

Agenda Item 2

Review of New Information on Threats to  
Small Cetaceans (reporting cycle 2017 only)

Bycatch

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**Compliance Guide – Marine  
Mammal Protection Act Import  
Provisions to Reduce Marine  
Mammal Bycatch**

Action Requested

- Take note

Submitted by

NOAA



**NOTE:  
DELEGATES ARE KINDLY REMINDED  
TO BRING THEIR OWN COPIES OF DOCUMENTS TO THE MEETING**

## **Secretariat's Note**

The Rules of Procedure adopted at the ASCOBANS 8<sup>th</sup> Meeting of Parties remain in force until and unless an amendment is called for and adopted.



# NOAA FISHERIES

International Affairs and Seafood Inspection

## Compliance Guide—Marine Mammal Protection Act Import Provisions To Reduce Marine Mammal Bycatch

This guide summarizes how to comply with regulations implementing the Marine Mammal Protection Act provisions related to the importation of fish and fish products from fisheries that have incidental or intentional mortality and serious injury of marine mammals. These regulations were published in the Federal Register on August 15, 2016 (80 FR 54390). These measures are intended to reduce interactions, to the levels comparable to those of U.S. regulatory programs in U.S. fisheries, between marine mammals and foreign commercial fisheries where the products from those fisheries are exported to the United States. These regulations establish the criteria for evaluating a harvesting nation's regulatory program for reducing marine mammal bycatch in such fisheries and the procedures required to receive a comparability finding. Under the regulations a comparability finding for a fishery is necessary to import fish and fish products into the United States from that fishery. To ensure effective implementation, the rule establishes a 5-year exemption period to allow foreign harvesting nations time to develop, as appropriate, regulatory programs comparable in effectiveness to U.S. programs and to apply for comparability findings for their fisheries. Regulations are subject to change, and any differences between this compliance guide and the regulations will be resolved in favor of the regulations published in Title 50 of the Code of Federal Regulations, Part 216. This compliance guide is issued in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996: title II of Public Law 104-121. For additional questions contact Nina Young at [Nina.Young@noaa.gov](mailto:Nina.Young@noaa.gov).

### Who must comply with these regulations?

The regulations apply to any foreign nation with fisheries that exports fish and fish products to the United States, either directly or through an intermediary nation.

### When will this regulation be effective?

January 1, 2017, however NOAA Fisheries has established a 5-year exemption period to provide nations with the time necessary to develop, as appropriate, regulatory programs comparable in effectiveness to the U.S. program. This may include assessing their marine mammal stocks, estimating bycatch, and mitigating that bycatch to levels comparable with U.S. regulatory programs in an analogous domestic fishery. Fisheries will require comparability findings for import starting January 1, 2022.

### What is the purpose of these regulations?

The regulations are intended to reduce the bycatch of marine mammals in foreign commercial fishing operations that export fish and fish products to the United States.

### Does U.S. have the authority to implement this regulation as it corresponds to another nation's coastal waters?

The U.S. is not attempting to directly regulate fisheries bycatch of marine mammals within a nation's coastal waters. NOAA Fisheries is establishing criteria that harvesting nations must meet for imports of fish and fish products into the United States. (*MMPA sections 101 (a) (2), 102 (c) (3) for international fisheries, and 118 (a) (5) for domestic fisheries.*)

### **Why has the U.S. provided a one-time exemption period of five years for the implementation of this regulation?**

For some harvesting nations this amount of time will be essential in developing, implementing, and enforcing fishery or protected species conservation and management regulations. NOAA Fisheries will, subject to available resources, work with nations during the exemption period, to the extent possible, to support their efforts to meet the regulation’s standards. Nevertheless during the exemption period NOAA Fisheries expects that all nations will be working in earnest to develop their regulatory programs as this five-year period will not be reissued.

