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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*

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Coordinator: Thank you for standing by. At this time, all lines are in listen-only mode for the duration of today's presentation. This call is being recorded. If you have any objections you may disconnect at this time.

We will conduct a question and answer session. If you would like to ask a question today, please press Star 1.

Now I'll turn the call over to our first speaker today, Ms. Kerry Turner, you may begin.

Kerry Turner: Thank you (Jeremy) and welcome everyone, good morning or good evening, depending on where you're calling in from. My name is Kerry Turner. I'm a Communications Specialist here for NOAA Fisheries' Office of International Affairs and Seafood Inspection.

I'd like to welcome everyone to the second 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. And this webinar is another opportunity, NOAA Fisheries has provided throughout this process to engage interested stakeholders about the rule and its implications.

We have a lot of information to give you, but don't worry about it, at the end of the presentation we'll also have a question and answer session for anyone to ask a question or if you would like to request further information or a clarification of anything that has been presented.

Before I introduce our speakers, just a few housekeeping items, if you're on the WebEx, just follow along. You can submit questions both through the conference operator, the audio line or you can submit questions through the WebEx at the, I believe, the lower right portion of your WebEx screen.



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Also, if you having any IT difficulties, participating in the webinar, please know shortly we'll post the .pdf of the presentation on our website at www.nmfs.noaa.gov/ia. That was www.n-m-f-s.noaa.gov/ia.

With that, let's introduce our speaker, presenting today, Ms. 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 final rule and its implications. And once she's done, she'll turn the presentation back over to me and then we'll open it up for a question and answer session, Nina?

Nina Young:

Good morning or good evening everyone, depending again, as you were saying where you are. Thank you for joining this presentation and I'll get right to it.

There's an overview slide of the issues that I'll be addressing. These are the components of the rule, and we'll walk through each one of those in the course of this presentation.

So, driving factors, some time ago, scientists determined that there are between - around 600,000 marine mammals that die annually in global fisheries.

So this is recognized to be the greatest threat to marine mammals. At the same time, the U.S. now is growing in its number of imports of seafood. And it's now reached somewhere around 90% of what we import is foreign seafood.

So, for some years, since approximately 1994, the U.S. Fisheries has been under a domestic regime to reduce marine mammal bycatch. This has resulted in additional regulations which some believe have put the U.S. Fisheries at a disadvantage, compared to other international fisheries that are not held to that same regulatory requirement as U.S. fisherman.

In 2008, we received a petition to prohibit the importation of swordfish into U.S. markets. We thought at that time, that this would probably be the first of many petitions and so National Marine Fisheries Service made the determination that any rule making that we undertook would apply to all fish and fish products.

So, it started us down the road of an advance notice of proposed rulemaking in 2010, followed by a proposed rule in 2015, and it culminated in this final rule, which as Kerry said, published last month. So the provision of laws that this particular rule implements is what you see before you.

Essentially it's Marine Mammal Protection Act, Section 10182, which says that the secretary shall ban the importation of commercial fish and fish



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products, where the bycatch of marine mammals is in excess of U.S. standards. That's kind of the shorthand for that.

And, we will insist on reasonable proof from the government in terms of the impact of that commercial fishing technology on marine mammals.

So, the rule will become effective January 1, 2017. That will start us down the road as a five-year exemption period. And during that period, we will begin in the first year, to classify fisheries and produce what will be called the List of Foreign Fisheries.

We'll be looking for countries to develop their regulatory program for specific fisheries and to provide a progress report midway through that exemption period to let us know how they are progressing in the development of that regulatory program.

It will culminate in a comparability finding. And that comparability finding will be required for each fishery under that nation, in order to export fish and fish products to the United States.

This is a schematic that kind of summarizes the various parts. Just to go over, we will go over each of these in a bit more detail. But, we will identify the foreign fisheries through a list of fisheries. We will consult with nations. Assist in developing their regulatory programs. Midway through, we'll be looking for a progress report. Finally, we'll make a comparability finding. If the finding is granted, nations can export fish and fish products to the United States and do not have to reapply for four years.

If they are denied, there will be an import prohibition of fish from that particular fishery. And they can reapply at any time provide that they meet the conditions and the requirements for a comparability finding.

So, within the first year, we're going to develop this List of Foreign Fisheries. It's very similar to the U.S. Domestic List of Fisheries. It will probably follow along the same lines.

