



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

Docket No. 260723-0179

RIN 0648-BO43

Implementation of Fish and Fish Product Import Provisions of the Marine Mammal Protection Act

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

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS is soliciting public input to inform potential revisions to the implementing regulations pursuant to the import provisions of the Marine Mammal Protection Act (MMPA). NMFS is initiating a comprehensive review of the import regulations to increase efficiency of the program while ensuring that the objectives of the statute are met.

DATES: Written comments must be received by 5 p.m. on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2026-0826 by any of the following methods:

(1) Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit <http://www.regulations.gov> and type NOAA-NMFS-2026-0826 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

(2) Mail: Julia Goss, Foreign Affairs Specialist, Office of International Affairs, Trade, and Commerce, Attn: MMPA Fish Import Provisions, NMFS, F/IA, 1315 East-West Highway, Silver Spring, MD 20910.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

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, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT: Julia Goss at julia.goss@noaa.gov or 301-427-8360.

SUPPLEMENTARY INFORMATION:

The Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.*, contains provisions to address the incidental mortality and serious injury of marine mammals in both domestic and foreign commercial fisheries. Section 1371(a)(2) requires the United States to ban the importation of commercial fish or fish products caught with commercial fishing technology that results in the incidental kill or serious injury of marine mammals in excess of U.S. standards. The regulations at 50 CFR 216.24(h), finalized on August 15, 2016, established procedures for making comparability findings, *i.e.*, assessments of whether a nation has met certain conditions for its fisheries to be considered comparable to the U.S. regulatory program for addressing marine mammal bycatch. The statute further requires the Secretary of Commerce to insist on reasonable proof from exporting

nations of the effects of commercial fishing technology on marine mammals incidental to those fisheries.

NMFS' implementation of the import provisions followed a multi-year rulemaking process. In 2008, NMFS received a petition to ban the import of swordfish and swordfish products from nations that could not provide reasonable proof regarding their fishing technology's impact on marine mammals. NMFS subsequently published an advance notice of proposed rulemaking (75 FR 22731, April 30, 2010) requesting comments on the standards to be used for implementing the import provisions for all fish and fish product imports; procedures for ensuring the established standards and their associated criteria are met; and procedures for developing recommendations regarding import prohibitions if those standards are not met. NMFS then issued a proposed rule on August 11, 2015 (80 FR 48172) and a final rule on August 15, 2016 (81 FR 54390). The import provisions established an initial 5-year exemption period before imports would be subject to trade restrictions to allow harvesting nations time to develop their regulatory programs governing mortality and serious injury of marine mammals incidental to commercial fishing. The exemption period was extended three times and ended on December 31, 2025.

The final rule established procedures for NMFS to identify foreign commercial fisheries that export fish and fish products to the United States, evaluate whether the nations' regulatory programs for each of those fisheries are comparable in effectiveness to the U.S. regulatory program, and implement import prohibitions when fisheries do not receive a comparability finding. To establish the scope of the evaluations, NMFS publishes a List of Foreign Fisheries (LOFF), which identifies the foreign commercial fisheries subject to the MMPA import provisions. The LOFF classifies these fisheries based on the frequency of marine mammal mortality and serious injury: "Exempt" fisheries are classified as having a remote likelihood of, or no known, incidental mortality

and serious injury, while “Export” fisheries are those having more than a remote likelihood of such mortality or injury. Additional information on the LOFF can be found on the NMFS website at <https://www.fisheries.noaa.gov/foreign/international-affairs/list-foreign-fisheries>. In order to receive a comparability finding for Exempt fisheries, a nation must demonstrate that it prohibits the intentional mortality or serious injury of marine mammals in the course of commercial fishing operations or has procedures to reliably certify that exports of fish and fish products to the United States are not the product of intentional killing or serious injury of a marine mammal. In addition, Export fisheries must maintain a regulatory program with respect to the fishery that is comparable in effectiveness to the U.S. regulatory program.