### **What is the *List of Foreign Fisheries* and how is it developed?**

NOAA Fisheries will determine which nations have commercial fishing operations that export fish and fish products to the United States and classify those fisheries based on their frequency of marine mammal interactions as either “exempt” or “export” fisheries (see definitions below). These classifications will be used to determine the criteria that must be met to receive a comparability finding for the fishery. A comparability finding is required with respect to both exempt and export fisheries, however, the criteria that must be met to receive a comparability finding for an exempt fishery are limited to those pertaining to the intentional take of marine mammals. To develop this list, NOAA Fisheries will notify the nations with commercial fishing operations that export fish or fish products to the United States and request that within 90 days of notification that the nation submit information about the commercial fishing operations identified, including the number of participants, number of vessels, gear type, target species, area of operation, fishing season, and any information regarding the frequency of marine mammal incidental mortality and serious injury, including programs to assess marine mammal populations. Nations will also be requested to submit copies of any laws, decrees, regulations, or measures to reduce incidental mortality and serious injury of marine mammals in those fisheries or prohibit the intentional killing or injury of marine mammals. NOAA Fisheries will use this information and any other readily available information to classify the fisheries as “export” or “exempt” fisheries in order to develop the *List of Foreign Fisheries*. In instances where information on the level of bycatch in a fishery has not been provided by the nation or is not readily available, NOAA Fisheries may determine whether a fishery is an exempt or export fishery by evaluating the fishery using information such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, the species and distribution of marine mammals in the area, or other factors. NOAA Fisheries may also draw an analogy to other U.S. fisheries (see detailed response below). NOAA Fisheries will develop a draft and final List of Foreign Fisheries in 2017 and 2021. Thereafter, The *List of Foreign Fisheries* will be revised every four years.

### **What is an Export Fishery?**

An “export fishery” is a foreign commercial fishing operation that exports commercial fish and fish products to the United States and has more than a remote likelihood of incidental mortality and serious injury of marine mammals in the course of its commercial fishing operations.

### **What is an Exempt Fishery?**

An “exempt fishery” is a foreign commercial fishing operation that exports commercial fish and fish products to the United States and has a remote likelihood of, or no known incidental mortality or serious injury of marine mammals in the course of its fishing operations. For a commercial fishing operation to have a remote likelihood of marine mammal bycatch it must have or collectively with other foreign fisheries exporting fish and fish products to the United States remove (1) ten percent or less of any marine mammal stock’s bycatch limit, or (2) more than 10 percent of any marine mammal stock’s bycatch limit, yet that fishery by itself removes 1 percent or less of that stock’s bycatch limit annually.

### **How will NOAA Fisheries classify a fishery if a harvesting nation does not provide information on the level of bycatch in the fishery?**

In instances where information on the level of bycatch in a fishery has not been provided by the nation or is not readily available, NOAA Fisheries may determine whether a fishery is an exempt or export fishery by evaluating the fishery using information such as fishing techniques, gear used, methods used to deter

marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, the species and distribution of marine mammals in the area, or other factors.

Initially, NOAA Fisheries expects information on the frequency of interactions in most foreign fisheries will be lacking or incomplete. In the absence of such information, NOAA Fisheries will use the information noted above to classify fisheries which may include drawing analogy with similar U.S. fisheries and gear types interacting with similar marine mammal stocks. Where no analogous fishery or fishery information exists, NOAA Fisheries will classify the commercial fishing operation as an export fishery until such time as information comes available to properly classify the fishery. NOAA Fisheries may reclassify a fishery if a harvesting nation provides reliable information to properly classify the fishery or such information is readily available to the Assistant Administrator in the course of preparing the *List of Foreign Fisheries*.

### **What is a comparability finding?**

Comparability finding is a finding by NOAA Fisheries that the harvesting nation for an export or exempt fishery has met the applicable conditions specified in the regulations and discussed below subject to the additional considerations for comparability determinations set out in the regulations. A comparability finding is required for a nation to export fish and fish products to the United States. Under the regulations to receive a comparability finding for an export fishery, the harvesting nation must maintain a regulatory program with respect to that fishery that is comparable in effectiveness to the U.S. regulatory program for reducing incidental marine mammal bycatch. This may be met by maintaining a regulatory program that includes, or effectively achieve comparable results as, as key features the U.S. regulatory program in the analogous U.S. fishery.