We will solicit information from nations requesting that they provide information on their marine mammal bycatch, anything they know about marine mammal stocks and any regulations. And these are for any fisheries where the product is exported to the United States.

We will use that information that's provided to the nation, along with any other information that we have, to classify those fisheries. We'll publish a draft list for public comment and then a final list in the Federal Register, probably at year's end.



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So, we would classify fisheries in one of two categories, either exempt or export. These are very similar to our domestic fisheries. We have a Category 1, 2 and 3 fisheries. We've compressed this. Exempt fisheries are equivalent to Category 3 fisheries. Export fisheries are equivalent to Category 1 and 2.

So, exempt fisheries have a remote likelihood or no marine mammal bycatch. If we actually have a bycatch limit, then it is the bycatch in that fishery is 10% or less of any marine mammal bycatch or of that bycatch limit. For exempt fisheries, no regulatory program is required. For export fisheries, they have more than a remote likelihood of marine mammal bycatch.

If we have insufficient information to properly classify the fishery, on a precautionary basis, we will classify that fishery as an export fishery until we have sufficient information to properly classify it. And, all export fisheries will have to develop a regulatory program that's comparable in effectiveness to the U.S. regulatory program to reduce their marine mammal bycatch.

Both exempt and export fisheries must prohibit the intentional killing and serious injury of marine mammals or demonstrate that they have procedures to segregate or demonstrate that the fish and fish products that are caught were no-way associated with intentional killing or serious injury of marine mammals.

This is a very complicated system, so we're going to actively engage in consultations with our trading partners. First, as I said, we will reach out to those countries to gather the information to create the list of foreign fisheries.

Once that list is created, we will provide the list and the classifications to the nations, along with any regulatory requirements that would be applicable to those fisheries.

Nations can consult with us at any time upon request. And, there are two other times when we will reach out to nations and that is when it looks as if a nation will be denied or a comparability finding will be revoke for a particular fishery. That's what we refer to as a preliminary comparability finding, at which point, we will reach out to those nations and let them know that that fishery is potentially in jeopardy.

If a comparability finding is denied or revoked for a particular fishery, again we will reach out to the nations and provide them with a rational for that denial of revocation.



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So now I'm going to step through the conditions that a nation must adhere to in order to receive a comparability finding. And, these conditions are partly determined by where a particular fishery is operating.

So, if the fishery is operating within the EEZ of its harvesting national, there has to be some type of fishery registration or licensing agreement. The country must also undertake a marine mammal stock assessment and estimate bycatch of marine mammals that interact with that particular fishery.

There will also be requirements for reporting (incident) mortality and serious injury and monitoring bycatch in that fishery. The nation will be required to calculate a bycatch limit for that marine mammal stock that interacts with the fishery. That's similar to the U.S. bycatch rate which is called the potential biological removal. So we're looking for something that's scientifically equivalent.

And then finally, the nation has to develop a regulatory program to reduce the bycatch, below the bycatch limit, as well as implement any Take Reduction Plan requirements. The Take Reduction Plan is our regulatory program for certain fisheries in the United States.

So, if we have one in place for a similar fishery interacting with a similar marine mammal stock, we will be looking for those fisheries again to adopt those regulatory requirements.

Now, there is an out or an alternative, and that is, if a nation chooses not to step through all those aspects, they can implement alternative measures that are comparable in effectiveness.

An example of what might be an alternative measure is if a nation knows that it has bycatch in a particular time or area, they can implement closures in that area to eliminate their bycatch and that action would be considered comparable in effectiveness.

If the fishery is operating in another coastal state, that requires that the harvesting nation cooperate with that coastal state, to gather pretty much the same information as it would be required if it was operating within its own EEZ.

And so again, that would be a marine mammal stock assessment and bycatch estimation. The calculation of bycatch limit, a regulatory program to reduce that bycatch below the bycatch limit, any applicable take reduction plan requirement and also if there are conservation and management measures associated with a regional fishery management organization, the country



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would be required to also implement those provisions for that particular fishery.

On the high seas, we're looking for countries to implement any conservation and management measures of a regional fishery management organization or intergovernmental agreement.

Also, if the U.S. has applicable take reduction plan requirements for the high seas, again, we would be looking for nations to implement those as well, for similar fisheries or again, in each of these scenarios there's alternative measures can be applied that are considered comparable in effectiveness.

We realize that this program will probably take some years for countries to fully develop and to achieve all of its outcomes. So we have provided some flexibility for National Marine Fisheries Service when it's evaluating the application for a comparability finding.

