

and Safety Risks—This proposed action is not subject to EO 13045 because it is not economically significant and is not based on health or safety risks;

8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use—This action is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866;

9. National Technology Transfer Advancement Act—This provision directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. EPA approves state programs so long as the State programs meet the criteria delineated in 40 CFR part 258. It would be inconsistent with applicable law for EPA, in its review of a state program, to require the use of any particular voluntary consensus standard in place of another standard that meets 40 CFR part 258 requirements. Thus, the National Technology Transfer and Advancement Act does not apply to this action;

10. Congressional Review Act—EPA will submit a report containing this action and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**.

#### List of Subjects

##### 40 CFR Part 239

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Waste treatment and disposal.

##### 40 CFR Part 258

Reporting and recordkeeping requirements, Waste treatment disposal, Water pollution control.

**Authority:** This action is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: December 3, 2008.

**John B. Askew,**

*Regional Administrator, Region 7.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 216

RIN 0648-AX36

#### Notification of Receipt of a Petition for Rulemaking to Implement the Provisions of the Marine Mammal Protection Act for Swordfish Imports

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

**ACTION:** Receipt of petition for rulemaking; request for information and comments.

**SUMMARY:** NMFS announces receipt of a petition for rulemaking under the Administrative Procedure Act. Center for Biological Diversity and Turtle Island Restoration Network, non-governmental organizations, have petitioned the U.S. Department of Commerce and other relevant Departments to initiate rulemaking to ban importation of commercial fish or products from fish that have been caught with commercial fishing technology that results in incidental mortality or serious injury of marine mammals in excess of United States standards.

**DATES:** Comments must be received by January 29, 2009.

**ADDRESSES:** You may submit comments by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal at <http://www.regulations.gov>.
- Mail: Director, Office of International Affairs, Attn: Swordfish Petition, NMFS, F/IA, 1315 East-West Highway, Silver Spring, MD 20910
- Fax: (301) 713-2313

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

The complete text of Center for Biological Diversity and Turtle Island Restoration Network's petition is available via the internet at the following web address: <http://www.nmfs.noaa.gov/ia/>. In addition copies of this petition may be obtained by contacting NMFS at the above address.

**FOR FURTHER INFORMATION CONTACT:** Lekelia Jenkins at 301-713-9090 x131.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 101(a)(2) of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1371(a)(2), states that "The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying the preceding sentence, the Secretary [of Commerce] (A) shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States."

Some information pertinent to the effects of commercial fishing technology on marine mammals can be found in a report entitled "Worldwide Bycatch of Cetaceans: An evaluation of the most significant threats to cetaceans, the affected species and the geographic areas of high risk, and the recommended actions from various independent institutions." This report, published by NMFS Office of International Affairs and prepared by outside experts, was commissioned by NMFS to identify threats to cetaceans, ongoing efforts to address these threats, and prioritize areas where the agency could focus future initiatives to improve international cetacean conservation. The complete text of this report is available via the internet at the following web address: <http://www.nmfs.noaa.gov/ia/docs/OPR36.pdf>.

##### Information in the Petition

NMFS received the petition on March 5, 2008. The petition asserts that the Secretaries of Commerce and other relevant federal Departments are required to obtain reasonable proof from countries exporting swordfish and swordfish products to the U.S. regarding the effects of their commercial swordfish fishing technology on marine

mammals. The petition requests that the Secretary of the Treasury ban imports of swordfish from any and all countries that have not satisfied the MMPA section 101(a)(2) requirement. As support for the need for this action, the petition alleges potential deficiencies in the fishing, exporting, and other related practices of some nations that export swordfish to the United States without articulating any specific “U.S.

standards” that have been exceeded by other nations.

The petition fails to define “United States standards;” rather, it describes marine mammal protection programs that the United States has implemented. NMFS will consider public comments received in determining whether to proceed with the request by Center for Biological Diversity and Turtle Island Restoration Network. In addition to general comments on the petition,

NMFS specifically requests comments on how to define “United States standards” as referenced in MMPA section 101(a)(2).

Dated: December 10, 2008.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

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