### **Are exempt fisheries subject to these regulations?**

No. A nation must still obtain a comparability finding for its exempt fisheries by demonstrating that it has either prohibited the intentional mortality or serious injury of marine mammals in the course of commercial fishing operations in these exempt fisheries, unless the intentional mortality or serious injury of a marine mammal is imminently necessary in self-defense or to save the life of a person in immediate danger; or that it has procedures to reliably certify that exports of fish and fish products to the United States are not the product of a fishing operation that permits the intentional killing or serious injury of a marine mammal. Exempt fisheries, however, do not have to meet the conditions for comparability finding requirement for export fisheries to have a regulatory program for incidental marine mammal bycatch comparable in effectiveness to the U.S. regulatory program.

### **What is the process for a new fishery that wishes to export to the United States but does not have a comparability finding?**

After the conclusion of the one-time five-year exemption period, any nation or fishery that has not previously exported to the United States and that wishes to export will be granted a provisional comparability finding for a period not to exceed twelve months. Subsequently, such fishery will be classified as an export fishery until the next *List of Foreign Fisheries* is published. If a nation provides the reliable information necessary to classify the commercial fishing operation at the time of the request for a provisional comparability finding or prior to the expiration of the provisional comparability finding, NOAA Fisheries will classify the fishery in accordance with the definitions. Prior to the expiration of a provisional comparability finding, a nation must provide information to classify the fishery and apply for and receive a comparability finding for its fishery to continue exporting fish and fish products from that fishery to the United States after the expiration of the provisional comparability finding.

### **Could harvesting nations change the categories of their fisheries from “export” to “exempt” fisheries by providing further information?**

NOAA Fisheries will periodically revise the *List of Foreign Fisheries*, once before the expiration of the five-year exemption period and then every four years. The revisions will be based on information provided by the harvesting nation or other available information. It will not be possible to recategorize foreign fisheries in the interim periods.

### **Are aquaculture operations included under these regulations?**

Yes. The regulatory definition of a commercial fishing operation includes aquaculture. A comparability finding is required for the import of fish and fish products harvested in an aquaculture facility. NMFS will classify foreign aquaculture operations that operate in marine mammal habitat as exempt or export fisheries using the same criteria as for other fisheries (i.e., based on the level of incidental marine mammal bycatch).

### **Is a comparability finding needed to import fish and fish products into the United States?**

Yes. By the end of the exemption period and every four years thereafter, a harvesting nation must have applied for and received a comparability finding for its fisheries to export fish and fish products to the United States. Fish and fish products from fisheries that fail to receive a comparability finding may not be imported into the United States. The United States will notify nations and publish in the *Federal Register* a list of the nations and the fisheries that have received or been denied a comparability finding and the fish and fish products that are subject to an import prohibition.

### **What are the requirements that nations must meet for a comparability finding?**

To receive a comparability finding for an exempt or export fishery operating within the harvesting nation's exclusive economic zone (EEZ) and territorial sea, the high seas, or in the waters of another state, the harvesting nation must demonstrate it has prohibited the intentional mortality or serious injury of marine mammals in the course of commercial fishing operations in the fishery unless the intentional mortality or serious injury of a marine mammal is imminently necessary in self-defense or to save the life of a person in immediate danger. Alternatively, the harvesting nation must demonstrate that it has procedures to reliably certify that exports of fish and fish products to the United States are not the product of a fishery that permits the intentional killing or serious injury of a marine mammal unless the intentional mortality or serious injury of a marine mammal is imminently necessary in self-defense or to save the life of a person in immediate danger. The harvesting nation must also demonstrate that it has adopted and implemented, with respect to an export fishery, a regulatory program governing the incidental mortality and serious injury of marine mammals in the course of commercial fishing operations in its export fishery that is comparable in effectiveness to the U.S. regulatory program.