Comparability findings for Exempt and Export fisheries are made on a fishery-by-fishery basis. Additional details regarding the process for making such findings can be found in the proposed rule published in 2015, the final rule published in 2016, and the NMFS website at <https://www.fisheries.noaa.gov/foreign/marine-mammal-protection/marine-mammal-protection-act-import-provisions>. Before NMFS denies a foreign fishery a comparability finding, NMFS provides the harvesting nation notice of the preliminary finding and an opportunity to submit reliable information to refute the denial and communicate corrective actions. Unless terminated by NMFS, a comparability finding remains valid for 4 years from the publication of the finding or for such other period specified by NMFS. To seek renewal, harvesting nations must submit the application and required documentary evidence by November 30 of the year prior to the expiration date of its current comparability finding. If a harvesting nation begins exporting fish or fish product to the United States from a fishery that is not on the LOFF, the harvesting nation must notify NMFS, and NMFS may issue a provisional comparability finding allowing such imports for a period not to exceed 12 months while

the nation submits the required application materials for NMFS to evaluate comparability.

Denial of a comparability finding for a fishery results in an import prohibition of fish and fish products harvested in that fishery into the United States. Import prohibitions become effective 30 days after publication of the **Federal Register** notice announcing the denial of the comparability finding and remain in effect until NMFS issues a comparability finding for that fishery. A harvesting nation may reapply at any time by submitting an application and providing new documentary evidence that the fishery meets the required conditions.

To allow for the lawful entry of product that is the same or similar to product harvested in a fishery subject to an import prohibition, the product must be accompanied by a Certification of Admissibility (COA) or an electronic equivalent. The COA is a government attestation that the fish or fish products being imported into the United States were not harvested in a fishery subject to an import prohibition under the MMPA import provisions. As traded products are identified by tariff codes, the COA allows for the identification of products that are admissible to the United States, but may otherwise be blocked because they share tariff codes with prohibited products. COA reporting requirements allow verification that fish and fish products are not sourced from a prohibited fishery and must be signed by an authorized government official of the harvesting or exporting nation. The COA must be filed with the U.S. Customs and Border Protection (CBP) upon entry through the Automated Commercial Environment (ACE) portal. The COA is required to be provided upon entry into ACE as a condition for CBP to release the import into the United States. Imports that are the same or similar to fish and fish products subject to import restrictions under the MMPA are not admissible unless a completed COA is provided through ACE.

Under the 2016 final rule, no fish or fish products caught or harvested in a fishery subject to an import prohibition may be imported into the United States from any intermediary nations (*i.e.*, nations processing and re-exporting products to the United States). NMFS may identify intermediary nations that import and re-export fish and fish products to the United States from prohibited fisheries and require those intermediary nations to certify either that they do not import such prohibited products or that they have procedures in place to reliably certify that exports to the United States do not contain fish or fish products from prohibited fisheries.

The 2016 final rule also established an ongoing oversight mechanism through periodic progress reports. A harvesting nation must submit progress reports every 4 years, offset with the 4-year cycle for comparability findings, to document actions taken to develop, adopt, and implement its regulatory program and to meet the conditions in 50 CFR 216.24(h)(6)(iii). The first progress reports received from harvesting nations in 2019 helped establish baselines and prepare harvesting nations for the comparability finding application. Finally, the final rule addressed international cooperation and assistance, including the possibility of technical support, subject to existing authority and appropriations.

As NMFS moved from developing to implementing the regulatory framework, completing the first full round of comparability findings proved to be significantly more complex and time-intensive than NMFS anticipated when the final rule was promulgated. On September 2, 2025, NMFS issued comparability findings for approximately 2,500 fisheries from 135 harvesting nations with a highly diverse set of management systems. For each of these fisheries, NMFS evaluated multiple, detailed conditions for each comparability finding as outlined in 50 CFR 216.24(h)(6)(iii) and (h)(7), a task complicated by vastly different legal systems, institutional capacities, monitoring programs, bycatch reduction strategies, and data availability among the harvesting

nations. This required NMFS to review massive volumes of documentation, conduct extensive follow-up engagement with harvesting nations to clarify its understanding of the harvesting nations' regulatory programs, resolve inconsistencies, and prepare fishery-specific determinations for publication. Including several extensions to the exemption period, the first comparability finding review took NMFS more than 3 years to complete. Because these evaluations, in addition to the progress reports, are scheduled to occur on 4-year cycles, processing this volume of data consistently across thousands of fisheries creates a high level of administrative burden for harvesting nations and NMFS under restrictive timelines.

