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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

RIN 0648-XG809

Notification of Receipt of a Petition to Ban Imports of All Fish and Fish Products from New Zealand that Do Not Satisfy the Marine Mammal Protection Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of petition to ban imports through emergency rulemaking; request for information and comments.

SUMMARY: NMFS announces receipt of a petition for emergency rulemaking under the Administrative Procedure Act. Sea Shepherd Legal, Sea Shepherd New Zealand Ltd., and Sea Shepherd Conservation Society petitioned the U.S. Department of Commerce and other relevant Departments to initiate emergency rulemaking under the Marine Mammal Protection Act ("MMPA"), , to ban importation of commercial fish or products from fish that have been caught with commercial fishing technology that results in incidental mortality or serious injury of Māui dolphin in excess of United States standards.

DATES: Written comments must be received by 5 p.m. Eastern Time on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2019-0013, by either of the following methods:

1. *Electronic Submissions:* Submit all electronic comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0013, click the "Comment Now!" icon, complete the required fields and enter or attach your comments.

2. *Mail:* Submit written comments to: Director, Office of International Affairs and Seafood Inspection, Attn: MMPA Petition, NMFS, F/IASI, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe portable document file (PDF) formats only. The complete text of the petition is available via the internet at the following web address: <http://www.nmfs.noaa.gov/ia/>. In addition, copies of this petition may be obtained by contacting NMFS at the above address.

FOR FURTHER INFORMATION CONTACT: Nina Young, NMFS F/IASI at Nina.Young@noaa.gov or 301-427-8383.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a) (2) of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1371(a) (2), states that: "The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards." In August 2016, NMFS published a final rule (81 FR 54390; August 15, 2016) implementing the fish and fish product import provisions in section 101(a) (2) of the MMPA. This rule established conditions for evaluating a harvesting nation's regulatory programs to address 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. In that rule's preamble, NMFS stated that it may

consider emergency rulemaking to ban imports of fish and fish products from an export or exempt fishery having or likely to have an immediate and significant adverse impact on a marine mammal stock.

Information in the Petition

NMFS received the petition on February 6, 2019. The petition alleges that the Secretaries of Commerce and other relevant federal Departments are required to carry out non-discretionary duties under section 101(a)(2) of the MMPA (16 U.S.C. 1371(a)(2)), to "ban the importation of commercial fish or products from fish" sourced in a manner that "results in the incidental kill or incidental serious injury" of Māui dolphin "in excess of United States standards." The petition requested that the relevant Secretary ban the importation of all fish and fish products caught in set nets or trawls inside the Māui dolphin's range and from either the west coast of New Zealand's North Island or the Cook Strait, unless affirmatively identified as having been caught with a gear type other than set nets or trawls or affirmatively identified as caught outside the Māui dolphin's range.

As support for the need for this action, the petition cites several reports and studies noting various estimates of decline. The petitioners assert that for the Māui dolphin, set net and trawl bycatch has driven the species from a population of

approximately 2,000 individuals in 1971, to 111 in 2004, to 55 in 2011. Further, the petition notes that in 2018 the Scientific Committee of the International Whaling Commission reported an abundance estimate of 57 individuals, with a 95% confidence interval of 44 to 75 individuals, which equates to an average decline of 2% every year and a total decline of 59% over the 31-year period from 1985 to 2016.

The petitioners maintain that any fishery using set nets, trawls, or gillnets in the Māui dolphin range along the west coast of New Zealand's North Island violates U.S. standards under the MMPA. The petitioners provide a list of 11 fish species harvested within the Māui dolphin range by set nets, trawls, or gillnets that are potentially imported into the U.S. as fish or fish products.

As noted in the petition, New Zealand has attempted to address the bycatch problem by (1) restricting set nets and trawls in certain areas, and (2) increasing observer coverage and other monitoring mechanisms. In the case of gear and area/seasonal restrictions, trawling has been banned in approximately 5% of the habitat of Māui dolphin, while gillnets are banned in an additional 14% of that habitat. In addition, New Zealand's Hector's and Māui dolphin Threat Management Plan is currently under review for updates, with decision documents scheduled to be provided to Ministers in May 2019 (See:

<https://www.mpi.govt.nz/protection-and-response/sustainable-fisheries/managing-our-impact-on-marine-life/protecting-hectors-and-maui-dolphins/>).

NMFS will consider public comments received in evaluating the request by the petitioners. In addition to general comments on the petition, NMFS specifically requests comments on:

- The adequacy of existing measures regulating commercial fishing throughout the range of the Māui dolphin;
- Whether such measures can be considered comparable in effectiveness to the U.S. regulatory program;
- Whether the apparent decline in the Māui dolphin population due to commercial fishing meets the standard of "immediate and significant adverse impact on a marine mammal stock" within the MMPA; and
- Which specific fisheries are or may be directly associated with potential mortality of Māui dolphin and therefore fall within the scope of the petition for emergency action.

Dated: February 19, 2019.

Samuel D. Rauch III,

Deputy Assistant Administrator for

Regulatory Programs, National Marine

Fisheries Service.

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