UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

July 3, 2025

MEMORANDUM FOR: Eugenio Piñeiro Soler
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for Fisheries

THROUGH: Emily Menashes
Deputy Assistant Administrator
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FROM: Alexa Cole
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SUBJECT: Issuance of Marine Mammal Protection Act (MMPA) Comparability Findings – **DECISION MEMORANDUM**

SUMMARY

The Marine Mammal Protection Act (MMPA) precludes the import into the United States of fish and fish products taken in foreign commercial fisheries that have serious injury and mortality of marine mammals in excess of U.S. standards. Regulations issued to implement the MMPA fish import provisions require exporting nations to receive a finding that their regulatory program for marine mammal bycatch mitigation in each fishery is comparable in effectiveness to the U.S. program. Over 130 nations have applied for comparability findings for over 2500 foreign fisheries. Under our regulations, NMFS must finalize our comparability findings no later than November 30, 2025; however, per the terms of a recent settlement agreement, we must issue our final determinations by September 1, 2025. Comparability determinations are made on a fishery-by-fishery basis, not on a nation-basis. Any fishery that does not receive a comparability finding will be subject to import restrictions on the fish and fish products from that foreign fishery. These import restrictions will go into effect on January 1, 2026.

BACKGROUND

A. MMPA Provisions Governing the Importation of Fish and Fish Products into the United States

The MMPA requires the United States to ban the importation of fish or fish products that have been caught with commercial fishing technology that results in the incidental kill or incidental serious injury of marine mammals in excess of U.S. standards. *See* 16 U.S.C. § 1371(a)(2). For

purposes of applying Section 1371(a)(2) of the MMPA, the Secretary of Commerce shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on marine mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States. *Id.* at § 1371(a)(2)(A). The MMPA also states it is unlawful to import into the United States any fish if such fish was caught in a manner which the Secretary of Commerce has proscribed for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incidental to the catching of the fish. *Id.* at §1372(c)(3). The prohibition includes, among other things, the intentional killing or serious injury of marine mammals in the course of commercial fishing. *Id.* at § 1378(a)(5); 50 C.F.R. § 229.3(f).

In 2008, the Center for Biological Diversity and Turtle Island Restoration Network filed a petition for rulemaking requesting that NMFS and other relevant federal agencies exercise their authority under the MMPA to ban the imports of swordfish and swordfish products from nations that had failed to provide reliable information regarding the incidental mortality and serious injury of marine mammals in foreign fishing gear used to catch swordfish. NMFS initiated a new rulemaking process in response to the petition. The U.S. commercial fishing industry supported the rulemaking because it wanted fisheries in other nations to be subject to the same standards of marine mammal conservation as U.S. commercial fisheries. In addition, in 2011 and 2012, non-governmental organizations urged NMFS to ban the importation of Canadian and Scottish farmed salmon into the United States due to intentional killing of seals, which is prohibited under the MMPA. NMFS issued a proposed rule in 2015 that addressed the incidental and intentional killing and serious injury of marine mammals and the importation of fish and fish products into the United States; however, the rule applied to a substantially larger universe of nations and fisheries than the petitioners requested originally.[1]

The MMPA Import Provisions Final Rule ("Final Rule") was published in 2016.[2] The Final Rule established a process to evaluate a harvesting nation's regulatory program concerning the incidental and intentional mortality and serious injury of marine mammals in fisheries operated by nations that export fish and fish products to the United States. Harvesting nation's commercial fisheries are required to be classified by NMFS as either "Exempt"[3] or "Export"[4] fisheries based on the risk of marine mammal bycatch (i.e., entanglement or capture) in fishing gear. This list of Exempt and Export fisheries, known as the List of Foreign Fisheries (LOFF), was last updated in 2020 and currently consists of approximately 1,400 Export fisheries and 1,100 Exempt fisheries totaling approximately 2,500 fisheries across 135 nations.[5] Despite the

[1] NMFS received public comment on the petition over the course of nearly seven years, including requests to ban additional fish and fish products from other harvesting nations. NMFS determined that the rulemaking would be broader in scope than the 2008 petition and not limited in application to swordfish fisheries.
[2] *See* 81 Fed Reg. 54390 (August 15, 2016).
[3] An "Exempt" fishery is a foreign commercial fishery determined by NMFS to have a remote likelihood of, or no known, incidental mortality and serious injury of marine mammals in the course of commercial fishing operation. Exempt fisheries are considered to be the functional equivalent to Category III fisheries under the U.S. regulatory program.
[4] An "Export" fishery is a foreign commercial fishery determined by NMFS to have more than a remote likelihood of incidental mortality and serious injury of marine mammals in the course of commercial fishing operations. Export fisheries are considered to be the functional equivalent to Category I and II fisheries under the U.S. regulatory program.
[5] NMFS expects to update the LOFF in late 2025.

name, Exempt fisheries are still subject to the import provisions – they are, however, subjected to more limited conditions for comparability evaluation, namely demonstrating a prohibition on intentional mortality and serious injury of marine mammals in the course of commercial fishing operations or demonstrating it has procedures to reliably certify that exports of fish and fish products to the United States are not the product of an intentional killing or serious injury of a marine mammal.

Fish and fish products from fisheries identified on the LOFF may only be imported into the United States if the harvesting nation has applied for, and NMFS has issued, a comparability finding. A comparability finding means the harvesting nations' Export and/or Exempt fisheries meet the applicable conditions specified in the Final Rule.[6] Comparability findings are fishery-specific, not nation-specific, so nations receiving a partial denial will be able to continue exporting fish or fish products to the United States from any fishery that receives a comparability finding. All final comparability findings will be published in the *Federal Register* and, in cases where NMFS denies or terminates a comparability finding for a fishery, it will coordinate with the Secretaries of Treasury and Homeland Security to identify and prohibit the importation of fish and fish products into the United States. The Final Rule also established a five-year exemption period before imports would be subject to trade restrictions. The exemption period has been extended three times and ends on December 31, 2025.

Pursuant to a settlement agreement in *NRDC, et al. v. Raimondo, et al.,* and consistent with the Final Rule, in December 2024 and January 2025 NMFS issued letters informing nations that it was preliminarily denying comparability findings for one or more of the nations' fisheries, along with the reasons for the preliminary denial, and offered an opportunity for nations to supply reliable information to refute the preliminary denial[7]. Also pursuant to the settlement agreement, NMFS is required to issue final comparability findings for all harvesting nations and submit the findings to the *Federal Register* for publication on or before September 1, 2025. On January 1, 2026, NMFS, in cooperation with the Secretaries of Treasury and Homeland Security, will implement the prohibition on the importation of fish and fish products into the United States from all harvesting nations' fisheries for which NMFS has denied a comparability finding.

