



MARINE MAMMAL COMMISSION

4 March 2010

Rebecca Lent, Ph.D.
Director, Office of International Affairs
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, Maryland 20910

Dear Dr. Lent:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the National Marine Fisheries Service's 11 January 2009 *Federal Register* notice (75 Fed. Reg. 1324) to implement measures developed by regional fishery management organizations to manage vessels that engage in illegal, unregulated, and unreported (IUU) fishing. The notice requests comments on the Service's proposed rule to restrict entry of such vessels into any U.S. port and deny services and commercial transactions to them. The Commission supports efforts to deter and prevent IUU fishing activities because they may take significant numbers of marine mammals as bycatch and they compromise the health of the ecosystems upon which marine mammals depend.

RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service—

- work closely with the Department of State to promote greater consistency in the IUU deterrence and prevention measures authorized under different regional fishery management organizations;
- work with the Department of State to encourage regional fishery management organizations to adopt consistent definitions of "IUU fishing" comparable to the U.S. definition, including provisions for listing vessels with unauthorized or unsustainable bycatch of marine mammals and other protected species;
- review its current legislative authorities for imposing sanctions in cases where the United States has sufficient evidence of IUU fishing by vessels not listed by any fishery management organization or where the activities of such vessels are in dispute and, to the extent that any gaps in authority are identified, recommend amendments to close them;
- clarify the specific steps to be taken during the interagency consultative process to determine whether to deny port access or access to commercial transactions to a specific vessel;
- provide notice and explanations for actions taken pursuant to these regulations, whether access is denied or not;
- support ongoing U.S. Coast Guard efforts to eliminate the notification exemption for foreign vessels less than 300 gross tons; and
- convey to member nations of the Agreement on the International Dolphin Conservation Program the importance of creating a provisional IUU vessel list at the program's next annual meeting in June 2010.

RATIONALE

The National Marine Fisheries Service and its partners in the Departments of State and Homeland Security face a considerable challenge in combating IUU fishing by foreign nations. Such fishing constitutes an elusive yet lucrative practice that undermines the effectiveness of international efforts to conserve and manage international fish stocks and protected species. The proposed rule would implement international conservation and management measures adopted by six regional fishery management organizations. The Marine Mammal Commission generally supports strong action against IUU fishing and specifically supports the Service's intent in proposing these regulations.

At the same time, the Commission notes several international and interagency challenges that may limit the effectiveness of the proposed measures in conserving and managing international fish stocks and protected species. These involve the diversity of measures in place and the varying definitions of IUU fishing adopted by different regional fishery management organizations, the lack of clarity regarding the relationship of domestic and international policies, and the design of the interagency consultative process that leads to port denials. In addition, the Commission is concerned about the limited reach of these regulations, as the vessels that may be sanctioned under the proposed regulations are constrained by vessel size limits, the accuracy and completeness of each organization's IUU vessel list, and the fact that some bodies, such as the parties to the Agreement on the International Dolphin Conservation Program, have not yet developed IUU vessel lists.

Regional fishery management organizations with IUU vessel lists have adopted a variety of sanctions for listed vessels, including port denial and vessel inspections, and conditions under which those sanctions may be applied. The diversity of existing measures complicates efforts to create a uniform and streamlined international policy for implementing sanctions against listed IUU vessels. To avoid further divergence of IUU measures by different regional fishery management organizations, the Marine Mammal Commission recommends that the National Marine Fisheries Service work closely with the Department of State to promote greater consistency in the IUU deterrence and prevention measures authorized under different regional fishery management organizations.

The Commission also notes that the definition of "IUU fishing" may vary among organizations, and some definitions may not include fishing that results in unauthorized or unsustainable bycatch of marine mammals and other protected species. To achieve the greatest possible conservation benefit for species of common international concern, the Marine Mammal Commission recommends that the National Marine Fisheries Service work with the Department of State to encourage regional fishery management organizations to adopt consistent definitions of "IUU fishing" comparable to the U.S. definition, including provisions for listing vessels with unauthorized or unsustainable bycatch of marine mammals and other protected species.

The success of any regulations imposed will hinge on the ability of regional fishery management organizations to define IUU fishing and to identify and list vessels that meet that definition. In addition, the listing processes may be complicated, slow, and subject to internal

dispute, potentially limiting U.S. options for applying sanctions to certain vessels. Over time, cases likely will arise in which the United States has evidence of IUU fishing by vessels that are not listed by any organization, and our government should not be precluded from taking action against these vessels. To identify and eliminate possible gaps in the coverage under existing statutes, the Marine Mammal Commission recommends that the National Marine Fisheries Service review its current legislative authorities for imposing sanctions in cases where the United States has sufficient evidence of IUU fishing by vessels not listed by any fishery management organization or where the activities of such vessels are in dispute and, to the extent that any gaps in authority are identified, recommend amendments to close them.

The interagency consultative processes that govern U.S. actions regarding IUU fishing vessels are complex. Under the proposed rule, the Service would receive notice that a foreign vessel intends to land in a U.S. port and it would then consult with the U.S. Coast Guard, the Department of State, and possibly Customs and Border Protection and the Office of the United States Trade Representative to determine the most appropriate course of action given the applicable measures of pertinent regional fishery management organizations. The proposed rule provides little information on the mechanics of this consultation, such as how and when decisions would be made and how disputes or contradictory information would be addressed. The proposed rule also is vague with regard to any additional criteria that might be applied beyond those of the applicable listing organization. Because the effectiveness of this policy depends on making timely and justifiable decisions, the Marine Mammal Commission recommends that the National Marine Fisheries Service clarify the specific steps to be taken during the interagency consultative process to determine whether to deny port access or access to commercial transactions to a specific vessel. Further, given the broad discretion that would be available to the Assistant Administrator for Fisheries in making the determinations, decisions must be transparent. To that end, the Marine Mammal Commission recommends that the National Marine Fisheries Service provide notice and explanations for actions taken pursuant to these regulations, whether access is denied or not. Such information would enable interested parties to assess the effectiveness of these regulations and help raise awareness about efforts to combat IUU fishing.

The Commission is concerned that the proposed regulations may not be sufficiently comprehensive. The advance notification requirements for interagency consultation apply only to vessels greater than 300 gross tons. Thus, smaller vessels, which may contribute significantly to IUU fishing, may not be managed effectively. To address this concern, the Marine Mammal Commission recommends that the National Marine Fisheries Service support ongoing U.S. Coast Guard efforts to eliminate the notification exemption for foreign vessels less than 300 gross tons. Doing so would help ensure comprehensive screening of all commercial vessels seeking access to U.S. ports.

Finally, the proposed rule notes that the parties to the Agreement on the International Dolphin Conservation Program have not developed an IUU vessel list at this time despite the availability of a listing mechanism and the information needed to compile a list. That agreement entails the use of an international review panel that sets dolphin mortality limits on a vessel-by-vessel basis. All of the vessels in the fishery are observed, and the international panel reviews any infractions. Provisions of the agreement include the option of denying a vessel a new dolphin

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mortality limit if it has exceeded its past limits. Because the mechanisms and information needed to create an IUU vessel list are already in place, the Marine Mammal Commission recommends that the National Marine Fisheries Service convey to member nations of the Agreement on the International Dolphin Conservation Program the importance of creating a provisional IUU vessel list at the program's next annual meeting in June 2010.

Please contact me if you have questions about our recommendations or rationale or if we can provide additional assistance on this matter.

Sincerely,

A handwritten signature in blue ink that reads "Suzanne Montgomery for". The signature is written in a cursive style.

Timothy J. Ragen, Ph.D.
Executive Director