### **What are the US standards for mitigating marine mammal bycatch?**

The U.S. regulatory program governing the incidental mortality and serious injury of marine mammals in the course of commercial fishing operations is specified in the MMPA (e.g., 16 U.S.C. 1386 and 1387) and its implementing regulations. This information is readily available. Information on marine mammal bycatch and the U.S. regulatory program and stock assessments can be found at: [http://www.NOAA Fisheries.noaa.gov/pr/sars/species.htm](http://www.NOAA.Fisheries.noaa.gov/pr/sars/species.htm) and at [http://www.NOAA Fisheries.noaa.gov/pr/interactions/trt/marine\\_mammal\\_take\\_reduction\\_program.html](http://www.NOAA.Fisheries.noaa.gov/pr/interactions/trt/marine_mammal_take_reduction_program.html)

### **Where can I find more information on the U.S. regulatory programs?**

The overall regulations implementing the MMPA can be found at [http://www.NOAA Fisheries.noaa.gov/pr/interactions/](http://www.NOAA.Fisheries.noaa.gov/pr/interactions/). This link includes links to the list of fisheries, take reduction team regulations, and the overall regulations governing marine mammal bycatch. The actual regulations implementing the U.S. regulatory program are available at: [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title50/50cfr229\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title50/50cfr229_main_02.tpl). NOAA Fisheries Stock Assessment Reports can be found at [http://www.NOAA Fisheries.noaa.gov/pr/sars/species.htm](http://www.NOAA.Fisheries.noaa.gov/pr/sars/species.htm). These reports contain marine mammal abundance and bycatch estimates.

### **What are the requirements when an export fishery is operating within its own EEZ or territorial water?**

For export fisheries operating within the EEZ or territorial waters of the nation, the requirements are a regulatory program that is comparable in effectiveness to the U.S. regulatory program and includes, or achieves comparable results as, the following elements:

- Marine mammal stock assessments estimating population abundance for marine mammal stocks that are caught as bycatch in the export fishery in waters under its jurisdiction;

- An export fishery register containing a list of all vessels participating in the export fishery under the jurisdiction of the nation, including the number of vessels participating, information on gear type, target species, fishing season, and fishing area;
- Regulatory requirements (e.g., including copies of relevant laws, decrees, and implementing regulations or measures) that include:
  - A requirement for the owner or operator of vessels participating in the fishery to report all intentional and incidental mortality and injury of marine mammals in the course of commercial fishing operations; and
  - A requirement to implement measures in export fisheries designed to reduce the total incidental mortality and serious injury of a marine mammal stock below the bycatch limit. Such measures may include: Incidental mortality and serious injury limits; careful release and safe-handling of marine mammals and gear removal; gear marking; bycatch reduction devices or avoidance gear (e.g., pingers); gear modifications or restrictions; or time-area closures; and
  - For transboundary stocks or any other marine mammal stocks interacting with the export fishery, any measures to reduce the incidental mortality and serious injury of that stock that are the same or are comparable in effectiveness to measures the United States requires its domestic fisheries to take with respect to that transboundary stock or marine mammal stock in the United States.
- Implementation of monitoring procedures in export fisheries designed to estimate incidental mortality and serious injury of marine mammals in each export fishery under its jurisdiction, as well as estimates of cumulative incidental mortality and serious injury for marine mammal stocks in waters under its jurisdiction that are incidentally killed or seriously injured in the export fishery and other export fisheries with the same marine mammal stock, including an indication of the statistical reliability of those estimates;
- Calculation of bycatch limits for marine mammal stocks in waters under its jurisdiction that are incidentally killed or seriously injured in an export fishery;
- Comparison of the incidental mortality and serious injury of each marine mammal stock or stocks that interact with the export fishery in relation to the bycatch limit for each stock; and comparison of the cumulative incidental mortality and serious injury of each marine mammal stock or stocks that interact with the export fishery and any other export fisheries of the harvesting nation showing that these export fisheries:
  - Do not exceed the bycatch limit for that stock or stocks; or
  - Exceed the bycatch limit for that stock or stocks, but the portion of incidental marine mammal mortality or serious injury for which the exporting fishery is responsible is at a level that, if the other export fisheries interacting with the same marine mammal stock or stocks were at the same level, would not result in cumulative incidental mortality and serious injury in excess of the bycatch limit for that stock or stocks.

