

NATIONAL MARINE FISHERIES SERVICE (NMFS) REPORT  
ON HIGHLY MIGRATORY SPECIES (HMS) ACTIVITIES

**Import Restrictions under the Marine Mammal Protection Act Update**

*List of foreign fisheries*

On August 22, 2017, NMFS published a notice of availability and request for comments on the draft List of Foreign Fisheries (LOFF) ([82 FR 39762](#); comment period closed October 23, 2017). This request for comments follows the rule NMFS published on August 15, 2016, ([81 FR 54390](#)) implementing the fish and fish product import provisions (section 101(a)(2)) of the Marine Mammal Protection Act (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.

The [draft LOFF](#) reflects available information on marine mammal interactions in commercial fisheries exporting fish and fish products to the United States. NMFS has classified each commercial fishery included in the draft LOFF as either “exempt” or “export” based upon frequency and likelihood of incidental mortality and serious injury of marine mammals that is likely to occur incidental to each fishery. The classification of a fishery on the draft and final LOFF will determine which regulatory requirements will be applicable to that fishery to enable the nation to receive a comparability finding necessary to export fish and fish products to the United States from that particular fishery. The final LOFF will likely published in March 2018.

*Export fisheries*

The definition of export fishery can be found in the implementing regulations for section 101(a)(2) of the MMPA (see [50 CFR 216.3](#)). NMFS considers export fisheries to be functionally equivalent to Category I and II fisheries under the U.S. regulatory program (see definitions at [50 CFR 229.2](#)). NMFS defines export fishery as a foreign commercial fishing operation determined by the Assistant Administrator to be the source of exports of commercial fish and fish products to the United States that have more than a remote likelihood of incidental mortality and serious injury of marine mammals in the course of its commercial fishing operations.

*Exempt fisheries*

The definition of exempt fishery can be found in the implementing regulations for section 101(a)(2) of the MMPA (see [50 CFR 216.3](#)). NMFS considers exempt fisheries to be functionally equivalent to Category III fisheries under the U.S. regulatory program (see definitions at [50 CFR 229.2](#)). NMFS defines an exempt fishery as a foreign commercial fishing operation determined by the Assistant Administrator for Fisheries to be the source of exports of commercial fish and fish products to the United States that have a remote likelihood of, or no known, incidental mortality and serious injury of marine mammals in the course of commercial fishing operations. A commercial fishing operation that has a remote likelihood of causing incidental mortality and serious injury of marine mammals is one that, collectively with other foreign fisheries exporting fish and fish products to the United States, causes the annual removal of:

- (1) Ten percent or less of any marine mammal stock's bycatch limit, or

(2) More than ten percent of any marine mammal stock's bycatch limit, yet that fishery by itself removes one percent or less of that stock's bycatch limit annually, or

(3) Where reliable information has not been provided by the harvesting nation on the frequency of incidental mortality and serious injury of marine mammals caused by the commercial fishing operation, the Assistant Administrator for Fisheries may determine whether the likelihood of incidental mortality and serious injury is “remote” by evaluating information such as fishing techniques, gear used, methods to deter marine mammals, target fish species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, the species and distribution of marine mammals in the area, or other factors at the discretion of the Assistant Administrator for Fisheries.

#### *Comparability finding*

A comparability finding is a finding by NMFS that the harvesting nation for an export or exempt fishery has met the applicable conditions specified in the regulations (see [50 CFR 216.24\(h\)](#)) subject to the additional considerations for comparability findings set out in the regulations. A comparability finding is required for a nation to export fish and fish products to the United States. In order to receive a comparability finding for an export fishery, the harvesting nation must maintain a regulatory program with respect to that fishery that is comparable in effectiveness to the U.S. regulatory program for reducing incidental marine mammal bycatch. This may be met by maintaining a regulatory program that includes measures that are comparable, or that effectively achieve comparable results, to the regulatory program under which the analogous U.S. fishery operates. The criteria for an exempt fishery to receive a comparability finding are limited only to those conditions related to the prohibition of intentional killing or injury of marine mammals (see [50 CFR 216.24\(h\)\(6\)\(iii\)\(A\)](#)).

