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NMFS Webinar: Regulations to Implement Import Restrictions under the Marine Mammal Protection Act

Speaker: *Nina Young, Foreign Affairs Specialist, Office of International Affairs and Seafood Inspection*

Date: *September 12, 2016, 1:30 pm CT*

Coordinator: Welcome and thank you for standing by. At this time all lines are in a listen only mode until the question and answer session. At that time if you'd like to ask a question, you may do so by pressing star then 1 and recording your first and last name.

Today's call is being recorded. If you have any objections you may disconnect at this time. I would now like to introduce your host for today's call, Ms. Kerry Turner. You may begin.

Kerry Turner: Thank you (Lauren) and welcome everyone. My name is (Kerry Turner). I'm a Communication Specialist here at NOAA Fisheries' Office of International Affairs and Seafood Inspection.

I'd like to welcome everyone to the first of our Webinar series on NOAA Fisheries' Final Rule for Implementing MMPA, Marine Mammal Protection Act, Import Provisions.

As you may know, the final rule was published last month. This Webinar is another opportunity NOAA Fisheries has provided throughout this process to engage interested stakeholders about the rule and its implications.

So we've got a diverse group of participants on today's webinar, both national and international. So if you head starts to spin by the information coming your way, don't worry about it. At the end of the presentation we'll have a question and answer session for anyone to ask a question or request further information and clarification on what has been presented.

Before I introduce our speaker, a few housekeeping items. One, we know that everyone is online on WebEx. Just follow along. However, please do not submit any questions through that. We can't see the window and it's much easier if you submit questions through the conference line. We'll give instructions on how to do this right after the presentation.



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Also, if you're having any IT difficulty viewing the presentation, please know we've also posted a PDF of the presentation at our website at www.nmfs.noaa.gov/ia. In fact, all of the information with regards to this rule and these discussions – transcripts and recordings will be posted on that webpage in a few days.

With that let's introduce our speaker. Presenting today is Nina Young, a Foreign Affairs Specialist with our Office of International Affairs and Seafood Inspection. Nina will be taking you through a PowerPoint on the rule and its implications.

And once she's done with the presentation, she'll turn it back over to me. We'll have the conference line operator open it up for the question and answer portion that I mentioned. And with that Nina, I'll turn it over to you.

Nina Young:

Thank you Kerry. Thanks everyone for joining us this afternoon. And I will start by going through here's our brief outline of what we'll be discussing. The driving factors, a little bit about the rule and the components of the rule which includes the list of foreign fisheries, the categories, the consultations, the actual comparability finding, additional considerations, implication and resource engagement.

So the driving factors – it was found some years ago in the literature that there are more than 600,000 marine mammals that are caught in global fisheries annually. And this caused an increased concern about this as the Number 1 threat to marine mammals.

Meanwhile, the US now has increased its imports of seafood to more than 90% annually. Since 1994, US commercial fisheries have been under a domestic program to reduce their marine mammal bycatch. And it was thought that this put US fisheries at somewhat of a disadvantage compared to international commercial fishing operations.

In 2008 we received a petition from the Center for Biological Diversity to prohibit the imports of swordfish under this marine mammal protection import prohibition. And at that point and time National Marine Fishery Service thought that it was probably in our best interest to address that petition more than just swordfish, but to include all fisheries.

And so that lead us down the road of an advanced notice of proposed rulemaking in 2010, followed by a proposed rule in 2015 and then the final rule which published last month.

So the provision of law that this particular rule will essentially implement is here on this slide. And essentially it says that the secretaries will ban the



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importation of commercial fish and fish products that have been caught with the incidental kill or serious injury of marine mammals in excess of US standards.

And to make a determination about whether that particular fishery exceeds US standards, the Secretary of Commerce will insist on reasonable proof from the government about the impact of that particular fishery on ocean mammals.

So the rule was published, as we said, last month. Its effective date is January 1, 2007. It starts at that point with a five-year exemption period during which we expect that we will develop a list of foreign fisheries very similar to our domestic list of fisheries.

We will be looking for countries to develop their regulatory programs for certain fisheries to provide mid-way through that five-year period a progress report on how they are doing.

And then finally, at the end apply for a comparability finding in order to export fish and fish products to the United States. The comparability finding is the requirement that all nations must have for each of its exporting fisheries in order to export fish and fish products to the US.

So here generally is the process. In the first box you have there, we will identify foreign fisheries. We will be consulting then with nations to identify which fisheries they will have to develop a regulatory program.

