

**List of Subjects in 30 CFR Part 943**

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 25, 2007.

**Ervin J. Barchenger,**

*Acting Regional Director, Mid-Continent Region.*

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 300**

[Docket No. 070514119-7120-01; I.D. 042307D]

**RIN 0648-AV51**

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

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

**ACTION:** Advance notice of proposed rulemaking; request for comments.

**SUMMARY:** NMFS issues this advance notice of proposed rulemaking to announce that it is developing 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). NMFS is seeking advance public comment on the development of these procedures and on the sources and types of information to be considered in the process. NMFS plans to arrange for one or more opportunities to obtain public input on the certification procedures. Dates and locations of any such opportunities will be published in the **Federal Register** at a later date.

**DATES:** Written comments must be received by July 26, 2007.

**ADDRESSES:** Written comments on this action and requests for background information should be addressed to Christopher Rogers, Trade and Marine Stewardship Division, Office of International Affairs, NMFS. Comments and requests may be submitted by any of the following methods:

- Email: 0648-AV51@noaa.gov.

Including "0648-AV51" in the subject line of the e-mail comment. Comments

sent via e-mail, including all attachments, must not exceed a 10 megabyte file size.

- Federal e-Rulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

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

**FOR FURTHER INFORMATION CONTACT:**

Christopher Rogers (ph. 301-713-9090, fax 301-713-9106, e-mail [christopher.rogers@noaa.gov](mailto:christopher.rogers@noaa.gov)).

**SUPPLEMENTARY INFORMATION:****Background**

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (Public Law 109-479), which was signed into law in January 2007, amends the Moratorium Protection Act (Public Law 104-43) to require actions be taken by the United States to strengthen international fishery management organizations and address IUU fishing and bycatch of protected living marine resources. Specifically, the Moratorium Protection Act requires the Secretary of Commerce to identify in a biennial report to Congress those foreign nations whose vessels are engaged in IUU fishing or fishing that results in bycatch of protected living marine resources. The Moratorium Protection Act also requires the establishment of procedures to certify whether nations identified in the biennial report are taking appropriate corrective actions to address IUU fishing or bycatch of protected living marine resources by fishing vessels of that nation. Based upon the outcome of the certification procedures developed in this rulemaking, nations could be subject to import prohibitions and other measures under the authority provided in the High Seas Driftnet Fisheries Enforcement Act at 16 U.S.C. 1826a (Enforcement Act) if they are not positively certified by the Secretary of Commerce. The Secretary of Commerce has delegated authority under this Act and the Moratorium Protection Act to NMFS. In addition to the Moratorium Protection and Enforcement Acts, NMFS notes that there are identification and/or certification procedures in other statutes, including the Pelly Amendment to the Fishermen's Protective Act at 22 U.S.C. 1978. This advance notice of proposed rulemaking solicits public input on the new Moratorium Protection Act provisions and applicable Enforcement Act provisions, as well as general

identification and certification considerations.

**Definitions under the Moratorium Protection Act**

For purposes of the Moratorium Protection Act, "IUU fishing" is defined as fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including catch limits or quotas, capacity restrictions, and bycatch reduction requirements; overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks; and fishing activity that has an adverse impact on seamounts, hydrothermal vents, and cold water corals located beyond national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement. See 16 U.S.C. 1826j. This definition of IUU fishing was published in the **Federal Register** on April 12, 2007 (72 FR 18404) and is codified at 50 CFR part 300.

"Protected living marine resources" is defined in the Moratorium Protection Act as non-target fish, sea turtles, or marine mammals that are protected under United States law or international agreement, including the Marine Mammal Protection Act, the Endangered Species Act, the Shark Finning Prohibition Act, and the Convention on International Trade in Endangered Species of Wild Flora and Fauna; but they do not include species, except sharks, that are managed under the Magnuson-Stevens Fishery Conservation and Management Act, the Atlantic Tunas Convention Act, or any international fishery management organization. See 16 U.S.C. 1826k.