A related challenge is that the "U.S. standards" component of the MMPA import provisions requires NMFS to evaluate foreign harvesting nations' programs through the lens of the MMPA's domestic framework (*i.e.*, 16 U.S.C. 1386 and 1387), which relies on systematic prioritization and is specific to commercial fisheries in the United States. As described in more detail in the proposed rule published in 2015 and the final rule published in 2016, effective bycatch reduction programs for harvesting nations should include estimating population abundance and bycatch, monitoring fisheries, and mitigating unsustainable bycatch; however, their practical implementation can be constrained by lack of data, poor data quality, and lack of technical expertise.

The United States experiences many similar challenges in regard to managing marine mammal bycatch in its domestic fisheries. Under 16 U.S.C. 1387(f)(3), for example, these limitations necessitate a domestic prioritization process to determine which species or stocks are designated as "strategic"—defined as those for which the level of human-caused mortality exceeds the stock's potential biological removal level, those declining and listed (or likely to be listed) as endangered or threatened under the U.S. Endangered Species Act, or are designated as depleted under the MMPA. If those stocks interact with a Category I or Category II fishery (defined as those having frequent

or occasional incidental death or serious injury of marine mammals), they are prioritized for the development of Take Reduction Plans (TRPs). Once a TRP is developed, the process remains highly iterative as the Take Reduction Teams develop and refine both regulatory and voluntary measures to ensure the fishery meets MMPA requirements while adapting to the specific operational realities of the fleet. While the regulatory conditions in 50 CFR 216.24(h)(6)(iii) and (h)(7) provide a framework for evaluation, they do not explicitly reflect this underlying prioritization prescribed for the domestic program or the iterative, resource-dependent nature of domestic bycatch management. Consequently, defining “U.S. standards” and what may be considered to be “comparable in effectiveness” for a multitude of fisheries under a range of systems of governance presents an immense analytical hurdle. NMFS has had to grapple with applying a dynamic and tailored domestic set of requirements in determining comparability consistently for thousands of diverse foreign fisheries.

Linking comparability findings to U.S market access is a central feature of the statute and is intended to create incentives for regulatory improvements and bycatch reduction as well as address disadvantages facing domestic fishermen with unfair competition from imports. However, the structure of the program under the final rule requires substantial operational effort to implement. When NMFS denies a comparability finding for a fishery, the agency translates that determination into an import prohibition by identifying the affected fish and fish products and the most appropriate U.S. HTS codes associated with those products. The combination of the HTS codes and the Country of Origin associated with the product determine whether or not a COA is required. Because HTS codes are designed for trade classification rather than tracing products to a specific fishery of harvest, NMFS relies on the COA to distinguish allowable from prohibited products at the point of entry into the United States. This task is complicated by dynamic seafood supply chains, where products are often landed, processed, or re-

exported through multiple jurisdictions, including intermediary nations that may process catch from various sources. Consequently, the COA process requires constant coordination among foreign officials, the fishing and seafood industries, the trade community, and U.S. agencies, creating delays at ports, a heavy administrative workload, and enforcement concerns.

Traceability challenges are particularly acute for certain highly processed products, such as fish oil or fish sauce. The final rule acknowledges that NMFS may not be able to include certain products in an import prohibition where it is not feasible to identify the species or link a product back to the specific fishery subject to the prohibition. Determining whether to apply a COA requirement to any fish or fish product on a case-by-case basis places a significant demand on agency resources and, in some cases, may not be feasible. Taken together, these factors require substantial ongoing effort by NMFS and its partners to implement, administer, and maintain the trade-related components of the program.

NMFS' implementation experience indicates that the MMPA import provisions framework is an important tool that can be used to encourage harvesting nations to implement more effective measures to reduce marine mammal bycatch, but that administering the program at the scale required by the current regulations is resource-intensive and operationally complex. NMFS is therefore seeking public comment on whether and how to: (1) clarify the term "U.S. standards" for purposes of issuing comparability findings; (2) better account for the diversity among harvesting nations' legal and regulatory programs and their capacity to develop and oversee bycatch reduction programs that could meet the requirements of the MMPA at 16 U.S.C. - 1371(a)(2); (3) change the procedures to improve administrative operations and efficiency; (4) ensure fair and consistent application across exporting nations; and (5) ensure a level playing field such that fisheries abide by marine mammal bycatch

standards that are comparable in effectiveness to the U.S. regulatory program when introducing fish or fish products into the U.S. market. NMFS requests comments on the current processes but also welcomes comments related to the LOFF, comparability findings, international cooperation and assistance, and import prohibitions. NMFS also seeks responses to the specific questions provided below to help inform future rulemaking that revises implementation of the MMPA import provisions while maintaining fidelity to the MMPA's statutory requirements and the outcomes the import provisions are intended to achieve.