#### **What are the requirements when an export fishery is operating within the EEZ or territorial waters of another state?**

For export fisheries operating within the jurisdiction of another state the requirements are a regulatory program that is comparable in effectiveness to the U.S. regulatory program and includes, or achieves comparable results as, the following elements:

- With respect to any transboundary stock interacting with the export fishery, any measures to reduce the incidental mortality and serious injury of that stock that the United States requires its domestic fisheries to take with respect to that transboundary stock; and
- With respect to any other marine mammal stocks interacting with the export fishery while operating within the jurisdiction of the state, any measures to reduce incidental mortality and serious injury that the United States requires its domestic fisheries to take with respect to that marine mammal stock; and
- For an export fishery not subject to management by a regional fishery management organization:
  - An assessment of marine mammal abundance of stocks interacting with the export fishery, the calculation of a bycatch limit for each such stock, an estimation of incidental

- mortality and serious injury for each stock and reduction in or maintenance of the incidental mortality and serious injury of each stock below the bycatch limit. This data included in the application may be provided by the state or another source; and
- Comparison of the incidental mortality and serious injury of each marine mammal stock or stocks that interact with the export fishery in relation to the bycatch limit for each stock; and comparison of the cumulative incidental mortality and serious injury of each marine mammal stock or stocks that interact with the export fishery and any other export fisheries of the harvesting nation showing that these export fisheries do not exceed the bycatch limit for that stock or stocks; or that, if they do exceed the bycatch limit for that stock or stocks, the portion of incidental marine mammal mortality or serious injury for which the export fishery is responsible is at a level that, if the other export fisheries interacting with the same marine mammal stock or stocks were at the same level, would not result in cumulative incidental mortality and serious injury in excess of the bycatch limit for that stock or stocks; or

### **What are the requirements when an export fishery is operating on the high seas?**

For an export fishery operating on the high seas under the jurisdiction of the harvesting nation or of another state is required to have a regulatory program that is comparable in effectiveness to the U.S. regulatory program and includes, or achieves comparable results as, the following elements:

- Implementation of marine mammal data collection and conservation and management measures applicable to that fishery required under any applicable to that export fishery as required under any applicable intergovernmental agreement or regional fisheries management organization to which the United States is a party; and
- Implementation in the export fishery of:
  - With respect to any transboundary stock interacting with the export fishery, implementation of any measures to reduce the incidental mortality and serious injury of that stock that the United States requires its domestic fisheries to take with respect to that transboundary stock; and
  - With respect to any other marine mammal stocks interacting with the export fishery while operating on the high seas, implementation of any measures to reduce incidental mortality and serious injury that the United States requires its domestic fisheries to take with respect to that marine mammal stock when they are operating on the high seas.

### **How does the US calculate bycatch limits?**

The following link provides information on the calculation of the potential biological removal limit (PBR) which is scientifically equivalent to the “bycatch limit”:

<http://www.nefsc.noaa.gov/psb/assessment/pbr.html>

### **Will NOAA Fisheries require a nation to calculate a bycatch limit for every marine mammal stock caught in every export fishery?**

Nations will be expected to calculate bycatch limits for each marine mammal stock that interacts with an export fishery, unless the nation implements alternative measures that are comparable in effectiveness to the U.S. regulatory program.

### **What does “comparable in effectiveness” mean?**

“Comparable in effectiveness” means that the regulatory program effectively achieves comparable results to the U.S. regulatory program. This approach gives harvesting nations flexibility to implement the same type of regulatory program as the United States or a program that is completely different but achieves the same results—reducing marine mammal bycatch in an export fishery.