**Biennial Report to Congress on International Compliance**

The Moratorium Protection Act (see 16 U.S.C. 1826h) requires that the Secretary, in consultation with the Secretary of State, provide Congress (by no later than January 12, 2009, and every two years thereafter), a report that includes:

1. the state of knowledge on the status of international living marine resources shared by the United States or subject to treaties or agreements to which the United States is a party, including a list of all such fish stocks classified as overfished, overexploited, depleted,

endangered, or threatened with extinction by any international or other authority charged with management or conservation of living marine resources;

2. a list of nations whose vessels have been identified pursuant to the Moratorium Protection Act for engaging in IUU fishing or bycatch of protected living marine resources, including the specific offending activities and any subsequent actions taken pursuant to the Act;

3. a description of efforts taken by nations on those lists to take appropriate corrective action consistent with the Moratorium Protection Act, and an evaluation of the progress of those efforts, including steps taken by the United States to implement those sections and to improve international compliance;

4. progress at the international level to strengthen the efforts of international fishery management organizations to end IUU fishing; and

5. steps taken by the Secretary at the international level to adopt international measures comparable to those of the United States to reduce impacts of fishing and other practices on protected living marine resources, if no international agreement to achieve such goal exists, or if the relevant international fishery or conservation organization has failed to implement effective measures to end or reduce the adverse impacts of fishing practices on such species.

#### Identification Under the Moratorium Protection Act

Section 609 of the Moratorium Protection Act (see 16 U.S.C. 1826j(a)) requires the Secretary to identify, and list in the biennial report, a nation if fishing vessels of that nation are engaged, or have been engaged at any point during the preceding two years, in IUU fishing; and (1) the relevant international fishery management organization has failed to implement effective measures to end the IUU fishing activity by vessels of that nation or that the nation is not a party to, or does not maintain cooperating status with such organization; or (2) where no international fishery management organization exists with a mandate to regulate the fishing activity in question.

Section 610 of the Moratorium Protection Act (see 16 U.S.C. 1826k(a)) requires the Secretary to identify, and list in the biennial report, a nation if:

1. fishing vessels of that nation are engaged, or have been engaged during the preceding calendar year in fishing activities or practices;

A. in waters beyond any national jurisdiction that result in bycatch of a protected living marine resource; or

B. beyond the exclusive economic zone of the United States that result in bycatch of a protected living marine resource shared by the United States.

2. the relevant international organization for the conservation and protection of such resources or the relevant international or regional fishery organization has failed to implement effective measures to end or reduce such bycatch, or the nation is not a party to, or does not maintain cooperating status with, such organization; and

3. the nation has not adopted a regulatory program governing such fishing practices designed to end or reduce such bycatch that is comparable to that of the United States, taking into account different conditions.

Reliable and timely information is critical to making accurate and effective use of identification provisions under the Moratorium Protection Act.

Potential sources of information for identification of nations whose vessels are engaged in IUU fishing or bycatch of protected living marine resources could include IUU vessel lists from RFMOs, as well as reports from RFMOs on vessels engaged in IUU fishing or bycatch of protected living marine resources. In addition, foreign, federal, state, and local governments; nongovernmental organizations; industry organizations; and citizens and citizen groups from both the United States and other foreign nations could be potential sources of information. Such information might include photographs or video of vessels engaging in IUU activities and/or fisheries with bycatch of protected living marine resources, surveillance from satellite and Vessel Monitoring Systems (VMS), observations and testimony from crew and/or observers, nongovernmental organizations, industry representatives, and citizens and citizen groups.

NMFS will assess different approaches for evaluating pieces of information related to nations whose fishing vessels are alleged to be engaged in IUU fishing activities or bycatch of protected living marine resources. Considerations for potential sources of information to be used include:

- Accessibility and transparency of the collected data/information and methodology used to collect the data/information;

- Specificity of the information;
- Susceptibility of the media to falsification and alteration;

NMFS seeks input on the above and other relevant sources of information, as well as other issues related to

identification under the Moratorium Protection Act.

