified under a certification program such as the Marine Stewardship Council or if they have fisheries that have been denied certification. MSC involves 3<sup>rd</sup> party evaluation of fisheries based on ecological and other criteria that would identify issues such as excessive bycatch or recognized IUU.
- The specific situation and bycatch species at greatest risk in a country under consideration and which bycatch mitigation measures may be most appropriate for the situation. Whether the required bycatch mitigation measures will transfer the risk to other threatened or endangered species. *(See details below)*  
Are the offending vessels in compliance with local laws and regulations? If not, are they being prosecuted for violations?
- Existence of legislation, regulations and enforcement measures designed to minimize bycatch, including implementation of RFMO measures and regulations applying to operation of fishing vessels in areas outside national jurisdiction. Possible measures may include use of selective fishing gear and methods such as: turtle excluder devices: circle hooks: deeper setting of longlines; avoidable, detectable, less entrapping gillnets; and selective trawls that separate shrimp or fish by size. Other bycatch management measures may include: the use of bycatch quotas based on mesh size; precautionary TACs, or even discard bans.
- Use of time/area closures, seasonal and area-based management measures to protect other species from being caught as bycatch. Examples include measures to protect nesting beaches for sea turtles, spawning areas and migratory routes for fish, cetaceans and other species, coral reef habitat, vulnerable marine ecosystems, real-time closures, no-take zones, or bans of certain gear types in critical places or at critical times, temporary closures of fishing grounds when bycatch exceeds certain levels, etc.  
Participation in international and bilateral technical assistance and capacity building programs to reduce bycatch either as a donor or a recipient, or with environmental non-governmental organizations.  
Transparency of country's measures, regulations and openness to stakeholder engagement.

**Comparable Regulatory Programs** – The proposed rule for positively certifying a nation identified for bycatch incorporates unchanged the standard set forth in the statute that requires that the nation adopt a regulatory program governing fishing practices designed to end or reduce bycatch that is “comparable to that of the United States, taking into account different conditions.” (Sec 610 (a) (3)) This language seems designed to test the limits of the WTO’s strictures expressed in the 2001 *Shrimp-Turtle II* decision, projecting U.S. conservation standards extraterritorially, but adopting the concession that approaches may reasonably differ according to local conditions. In *Shrimp-Turtle II*, the WTO Appellate Body upheld a requirement that shrimp fisheries adopt sea turtle conservation measures “comparable in effectiveness” to those of the U.S., and held that import restrictions based on this requirement were allowable. By failing to adopt the full “comparable in effectiveness” qualifier, the statute and proposed rule may risk rejection by a future WTO panel. In order to position strategically for a challenge under WTO guidelines, adding “in effectiveness” in the proposed rule could be beneficial and still permit requiring such measures that arguably are uniquely effective.

**Circle Hooks** – Under Conservation Certification Procedure, the MSRA calls on the Secretary to establish a procedure for determining whether the government of the harvesting nation identified for bycatch has adopted a regulatory program governing the conservation of the protected living marine resource “which, in the case of pelagic longline fishing, includes mandatory use of circle hooks, careful handling and release equipment, and training and observer program;” (Sec 610 (c) (1) (A)).

Estimates suggest that as many as 250,000 endangered loggerhead sea turtles and critically endangered leatherback turtles are caught annually by pelagic long-line gear.<sup>1 2</sup> Research has clearly demonstrated that the use of circle hooks in long-line fisheries can significantly reduce the bycatch and mortality of loggerhead and leatherback sea turtles that are listed under the Endangered Species Act and Appendix I of CITES in many fisheries. It also shows that in many fisheries, this bycatch reduction can be achieved without significant reduction in target catch rates.<sup>3 4 5</sup>

WWF’s current position is that large circle hooks are a promising turtle bycatch mitigation tool in longline fisheries and that they should be widely applied where longline fisheries threaten turtle populations. We are actively working to advance the testing and adoption of circle hooks and related measures in many countries around the Pacific in cooperation with government, industry and research partners.

<sup>1</sup> Lewison, R.L. et al. 2004. Quantifying the effects of fisheries on threatened species: the impact of pelagic longlines on loggerhead and leatherback sea turtles. *Ecol. Lett.* 7, 221–231.

<sup>2</sup> Bycatch – WWF Marine Fact Sheet - [http://assets.panda.org/downloads/bycatch\\_apr\\_2006\\_1.pdf](http://assets.panda.org/downloads/bycatch_apr_2006_1.pdf)

<sup>3</sup> Largacha, E. et al. 2005. Working with the Ecuadorian Fishing Community to Reduce the Mortality of Sea Turtles in Longlines. <http://assets.panda.org/downloads/ecuadorcirclehooks.pdf>.