We will consider our own implementation of our regulatory program for similar marine mammal stocks and fisheries. We won't be asking a country to do more than we ourselves have done for particular fisheries. We'll consider the extent to which the nation has successfully implemented the measures and take an action to reduce the bycatch below the bycatch limit.

If the measures are newly adopted, we will be looking at the likelihood that those measures will reduce bycatch below the bycatch limit and the progress that has been made to date on terms of the regulatory program toward achieving its objectives.

So, this allows us greater flexibility. The goal here is not to impose import prohibitions, but to work with countries to develop regulatory programs that progressively reduce bycatch below the bycatch limit.

In the event that a nation has failed to receive a comparability finding or that comparability finding is revoked for a particular fishery, there will be an import prohibition of fish and fish products from that fishery.

Additionally, National Marine Fisheries Service may require a certification of admissibility from that nation for other fisheries that are providing the same or similar fish products.

So, for example, if purse seine fishery for tuna did not receive a comparability finding, National Marine Fisheries Service may require a certification of admissibility from long-line fisheries for tuna.



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A nation can reapply at any time, demonstrating that the conditions that it failed to achieve are now being met. So they can reapply to receive that comparability finding.

There is also a provision that at any time if an individual RFMO nation has information that indicates that a country is no longer meeting its obligations and conditions under a comparability finding, they may provide that information to National Marine Fisheries Service, which will trigger a re-evaluation. And it may result in the revocation of a comparability finding, if we determine that the conditions are no longer being met.

If import prohibitions are triggered, that may also affect processing nations or what we refer to as intermediary nations. And so, at that point, an intermediary nation must demonstrate that they do not import the prohibited product or they have tracking and verification procedures in place to insure that the prohibited product is not then re-exported from their country to the United States.

So just to recap, again, we will develop the List of Foreign Fisheries. We will periodically update that throughout this process, as information becomes available.

We will consult with nations in the development of that list, but also as they develop their regulatory programs. We will be looking for progress reports both midterm in the five-year period and also midterm in the four-year period, once they receive a comparability finding.

Comparability findings are - they reapply for comparability findings every four years. If a comparability finding is granted, the fishery can export fish or fish products to the United States. If it's denied, then there'll be an import prohibition. But at any time, the nation can reapply for a comparability finding for that fishery provided that it can demonstrate that it's meeting the conditions.

We had more than 120 trading partners that export fish and fish products in the United States. The three largest imports are tuna, shrimp and salmon. This will include, as you can imagine both wild caught and aquaculture. We have more than 50 nations that export tuna and swordfish, and we import more than 67 marine species. The top exporting nations are Canada, Chile, China, Japan, Mexico, Taiwan, Thailand, South Korea and Vietnam.

In some cases some of these nations are both harvesting nations and intermediary nations for certain fish products. And, we'll be working to identify which products they serve as the harvesting nation, the intermediary nation or both.



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So, if you would like more information, the final rule is available through the Federal Register. It's also available on our website along with a fact sheet. We have cable letters that explain in slightly more detail aspects of the rule. They are available in Spanish and French. And there is a list of the additional webinars that we have coming forward on this topic.

And, if you have any questions, feel free to contact me. There's my phone number and my email address. And with that, I think we'll open it for questions.

Kerry Turner: Yes, we'll now have that question and answer session that I mentioned early on. You can submit your questions both through the WebEx and also through the phone line. And operator, will you tell us how to get a question into the queue please?

Coordinator: Yes, if you would like to ask a question today, please press Star 1 and record your name clearly at the prompt. To withdraw your question, you may press Star 2.

Once again, if you would like to ask a question today, please press Star 1 and record your name at the prompt. One moment while we wait for the incoming questions, as a reminder, if you would like to ask a question, please press Star 1. And, I'm currently showing no questions in queue at this time.

Kerry Turner: Okay, just a reminder, we do welcome your questions or if you have requests for clarification of anything that's been presented, please feel free to submit that through the phone or through the WebEx, and we'll be able to have that discussion with you right now. We'll wait a couple more seconds to see if any questions come in.

Okay, well thank you for joining us today. If you have any questions, Nina Young's contact information is up on the screen right now. And, feel free to send her an email, give her a call with any questions that you may have.

I hope you have a wonderful day and/or evening.

Coordinator: Thank you and this does conclude today's conference. All parties may disconnect.

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