Additional details regarding the Final Rule, its applicability to the 2025 final comparability findings, and NMFS's process and methodology for making the findings are provided below.

B. Litigation History

Litigation involving 16 U.S.C. § 1371(a)(2) increased significantly following the publication of the Final Rule. Environmental NGOs filed several lawsuits claiming the U.S. Government has violated its non-discretionary duty under the MMPA to impose import bans on foreign nations' fish and fish products that have been harvested in violation of the MMPA's standards. The cases and their status are summarized below.

- *Natural Resources Defense Council, Inc., et al. v. Ross, et al.*, Case 18-00055 (CIT) – On March 21, 2018, Plaintiffs initiated a lawsuit in the Court of International Trade alleging

[6] The applicable regulatory conditions are contained in 50 CFR §§ 216.24(h)(6) & (7).
[7] NMFS issued a preliminary denial letter to Namibia in June 2025 upon further review of relevant information.

that NMFS's failure to ban imports of fish and shrimp from gillnet fisheries in the northern Gulf of California violated the MMPA and Administrative Procedure Act (APA). The Plaintiffs were concerned that the Mexican commercial gillnet fisheries resulted in the incidental mortality and serious injury of the critically-endangered vaquita porpoise. On July 16, 2018, the court granted Plaintiff's request for a preliminary injunction and ordered the United States to ban the importation of all fish and fish products from four specified Mexican commercial fisheries – shrimp, curvina, chano, and sierra – that use gillnets in the vaquita's range. During the pendency of the litigation, NMFS published a Federal Register notice on March 9, 2020, stating that the Government of Mexico lacked a regulatory program comparable in effectiveness to the U.S. regulatory program. An import ban was immediately executed for all shrimp, curvina, sierra, chano and certain other fish and their products that are caught with gillnets inside the vaquita's range. Thereafter, the court lifted its preliminary injunction and entered an order of voluntary dismissal on April 22, 2020.

- *Sea Shepherd New Zealand and Sea Shepherd Conservation Society v. United States, et al.*, Case 1:20-cv-00112 (CIT) – On May 21, 2020, Plaintiffs initiated a suit in the Court of International Trade alleging NMFS's failure to ban imports from New Zealand's North Island West Coast set net and trawl fisheries and its denial of their petition for rulemaking violated the MMPA and APA. The Plaintiffs were concerned about the threats these fisheries pose to endangered Māui dolphins and moved for a preliminary injunction to ban imports of seafood into the United States from New Zealand's set net and trawl fisheries. The court granted a preliminary injunction and imposed import restrictions for the export fisheries operating on the West Coast North Island within the Māui dolphin's range. The court's order effectively removed the operative exemption period protections for these fisheries. In January 2024, and in response to the Government of New Zealand's renewed request for comparability findings, NMFS concluded that New Zealand met the requirements under the MMPA and the Final Rule and issued a comparability finding for the West coast, North Island multi-species set-net and trawl fisheries and lifted the embargo on fish and fish products from these fisheries.

- *Natural Resources Defense Council, et al. v. National Marine Fisheries Service, et al.,* 1:24-cv-00148 (CIT) – On August 8, 2024, Plaintiffs initiated a suit in the Court of International Trade alleging the United States violated the MMPA and APA when it failed to ban the importation of fish and fish products from a number of gillnet fisheries in Canada, Ecuador, France, Indonesia, India, Mexico, South Africa, the United Kingdom and commercial fisheries in South Korea; failed to insist on "reasonable proof" from such nations on the effects of their export fisheries on marine mammals; and failed to provide notice and comment on the last extension of the final rule's exemption period. The parties executed a Settlement Agreement on January 15, 2025, which required the United States to implement the MMPA Import Provisions pursuant to an agreed-upon schedule. The court issued a Stipulation of Dismissal of the case on March 25, 2025, but retained jurisdiction to oversee the compliance with the schedule for issuing the final comparability findings.

- *Māui and Hector's Dolphin Defenders NZ Inc. v. National Marine Fisheries Service, et al.,* 1:24-cv-00218 (CIT). On December 4, 2024, Plaintiffs initiated a suit in the Court of International Trade challenging NMFS's 2024 comparability findings for New Zealand's West Coast North Island set-net and trawl fisheries. Plaintiffs assert that NMFS's comparability findings and its failure to ban imports from these fisheries violated the MMPA and APA. The parties have briefed the case and are awaiting a decision from the court.

COMPARABILITY FINDING APPLICATION PROCESS

The current action is the first time that NMFS has evaluated and will be issuing final comparability findings for the entire group of harvesting nations (135 nations covering approximately 2,500 fisheries) seeking to export fish and fish products to the United States. NMFS's Final Rule and the implementation of the import provisions program under 16 U.S.C. § 1371(a)(2) was designed to be an iterative process based on the fact that harvesting nations would be at different stages in their efforts to regulate commercial fisheries interactions with marine mammals and would need time and support to build capacity. In addition, NMFS expected that the quality and quantity of data about the harvesting nations' efforts would vary considerably. These factors led NMFS to concentrate its efforts on this initial set of findings on developing a baseline of knowledge for all nations identified on the LOFF.

The first round of comparability findings proved to be a significantly more complex and time-intensive undertaking than NMFS had anticipated at the time the Final Rule was promulgated. The practical challenges and differences associated with a diverse group of nations became clear early in the process. Many of the harvesting nations had never confronted the problem of commercial fisheries' interactions with marine mammals and it was unrealistic to expect that 135 nations would address the issue in the same way.[8] Despite these challenges, NMFS applied the framework established by the Final Rule and proceeded to develop an understanding about whether the harvesting nations had laws, regulations, and processes in place to address incidental mortality and serious injury of marine mammals in the course of their commercial fisheries operations and whether their regulatory programs were comparable in effectiveness to the United States' regulatory program. NMFS has, since enacting the Final Rule, coordinated closely with harvesting nations, the U.S. Department of State, the Office of the U.S. Trade Representative, the U.S. Department of Homeland Security, and other experts to gather as much information as possible to make informed decisions about whether a harvesting nation's fisheries would qualify for a comparability finding.

A. Classifying Fisheries in the List of Foreign Fisheries

As described in the Background section, foreign commercial fishing operations were classified as either "Exempt" or "Export" based on their frequency of marine mammal interactions. NMFS reviewed import trade data of fish and fish products to identify harvesting nations and their commercial fisheries and coordinated with each of the harvesting nations prior to finalizing the

[8] NMFS explained in its Final Rule that the MMPA prioritizes action for those stocks defined as "strategic" and expressed hope that nations would also prioritize their actions for threatened and endangered species and those for which bycatch is unsustainable. *See* 81 Fed Reg. 54390, *supra,* note 1 at 54397 (Response to Comment 11).