#### Notification and Consultation Procedures

Identifications under the Moratorium Protection Act are deemed to be identifications under the Enforcement Act. See 16 U.S.C. 1826j. Accordingly, the Secretary of Commerce would notify both the President and the affected nations of such identifications.

For IUU identifications, no later than 60 days after submission of the biennial report to Congress, the Secretary of Commerce, acting through the Secretary of State, is to notify nations identified in the biennial report of the requirements of the Moratorium Protection Act and initiate consultations for the purpose of encouraging such nations to take the appropriate corrective action with respect to the offending activities of their fishing vessels identified in the report. The Secretary of Commerce, acting through the Secretary of State, would also notify any relevant international fishery management organization of actions taken by the United States under Section 609 of the Moratorium Protection Act. See 16 U.S.C. 1826j.

For nations whose vessels engage in fishing activities or practices described in section 610(a) of the Moratorium Protection Act, the Secretary of Commerce, acting through the Secretary of State, is to notify these nations about the requirements of the Moratorium Protection Act as soon as possible. The Secretary of Commerce, acting through the Secretary of State, is also called upon to initiate discussions as soon as possible with all foreign governments that are engaged in, or that have persons or companies engaged in, fishing activities or practices described in section 610(a), for the purpose of entering into bilateral and multilateral treaties with these countries to protect such species. In addition, the Secretary of State, acting on behalf of the Secretary of Commerce, is called upon to seek agreements calling for international restrictions on fishing activities or practices described in section 610(a) through the United Nations, the Food and Agriculture Organization's Committee on Fisheries, and appropriate international fishery management bodies; and initiate the amendment of any existing international treaty for the protection and conservation of such species to which the United States is a party in order to make such treaty consistent with the purposes and policies of section 610 of the Moratorium Protection Act. See 16 U.S.C. 1826k.

### Certification of Nations

The Moratorium Protection Act calls for the Secretary of Commerce to establish procedures through rulemaking to certify identified nations under sections 609(d) and 610(c). In order to positively certify an identified nation for IUU fishing, the Secretary shall determine (A) whether the government of an identified nation has provided documentary evidence that it has taken corrective action with respect to the offending activities of its fishing vessels identified in the report; or (B) whether the relevant international fishery management organization has implemented measures that are effective in ending the IUU fishing by vessels of that nation. See 18 U.S.C. 1826j(d)(1).

In order to positively certify a nation identified for bycatch of protected living marine resources, the Secretary shall determine that the government of an identified nation (A) has provided documentary evidence of the adoption of a regulatory program governing the conservation of the protected living marine resource that is comparable to that of the United States, taking into account different conditions, and which, in the case of pelagic longline fishing, includes mandatory use of circle hooks, careful handling and release equipment, and training and observer programs; and (B) has established a management plan containing requirements that will assist in gathering species-specific data to support international stock assessments and conservation enforcement efforts for protected living marine resources. See 18 U.S.C. 1826k(c)(1).

Pursuant to the requirements under the Moratorium Protection Act, NMFS will publish certification of nations in the biennial report for Congress. However, the first certification of nations previously identified for having vessels that engaged in IUU fishing activities will occur no later than 90 days after the date of promulgation of the subsequent final rule. NMFS is also considering publishing certification decisions in the **Federal Register** concurrent with the publication of the biennial report and providing an opportunity for comment on these actions.

### Information for Certification

NMFS is considering the following sources of information in determining the certification of nations whose vessels are engaged in IUU fishing or bycatch of protected living marine resources: information on non-compliance with RFMO measures to address IUU fishing (as identified by the

RFMO); information on non-compliance with measures that have been recommended by the United Nations to address IUU fishing; whether the relevant RFMO has failed to implement effective measures to end IUU fishing activity or end or reduce bycatch of protected species; whether an identified nation is not party to, or does not maintain cooperating status with the relevant RFMO; whether a competent RFMO exists that regulates the IUU fishing activity in question; and whether 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, accounting for regional conditions. NMFS seeks input on the above and other relevant sources of information, and other issues related to certification under the Moratorium Protection Act.

