



To: Erin Arneson Purvis, UGA Marine Extension and Georgia Sea Grant

From: Siena Fouse, Ocean and Coastal Law Fellow

Re: Background on the Marine Mammal Protection Act Import Provisions and Their Implementation (NSGLC-26-04-01)¹

Date: February 27, 2025

Advisory Summary

An extension agent from UGA Marine Extension and Georgia Sea Grant contacted NSGLC to request information on the Marine Mammal Protection Act (MMPA) import provisions and their implementation. Starting on January 1, 2026, all harvesting nations with commercial fisheries exporting fish and fish products to the United States must have received comparability findings from the National Marine Fisheries Service (NMFS) confirming that their exporting fisheries meet the conditions in the MMPA import provisions.² This advisory memo first provides background on the MMPA import provisions and 2016 rule implementing the provisions, NMFS's List of Foreign Fisheries (LOFF), and NMFS's comparability finding determinations. Then, it discusses a challenge to the 2016 rule and comparability finding determinations.

Background on MMPA Import Provisions and Rulemaking

The MMPA “contains provisions to address the incidental mortality and serious injury of marine mammals in both domestic and foreign commercial fisheries.”³ MMPA §101(a)(2) states that “[t]he 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...the Secretary shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products.”⁴ In 2008, NMFS received a petition to ban imports of swordfish from countries that failed to submit proof of the effects of

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² [Marine Mammal Protection Act Import Provisions](#), NOAA FISHERIES (Feb. 6, 2026) [hereinafter *MMPA Import Provisions*].

³ [Fish and Fish Product Import Provisions of the Marine Mammal Protection Act](#), 81 Fed. Reg. 54390 (Sept. 15, 2016) (codified at 50 C.F.R. § 216 (2026)) [hereinafter *Fish and Fish Product Import Provisions of the MMPA*].

⁴ [Marine Mammal Protection Act of 1972 § 101\(a\)\(2\)](#), 16 U.S.C. § 1371.

commercial fishing technology in use to catch swordfish on marine mammals.⁵ Additionally, in 2011 and 2012, animal welfare organizations voiced concern about importing salmon from Canada and Scotland where farms intentionally killed seals to reduce predation, which would allegedly subject them to the MMPA import ban.⁶ NMFS decided to create a new import rule that applied beyond swordfish fisheries to cover intentional and incidental killing and serious injury of marine mammals.⁷ In 2015, NMFS published the proposed rule and “included a 90-day comment period.”⁸ After addressing comments, the final rule to implement the MMPA import provisions was published in 2016.⁹

The 2016 Imports Rule and List of Foreign Fisheries

The 2016 imports rule requires harvesting nations exporting fish and fish products to the United States to apply for and receive comparability findings from NMFS for their exporting fisheries by January 1, 2026.¹⁰ The comparability findings confirm that the harvesting nations’ exporting fisheries meet the conditions in the MMPA import provisions.¹¹

In 2020, NMFS published its [final List of Foreign Fisheries \(LOFF\)](#), which is organized by country and classifies fisheries that export to the United States “based on their frequency of marine mammal interactions as either ‘exempt’ or ‘export’ fisheries.”¹² “Exempt fisheries are fisheries that have no known or a remote likelihood of marine mammal bycatch and are exempt from instituting a regulatory program.”¹³ Export fisheries on the LOFF are “fisheries with more than a remote likelihood of marine mammal bycatch or insufficient information available on marine mammal interactions.”¹⁴ To receive a comparability finding, both exempt and export fisheries on the LOFF (1) have to prohibit “the intentional mortality or serious injury of marine mammals in the course of commercial fishing operations in the fishery unless...necessary in self-defense or to save the life of a person in immediate danger”; or (2) have procedures to reliably certify that fishery exports to the U.S. “are not the product of an intentional killing or serious injury of a marine mammal unless...necessary in self-defense or to save the life of a person in immediate danger.”¹⁵ Additionally, export fisheries must demonstrate that they have “a regulatory program governing the incidental mortality and serious injury of marine mammals in

⁵ CTR. FOR BIOLOGICAL DIVERSITY & TURTLE ISLAND RESTORATION NETWORK, [PETITION TO BAN IMPORTS OF SWORDFISH FROM COUNTRIES FAILING TO SUBMIT PROOF OF THE EFFECTS OF FISHING TECHNOLOGY ON MARINE MAMMALS PURSUANT TO MARINE MAMMAL PROTECTION ACT SECTION 101](#) (2008).

⁶ [Fish and Fish Product Import Provisions of the MMPA](#), *supra* note 3.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ [MMPA Import Provisions](#), *supra* note 2.

¹¹ *Id.*

¹² [Fish and Fish Product Import Provisions of the MMPA](#), *supra* note 3.

¹³ [List of Foreign Fisheries](#), NOAA FISHERIES (Oct. 1, 2025).

