



Public Listening Sessions: Proposed Certification Procedures to Address Illegal, Unreported, or Unregulated Fishing and Bycatch of Protected Living Marine Resources



July 2007

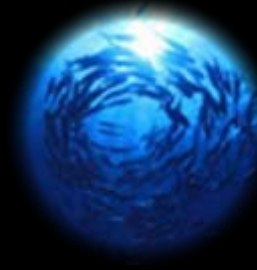
High Seas Driftnet Fishing Moratorium Protection Act



- Amended by Magnuson-Stevens Reauthorization Act of 2006 (MSRA)
- Among its new requirements, actions must be taken by the United States to:
 - Strengthen RFMOs
 - Address illegal, unreported, or unregulated (IUU) fishing
 - Address bycatch of protected living marine resources (LMRs)



Definitions Under the Moratorium Protection Act



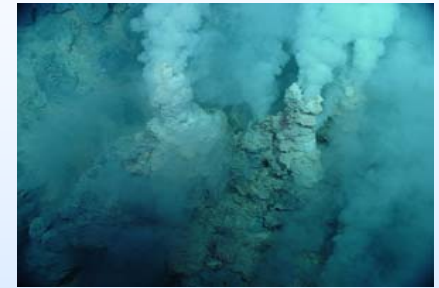
- “IUU fishing” is defined at 72 FR 18404 (pursuant to Sec. 609(e)) as:
 - Fishing activities that violate conservation and management measures required under an international agreement to which U.S. is a party
 - Overfishing of fish stocks shared with U.S. for which there are no applicable international measures, or in areas with no RFMO or international agreement



Definitions Under the Moratorium Protection Act



- “IUU fishing” definition continued...
 - Fishing activity that has adverse impacts on seamounts, hydrothermal vents, and cold water corals beyond national jurisdiction for which there are no applicable international measures, or in areas with no RFMO or international agreement



Definitions Under the Moratorium Protection Act



- “Protected LMRs” are defined as:
 - Non-target fish, sea turtles, or marine mammals that are protected under U.S. law or international agreement, including MMPA, ESA, SFPA, and CITES
 - With exception of sharks, protected LMRs do not include species managed under MSA, ATCA, or any international fishery management agreement



Actions Required Under the Moratorium Protection Act



- Biennial Report
- First report due to Congress Jan. 2009
- Report must include:
 - Status information on international LMRs
 - List of nations whose vessels have been identified for engaging in IUU fishing or bycatch or protected LMRs





Identification Under the Moratorium Protection Act



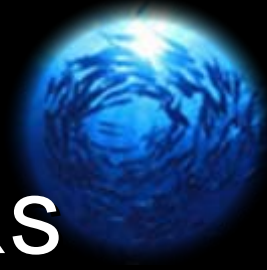
Identification Procedures for IUU Fishing



- Commerce Secretary is required to identify:
 - Nations whose vessels are engaged, or have been engaged during the last two years, in IUU fishing;
 - If the relevant RFMO has failed to implement effective measures to end IUU fishing activity;
 - Nations that are not party to or do not maintain cooperating status with the relevant RFMO; or
 - If no RFMO regulates the IUU fishing activity in question



Identification Procedures for Bycatch of Protected LMRs



- Commerce Secretary is required to identify:
 - Nations whose vessels are engaged, or have been engaged during the past calendar year, in fishing activities or practices that result in:
 - bycatch of protected LMRs in waters beyond any national jurisdiction; or
 - bycatch of protected LMRs shared by the United States beyond the U.S. EEZ



Identification Procedures for Bycatch of Protected LMRs



- Commerce Secretary is also required to identify:
 - Whether the relevant RFMO has failed to implement effective measures to end or reduce bycatch; or
 - Nations that are not party to or do not maintain cooperating status with RFMO; and
 - Nations that have not adopted a regulatory program to end or reduce bycatch that is comparable to that of the U.S.