LOFF. Harvesting nations were asked to provide information about their commercial fisheries, including for example, the number of participants involved in a fishery, number of vessels, gear type, target species, the geographic area of operation, fishing season, frequency of and measures to reduce incidental mortality and serious injury of marine mammals in those fisheries, whether the harvesting nation had any programs to assess marine mammal populations, and whether any laws, decrees, regulations, or measures existed to reduce incidental mortality and serious injury of marine mammals or prohibit the intentional killing or serious injury of marine mammals in the course of commercial fishing operations.

If a harvesting nation did not provide enough information to allow NMFS to precisely classify a fishery, NMFS erred on the side of caution and classified the fishery as an "Export" fishery until such time as the harvesting nation could demonstrate otherwise. This approach is comparable to how NMFS manages domestic commercial fisheries pursuant to 16 U.S.C. §§ 1386 and 1387. Essentially, where data are lacking for a domestic fishery, the MMPA regulations at 50 CFR § 229.2 (definition of "Category II" fishery) indicate that the fishery should be classified as Category II.[9] Also, in response to harvesting nations' concerns about the inadequacy or unavailability of marine mammal abundance estimates, NMFS stated it would treat such situations similarly to the United States' implementation of its stock assessment program, which is guided by the "best scientific information available" standard.[10] NMFS evaluated all readily available information to classify the fisheries and published the LOFF in the *Federal Register*.[11]

B. The International Affairs Information Capture and Reporting System (IAICRS) Served as the Primary Mechanism for Gathering Information from Harvesting Nations

In 2019, NMFS launched a web-based information and data collection system, IAICRS, as a way to facilitate implementation of the Final Rule and achieve maximum consistency and standardization in how data were reported by harvesting nations and the type of data reported. IAICRS Users are foreign government agencies of harvesting nations that provided data to NMFS in accordance with guidance provided by NMFS to demonstrate that they met the Final Rule's requirements. In particular, NMFS required that harvesting nations provide the following information for all of its fisheries on the LOFF, including but not limited to: (1) fishery target species; (2) gear types; (3) area of fishing operations; (4) existing fisheries; (5) lists of all marine mammals in the nations' waters and/or that overlap with its fisheries, including stock abundance estimates, recent and planned abundance survey dates and bycatch limits; (6) timing of the fishery(ies); (7) annual mortality rates of marine mammal interactions in fisheries that export fish and fish products to the United States; (8) marine mammal monitoring programs; (9) bycatch reduction measures; and (10) copies of relevant laws, decrees, and implementing regulations or

[9] *See* 80 Fed. Reg. 48172, 48176 (August 11, 2015).
[10] *See* 16 U.S.C. § 1386(a)*; see also, supra* note 12 at 54400 (Response to Comment 31) ("NMFS will consider all data, including abundance estimates, provided in a harvesting nation's application for a comparability finding for an export fish in light of the U.S. implementation of its stock assessment program for the same or similar marine mammal stocks and its bycatch mitigation measures for similar fisheries."); *see also,* 89 Fed. Reg. 12257 (February 16, 2024) (NMFS's List of Fisheries for 2024).
[11] *See* 85 Fed. Reg. 63527 (October 8, 2020).

measures related to commercial fisheries and marine mammal interactions.[12] Harvesting nations submitted their 2019 Progress Reports[13] through IAICRS, provided information about their fisheries for updated LOFF determinations, and submitted their applications for comparability findings through IAICRS in 2021.

NMFS understood that performing stock assessments is a technical and resource-intensive activity and that some harvesting nations were unlikely to have the capacity to conduct such assessments given their limited financial and staffing resources and technical expertise, and lack of data, among other limitations.[14] To address this, NMFS created a tool within IAICRS – the "Lookup Table" – to assist nations that lacked the necessary tools, resources, or expertise to estimate marine mammal population abundance in their waters. The "Lookup Table" is a compilation of known information about extant marine mammal species and stocks from available scientific literature, including peer-reviewed research articles, NMFS Stock Assessment Reports, International Whaling Commission reports, International Union for Conservation of Nature reports, ICES studies and reports, and technical memoranda, among others. A nation could browse this table to select marine mammal species or stocks present in its waters or interacting with its fisheries and information about the stock status for that species or stock would automatically populate within the nation's application.

NMFS asked nations to provide bycatch limits for all marine mammal species and stocks interacting with its fisheries in IAICRS. A nation could list the bycatch limit as "unknown" if the species was not identified (such as "Dolphin unspecified") or if it had not calculated a bycatch limit based on population abundance survey data. A nation could also provide bycatch limits that it calculated based on its domestic stock surveys and using its own methods for calculation that may not be the same as the calculations for Potential Biological Removal (PBR). For nations that selected marine mammal species or stocks from the "Lookup Table" or nations that had not calculated a bycatch limit but provided information about population abundance, IAICRS automatically generated a bycatch limit using the calculation for PBR.

Nations provided information about marine mammal fishery interactions including co-occurrence, annual estimates of incidental injury, and annual estimates of incidental mortality, for each individual fishery on the LOFF. Annual estimates of injury and mortality for a given species or stock were averaged to determine a fishery's average annual estimated mortality. The nation could provide the average estimated mortality value or IAICRS could calculate the average value from the annual data provided by the nation. IAICRS links the fishery information

[12] The IAICRS tool User Guide was provided to all harvesting nations and contains instructions for completing applications for comparability findings. In many cases, harvesting nations' laws, decrees, and implementing regulations needed to be translated into English and there may have been changes in meaning during the translation process. NMFS evaluated the information provided by the harvesting nation and made determinations based on its best understanding of the nation's laws, decrees, and regulations. However, NMFS ultimately deferred to a nation's interpretation of its own laws, decrees, and regulations and the representations made about such.

[13] Progress reports consist of information describing a harvesting nation's update on actions it has 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.

[14] The United States faces similar challenges in its pursuit of conducting stock assessments of marine mammal stocks found in its waters. *See* NMFS Guidelines for Preparing Stock Assessment Reports Pursuant to the Marine Mammal Protection Act, NMFS Instruction 02-204-01. (February 7, 2023) ("sometimes the data necessary to conduct such an assessment are not available.").

with the marine mammal species or stock information provided or selected by the nation. Where multiple fisheries interact with a given marine mammal species or stock, IAICRS sums the average annual estimated mortality for each fishery interacting with that marine mammal species or stock and generates a total average annual mortality for that species or stock. This total average annual mortality for any given marine mammal species or stock was assessed against the bycatch limit for that marine mammal species or stock in IAICRS. IAICRS compiles this information and displays whether the bycatch limit is exceeded for any given marine mammal species or stock.

