

Agenda Item 2

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

Bycatch

Document Inf.2.1.e

Seafood Import Provisions under the Marine Mammal Protection Act

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 8th Meeting of Parties remain in force until and unless an amendment is called for and adopted.



NOAA FISHERIES

International Affairs and Seafood Inspection

Seafood Import Provisions under the Marine Mammal Protection Act

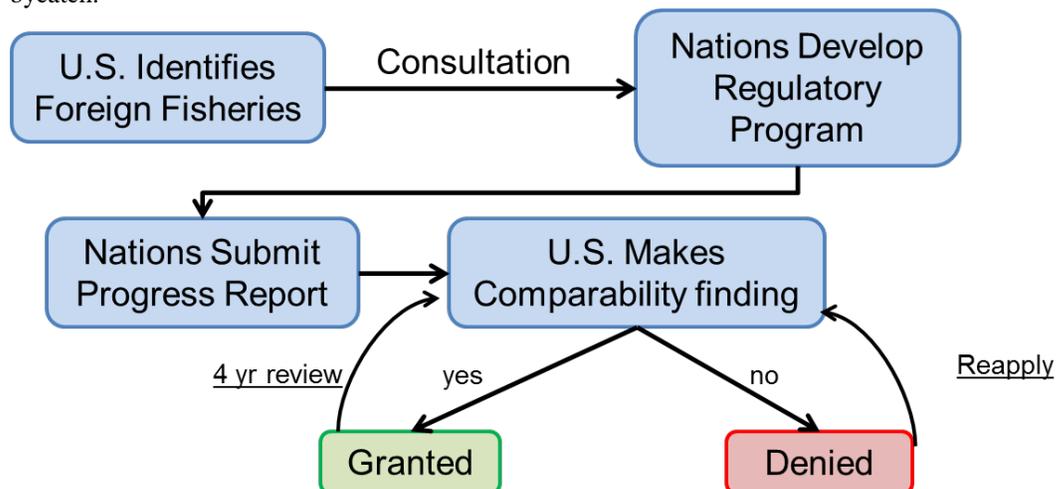
Background

Purpose:

The Marine Mammal Protection Act (MMPA) includes provisions to reduce marine mammal bycatch associated with fisheries that supply imports to the United States. Specifically, the MMPA requires that the United States ban imports of commercial fish or fish products caught in commercial fisheries resulting in the accidental killing or serious injury (bycatch) of marine mammals in excess of United States standards. NOAA has published a final rule containing regulation implementing these MMPA import provisions. These regulations establish conditions for evaluating a harvesting nation's regulatory program for reducing marine mammal incidental mortality and serious injury in fisheries that export fish and fish products to the United States. To import fish and fish products into the United States under this regulation, harvesting nations must apply for and receive a comparability finding. To receive a comparability finding nations exporting fish and fish products to the United States must demonstrate they have a regulatory program for reducing marine mammal incidental mortality and serious injury that is comparable in effectiveness to U.S. standards. To comply with U.S. standards, harvesting nations must implement a regulatory program that:

- Prohibits the intentional killing or serious injury of marine mammals in all fisheries; and
- Assesses marine mammal stocks, estimates bycatch, calculates bycatch limits, and reduces total bycatch below the bycatch limit for fisheries that have interactions with marine mammals and export fish and fish products to the U.S. ("Export Fisheries"); or
- Implements alternative measures for those fisheries.

A five-year exemption period has been provided to allow foreign harvesting nations time to develop, as appropriate, regulatory programs comparable in effectiveness to U.S. programs. During this time, NOAA will identify fisheries that have interactions with marine mammals and export fish and fish products to the U.S. and NOAA will consult with harvesting nations with such fisheries to gather information about their marine mammal bycatch.



Process:

Identifying Foreign Fisheries

During the first year of the exemption period, NOAA will request information on marine mammal bycatch from nations that export to the U.S. and create a *List of Foreign Fisheries*. Fisheries will be classified as either “export” or “exempt” based on their levels of marine mammal bycatch. Exempt fisheries are fisheries that have no known or a remote likelihood of marine mammal bycatch and are exempt from instituting a regulatory program. Export fisheries are those fisheries with more than a remote likelihood of marine mammal bycatch or insufficient information available on marine mammal interaction. All fisheries must prohibit intentional killing of marine mammals in order to be certified under this program.