¹⁴ *Id.*

¹⁵ [Fish and Fish Product Import Provisions of the MMPA](#), *supra* note 3.

the course of commercial fishing operations that is comparable in effectiveness to the U.S. regulatory program.”¹⁶

This rule is currently in effect. Since January 1, 2026, nations whose fisheries have not received a comparability finding have been prohibited from exporting fish and fish products from those fisheries to the U.S.¹⁷ Harvesting nations “must reapply for a comparability finding every four years” to continue exporting to the U.S.¹⁸ Fisheries that were initially denied a comparability finding may present new or updated information and reapply at any time.¹⁹

Identifying Approved Export Fisheries

In September 2025, NMFS published its 2025 Marine Mammal Protection Act comparability finding determinations in the [Federal Register](#).²⁰ These determinations covered about 2,500 fisheries across 135 nations.²¹ Over ninety percent of evaluated fisheries received comparability findings.²² Just “240 fisheries from 46 nations were denied comparability findings,” restricting their ability to export to the U.S.²³

The 2025 comparability finding determinations are also available on [NMFS's website](#). This webpage has three lists: (1) “[n]ations receiving comparability findings for all export/exempt fisheries”; (2) “[n]ations denied comparability findings for some fisheries”; and (3) “[n]ations denied comparability findings for all fisheries.”²⁴ Website users can click on the name of country under one of these lists and be directed to the country’s MMPA Import Provisions Comparability Finding Application Final Report. The final report will state whether all or none of a country’s exempt and export fisheries are comparable in effectiveness to the U.S. regulatory program. If only a subset of a country’s fisheries are found to not be comparable to the U.S. regulatory program, the final report lists those fisheries that are not comparable and states that the countries’ remaining fisheries on the LOFF are comparable. Additionally, “[n]ations denied comparability findings for a subset of their fisheries are required to implement Certifications of Admissibility” (COA) to attest that imports are not subject to prohibitions. NOAA provided [clarification on COA requirements](#) at the beginning of February 2026 describing required information and filing requirements.²⁵

¹⁶ *Id.*; [MMPA Import Provisions](#), *supra* note 2.

¹⁷ [MMPA Import Provisions](#), *supra* note 2.

¹⁸ [NOAA Fisheries Bolsters American Seafood Industry with New Import Provisions](#), NAT’L OCEANIC AND ATMOSPHERIC ADMIN. (Aug. 29, 2025).

¹⁹ [2025 Marine Mammal Protection Act Comparability Finding Determinations for Harvesting Nations](#), NOAA FISHERIES (Feb. 6, 2026).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ [CSMS # 67590021 – Follow-Up: NOAA Fisheries Marine Mammal Protection Act \(MMPA\) Import Restrictions and Certification of Admissibility \(COA\) Requirements](#), U.S. Customs and Border Prot. (Feb. 3, 2026).

NMFS Resources

- [2025 Final Comparability Finding Approvals](#)
- [2025 Final Comparability Finding Denials](#)
- [Marine Mammal Protection Act Import Provisions FAQs](#)

South American Countries' Comparability Findings

South American countries and territories that received comparability findings from NMFS in 2025 for all fisheries in the country include Argentina, the Falkland Islands, Guyana, and Uruguay.²⁶ The countries in South America denied comparability findings for a subset of their fisheries, include Brazil, Chile, Colombia, Ecuador, Peru, and Suriname. The only South American country denied comparability findings for all its fisheries is Venezuela because it did not submit an application for comparability findings.²⁷ Since the announcement of the comparability determinations last year, some countries like Peru are already making changes that likely support reapplications for comparability findings.²⁸ Peru's Ministry of Production announced in December 2025 that "mahi-mahi intended for export must be caught exclusively using a drifting longline," which is "recognized for its low impact on marine mammals."²⁹

Challenging the MMPA Import Rule and Comparability Determinations

In 2010, NMFS "published an advance notice of proposed rulemaking describing options to develop procedures to implement the import provisions" of the MMPA and requested public comment.³⁰ NMFS published a proposed rule in August 2015 "that included a 90-day comment period" then addressed the comments in the final rule published in August 2016.³¹ Some of the changes NMFS made in response to public comments included clarifying conditions for a comparability requirement and clarifying use of alternative documentation to the certification of admissibility.³² After extending the due date of comparability findings applications three times, NMFS "notified countries of its preliminary comparability determination" in January 2025.³³ Nations were allowed "to submit evidence to refute denials" until April 2025, then NMFS finally

²⁶ [2025 Marine Mammal Protection Act Comparability Finding Determinations for Harvesting Nations](#), NOAA FISHERIES (Feb. 6, 2026).

²⁷ *Id.*

²⁸ Marta Negrete, [Peru Secures Continuity of its Mahi-Mahi Exports to the U.S.](#), WE ARE AQUACULTURE (Dec. 29, 2025, 1:15 PM).

²⁹ *Id.*; [Estados Unidos Prohibe el Ingreso de Pesquerías Peruanas Capturadas con Redes de Enmalle](#), dataPortuaria (Dec. 17, 2025).

³⁰ [Fish and Fish Product Import Provisions of the MMPA](#), *supra* note 3.