In addition to the information provided by the harvesting nations through IAICRS, NMFS reviewed fisheries individually to assess details about each fishery including marine mammal interactions, monitoring programs, and bycatch reduction measures. NMFS also reviewed all marine mammals listed in the nation's application as co-occurring with that nation's fisheries as well as any marine mammals for which NMFS had readily available information or scientific expertise to determine which species or stocks may occur in that nation's waters to fully assess the nation's fisheries and to identify which fisheries may be contributing to exceedance of a bycatch limit, as appropriate.

C. NMFS Applied the "Best Scientific Information Available" Standard to Classify Fisheries and Issue Final Comparability Findings for Harvesting Nations.

The MMPA states that the Secretary "shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States." 16 U.S.C. § 1371(a)(2)(A). The term "reasonable proof" is not defined by the MMPA; therefore, NMFS explained in its Final Rule that it will, "as a matter of practice, use the best scientific information available" to evaluate a harvesting nation's regulatory program for a given export fishery and that harvesting nations must provide NMFS with documentary evidence of "sufficient detail, quality, and reliability."[15] NMFS also stated that it would take into consideration the uncertainty of any scientific information provided by a harvesting nation or that is otherwise readily available.[16]

The Final Rule explains that NMFS was aware that harvesting nations would experience difficulty providing documentary evidence of "sufficient detail, quality, and reliability", particularly because data would be incomplete, lacking, or unquantifiable. Many of the harvesting nations faced challenges providing NMFS with marine mammal and commercial fisheries' data, largely because they lacked the resources, expertise, or funding to acquire the data to fully support their application for a comparability finding. As discussed above, NMFS created a database to ensure that it sought consistent information from all exporting nations and

[15] *See* 81 Fed. Reg. 54390, 54406 (August 15, 2016) (Response to Comment 56).

[16] *See id.* (Response to Comment 55) ("NMFS will only make its comparability finding determinations based on the information provided by the nation, and any other readily available information, taking into consideration scientific uncertainty."). Information that was "readily available" to NMFS during the comparability finding process included the information physically held by any office within NMFS (i.e., hard copy format) and any information stored electronically in databases routinely consulted by NMFS in the ordinary course of its work. It did not include information provided to NMFS outside public notice and comment periods unless the information was from one of the harvesting nations and was required by NMFS in making its findings.

to standardize, to the greatest extent possible, the information received and how it would be interpreted. However, the information received from all harvesting nations was uneven in its volume, scope, and detail. Ultimately, NMFS evaluated each application based on the best scientific information available and exercised reasonable judgment when faced with uncertainty, a lack of data, or imperfect data.[17]

The U.S. Regulatory Program Governing the Incidental Mortality and Serious Injury of Marine Mammals Informed the Comparability Findings

Historically, the United States has applied an iterative process to address the incidental take of marine mammals in the context of its domestic commercial fisheries.[18] Despite numerous successes across a range of fisheries, NMFS has acknowledged over the years that more work is needed to reduce marine mammal bycatch within its domestic fisheries. This section describes the current process governing the incidental take of marine mammals in domestic commercial fisheries, the challenges NMFS has experienced in addressing incidental take under the MMPA within its domestic commercial fisheries, and why NMFS concluded that "U.S. standards" for purposes of section 1371(a)(2) of the MMPA are defined to be the regulatory measures required of U.S. commercial fishing operations.

A. The "U.S. Standards" for Regulating Incidental Mortality and Serious Injury in Domestic Commercial Fisheries

NMFS may authorized the take of marine mammals incidental to commercial fisheries in accordance with 16 U.S.C. §§ 1386 and 1387 of the MMPA. NMFS is required to prepare Stock Assessment Reports (SAR) for marine mammal stocks that occur in waters under the jurisdiction of the United States and may also prepare such reports for stocks present on the high seas. A SAR must be based on the best scientific information available and include, among other things, a description of the stock's range, its status, a description of the commercial fisheries that interact with each marine mammal stock, a minimum population estimate, "potential biological removal" (PBR) levels[19], and estimates of human-caused mortality and serious injury by source. *See* 16 U.S.C. § 1386(a). The information included in a SAR is used by NMFS to regulate and reduce the incidental mortality and serious injury of marine mammals in U.S. commercial fisheries.

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[17] Specifically, NMFS is required to "draw reasonable conclusions regarding the fishery based on readily available information" in those cases where a harvesting nation provides insufficient documentary evidence in support of its application. *See* 50 CFR 216.24(h)(6)(ii); *see also,* 80 Fed. Reg. 48172, 48178 (August 11, 2015) (noting that the Assistant Administrator may rely on other information such as indirect evidence of bycatch in the fishery or information from analogous fisheries if a harvesting nation does not provide sufficient relevant information).

[18] *See* 81 Fed Reg. 54390, *supra* note 9, at 48173-48174 (describing the history of the United States' implementation of the MMPA's import provisions and amendments to the MMPA's provisions governing the incidental take of marine mammals in U.S. commercial fisheries).

[19] The Potential Biological Removal level is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (16 U.S.C. §1362(20). PBR is calculated using the minimum population abundance estimate (Nmin), times the population recovery factor (RF), times one-half the maximum or estimated net reproductive rate (Rmax) (Bycatch Limit = Nmin x RF x (0.5Rmax)).

NMFS classifies commercial fisheries according to their levels of incidental marine mammal mortality and serious injury (e.g., List of Fisheries (Category I (frequent), Category II (occasional), and Category III (remote likelihood)).[20] The classification system consists of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock and then addresses the impact of the individual fisheries on each stock.[21] This approach is based on the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to a stock's PBR. Importantly, the tier analysis requires a minimum amount of data and NMFS does not always have sufficient data to perform a tier analysis on certain fisheries. In cases where NMFS does not have reliable data, NMFS determines whether the incidental mortality and serious injury is "occasional" by evaluating other factors (e.g., fishing techniques, gear used, qualitative data from logbooks, etc.).[22] Following the classification process, NMFS issues marine mammal authorizations for Category I and II fisheries and prescribes, as appropriate, one or more regulatory measures for the fishery. *See id.* at § 1387. Any regulatory requirements pertaining to a fishery will be based on a number of factors, including but not limited to the fishery's classification in the List of Fisheries, the status of the affected marine mammal species or stock, and rates of human-caused mortality and serious injury. For example, Category I and II fisheries typically require owners of vessels to register with the Marine Mammal Authorization Program, accommodate an onboard observer upon request, and comply with any applicable take reduction plans.