### Effect of Certification

Where NMFS negatively certifies a nation identified in the biennial report, or in cases where NMFS cannot make a certification determination for an identified nation whose vessels engaged in IUU fishing or bycatch of protected living marine resources, the Moratorium Protection Act provides for the application of sections 101(a) and sections 101(b)(3) and (b)(4) of the Enforcement Act. See 16 U.S.C. 1826a(a), and 1826a(b)(3) and (b)(4). Relevant provisions of that Act include the following:

- The Secretary of Treasury shall, in accordance with recognized principles of international law deny entry of that vessel to any place in the United States and to the navigable waters of the United States;
- For nations whose vessels engaged in IUU fishing, the President shall direct the Secretary of Treasury to prohibit the importation into the United States of fish or fish products, except to the extent that such provisions would apply to sport fishing equipment or to fish or fish products not managed under the applicable international fishery agreement; or if there is no applicable international fishery agreement, to the extent that such provision would apply to fish or fish products caught by vessels not engaged in IUU fishing;
- For nations whose vessels engaged in bycatch of protected living marine resources, the President shall direct the Secretary of Treasury to prohibit the importation into the United States of fish or fish products, except to the extent that such provisions apply to sport fishing equipment or fish or fish

products not caught by vessels engaged in IUU fishing; and

- Possible additional measures.

### Alternative Procedures

Section 609(d)(2) of the Moratorium Protection Act authorizes NMFS to establish a procedure for certification, on a shipment-by-shipment, shipper-by-shipper, or other basis of fish or fish products from a vessel of a harvesting nation that is not certified in the biennial report under section 609(d)(1), if NMFS determines that: (A) the vessel has not engaged in IUU fishing under an international fishery management agreement to which the United States is a party; or (B) the vessel is not identified by an international fishery management agreement as participating in IUU fishing activities.

In addition, section 610(c)(4) of the Moratorium Protection Act authorizes NMFS to establish a procedure for certification, on a shipment-by-shipment, shipper-by-shipper, or other basis of fish or fish products from a vessel of a harvesting nation that is not certified in the biennial report under section 610(c)(1), if NMFS determines that such imports were harvested by practices that do not result in bycatch of a protected living marine species, or were harvested by practices that: (A) are comparable to those of the United States, taking into account different conditions, and which, in the case of pelagic longline fishing, includes mandatory use of circle hooks, careful handling and release equipment, and training and observer programs; and (B) include the gathering of species-specific data that can be used to support international and regional stock assessments and conservation efforts for protected living marine resources.

The Moratorium Protection Act envisions a multilateral process to implement effective measures to end IUU fishing and eliminate or reduce the bycatch of protected living marine resources. In the case of bycatch of protected living marine resources, NMFS plans to work on a bilateral and/or multilateral basis to assist nations with the adoption of regulatory measures designed to end or reduce bycatch that are comparable to those measures applied in the United States, taking into account relevant environmental and/or socioeconomic conditions that may bear on their effectiveness.

### Public Comment

You may submit information and comments concerning this advanced notice of proposed rulemaking by any one of several methods (see **ADDRESSES**).

During the comment period, NMFS plans to arrange for one or more opportunities to obtain public input on the certification procedures. Prior notice of the dates, times and locations of any such opportunities will be published in the **Federal Register**.

Information related to the international fisheries provisions of the Moratorium Protection Act can be found

on the NMFS Web site at <http://www.nmfs.noaa.gov/>. NMFS will consider all comments and information received during the comment period in preparing a proposed rule.

#### **Classification**

This advance notice of proposed rulemaking has been determined to be not significant for the purposes of Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 1826d–1826k.

Dated: June 5, 2007.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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