Overarching questions

1. What changes should NMFS make to its regulations to improve marine mammal conservation outcomes while treating exporting nations fairly and consistently?
2. What opportunities or challenges have the MMPA import provisions introduced to you as a harvesting nation, intermediary nation, seafood importer, or seafood consumer?

Questions on U.S. standards

3. For purposes of determining comparability, NMFS requires harvesting nations wishing to export fish and fish products to the United States to demonstrate comparability with U.S. standards as set out for domestic fisheries under the MMPA at 16 U.S.C. 1386 and 1387 of MMPA. Comparability under the current regulations is defined to mean "comparable in effectiveness to that of the United States [regulatory program]," not necessarily identical or as detailed. How else could NMFS define "U.S. standards" for purposes of rendering comparability determinations and are there other ways to assess comparability?
4. How can NMFS make the process for evaluating whether exporting nations' fisheries are in excess of U.S. standards more straightforward, while maintaining marine mammal conservation outcomes across data-rich as well as data-limited

contexts and a level playing field for U.S. commercial fishing operations? (*See* 50 CFR 216.24(h)(6)(iii)).

Questions on scope

5. Should NMFS consider revising the current regulations to specify that NMFS will prioritize comparability findings for nations with commercial fisheries that co-occur with marine mammals based on conservation status and risk of bycatch, similar to NMFS' prioritization scheme under the MMPA at 16 U.S.C. 1387(f)(3)? If so, what criteria should NMFS consider and apply to its evaluation?
6. Are there any factors or elements that NMFS is not considering under the current program but should be?
7. Instead of imposing an immediate import prohibition on harvesting nations, should NMFS consider allowing "conditional" comparability findings based on a harvesting nation's commitments to meeting "U.S. standards"? In other words, should a discretionary consultation period be allowed to afford nations time to address issues identified concerning their fisheries that result in incidental mortality or incidental serious injury of marine mammals in "excess of U.S. standards"?
8. Should fisheries be categorically excluded from the comparability finding process because they would, whether by gear type, likelihood of killing or seriously injuring marine mammals, or other reasons, be considered to have de minimis impacts on marine mammals and thus, the fishery would not be expected to exceed "U.S. standards"?

Questions on timeline

9. How do the current 4-year progress report and application cycle deadlines impact the ability of harvesting nations to plan and implement long-term conservation

goals? Should the current four-year cycles be modified, and if so, how? (*See* 50 CFR 216.24(h)(8)(v); 50 CFR 216.24(h)(10)(iii)).

Questions on trade restrictions

10. In what ways should NMFS structure and implement trade-related measures under the MMPA import provisions, including the timing and operationalization of trade measures to support fair, efficient, and enforceable implementation? (*See* 50 CFR 216.24(h)(9)).
11. Should potential economic impacts inform NMFS' comparability findings, specifically to the trade community, small entities, and harvesting nations?

Questions on intermediary nations

12. How could NMFS revise or clarify the intermediary nation provisions, including what constitutes procedures that can reliably certify that exports do not contain fish from prohibited fisheries? (*See* 50 CFR 216.24(h)(9)(iv)).

Questions on public input/data gathering

13. How should NMFS account for uncertainty and incomplete information when evaluating comparability of foreign fisheries, while ensuring fair and consistent treatment across exporting nations?
14. What changes, if any, would improve NMFS' processes for receiving, evaluating, and incorporating public input that is relevant to the agency's evaluation of the harvesting nations' regulatory programs? (*See* 50 CFR 216.24(h)(6)(ii)).

Questions on the COA process

15. How could the admissibility process, using the COA form or alternative means, be changed to more efficiently and effectively facilitate lawful entry of fish and fish products that are the same or similar to products that are subject to an import ban? (*See* 50 CFR 216.24(h)(9)(iii)).

Questions on capacity building

16. Which technical areas are the highest priority for harvesting nations to achieve and maintain comparability (*e.g.*, marine mammal stock assessments, monitoring programs, mitigation measures, enforcement) and what forms of assistance are the most effective in building these capacities in harvesting nations? (*See* 50 CFR 216.24(h)(11)).

Classification

This advance notice of proposed rulemaking has been determined to be significant for purposes of Executive Order 12866.

Dated: July 24, 2026.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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