NMFS also has responsibilities where marine mammals from species or stocks designated as depleted on the basis of their listing as threatened or endangered pursuant to the Endangered Species Act (ESA) are potentially impacted by commercial fisheries. *See* 16 U.S.C. 1387(f)(2). Where a depleted marine mammal species or stock is affected, the MMPA provides that NMFS shall allow the incidental taking of such species or stock if the incidental mortality or serious injury from commercial fisheries will have (i) a negligible impact on such species or stock; (ii) a recovery plan has been developed or is being developed for a species or stock under the ESA; and, (iii) where it is required under Section 1387 of the MMPA, a monitoring program has been established, vessels engaged in the fisheries are registered, and a take reduction plan has been developed or is being developed for the species or stock. *See id.* at § 1371(a)(5)(E). Once NMFS determines that each requirement has been met, the agency publishes a list of those fisheries for which it has made a determination and issues an appropriate permit for each authorization granted. The process described above focuses on affirmatively providing permits for incidental take, and to the best of NMFS's knowledge is a statutory construct that is unique to the United States' regulatory scheme involving commercial fisheries interactions with marine mammals.

[20] Category I: annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level; Category II: annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level; Category III: annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level.
[21] *See, e.g.,* 89 Fed. Reg. 12257 (February 16, 2024).
[22] *See id.* at 12258.

B. MMPA Section 1387 Take Reduction Process and Take Reduction Teams

In accordance with the MMPA, NMFS *must* develop and implement a Take Reduction Plan (TRP) for each strategic stock[23] that interacts with a Category I or II fishery. In addition, NMFS *may* develop a TRP for other marine mammal stocks that interact with a Category I fishery and if the agency determines that the fishery has a high level of serious injury and mortality across a number of marine mammal stocks. *See id.* at § 1387(f)(1). The long-term goal of a TRP is to reduce, within five years, the incidental mortality and serious injury to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and the existing state or regional fishery management plans. This long-term goal is often referred to as the zero mortality rate goal or ZMRG. NMFS has defined "insignificant levels approaching a zero mortality and serious injury rate" as 10% of a stock's PBR level. The rationale for 10% of a stock's PBR is that this small amount of mortality and serious injury will not significantly delay the time to recovery for most stocks and therefore still allows for the MMPA's overarching goal of recovering all stocks to their optimum sustainable population levels to be met. ZMRG is ultimately a goal that commercial fisheries should approach.[24]

TRPs are developed by a Take Reduction Team (TRT) whose purpose is to assist NMFS in the development of a draft TRP and provide recommendations to reduce marine mammal bycatch in particular commercial fisheries. The TRT process is an iterative one, whereby initial recommendations and plans are refined over time to ensure they are meeting their goals. A TRT's recommendations may be included by NMFS in a final TRP and implementing regulations. *See id.* at §§ 1387(f)(6) – (f)(9). TRPs, however, are not required for Category III fisheries. *Id.* at § 1387(f). A TRP includes a variety of regulatory and non-regulatory measures designed to reduce the incidental mortality and serious injury of certain marine mammal stocks incidental to the fishery or fisheries subject to the TRP. *See id.* at §§ 1387(f)(2) and (f)(4). TRPs include measures like time/area closures and gear modifications to reduce marine mammal bycatch in commercial fishing gear. Such measures may be time bound or indefinite depending on whether the amount of mortality and serious injury exceeds a stock's PBR level and/or whether a particular TRP includes a limit or cap on the number of animals killed or seriously injured in a given fishery. Importantly, however, the MMPA does not require NMFS to close (i.e., a complete shutdown) a fishery if a stock's PBR is exceeded. In such a situation, NMFS usually reconvenes a TRT to consider additional regulatory measures to further reduce bycatch below the PBR.[25]

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[23] A "strategic" stock is defined as one for which the level of direct human-caused mortality exceeds the potential biological removal level; (B) is declining and likely to be listed as threatened under the Endangered Species Act (ESA); or (C) which is listed under the ESA or is designated as depleted under the MMPA. *See* 16 U.S.C. § 1362(19).

[24] The House Conference Report that accompanied the original inclusion of ZMRG stated ". . . the objective of regulation would be to approach as closely as is feasible the goal of zero mortality and injury to marine mammals . . . [i]t may never be possible to achieve this goal, human fallibility being what it is, but the objective remains clear." H.R. Conf. Rep. No. 92-1488.

[25] NMFS's 2004 final rule establishing the agency's insignificance threshold as 10 percent of the PBR of a stock of marine mammals supports this position. *See* 69 Fed. Reg. 43338, 43340 & 43344 (July 20, 2004) ("Appropriate" action is to be taken when NMFS determines the established target level of mortality and serious injury of marine mammals incidental to commercial fisheries has been exceeded. NMFS also explained that the ZMRG threshold is

TRPs may also recommend specific levels of monitoring for a fishery to account for any incidental mortality and serious injury of marine mammals during the course of commercial fishing operations. *See id.* at §§ 1387(d)(1) & (f)(9). Examples of monitoring methods include at-sea monitoring through observers, electronic monitoring using onboard video cameras, and self-reporting of any incidental mortality and injury of marine mammals. *See id.* at §§ 1387(d) & (e). Observers and electronic monitoring systems collect data on the catch and discards caught by U.S. commercial fishing vessels and document bycatch of marine mammals. These data are used primarily to monitor federal commercial fisheries and some state fisheries and inform sustainable fisheries management. Observers also collect data to support compliance monitoring with fishing and safety regulations.

C. The Practical Challenges of Managing U.S. Commercial Fisheries Interactions with Marine Mammals under the MMPA

The MMPA is not unlike many other environmental laws that seek to balance the protection and conservation of natural resources with the needs of humans. In the case of U.S. commercial fisheries, NMFS must follow specific procedures and consider standards prior to making a final decision whether to authorize the incidental mortality and serious injury of marine mammals, the level of taking, in what manner, and any measures necessary to reduce such interactions. Of course, NMFS must take steps to reduce incidental mortality and serious injury of marine mammals in commercial fisheries to insignificant levels approaching a zero mortality and serious injury rate within statutory timeframes but in so doing, it must also take into account a variety of factors. *Compare* §§ 16 U.S.C. 1387(a)(1) and 1387(f)(2).

TRTs (and ultimately, NMFS) must consider the economics of the fishery, the availability of existing technology, and existing fishery management plans when deciding whether take reduction measures are needed to achieve the long-term goal of a TRP. The economics of the fishery influence whether, and if so how, a commercial fishery is regulated, including the specific measures (e.g., bycatch reduction gear, time/area closures, etc.) imposed by NMFS under the MMPA. In some cases, the lowest cost option may be selected as a component of a TRP so long as it is expected to achieve the short-term goal of a TRP (this may be the case even though the measure(s) would not provide the maximum conservation value). Also, the availability of existing technology influences decision-making. For instance, if new gear technology is unavailable for a fishery, not applicable across a broad range of fisheries, too costly for the fishery, or the technology has not yet been demonstrated to be effective in reducing bycatch of marine mammals, a TRT could recommend that the TRP has met the long-term goal even if mortality and serious injury exceeds 10% of a stock's PBR.