### **What are alternative measures?**

For example, if a particular fishery with high bycatch switches to non-entangling gear and can demonstrate that it has effectively mitigated its bycatch, those results can be considered comparable in effectiveness. Likewise, if a nation chooses to eliminate its bycatch by implementing time/area closures

and can demonstrate the effectiveness of such closures, that regulatory program may be considered comparable in effectiveness. In lieu of implementing the various elements of the U.S. regulatory program (e.g., stock assessments and bycatch limits), a harvesting nation's implementation of alternative bycatch mitigation measures may still result in clear and significant reductions in marine mammal bycatch.

**If a fishery has a third-party certification (e.g. Marine Stewardship Council) is that sufficient to obtain a comparability finding?**

NOAA Fisheries cannot rely solely on third-party certifications as a basis or proxy for a determination that an export fishery is meeting the conditions of a comparability finding. NOAA Fisheries can consider such information as part of the documentary evidence that a harvesting nation submits to receive a comparability finding. Currently, NOAA Fisheries does not recognize Marine Stewardship Council (MSC) certification in its management of protected species because the criteria for obtaining MSC certification do not comport with all the specific requirements of the MMPA or the ESA. Therefore, NOAA Fisheries cannot base determinations to issue comparability findings solely on MSC certification.

**Does NOAA Fisheries consider any other factors when making a comparability finding?**

When determining whether to issue any comparability finding for a harvesting nation's export fishery, the NOAA Fisheries will also consider:

- U.S. implementation of its regulatory program for similar marine mammal stocks and similar fisheries (e.g., considering gear or target species), including transboundary stocks governed by regulations implementing a marine mammal take reduction plan, and any other relevant information received during consultations;
- The extent to which the nation has successfully implemented measures in the export fishery to reduce the marine mammal bycatch caused by the nation's export fisheries to levels below the bycatch limit;
- Whether the measures adopted by the nation for its export fishery have reduced or will likely reduce the cumulative bycatch of each marine mammal stock below the bycatch limit, and the progress of the regulatory program toward achieving its objectives; and
- Other relevant facts and circumstances, which may include the history and nature of interactions with marine mammals in this export fishery, whether the level of bycatch resulting from the fishery or fisheries exceeds the bycatch limit for a marine mammal stock, the population size and trend of the marine mammal stock, the population level impacts of the bycatch of marine mammals in a nation's export fisheries, and the conservation status of those marine mammal stocks where available.

**What happens when a harvesting nation provides insufficient evidence to determine whether to issue a comparability finding?**

If a harvesting nation provides insufficient documentary evidence in support of its application, NOAA Fisheries may evaluate the fishery and draw reasonable conclusions regarding the fishery based on readily available and relevant information from other sources, including where appropriate information concerning analogous fisheries that use the same or similar gear-type under similar conditions as the fishery, in determining whether to issue the harvesting nation a comparability finding for the fishery.

**What happens if a fishery is denied a comparability finding?**

If a fishery of a harvesting nation fails to receive a comparability finding for a fishery, fish and fish products caught or harvested in that fishery will be subject to an import prohibition, including highly processed fish products containing fish caught or harvested in the fishery. Any such import prohibition will become effective 30 days after publication of the *Federal Register* notice announcing the comparability finding and shall only apply to fish and fish products caught or harvested in that fishery. Any import prohibition imposed under this regulation will remain in effect until the harvesting nation reapplies and receives a comparability finding for that fishery.

**What is a certification of admissibility?**

If fish or fish products are subject to import prohibitions from a harvesting nation's fishery, NOAA

Fisheries, to avoid circumvention of, or to facilitate enforcement of import prohibitions, may require and publish in the *Federal Register* the requirement that the same or similar fish or fish products from the harvesting nation's exempt or export fisheries that are not subject to any import prohibitions (*i.e.*, those that have received a comparability finding) be accompanied by certification of admissibility. NOAA Fisheries will notify the harvesting nation of the fisheries and the fish and fish products required to be accompanied by a certification of admissibility and provide the necessary documents and instruction. NOAA Fisheries shall, as part of the *Federal Register* notice referenced above, publish by harvesting nation the fish and fish products required to be accompanied by a certification of admissibility. However, no certification of admissibility shall apply with respect to fish or fish products for which it is infeasible to substantiate the attestation contained in the certification of admissibility that the fish or fish products do not contain fish caught or harvested in a fishery subject to an import prohibition. NOAA Fisheries will determine whether to apply a certification of admissibility to any fish or fish product on a case by case basis.