#### *Exemption period*

NMFS is giving foreign harvesting nations a five-year “exemption period” (which began January 1, 2017) to develop, as appropriate, regulatory programs comparable in effectiveness to U.S. programs at reducing marine mammal bycatch. During this exemption period, NMFS, based on the final LOFF, and in consultation with the Secretary of State, will consult with harvesting nations with commercial fishing operations identified as export or exempt fisheries for purposes of notifying the harvesting nation of the requirements of the MMPA. NMFS will continue to urge harvesting nations to gather information about marine mammal bycatch in their commercial fisheries to inform the next draft and final LOFF. NMFS will re-evaluate foreign commercial fishing operations and publish a notice of availability of the draft for public comment, and a notice of availability of the final revised LOFF in the Federal Register the year prior to the expiration of the exemption period (2020). If, during the five-year exemption period, the United States determines that a marine mammal stock is immediately and significantly adversely affected by an export fishery, NMFS may use its emergency rulemaking authority to institute an import ban on these products.

#### **Notice of Availability (NOA) and Proposed Rule to Implement Amendment 4 to the HMS Fishery Management Plan (FMP): Revisions to the Biennial Management Cycle**

On January 23, 2018, NMFS published a NOA ([83 FR 3108](#)) and requested public comment on Amendment 4 to the HMS FMP. The public comment period is 60 days, and will end on March 26, 2018. The intent of Amendment 4 is to bring descriptions of the management context for HMS

fisheries up to date, to better describe the Council's role in the process of making stock status determinations for HMS, including the Council's evaluations of the best scientific information available (BSIA), and to change the schedule of the Council's three-meeting biennial management cycle for HMS stocks. NMFS has 90 days to approve, disapprove, or partially approve the proposed changes to the FMP; the decision date is April 25, 2018.

Additionally, NMFS published a proposed rule to implement Amendment 4 on February 27, 2018 ([83 FR 8414](#)). The public comment period on the proposed rule is 45 days, ending on April 13, 2018. Any comments on the proposed rule that are received prior to the end of the comment period on the NOA (i.e., March 26, 2018) will also be taken into account in NMFS' decision whether to approve Amendment 4 to the HMS FMP.

### **Final Rule for 2018 Pacific bluefin tuna trip limits**

NMFS anticipates publishing a final rule revising trip limits for commercial Pacific bluefin tuna in the eastern Pacific Ocean in mid-March 2018. If approved, U.S. commercial fishing vessels will be subject to a 1-metric ton (mt) trip limit---except large-mesh drift gillnet, which would be subject to a 2-mt trip limit---throughout 2018. If the 2018 catch limit of 114 mt were to be reached, NMFS would close the fishery for the remainder of the 2018 calendar year.

### **Updates on HMS International Activities**

#### Pacific bluefin tuna Management Listening Session

As reported in the NMFS Report (see Agenda Item I.1.a), the International Scientific Committee for Tuna and Tuna-like Species in the North Pacific Ocean is hosting a stakeholder workshop on a Pacific bluefin tuna (PBF) management strategy evaluation (MSE). Although an agenda is not available yet, NMFS anticipates the workshop participants will discuss management objectives to incorporate into the MSE. NMFS is interested in learning from U.S. stakeholders potential management objectives for PBF. Therefore, NMFS will be hosting a listening session on April 18, 2018, with presentations and discussions broadcast at two locations: 1) the Southwest Fisheries Science Center, and 2) the Long Beach Federal Building. NMFS is preparing a Federal Register notice to announce the meeting times and other logistics, and expects the Notice will publish in late March 2018. If you have any questions, please contact NMFS WCR staff Celia Barroso at 562-432-1850 or [Celia.Barroso@noaa.gov](mailto:Celia.Barroso@noaa.gov).

#### Bilateral with Mexico

Representatives from the United States and Mexico met on February 6-8, 2018, in Silver Spring, Maryland to discuss high level fisheries issues. NMFS region staff and Mexico discussed issues related to the Inter-American Tropical Tuna Commission annual meeting in August 2018 including Pacific bluefin tuna, observer safety, and bycatch in the eastern Pacific Ocean. Mexico expressed a commitment to working with the United States. on these subjects. The Council can expect to see draft U.S. proposals for the IATTC at the June 2018 meeting.

#### Other International Meetings in 2018

Below is a list of upcoming international meetings in which the U.S. will participate, in addition to those listed in the NMFS Report I.1.a.

*IATTC-related Meetings*<sup>1</sup>

IATTC Bycatch Working Group	May 10-11(AM)	La Jolla, CA
IATTC FAD Working Group	May 11(PM)-12	La Jolla, CA
IATTC Fleet Capacity Working Group	May 13	La Jolla, CA

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<sup>1</sup> For more information on future meetings, visit: <https://www.iattc.org/MeetingsENG.htm>