Consulting with Harvesting Nations

NOAA will consult with nations throughout the process including when developing the *List of Foreign Fisheries*, after finalizing the *List of Foreign Fisheries* to inform nations of their regulatory requirements, when a nation may be denied a comparability finding, and upon a comparability finding being denied or revoked (for nations that have already received a comparability finding but have failed to maintain their regulatory program). Nations may request to consult with NOAA at any time.

Developing a Marine Mammal Regulatory Program

During the five-year exemption period nations should develop regulatory programs comparable in effectiveness to United States’ marine mammal regulatory programs, the conditions of which are outlined below.

Conditions Fishing within EEZ—

- Fishery registration
- Marine mammal stock and bycatch assessment
- Prohibition on killing marine mammals
- Reporting and monitoring requirements
- Calculation of bycatch limit
- Regulatory program to reduce bycatch below bycatch limit
- Any U.S. regulatory requirements

Or alternative measures comparable in effectiveness

Conditions Fishing in another state—

- Marine mammal stock and bycatch assessment
- Prohibition on killing marine mammals
- Calculation of bycatch limit
- Regulatory program to reduce bycatch below bycatch limit
- Any U.S. regulatory requirements
- Conservation and management requirements from fishery management organization or other international agreements

Or alternative measures comparable in effectiveness

Conditions on the high seas—

- Any U.S. regulatory requirements
- Conservation and management requirements from fishery management organization or other international agreements

Or alternative measures comparable in effectiveness

Making a Comparability Finding

At the end of the five-year exemption period, each harvesting nation must apply for a comparability finding for its fisheries. The U.S. will review the application to determine if the harvesting nation has met the conditions for a regulatory program determined as comparable in effectiveness to the United States’ regulatory program. If the harvesting nation has met these conditions, a comparability finding will be granted. Contingent on funding, and by request, NOAA will work with harvesting nations to implement capacity building projects to assist nations in achieving a comparability finding.

Granting a Comparability Finding

NOAA will publish the fisheries granted comparability finding in the U.S. Federal Register. This finding is for four years, at which point the harvesting nation will need to re-apply for another comparability finding. A mid-term progress report must be submitted from the harvesting nation during the interim (see information on progress reports below). The comparability finding can be revoked or reviewed at any time if reasonable proof demonstrates a failure to comply with the comparability finding conditions.

Denying a Comparability Finding

NOAA will provide pre-comparability finding notifications to fisheries unlikely to receive a comparability finding. NOAA will publish a Federal Register notice listing the fisheries denied comparability findings and noting the fish and fish products prohibited from importation into the U.S.s by that fishery. NOAA will provide the harvesting nation the rationale for denial. The harvesting nation may re-apply for a comparability finding at any time.

Re-export of Prohibited Fish and Fish Product:

Intermediary nations are those nations importing fish and fish products from harvesting nations and re-exporting those products to the U.S. Intermediary nations which export species for which an import prohibition is established under this rule must certify that the product it is re-exporting to the U.S. does not come from a prohibited fishery.

Submitting a Progress Report

Nations will be required to submit progress reports detailing actions taken by the harvesting nation and providing information on the performance of its regulations. The report should detail the methodologies used and data collection. This will enable NOAA to track progress being made by a harvesting nation on its regulatory program mid-way through the exemption period. If appropriate, the United States may offer assistance to the harvesting nation in reaching compliance. Once a comparability finding is granted, progress reports will be required every four years.

Emergency Provisions

If, during the five-year exemption period, the United States determines that a marine mammal stock is immediately and significantly adversely affected by an export fishery, NOAA may use its emergency rulemaking authority to institute an import ban on these products. Prior to instituting a ban, NOAA will consult with the harvesting nation and urge them to take immediate measures to mitigate the incidental mortality or serious injury of the marine mammal stock.