The MMPA also allows NMFS to prioritize the development of TRPs based on the availability of funding. *See id.* at §1387(f)(3). Where funding is insufficient, NMFS must give highest priority to the development and implementation of TRPs for marine mammal species or stocks whose level of incidental mortality and serious injury exceeds the PBR level, those that have a small population size, and those which are declining most rapidly. *Id.; see also,* Memorandum Addressing NMFS' Priorities for Convening Take Reduction Teams (May 30, 2024). In

not defined in such a manner to shut-down or significantly curtail the activities of commercial fishing simply because a fishery exceeds the threshold.).

practice, therefore, NMFS usually focuses its efforts on those fisheries that pose the greatest risk to marine mammal species or stocks, with particular consideration given to gear type, conservation status of the species or stock, frequency of interaction, and numbers of marine mammals affected by the fishery.[26]

Other practical challenges make it difficult for NMFS to address incidental mortality and serious injury of marine mammals. For example, lack of the necessary marine mammal abundance data to estimate population size for an individual species or stock precludes a calculation of the stock's or species' PBR level; lack of mortality and serious injury data complicates efforts to assess the effects of certain fisheries on marine mammal species or stocks that might overlap with such fisheries; the type of bycatch reduction measures and how and when they are deployed could create significant safety concerns for fishermen; and the levels and types of observer coverage (i.e., humans v. electronic monitoring) vary considerably across fisheries with some benefiting from higher levels of coverage, while others may not have any observer requirements.[27]

Today, among the hundreds of fisheries operating in waters under the jurisdiction of the United States and on the high seas, there are six TRPs addressing 32 marine mammal stocks.[28] The progress that has been made through these existing TRPs has not happened overnight; instead, it is the result of many years of dedicated work through the TRT process. Ultimately, efforts to address incidental mortality and serious injury of marine mammals across all U.S. commercial fisheries, whether through the TRP/TRT process or otherwise, vary considerably. Every fishery is regulated to one degree or another based on the specifics of the fishery, status of the affected marine mammal species or stocks, availability of funding, data availability, the impact of regulations on the economics of the fishery, and other factors prescribed by the MMPA. Some fisheries are subjected to more restrictive MMPA regulatory measures while others are subjected to more limited measures, if any.[29] It is clear, therefore, that the U.S. domestic program for managing marine mammal interactions with commercial fisheries is not a "one-size fits all" approach and is constantly evolving to meet the needs of fishermen and marine mammals.

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[26] *See, e.g.,* Wade, *et al.* (2021), "Best Practices for Assessing and Managing Bycatch of Marine Mammals". Frontiers in Marine Science 8:757330. doi: 10.3389/fmars.2021.757330.

[27] See id.

[28] *See supra note 3* at 12280-81 (list of U.S. fisheries currently being managed under the TRP/TRT process). Of course, there are certainly more Category I and II fisheries identified in the U.S. that are not currently subject to the TRP/TRT process; however, as discussed in more detail in Section III.C of this memorandum, the MMPA provides NMFS with authority to give highest TRP/TRT priority to species or stocks whose level of incidental mortality and serious injury exceeds the PBR, those that have a small population size, and those that are declining most rapidly. Efforts to address incidental mortality and serious injury continue across all fisheries subject to the priorities of the agency.

[29] For example, all vessel owners or operators in Category I – III fisheries are required to report incidental mortality and serious injuries of marine mammals within 48 hours of the end of the fishing trip (50 CFR § 229.6), but vessel owners or operators in Category III fisheries are not required to register with NMFS, accommodate observers aboard vessels, or obtain a marine mammal authorization due to the remote likelihood of mortality and serious injury of marine mammals during fishing operations. *See* 89 Fed. Reg. 77789 (Sept. 24, 2024); *see also,* https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries.

D. "Comparable in Effectiveness" is Based on the MMPA's U.S. Standards for Regulating the Incidental Take of Marine Mammals in Commercial Fisheries

The MMPA neither defines "U.S. standards" nor does it identify any specific measures that NMFS must consider in the context of evaluating a foreign nation's commercial fishing operations pursuant to section 1371(a)(2)(A). In light of this fact, NMFS determined that, for purposes of implementing section 1371(a)(2), "U.S. standards" were those set out for domestic fisheries under sections 1376 and 1377 of the MMPA."[30]

The MMPA and the Final Rule take a results-oriented approach as it relates to NMFS' determination as to: (1) what constitutes a regulatory program that is "comparable in effectiveness"; and (2) whether to allow the importation of fish and fish products from harvesting nations. NMFS explained that it did not intend to regulate marine mammals within a harvesting nation's coastal waters; instead, NMFS would evaluate whether a harvesting nation that seeks to export fish and fish products to the United States maintains a regulatory program that is "comparable in effectiveness" (*not identical*), to the U.S. regulatory program, meaning that the regulatory program effectively achieves comparable results to the U.S. regulatory program.[31] (emphasis added). And as described earlier, NMFS' intention was to make comparability finding determinations based on the "reasonable proof" provided by a nation and any other readily available information, taking into consideration scientific uncertainty.[32]

NMFS evaluated each harvesting nation's application for a comparability finding against a suite of regulatory conditions.[33] For both Export and Exempt fisheries, the harvesting nation was first required to demonstrate that it prohibits the intentional mortality and serious injury of marine mammals in the course of commercial fishing operations; or that it had procedures to reliably certify that exports of fish and fish products to the United States are not the product of an intentional killing or serious injury of a marine mammal.[34] Next, and specific to an Export fishery, the harvesting nation was required to demonstrate that it maintained a regulatory program with respect to the fishery that is comparable in effectiveness to the U.S. regulatory

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[30] *See* 81 Fed Reg. 54390, *supra* note 1 at 54410 (describing NMFS's Preferred Alternative).

[31] *See* 80 Fed Reg. 48172, 48175 (August 11, 2015) ("NMFS is not proposing to require that a harvesting nation match every aspect of the U.S. regulatory program to obtain a comparability finding for an export fishery. Instead, the conditions allow for flexibility in granting a comparability finding to programs that effectively achieve comparable results to the U.S. regulatory program even where they use different mechanisms to do so."); 81 Fed. Reg. 54390, 54401 (August 15, 2016)(Response to Comment 36 "In using the terms 'comparable in effectiveness' NMFS 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."); and 81 Fed. Reg. 54390, 54410 (describing NMFS's Preferred Alternative 2).