<sup>4</sup> Watson, J.W., et al. 2005. Fishing methods to reduce turtle mortality associated with pelagic longlines. *Canadian Journal of Fisheries and Aquatic Sciences* 62: 965-981

<sup>5</sup> Read, A.J. 2007. Do circle hooks reduce the mortality of sea turtles in pelagic longlines? A review of recent experiments". *Biological Conservation* 135, 155-169.

We note, though, that many factors can influence effectiveness of circle hooks and that they may not be the ideal approach in all situations. Research is ongoing and more is needed to find the right combination of hooks and other measures to most effectively mitigate bycatch on a fishery-by-fishery basis. Many factors must be considered in determining if the use of circle hooks will be effective in a particular situation. These include, among others: the size and offset of the hooks; type of bait; post-hooking handling and mortalities; effects on target catch; and impacts on other species.

Some studies have also shown that the use of circle hooks may actually increase the catch rate of elasmobranchs in certain fisheries. This is a problem of serious concern, considering the threatened status of many shark species and the fact that these are often targeted for their highly valuable fins as well as for the expanding market for shark meat. Some 89% of hammerhead sharks and 80% of thresher and white sharks have disappeared from the NE Atlantic Ocean in the last 18 years, largely due to bycatch.<sup>6</sup> Several shark species are listed on Appendix I and II of CITES. The MSRA at Sec 610 (e) (2) excludes fish species covered under other fisheries management acts, "except sharks." This implies that sharks are to be taken into account in this rulemaking on bycatch. Where data suggest that shark bycatch is a problem, it may be necessary to test the effects of circle hooks and also consider the relative resilience of the species affected by bycatch. Where a marine turtle population is in a critical state, it may be necessary to call for the use circle hooks to solve that immediate problem, provided close examination is paid to the impacts that such a measure could have on shark stocks, especially those which themselves are at risk. In addition where circle hooks are applied in such circumstances, practical, scientific and financial attention should be given to seeking further technological and management solutions which will ensure that the effect on all affected species is mitigated.

Successful bycatch mitigation initiatives in many longline fisheries, especially artisanal and small scale commercial longline fisheries, will depend not only on raising awareness among fishers through education/training, but also on learning from them as their knowledge and understanding of the environment where they spend their lives can provide valuable information for turtle conservation. Circle hooks will likely be an important component of bycatch mitigation. The use of proper handling and release equipment and techniques will also be a very important component.

In considering information for identification and certification of countries for bycatch, the needs of the specific situation should be considered and the range of possible mitigation and control measures available should be taken into account. We urge the voluntary and public participation of a government or harvesting nation, with active and meaningful engagement of the longline industry and other stakeholders in that country in programs testing circle hooks and related measures to determine those most effective for that particular situation. In implementing this statute, programs should be adaptive and aimed at isolating and adopting measures that are most appropriate and effective on a fishery-by-fishery basis.

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<sup>6</sup> Bycatch – WWF Marine Fact Sheet - [http://assets.panda.org/downloads/bycatch\\_apr\\_2006\\_1.pdf](http://assets.panda.org/downloads/bycatch_apr_2006_1.pdf)

**Seabirds** - The MSRA calls for identification of nations whose fishing vessels engage in “bycatch of a protected living marine resource.” At 610(e), it defines “protected living marine resource” to mean “non-target fish, sea turtles or marine mammals that are protected under United States law or international agreement...” Seabirds are not explicitly included in this definition or the rule, even though hundreds of thousands are killed annually as a direct result of fishing and as a result many are threatened with extinction. Their inclusion may be implicit since previous versions of the Driftnet Moratorium Protection Act specifically included seabirds and other waterfowl in the definition of “marine living resources” (16 USC Sec 1826 (h) 2 Jan 2006). WWF would urge NMFS to explicitly include bycatch of seabirds in its rulemaking for identifying and certifying nations for bycatch of protected living marine resources. In addition to strengthening measures to protect these living marine resources, inclusion of information on bycatch of seabirds in the reports to Congress could provide valuable information on the measures being taken by countries to reduce or eliminate other types of bycatch.

**Certification of Fisheries** – NMFS should also take into account whether the country in question has any of its fisheries included in certification programs such as the Marine Stewardship Council. Certification involves 3<sup>rd</sup> party evaluation of fisheries based on ecological and other criteria that would identify issues such as excessive bycatch or recognized IUU.