The nation will then be tasked to develop regulatory programs for those fisheries, submit the progress report mid-way through, and then at the end of that five-year period, again, the US would make a comparability finding.

If they are granted a comparability finding, it's essentially go fish, and export and product to the United States. And they will not have to reapply until four years.

And if they are denied a comparability finding, they – the product from that fishery will be prohibited from entering the United States. And to receive a comparability funding, they will have to reapply demonstrating that the conditions that they did not meet, they have met. And we'll go into a bit more detail about that in a little – in a couple more slides.

So within the first year, what the United States will do is we will send out a notification to countries requesting information on marine mammal bycatch from any fishery where they export the product to the United States.



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We will use that information and any other readily available information to classify those fisheries according to their frequency of marine mammal bycatch. And then we will publish a draft list for public comment. And then based on the comments and additional information that we receive, we will publish a final list.

So here's the two categories of fisheries. We have compressed our domestic list of fisheries which contains Category 1, 2 and 3 into essentially two categories. Export fisheries include Category 1 and 2 fisheries. They have more than remote likelihood of marine mammal bycatch.

If we do not have sufficient data to categories those fisheries, they will appear as export fisheries until we receive information to properly classify them. And all the export fisheries will there be – therefore be required to develop a regulatory program that is comparable in effectiveness to the US regulatory program.

Exempt fisheries have a remote or no known marine mammal bycatch, or they have 10% or less of marine mammal bycatch limit. And for those fisheries, no further regulatory program is required.

There is a requirement that both export fisheries and exempt fisheries must prohibit the intentional killing and serious injury of marine mammals in the course of commercial fishing operations, or demonstrate that they have procedures which allow the segregation of those fish and fish products so that they are on way associated with the intentional killing or serious injury of marine mammals.

As you can imagine, this is going to require consultations with nations early and often. We will begin by requesting information from those countries to classify their fisheries according to their frequency of interaction with marine mammals.

After we produce the list of foreign fisheries, we will go back to the countries, provide them that list, and any regulatory requirements under the Marine Mammal Protection Act that may be applicable to those particular nations.

Any requirements that we have visa vie, take reduction plans and regulations that are currently required for similar histories. Nations can of course request consultations at any time.

And then when we start to have nations apply for a comparability finding and we are making determinations, we will consult with countries where it appears that they're – they may not meet the requirements for a comparability finding. So it looks as if they may be denied or revoked a comparability finding.



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And if there is indeed a denial or revocation of that comparability finding, again we will consult with the countries and provide them the reasons why we have done so.

So now I'm going to cover the conditions for a comparability finding. And they vary somewhat depending on the area of operation of the fishery. If the fishery is operating within that nation's EEZ, they're going to be required to have a general fishery registration or some means of licensing.

They will need to assess the marine mammal stocks and the bycatch associated with that particular fishery. They'll need to develop a way of reporting and monitoring marine mammal bycatch. They will need to calculate a bycatch limit which is equivalent scientifically to what we call in the United States our potential biological removal level.

And then they'll have a regulatory program to reduce that bycatch below the bycatch limit. And they'll be required to implement any of the requirements that are currently required for a US fishery under a take reduction plan.

But here's the kicker. If they cannot do all that they – we have provided the flexibility to undertake alternative measures that are comparable in effectiveness. And you will see this in each of the next three slides.

An example of this is if a nation understands that its bycatch occurs in a particular time and area, they could implement closures in that fishery at that time and in that area. And that would be considered comparable.

If a nation is fishing in another coastal state, then there – you'll see here that many of the requirements are very similar, but it is going to require that the harvesting nation coordinate to get this information with the coastal state.

And again, if the marine mammal stock and bycatch assessment, calculation of the bycatch limit, a regulatory program to reduce the bycatch below the bycatch limit, any applicable take reduction plan requirements.

And if it's applicable, any regional management organization requirements. That is conservation and management measures that have been adopted by that RFMO that are applicable in that region. Or, as we stated before, alternative measures that are comparable in effectiveness.

Then finally, if the fishery is operating on the high seas, we're really going to look at two issues. Whether that RFMO or intergovernmental agreement has conservation and management measures applicable to marine mammals. We



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would expect at that point that the nation would be applying and complying with those particular measures.

If on the high seas we have take reduction plan requirements applicable to our fisheries, we are going to be looking for countries to apply those same requirements on their fisheries, regardless of whether or not they have been adopted by a RFMO. Or they can develop alternative measures that will be considered comparable in effectiveness.