[32] *See* 81 Fed. Reg. at 54406 (Response to Comment 55).

[33] *See* 50 CFR §§ 216.24(h)(6) & (7). All of the regulatory conditions were considered by NMFS in one form or another. As NMFS stated in its Final Rule, ". . . NMFS will examine whether the harvesting nation maintains a regulatory program that includes, or effectively achieves comparable results, as certain conditions specified in paragraph (h)(6)(iii) of the rule, subject to additional considerations specified in paragraph (h)(7) of the rule. The conditions specified in paragraph (h)(6)(iii) are features of the U.S. regulatory program." *See* 81 Fed. Red. 54390, 54391-92 (August 15, 2016).

[34] The MMPA prohibits the intentional killing or serious injury of a marine mammal unless the intentional mortality or serious injury is imminently necessary in self-defense or to save the life of a person in immediate danger. *See* 16 U.S.C. 1371(c).

program and that it met the conditions related to intentional killing and serious injury of marine mammals in the course of commercial fisheries. In this case, Export fisheries were subjected to greater scrutiny and held to higher standards.[35]

Ultimately, the approach NMFS followed, as prescribed in the Final Rule, is consistent with the U.S. program for managing domestic fisheries under the MMPA, as described above, and its implementing regulations, and takes into account the practical realities of issuing comparability findings to various foreign sovereign nations, each of which has its own regulatory scheme governing marine mammal interactions with its commercial fisheries.

E. Achieving Consistency in Comparability Finding Determinations Across 135 Harvesting Nations' Disparate Regulatory Programs

To achieve consistency across the array of nations and fisheries that NMFS had to consider, NMFS created a standardized decision-making process that tiered off the Final Rule's framework. The first round of comparability findings utilized a template report entitled "Marine Mammal Protection Act Import Provisions Comparability Finding Application Report" ("Report"). The Report template was generated based on a series of questions NMFS posed to harvesting nations through its IAICRS database. Each question related to one or more of the regulatory conditions in 50 CFR §§ 216.24(h)(6) & (7) and, to the extent a harvesting nation was able, the nation populated the IAICRS database with responsive information.

Although the Reports do not explicitly identify each and every regulatory condition, all were considered by NMFS before final comparability decisions were issued. In the case of the "Additional Considerations" found at 50 CFR § 216.24(h)(7), for example, NMFS responded to each consideration where documentary evidence was produced by a nation or the information was otherwise readily available. The first consideration is captured above and, where possible, in one or more portions of each Report. The second, third, and fourth considerations query topics that are similar and related. These pertain to, in large part, a harvesting nation's efforts to reduce bycatch, whether the measures have proven effective in reducing bycatch levels (including below known bycatch limits), the history of fisheries interactions with marine mammals, population abundance estimates, and marine mammal conservation status. These topics were also addressed throughout each Report and NMFS's administrative record as a whole. Information pertaining to the fifth and sixth considerations was included in NMFS's IAICRS database and/or other portions of the administrative record. Finally, the seventh and eighth considerations focus on the execution of a harvesting nation's commercial fisheries under RFMOs or other inter-governmental agreements and the effectiveness of the nation's bycatch reduction program. Again, these considerations were addressed in each Report, e.g. response to questions 3 and 4, and NMFS's administrative record as a whole.[36]

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[35] Because Exempt fisheries, like Category III fisheries in the U.S., are considered to have a remote likelihood of bycatch of marine mammals, they are subject to a lesser standard, as are Category III fisheries. These fisheries are not required to have a regulatory program for incidental mortality and serious injury that is comparable in effectiveness to the U.S. regulatory program applicable to Category I and II fisheries but they must still meet the requirements in 50 CFR § 216.24(h)(6)(iii)(A)(1) or 216.24(h)(6)(iii)(A)(2).

[36] The Report template includes a separate section for the Additional Considerations identified in subsection (h)(7). To the extent NMFS had information relevant to the Additional Considerations that was not discussed elsewhere in the individual nations' reports, it was discussed in that section. Where NMFS noted "N/A" for one or

NMFS considered all marine mammals that the nations included in their applications as well as any additional marine mammals for which NMFS had readily available information or scientific expertise to indicate that those additional stocks or species occurred in the nations' waters. Using the information submitted through IAICRS, NMFS prepared Reports for every harvesting nation that submitted a comparability finding application. All of the Reports included the same set of questions, which effectively were a subset of the topics that NMFS determined to be most aligned with, and most relevant to, the U.S. regulatory program.[37] First, every Report addressed whether harvesting nations had a prohibition on intentional killing or serious injury of marine mammals in the course of commercial fishing operations and whether they had elements of a bycatch reduction program (e.g., monitoring, reporting, and/or mitigation). The intentional prohibition provision, in and of itself, was a threshold issue for NMFS. Failure to demonstrate a prohibition, or alternative measures such as licensing conditions that in their totality served as a prohibition, resulted in a denial of a comparability finding. NMFS then asked whether Export nations prioritized individual fisheries based on their relative risk to marine mammals.

The U.S. domestic regulatory program prioritizes action based on the risks presented to marine mammals by different fisheries. As explained above, the MMPA establishes a process for prioritizing the development and implementation of regulations to address marine mammal incidental mortality and serious injury in those fisheries that carry specific risks to strategic stocks that interact with Category I or II fisheries. Accordingly, NMFS developed a step-wise process designed to review the harvesting nations' regulatory programs in light of a comparable prioritization scheme. Specifically, NMFS evaluated whether the harvesting nation maintained a regulatory program for its Export fisheries that provided for, or effectively achieved comparable results to the U.S. regulatory program. *See id.* at § 216.24(h)(6)(iii)(B).

A harvesting nation's regulatory program was scrutinized largely based on the relative risk presented to marine mammals by the Export fishery. In particular, NMFS focused heavily on the type of gear used in the fishery and the status of the potentially affected marine mammal species/stock. For example, NMFS was especially concerned with fisheries using high-risk gear (e.g., gillnets) that overlap with what NMFS referred to as a "16 U.S.C. § 1387(f)(3)" marine mammal stock/species, and without other mitigation measures in place.[38] NMFS exercised considerable judgment based on the available data, the differences among harvesting nations' regulatory programs and the resources at their disposal, and the specific facts and circumstances surrounding their Export fisheries. Again, the U.S. domestic program, as described above, weighed heavily in NMFS's evaluation of the Export fisheries, the applicable regulatory conditions, and whether NMFS would have expected a harvesting nation to have established a "like for like" regulatory program for Export fisheries that interact with marine mammal stocks/species in a manner similar to U.S. commercial fisheries.