#### **IUU – Other Issues Related to Certification to Consider**

- **Completeness, accuracy and transparency of vessel records and landing documentation and full reporting of catch and landing**  
Use of on-board observers to verify records of catch and discards  
Compliance with local laws and regulations
- **Existence of legislation regulations including implementation of RFMO measures and regulations applying to operation of fishing vessels in areas outside national jurisdiction and to trans-shipment of product at sea.**  
Are the offending vessels in compliance with local laws and regulations? If not, are they being prosecuted for violations?
- **Adequate enforcement and penalty measures sufficient to serve as a deterrent to IUU fishing including: significant fines; confiscation of gear, catch, shipments and vessels; revocation of licenses, etc.**
- **Existence of adequate port-state controls in place to identify IUU vessels and catch before offloading, including application to transshipments, and ensure compliance with closures and limits.**
- **Adequate monitoring of flagged vessels, including use of Vessel Monitoring Systems and/or GPS where required by RFMOs or where feasible.**  
Adequate enforcement of fishing regulations against flagged vessels at sea and port and prosecution of violators
- **Collaboration with other governments in enforcement, apprehension and prosecution of those engaged in IUU.**



- Participation in listing fishing vessels on international positive and negative vessel lists of RFMOs and FAO and refusal to license vessels on negative or IUU lists or to allow them to benefit from public funding.
- Participation in international and bilateral technical assistance and capacity building programs to address IUU either as a donor or a recipient.
- Transparency of country's measures, regulations and openness to stakeholder engagement.
- Country participation in RFMOs where its vessels fish, as well as cooperation with relevant international agreements and organizations.
- Whether country has implemented a National Plan of Action to Prevent, Deter and Eliminate IUU Fishing consistent with the FAO International Plan of Action
- Traceability of chain of custody and supply of fish products from country in question.  
(See details below.)

**Traceability** – A key need of the seafood industry, retailers and consumers in the US is clear traceability of imported fish products from catch to table. This provides assurance for purchasers that they are dealing in sustainable product from responsible sources. It also helps to isolate and separate out IUU vessels and product, and the countries flagging them. Some measures available to date include: catch documentation schemes and statistical documentation for high value fish, paper audits, bar coding, electronic tagging, and letters of legal catch/warranty signed by vessel captains/owners. Other measures should be developed and encouraged. Large fish processors and other food industries use traceability systems to ensure phyto-sanitary standards are maintained; so the same is possible for IUU purposes as well. Appropriate government regulations and enforcement are necessary to ensure that processors and importers provide the traceability necessary to identify IUU-caught fish and prevent its landing or entering into markets.

**Definition of IUU** – As required by Section 403 of the MSRA of 2006, NMFS published a definition of IUU Fishing for the purposes of the Act at FR Doc. 07-1830 §300.201 that was exactly as set forth in section 403 of the MSRA. The notice continues that NMFS “if needed, may promulgate additional implementing regulations for the definition of ‘illegal, unreported, or unregulated’ fishing as that procedure is developed.”

Part (C) of the imported definition contains language also found in the 2006 UNGA Sustainable Fisheries Resolution that is difficult to interpret: “fishing activity that has an adverse impact on seamounts, hydrothermal vents, and cold water corals located beyond national jurisdiction.” “Adverse impact” is vague, and the definition does not suggest an effective standard for certification. In the cases of cold water corals and hydrothermal vents, this is less problematic because the purpose of the rule is evident (i.e., protecting the fragile coral and vent communities). In the case of seamounts, unless the fishery in question is abnormally destructive, determining adverse impacts would be extremely difficult. Here NMFS may find it helpful to clarify its understanding of the intention of the statute and incorporate a basis for certification into the rule.

The IUU definition also leaves a striking gap in its coverage: fisheries for which RFMO treaties exist, but to which the U.S. is not a party. This exclusion is presumably intentional and may be justifiable on several grounds to not require all such cases to be included. Nevertheless, the exclusion potentially undermines the intention of the statute. For example, if the U.S. had not ratified the Western and Central Pacific Fisheries Convention (WCPFC) as it recently has, although the U.S. was supportive of the WCPFC's management measures, the huge fisheries of the western and central Pacific, even though shared by the U.S., would have been exempt from certification under the proposed rule. While situations may exist where the measures of an RFMO should not form the basis for certification, in other cases the U.S. may be called upon and interested in supporting the measures of an RFMO to which it is not a party. In some instances, the U.S. may not be a party because it does not participate in those fisheries, but it may still be an importer of fish from that RFMO's management area and therefore have a role to play in control of IUU for that region. Without inclusion of such a category in the certification procedures, the rule lacks a mechanism for addressing a potentially significant segment of IUU fishing. NMFS should consider reserving the possibility of also considering information from instances of "fishing activities that violate conservation and management measures required under an international fishery management agreement to which the U.S. is not a party" for the purposes of certification for IUU or for bycatch.