One of the aspects of this role that we're all too familiar with is while we are developing – while countries are developing these regulatory programs, we expect that it will be an imperfect system and a iterative process, much the same was as it has been for US fisheries.

So with developing and reviewing these programs, we're – we at National Marine Fisheries Service, when it comes time to evaluate these fisheries for comparability finding we'll be looking at the implementation of the country's regulatory program for similar marine mammal stocks and fisheries.

And the extent to which that nation has successfully developed and implemented measures within that export fishery which we will expect will reduce the bycatch below the bycatch limit.

The progress that it has been making with regard to its regulatory program and if that regulatory program is achieving its objectives. And whether or not in achieving its objectives, if for example it is a regulatory program where they've had to make an alteration or add additional regulatory requirements, whether that regulatory program will reduce or is likely to reduce the bycatch below that bycatch limit.

There's a great deal of flexibility in terms of the considerations that we can consider as part of that evaluation process. But it's again designed to look at these fisheries and reward progress, understanding that it takes some time to estimate bycatch and develop some of these regulatory programs given their complexity.

So if a nation fails to receive a comparability finding or the finding is revoked, the US will prohibit the importation of fish and fish products from that specific fishery. These prohibitions are not on a nation basis, they are on a fishery basis because we wanted to avoid situations where other fisheries made the necessary – met the necessary requirements.

So if there is a prohibition, additionally the National Marine Fisheries Service may require a certification of admissibility form. And that will come from other fisheries from that nation with the same or similar fish products. So for



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example, if purse seine tuna is prohibited from entering, we may require a certification of admissibility for long line fisheries or troll fisheries for tuna.

A nation can reapply at any time, demonstrating that they now meet the requirements and the conditions that they had not met prior and that were the basis for denying its comparability finding.

The comparability finding can also be revoked if we receive information at any time from any individual, regional fishery management organization, any nation that demonstrates that a country is not meeting the requirements of a comparability finding.

If an intermediary – if an import prohibition is triggered for a particular fishery that may also import prohibitions by intermediary nations. And those are nations for which they are the processing nation for that particular product.

In that situation an intermediary nation must demonstrate that they either do not import the prohibited product or that they have a tracking and verification scheme in place to ensure that the prohibited product is not exported to the United States.

So just to recap, in this first year we're going to develop the list of foreign fisheries. That will be updated periodically. I believe at this point it's – we intend to update it in the year just prior to the nation submitting its comparability application so that we are always dealing with the most recent information that we have on those fisheries.

We will be consulting with nations, looking at – for them to develop their regulatory program for their export fisheries, submitting progress reports in the interim and also then submitting their application whereby we'll make a comparability finding.

If the finding is granted, it is good for four years. If it is denied, there will be a prohibition on fish and fish products from that particular export fishery. And they will have to reapply and demonstrate that they meet the conditions that they were not meeting at the time of denial.

So we anticipate that this will impact more than 120 nations that export fish and fish products to the United States. As you can imagine, our larger exports from these countries or the major imports into the United States are tuna, shrimp and salmon. And that involves more than 50 nations. And there are more than 67 marine species that are exported.

The top exporting nations are Canada, Chile, China, Japan, Mexico, Taiwan, Thailand, South Korea and Vietnam. And with regard to those imports, there



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are situations where they – that – there were situations for those countries where they are both the harvesting nation and the intermediary nation. That is they are a large processing nation.

So we're going to be spending the next year or so trying to tease out which nations are harvesting, which nations are just intermediary and which nations do both.

And so with that here's where you can find more information about the rule. We have materials that are posted. We have now an explanatory letter about the rule in both French and Spanish. We will be putting together a compliance document and the list of Webinars is listed below.

And of course if you have more – if you want more information or have further questions that is my contact information. Okay. So we're happy to take questions.

Kerry Turner: (Lauren) can you give the participants a prompt in how to get into the queue to ask any questions that they may have?

Coordinator: At this time we'd like to begin the formal question and answer session of the call. If you'd like to ask a question, please press star then 1 and record your first and last name.

To withdraw your question, you may press star then 2. Again, to ask a question please press star then 1 and record your first and last name. One moment for the first question please.

Kerry Turner: While we're waiting for questions to come into the queue, just reminder in terms of the information up on the slide, resources and where they're posted.

Coordinator: First question comes from (Mike Kraft). Your line is open.

(Mike Craft): Hi, good afternoon. This is (Mike Craft) with Bumble Bee Seafoods. You know – you mentioned that there's going to be consultations with foreign fisheries, and I'm assuming in many cases that will be with other nations with respect to tuna, specifically in the Western Central Pacific.