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more responses, "N/A" was meant to convey that information related to the question could be found elsewhere in the Report or administrative record.

[37] These were effectively the regulatory conditions specified in 50 CFR § 216.24(h)(6)(iii).

[38] A 16 U.S.C. § 1387(f)(3) stock/species is one that is considered to be either an endangered marine mammal species/stock or a species/stock that (a) experiences a level of incidental mortality and serious injury that exceeds the PBR level, (b) has a small population size, and (c) is declining most rapidly.

Finally, in the case of a marine mammal stock/species listed under the ESA, NMFS considered whether a harvesting nation must satisfy the same standards set forth in 16 U.S.C. § 1371(a)(5)(E) of the MMPA (e.g., demonstrate that incidental take would be negligible). As explained earlier, 16 U.S.C. § 1371(a)(5)(E) is a permitting scheme that affirmatively authorizes incidental take of marine mammal stocks/species listed under the ESA if certain statutory criteria are met. The negligible impact standard is a unique construct of the MMPA and the process of making such determinations is complex.[39] The term "negligible impact", as defined in regulation, focuses on whether the impact resulting from a specified activity ultimately affects the stock/species annual rates of recruitment or survival.[40] In practice, the individual regulatory measures (e.g., mitigation) applicable to the specified activity are key in determining whether the taking will be negligible. NMFS's responsibility under the Final Rule was to determine whether a harvesting nation's regulatory program was comparable in effectiveness to the U.S. regulatory program, irrespective of the status of a particular marine mammal stock/species. There is no requirement that harvesting nations maintain the exact same regulatory scheme as prescribed under the MMPA, section 101(a)(5)(E) included. NMFS's focus was on whether the harvesting nation's strategy, including its management measures, was ultimately comparable in effectiveness to the U.S. regulatory program, including in those cases where ESA-listed stocks/species were affected.

IV. Comparability Finding Recommendations

The final rule requires that comparability finding determinations be issued on a fishery-by-fishery basis (i.e., for each individual fishery on the LOFF). The following information and attached tables represent the results and recommendations of the evaluation process.

After review of the marine mammal bycatch monitoring and mitigation programs described in their respective applications, **I recommend that 89 nations receive comparability findings for all of their export and exempt fisheries on the LOFF** (Table 1). Seafood exports to the United States from these nations amounted to about $13 billion or approximately 52% of the recent average annual imports of edible seafood in 2024. Included in these 89 nations are four of our top ten largest seafood trading partners.

The 34 nations listed in Table 2 received a comparability finding for some but not all of their export fisheries having failed to meet the MMPA's import provisions requirements in some fisheries. **I recommend that these 34 nations receive a comparability finding for some of their fisheries and a denial of a comparability finding for at least one fishery.** Table 2 includes a summary of the basis of denial of some comparability findings and indicates the number of fisheries recommended for denial, which is explained more fully in the individual reports for these nations. For many of the nations in Table 2, their marine mammal bycatch regulatory programs for certain fisheries lack sufficient marine mammal monitoring and mitigation for high risk gear and/or high risk species.

[39] *See* NMFS, Criteria for Determining Negligible Impact under MMPA Section 101(a)(5)(E), Procedural Directive 02-204-02 at 2 (June 17, 2020).

[40] *See* 50 CFR § 216.103. (negligible impact is "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.").

Based on our analysis, the 8 nations listed in Table 3 failed to meet the MMPA's import provisions requirements to receive a comparability finding for any of their exempt and export fisheries. **Therefore, I recommend that these 8 nations receive a denial of a comparability finding for all of their fisheries.** Table 3 includes a brief summary of the basis of denial of comparability findings, which is explained more fully in the individual reports for these nations. For most of these nations, intentional take of marine mammals is allowed in some or all of their exempt and export fisheries, which is not consistent with the standards applicable to U.S. fisheries.

Four nations did not submit applications for comparability findings (Table 4), either because they did not respond to NMFS' requests for information and offers of assistance or because diplomatic communications with those nations are constrained. **All of the export and exempt fisheries on the LOFF for these four nations are denied a comparability finding given their failure to submit an application for comparability.** Three nations submitted applications that were not reviewed because they only export products as an intermediary for the harvesting nation or were not currently exporting to the United States (Table 5). No comparability determinations were made for these nations.

The estimated value of seafood that may be affected by denial of comparability findings is also indicated in Tables 2, 3, and 4. For those nations recommended for denials of comparability findings for all of their fisheries (Table 3), exports to the United States amounted to about $12.8 million in 2024, or approximately 0.05% of U.S. edible seafood imports. Russia, previously among the top 10 exporters of seafood to the United States, is among the nations recommended for a denial of all fisheries; however, U.S. seafood imports from Russia in 2024 were nil because Russia is currently banned from exporting seafood to the United States through executive order. Of the countries on Table 4, Venezuela is the only significant exporter, and accounts for 0.4% of seafood exports to the United States in 2024.

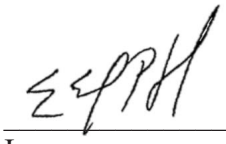
For those nations recommended for denials of comparability findings for only some of their fisheries (Table 2), their total seafood exports to the United States amounted to about $11.8 billion in 2024, or approximately 47% of U.S. edible seafood imports. For the nations listed in Table 2, it is difficult to estimate precisely the amount of trade to be prohibited (non-comparable fisheries) relative to trade allowed based on available trade data.[41] After mapping fishery IDs as closely as possible to Harmonized Tariff Schedule (HTS) codes, NMFS estimates the value of 2024 trade that relates to fisheries subject to a partial denial is approximately $3.6 billion. Import prohibitions could affect some but not all of the current trade from the nations listed in

[41] NMFS compared fisheries to potentially relevant Harmonized Tariff Schedule (HTS) codes to calculate as nearly as possible the import values for denied fisheries. Fish and fish products harvested from individual fisheries could be imported under a range of HTS codes and trade under a given HTS code from a nation receiving a partial denial could include some products subject to denial of comparability findings while other trade in those products is allowed. Some fisheries' target species include generic categories of species and the HTS codes subject to enforcement of import prohibitions may be refined and narrowed. The actual volume and value of trade affected could decrease if further analysis indicates some HTS codes included in these calculations could not be used to import product from denied fisheries. Nations may also be able to export individual fish or fish products under covered HTS codes if they demonstrate that they were not harvested in a fishery subject to an import prohibition through a Certification of Admissibility.

Table 2 and entry documentation and other trade program requirements could affect other trade flows from those nations.

RECOMMENDATION

I recommend that you concur with the comparability finding determinations for all nations as described above, in the attached tables, and the individual country reports.



I concur I do not concur Let's discuss

Attachments - Country Reports