#### **Can a comparability finding be revoked?**

Yes, NOAA Fisheries may reconsider a comparability finding and may terminate a comparability finding if he or she determines that the fishery no longer meets the applicable conditions for a comparability finding. Given that comparability findings are made every four years, this provision allows NOAA Fisheries to consider the progress report submitted by a harvesting nation, information collected by NOAA Fisheries, or information provided by entities including regional fisheries management organizations, nongovernmental organizations, and the public, to determine whether the exempt or export fishery is continuing to meet the conditions for a comparability finding. After such review or reconsideration, and after consultation with the harvesting nation (preliminary comparability finding), a comparability finding can be terminated if NOAA Fisheries determines that the basis for the comparability finding no longer applies. NOAA Fisheries shall notify in writing the harvesting nation and publish notice in the *Federal Register*, of the termination and the specific fish and fish products that as a result are subject to import prohibitions.

#### **What is an intermediary nation?**

Intermediary nation means a nation that imports fish or fish products from a fishery on the *List of Foreign Fisheries* and re-exports such fish or fish products to the United States.

#### **What requirements must an intermediary nation meet?**

NOAA Fisheries will identify intermediary nations that may import, and re-export to the United States, fish and fish products from a fishery subject to an import prohibition and notify such nations of the fish and fish products for which NOAA Fisheries has identified them. An intermediary nations must in turn certify that they do not import such fish and fish products from a harvesting nation's fisheries that are subject to import prohibitions applied under this regulation or that they have procedures to reliably certify that their exports of fish and fish products to the United States do not contain such fish or fish products caught or harvested in a fishery subject to an import prohibition. Those procedures can be implemented globally or on a shipment-by-shipment basis and could include, for example, prohibiting the import of the prohibited fish and fish products, prohibiting the export of such product to the United States, or maintaining a tracking and verification scheme and including certification of such scheme on a shipment-by-shipment basis.

#### **What are progress reports and why are they required?**

To review the harvesting nation's ongoing progress in developing and implementing its regulatory program for its export fisheries, NOAA Fisheries will require progress reports every four years. The first report will be submitted two years prior to the end of the exemption period and then every four years thereafter, on or before July 31. In this report, the harvesting nation will present an update on actions taken over the previous two years to develop, adopt, and implement its regulatory program, as well as information on the performance of its export fisheries in reducing incidental mortality and serious injury of marine mammals. This progress report should detail the methods used to obtain the information contained in the progress report and should include a certification by the harvesting nation of its accuracy

and authenticity. The report allows NOAA Fisheries to monitor the harvesting nation's efforts in its export fisheries and to work closely with a harvesting nation to ensure they meet and continue to meet the conditions for a comparability finding.

**Will the US/NOAA Fisheries provide any technical assistance to countries to develop comparatively effective fishery or protected species conservation and management programs?**

NOAA Fisheries will engage in consultations with harvesting nations. Consistent with existing authority under the MMPA (16 U.S.C 1378), and contingent on annual appropriations and available resources, NOAA Fisheries may provide technical assistance to harvesting nations to aid in compliance with this regulation. Assistance activities may include cooperative research on marine mammal assessments (e.g., designing vessel surveys and fishery observer programs) and development of techniques or technology to reduce incidental mortality and serious injury (e.g., fishing gear modifications), as well as efforts to improve bycatch data collection programs and strengthen governance structures or enforcement capacity (e.g., training). NOAA Fisheries may facilitate, as appropriate, the voluntary transfer of appropriate technology on mutually-agreed terms to assist a harvesting nation in qualifying its export fishery for a comparability finding and in designing and implementing appropriate fish harvesting methods that minimize the incidental mortality and serious injury of marine mammals.