Much of it's in multiple EEZs of nations as well as in the high seas. Will you be – part of these consultations be with the regional fishery management organization responsible for that ocean as well as in other oceans as well? Or is this going to be a nation by nation – or flag nation by flag nation discussion?



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Nina Young: Thank you (Mike). Certainly it will be with the nation by nation – the flag nations. That is – that’s the intentions. They are the ones that will have to apply for their comparability finding.

But that said, we’re also more than willing to provide information to the regional fishery management organizations and continue to work through them to gather information to allow us to properly classify the fishery. And also understand what their existing conservation and management measures are.

(Mike Kraft): Because if I interpret it correctly that if an RFMO has a set of conservation measures and regarding marine mammal protection that meet a comparability finding for the US standard.

And cooperating flag nations that are party to an RFMO like that. That would be applicable when their flags are fishing in the waters of – that are governed by those conservation measures or am I oversimplifying it?

Nina Young: So let me use a concrete example for you since you brought up WCPSC. With regard to that RFMO, they currently have a provision that prohibits the intentional encirclement and carries with it all sorts of requirements, as you well know, in terms of what should be done, the reporting, the safe release and handling and so on.

We generally view that as comparable because that is the same requirement that we have on US fishermen. And so if a nation is applying and complying with that provision, then we would largely see that nation as being comparable in effectiveness – having a regulatory program that’s comparable in effectiveness.

(Mike Kraft): Okay thank you very much.

Coordinator: Again if you’d like to ask a question, please press star then 1 and record your first and last name. One moment.

Kerry Turner: While we’re waiting for the next question, I just moved the slide back to the recap of the presentation in terms of the steps for this final rule. So I just wanted everyone – anyone had any questions regarding those steps and/or regarding the presentation or implementation – implications of this rule. Please feel free to ask a question.

Coordinator: I’m showing no further questions.

Kerry Turner: Okay. We’ll give it a few more seconds before we close out. We wanted to get anyone that had anything they wanted to comment on or ask for clarification.



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We're going to give you a couple more seconds to ask that. In the meantime, Nina did you have any closing remarks?

Nina Young: No. We understand that this is very complicated. And it may be some time before you think up or something comes to mind in terms of having reviewed the rule or some of the fact sheets. But please feel free that if anything comes up that you can contact me. And I'll be happy to answer questions.

Kerry Turner: We do have one more question.

Coordinator: (Melissa Mahoney) your line is open.

(Melissa Mahoney): Yes hi. I'm (Melissa Mahoney). I'm with Environmental Defense Fund. And thank you so much for setting up this Webinar. Sort of a, maybe a tough question to answer but just curious in the making of this ruling, did NMFS consider I guess any kind of a risk assessment on any potential backlash from this ruling?

And also the feasibility of enforcement in terms of, you know, making sure that the comparability agreement that you do receive is indeed accurate and correct?

Nina Young: So in terms of – can you repeat what you were asking about with regard to a risk assessment?

(Melissa Mahoney): Well in the past I know that there had been attempts to have stronger standards. And I have heard that some people saying that there could be an economic backlash with, you know, sort of keeping foreign product out of our country for various reasons. That there could be some kind of economic backlash. I'm just wondering if there was consideration to that. That's what I meant by that question.

Nina Young: So in the supporting documents in the environmental assessment and the regulatory impact review, we did do some economic analyses. And so those are available for you to review.

The US market is a very important market to nations. So we don't anticipate that there will be a strong economic backlash to this rule. The rule is compliant with WTO. We did a lot of work to make sure that we comply with the national treatment provisions and the non-discrimination provisions. And so we feel that in that case we're on firm footing.

In terms of the feasibility of enforcement, again one of the reasons why we created the conditions but also then included the provisions for alternative



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measures is to allow a country to establish a program that would be effective, but one that they could implement.

And so typically how we can determine whether or not the program is meeting its objective is again, by what happens in terms of the bycatch reduction that we see coming out of that fishery.

Also, as I stated that if for any reason individuals have information that's contrary to what is being supplied by a nation, they can provide that information that demonstrates that either there is – the enforcement or conditions of that comparability finding are no longer being met. And that will trigger a reevaluation of that comparability finding by NMFS.

(Melissa Mahoney): Okay thank you.

Kerry Turner: On this screen, we have Nina's contact information for any additional information or questions you may have. I would like to thank everyone for joining us and you have a great day.

Coordinator: This concludes today's call. You may disconnect at this time.

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