



MARINE MAMMAL COMMISSION

11 September 2015

Danielle Rioux
Office of Sustainable Fisheries
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Dear Ms. Rioux:

The Marine Mammal Commission (Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the National Marine Fisheries Service's (NMFS) notice seeking public comment on draft principles for determining seafood species at risk of illegal, unreported and unregulated (IUU) fishing and seafood fraud (80 Fed. Reg. 45955). These principles, along with a draft list of "at risk" species derived from the principles, were developed by the National Ocean Council Committee on IUU Fishing and Seafood Fraud (NOC Committee).

As noted in its comment letter of 16 January 2015 (enclosed) regarding the overall Action Plan for the Presidential Task Force on Combating IUU Fishing and Seafood Fraud, the Commission's major concern is with marine mammal bycatch in fisheries, which is the number one global source of serious injury and mortality for marine mammals. In addition to negative impacts on target species, IUU fishery operations are more likely than legal operations to operate with little or no concern for impacts on marine mammals. In this regard, the Commission is pleased to note the recent publication of a proposed rule (80 Fed. Reg. 48172) to implement the longstanding, but previously ignored requirement under section 101(a)(2) of the Marine Mammal Protection Act (MMPA) to address marine mammal bycatch in foreign-flagged fisheries supplying the U.S. market. The Commission will submit comments on that proposed rule in a forthcoming letter.

While the proposed rulemaking under the MMPA is a separate matter from the IUU fishing notice, the Commission notes that, if and when a country fails to receive a "comparability finding" for its fisheries under the contemplated rule, this would necessitate establishing a traceability system for imports of fish products. Therefore, any system adopted under the IUU fishing provisions for tracking seafood imported into the United States should anticipate the tracking mechanisms that will be needed to implement the MMPA import rule and coordinate the two tracking systems, preferably into a single, unified system that serves both purposes. The Commission therefore commends NMFS for including in the proposed rule for the MMPA import provisions a commitment that, in order to eliminate duplicative tracking requirements, NMFS will use any procedures developed under the IUU Task Force or the Automated Commercial Environment system as long as the information is sufficient to ensure that the prohibited product is excluded.

The approach taken by the NOC Committee in designating species at risk from IUU fishing is focused on whether the target species is subject to IUU fishing, rather than on bycatch, gear type, or even the overall sustainability of the fishery. However, fisheries often are classified as IUU because participants are using illegal gear, such as high seas driftnets (global ban) or gear banned by certain flag states (e.g., pair trawling) that has disproportionately negative impacts on non-target species such as marine mammals or sea turtles. Therefore, additionally focusing on non-target species that are more apt to be taken as bycatch in such gear would enhance the ability of the Task Force to effectively address IUU fishing. While the Commission agrees with the statement that “...the level of bycatch associated with harvest of a target species is not, in and of itself, determinative of the level of risk for IUU fishing,” the reverse is more likely to hold true – i.e., that IUU fishing is much more apt to result in high levels of bycatch.

For example, the Commission notes that the approach taken in the proposed list of principles would mean that shrimp caught with banned gillnets in the upper Gulf of California would not be subject to traceability under this system, even though the bycatch of vaquitas in this fishery is significant enough that it may lead to extinction of the species within a few years (Rojas-Bracho and Reeves 2013). By considering application of traceability requirements to target species whose harvest could be associated with illegal gear (high seas driftnets, gillnets, dynamite, cyanide, other banned gear), NMFS could improve its ability to track imports associated with these IUU operations. In response to the request from the NOC Committee for ideas on how to “refine the scope” of the huge volume of shrimp product imported into the United States, an approach that prioritizes traceability of shrimp from regions such as the upper Gulf of California, where the consequences of marine mammal bycatch are extreme, would offer a way to reduce the burden on a universally applicable traceability system.

Therefore, the Commission recommends that the NOC Committee expand its principles to include fisheries with a high risk of bycatch of endangered species, and that shrimp imported from the upper Gulf of California be included in the list of “species at risk” requiring traceability. There may be similar cases of shrimp or other target species whose likelihood of illegal bycatch is of concern.

The Commission notes that one of the products driving the decline of the vaquita toward extinction is the swim bladder of the totoaba. The totoaba, like the vaquita is endemic to the upper Gulf of California and endangered, and its swim bladder (also called "maw") is a highly prized product in certain Asian markets. This has led to increased illegal fishing pressure on the totoaba and by consequence increased the bycatch of vaquitas, which become entangled in gillnets used to catch totoaba. The existence of trade in swim bladders of other species, which may resemble totoaba swim bladders, raises concerns about the enforceability of the totoaba swim bladder trade ban¹. The Commission therefore recommends that the NOC Committee consider including fish parts (such as swim bladders of species of fish whose swim bladders are the object of trade) in the list of “species” at risk contained in the draft principles.

¹ Trade in totoaba is illegal under the Convention for International Trade in Endangered Species.

The Commission notes that traceability systems established by Regional Fishery Management Organizations (RFMOs), which are regional or quasi-global in implementation, may not always be sufficiently robust to ensure that potentially IUU-derived products are tracked in the market. Similarly, in exploring the feasibility of relying on existing traceability systems, it is important to question whether private tracking systems should be considered. An increasing number of U.S. and foreign fisheries are subject to private-label certification schemes which include traceability systems that are verified by third-party processes and reach into wholesale and retail markets. Because these traceability systems are industry-funded for the most part², they place the cost burden on the operators rather than the general public, and they have the potential to be more rapidly implemented than government-based systems. Nevertheless, the viability and trustworthiness of such private schemes would need to be verified if they are to be considered adequate for tracking fish products in any future U.S. traceability system. The Commission therefore recommends that the NOC Committee considers whether to allow RFMO-based or private systems as part of the U.S. traceability system, provided that they meet standards specified by the United States and are subject to adequate quality-control measures (e.g., random audits).

The Commission hopes that these comments and recommendations are helpful to the NOC Committee and the Presidential Task Force on IUU Fishing and Seafood Fraud in the critical mission of addressing unsustainable fishing practices around the world. These efforts can help transform the U.S. seafood market – one of the largest in the world - from a driver of global IUU fishing to a source of incentives for effectively addressing IUU challenges. Please contact me if you have any questions concerning the points raised in this letter.

Sincerely,



Rebecca J. Lent, Ph.D.
Executive Director

Enclosure

Reference

Rojas-Bracho, L. and R.R. Reeves. 2013. Vaquitas and gillnets: Mexico's ultimate cetacean conservation challenge. *Endangered Species Research* (21) 77-87.

² Some foreign flag nations provide subsidies for private certification programs.