³¹ *Id.*

³² *Id.*

³³ [Implementation of Fish and Fish Product Import Provisions of the Marine Mammal Protection Act-Notification of Comparability Findings and Implementation of Import Restrictions: Certification of Admissibility for Certain Fish Products](#), 90 Fed. Reg. 42395 (Sept. 2, 2025); Taylor Mills, [Agencies to Enforce Marine Mammal Protections for Fish Imports](#), BLOOMBERG L. (Jan. 17, 2025, 3:05 PM).

announced the comparability finding determinations for all fisheries on the LOFF in September 2025.³⁴

Final federal agency actions can be challenged in federal court under the Administrative Procedure Act (APA).³⁵ Courts may decide that the agency action is unlawful if it is found to be arbitrary and capricious, contrary to a constitutional right, in excess of statutory authority, or without observance of procedure required by law.³⁶

In October 2025, one month after the comparability determinations were announced, a coalition of trade associations, including the National Fisheries Institute, and seafood companies sued NOAA in the U.S. Court for International Trade claiming that “NMFS’s [comparability finding] determinations exceeded statutory authority, violate the agency’s own regulations, and are arbitrary and capricious.”³⁷ The seafood company plaintiffs process and sell crab from fisheries affected by the import ban and stated that the import prohibitions would “eliminate approximately 89% of the blue swimming crab available to the U.S. market, leaving no viable substitute.”³⁸ Plaintiffs argued that NMFS exceeded its statutory authority under the MMPA “by conditioning market access on regulatory replication rather than assessing actual marine-mammal mortality to U.S. standards” and that NMFS’s restriction on reapplications until after January 1, 2026 was contrary to the agency’s 2016 import rule.³⁹ Associations of commercial fishermen including the Alaska Longline Fishermen’s Association filed an amicus brief in support of NMFS stating that the “[c]omparability [f]indings and import bans are crucial to achieving the MMPA’s purposes of protecting marine mammals and promoting sustainable fisheries in the United States.”⁴⁰

The parties settled the case at the end of October with plaintiffs agreeing to dismiss the lawsuit and NMFS agreeing to stay the import ban for swimming crab fisheries located in Vietnam, the Philippines, Indonesia, and Sri Lanka while reconsidering those fisheries’ comparability finding determinations.⁴¹ Additionally, NMFS eliminated the wait period allowing harvesting nations to, “at any time, reapply for or request the reconsideration of a denied comparability finding for a

³⁴ [Implementation of Fish and Fish Product Import Provisions of the Marine Mammal Protection Act-Notification of Comparability Findings and Implementation of Import Restrictions; Certification of Admissibility for Certain Fish Products](#), 90 Fed. Reg. 42395 (Sept. 2, 2025); Taylor Mills, [Agencies to Enforce Marine Mammal Protections for Fish Imports](#), BLOOMBERG L. (Jan. 17, 2025, 3:05 PM).

³⁵ [5 U.S.C. § 704](#).

³⁶ [5 U.S.C. § 706](#).

³⁷ [Plaintiffs’ Motion for Preliminary Injunction](#) at 23, Nat’l Fisheries Inst. v. United States, No. 1:25-cv-223 (Ct. Int’l Trade 2025) (No. 17).

³⁸ *Id.* at 8.

³⁹ *Id.* at 24, 29.

⁴⁰ [Brief of Amici Curiae Alaska Longline Fishermen’s Association, et al. Filed in Support of Federal Defendants and Defendant-Intervenors’ Opposition to Plaintiffs’ Motion for a Preliminary Injunction](#) at 1, Nat’l Fisheries Inst. v. United States, No. 1:25-cv-223 (Ct. Int’l Trade 2025) (No. 40-1).

⁴¹ [Order](#) at 2, Nat’l Fisheries Inst. v. United States, No. 1:25-cv-223 (Ct. Int’l Trade 2025) (No. 37-1).

fishery.”⁴² Some harvesting nations have already completed corrective measures and reapplied for comparability findings through NOAA’s International Affairs Information Capture and Reporting System.⁴³ However, NMFS has not publicly released a timeline on reviewing reapplications.⁴⁴

NOAA Contacts for More Information

For questions related to the MMPA import provisions regulations, comparability finding determinations, or the List of Foreign Fisheries, you can contact MMPA.LOFF@noaa.gov. For technical assistance on current Certificate of Admissibility requirements, you can contact trademonitoring.support@noaa.gov.

⁴² *Marine Mammal Protection Act Import Provisions Frequently Asked Questions*, NOAA FISHERIES (De. 2025); *2025 Marine Mammal Protection Act Comparability Finding Determinations for Harvesting Nations*, NOAA FISHERIES (Feb. 6, 2026); *NOAA Fisheries Bolsters American Seafood Industry with New Import Provisions*, NAT’L OCEANIC AND ATMOSPHERIC ADMIN. (Aug. 29, 2025).

⁴³ *Update on US NOAA Fisheries Import Measures and Grenada’s Reapplication*, NOW GREN. (Jan. 2, 2026).

⁴⁴ *Id.*