An additional category of potential IUU fishing that is also missing in the definition is those overexploited fish stocks that the U.S. does not share and are not managed under an RFMO. Although lack of U.S. material interest in such fish stocks may justify omitting them, especially from the trade provisions, the certification procedures for IUU fishing would be more coherent if they were to allow for the inclusion of such stocks. As above, situations may also exist where the U.S. does not participate in these fisheries, but is an importer and therefore has an interest in the stocks. The global nature of the IUU problem also suggests the importance of global monitoring and enforcement. In this statute and rule, as well as in international usage, the term "IUU" refers to "illegal, unregulated *or* unreported fishing." By that common understanding, only one of the three identifiers is required, and therefore fishing that is unregulated is IUU. Fishing for stocks that are not managed by an RFMO or within a country's EEZ could rightfully be considered IUU and therefore applicable under this statute.

## **OTHER ISSUES**

**Alternative Procedures** - At Section 609(2) and 610 (c ) (4), the legislation offers an Alternative Procedure for certification based on "a shipment-by-shipment, shipper-by-shipper , or other basis of fish or fish products from a vessel of a harvesting national not certified under paragraph 601(3)" for IUU and bycatch respectively. This is somewhat unclear since it does not specify a positive or negative certification. Presumably, this provides the option of positively certifying individual shipments or vessels, when the country has not been certified positively. If this interpretation is correct, this provision would prevent unfairly punishing those within a country who are fishing responsibly, and those who do business with them in the US, for the irresponsible acts of a few rogue foreign vessels from that country, leading to undue economic hardship. While there is some sense of fairness to this, the burden of applying it equitably (and

the information required) would be enormous. It could also place excessive pressure on NMFS to certify every individual fishing vessel or shipment on a case-by-case basis, a practical nightmare.

Additionally, before applying this alternative, the larger question of long-term sustainability of the fisheries and marine species and habitats must also be considered. For these to survive into the future, every flag state must be held accountable for regulating and enforcing against the vessels that it flags. While there may be some justification for not punishing the good with the bad, the onus for ending IUU and excessive bycatch must ultimately rest with the flag states. An additional benefit to focusing on the state, rather than the vessel, is that all those engaged in any aspect of fishing in a country then have an incentive to take part in monitoring and enforcement against one another to prevent trade sanctions against the country and thereby themselves. Engendering such a “culture of enforcement” can greatly reduce the costs of enforcement for the flag state and increase overall compliance and effectiveness. It also puts pressure on those doing business with irresponsible flag states to take their business elsewhere if a state is allowing its flagged vessels to engage in uncontrolled bycatch or IUU. In this way, the measures will be much more effective over the long term for sustaining fisheries and marine ecosystems. NMFS should weigh the decision to utilize alternative procedures very, very carefully before removing the responsibility from the flag states.

**Mitigation Measures** – The universe of measures for mitigation of bycatch and IUU is not static, but rapidly evolving. International competitions such as the Smart Gear competition sponsored by WWF and NOAA are seeking to spur exploration and application of new ideas. Researchers are engaging in the evaluation and analysis of improving existing measures and developing new ones and analyzing their relative effectiveness. In collecting information for the biannual report to Congress, NMFS should maintain a list and description of other bycatch mitigation and IUU control measures being tested and discussed in both the US and in other countries. This could be included in the annual report to Congress. It could also provide a reference tool for future reports to Congress and for measures to consider in certifying countries. As measures are constantly being improved and new ones developed and tested, the issues related to certification of countries will continue to evolve as new ones arise. Some flexibility and adaptive management measures should be built into the procedures to accommodate the changing nature of IUU and bycatch mitigation.

**Opportunities for Foreign Assistance** – The tenor of this statute is being perceived internationally as quite threatening, especially to developing countries lacking the capacity for meeting the standards it sets and by industry that does business in these countries. While the potential implications of this legislation should cause countries to be concerned about whether or not they are doing enough to prevent IUU and bycatch, it also provides some positive opportunities for technical assistance and capacity-building. Section 610 (d) provides for international cooperation and assistance and constructively addressing the problems of IUU and bycatch. Additionally, NGOs such as WWF are available for technical assistance and capacity-building. By clearly spelling out expectations, this statute can provide some assurance and protection for those flag states that are operating responsibly to the best of their ability. The process also will be valuable for collecting vast amounts of data that can contribute globally to

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reducing bycatch and IUU fishing, as well as to other fisheries and ecosystem management. To the extent possible, the rulemaking should attempt to convey the positive aspects and opportunities of these procedures clearly.

WWF appreciates your consideration of these comments and looks forward to further opportunities to participate and collaborate in implementation of this legislation.

Respectfully,

Kimberly Davis  
World Wildlife Fund