Information for Identification Procedures



- Potential information sources include:
 - IUU vessel lists from RFMOs
 - Reports from RFMOs
 - Information from governments, NGOs, industry, citizens, and citizen groups from the U.S. and foreign nations



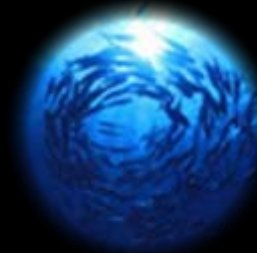
Information for Identification Procedures



- Potential types of information include:
 - Photographs or video of vessels
 - Surveillance from satellite or VMS
 - Observations and testimony from crew, observers, NGOs, industry, citizens, and citizen groups



Information for Identification Procedures



- Considerations for potential sources and types of information include:
 - Accessibility and transparency of collected data/information and methodology used
 - Specificity of the information
 - Susceptibility of the media to falsification and alteration



Questions: Identification Procedures



- Are there other sources of information that NMFS should consider when evaluating whether or not to identify nations?
- Are there other types of information that NMFS should consider?
- Are there any other considerations NMFS should take into account when evaluating sources/types of information?





Notification and Consultation Procedures



Notification and Consultation Procedures



- Identification of nations in the biennial report for both IUU fishing and bycatch of LMRs is deemed to be an identification under the High Seas Driftnet Fisheries Enforcement Act
- Upon identification, the Commerce Secretary must notify the U.S. President and affected nation of such identification



Notification and Consultation Procedures for IUU Fishing



- Within 60 days after submitting the biennial report to Congress, the Commerce Secretary, acting through Secretary of State, must:
 - Notify nations of their identification and the Act's requirements to address IUU fishing
 - Initiate consultations
 - Notify relevant RFMOs of U.S. actions to address IUU fishing





Notification and Consultation

Procedures for Bycatch of Protected LMRs

- Commerce Secretary, acting through Secretary of State, must also:
 - Notify nations whose vessels engage in fishing activities or practices that result in bycatch of protected LMRs about the Act's requirements
 - Initiate discussions as soon as possible with these governments to enter into treaties





Notification and Consultation Procedures for Bycatch of Protected LMRs

- Commerce Secretary, acting through Secretary of State, must also:
 - Seek agreements calling for international restrictions on bycatch through UN and other appropriate international fishery management bodies
 - Initiate amendment of existing treaties





Certification of Nations



Certification Procedures



- Commerce Secretary must establish procedures to certify to the Congress whether nations identified in the biennial report are taking appropriate actions to address IUU fishing and bycatch of protected LMRs
- Each certification procedure must provide notice and opportunity for comment by nations
- Identified nations will receive either a positive or negative certification



Certification Procedures for IUU Fishing



- To positively certify an identified nation, the Commerce Secretary must determine whether:
 - Nation has taken corrective action regarding activities described in the biennial report
 - Relevant RFMO has implemented effective measures to end IUU fishing by the nation's vessels



Certification Procedures for Bycatch of Protected LMRs



- To positively certify an identified nation, the Commerce Secretary must determine whether:
 - Nation has adopted a regulatory program comparable to the U.S., accounting for different conditions
 - Nation has established a management plan that will help gather species-specific data



Information for Certification



- NMFS is considering the following information in certifying nations:
 - Non-compliance with RFMO measures to address IUU fishing
 - Non-compliance with measures recommended by the United Nations to address IUU fishing



Information for Certification



- NMFS is also considering whether:
 - Relevant RFMO has failed to implement effective measures to end IUU fishing or end or reduce bycatch of protected LMRs
 - Identified nation is not party to, or does not maintain cooperating status with relevant RFMO
 - Competent RFMO exists that regulates the IUU fishing activity in question



Certification Procedures



- NMFS is also considering whether an identified nation has:
 - Provided sufficient documentary evidence of corrective action taken to end IUU fishing
 - Adopted a regulatory program to end or reduce bycatch that is comparable to that of the United States, accounting for regional conditions



Questions: Certification Procedures



- Are there other relevant sources of information that NMFS should consider when determining whether to positively or negatively certify an identified nation?
- Are there any other issues related to the certification of nations under the Moratorium Protection Act that NMFS should consider?





Effect of Certification



Effect of Certification



- When NMFS negatively certifies an identified nation, or when NMFS cannot make a certification determination:
 - Treasury Secretary shall deny entry of the vessel to the U.S. and its navigable waters, in accordance with international law
 - With exceptions, the President shall direct the Treasury Secretary to prohibit importation of fish or fish products



Effect of Certification



- The Moratorium Protection Act envisions a multilateral process to implement effective measures to end IUU fishing and eliminate or reduce bycatch of protected LMRs
- In the case of bycatch of protected LMRs, NMFS plans to work on a bilateral and/or multilateral basis to assist nations with adoption of regulatory measures comparable to those in the U.S., taking into account conditions that may bear on their effectiveness





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