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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF139

List of Foreign Fisheries

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

ACTION: Notice; request for information.

SUMMARY: NMFS is seeking information on foreign commercial fishing operations that export fish and fish products to the United States and the level of incidental and intentional mortality and serious injury of marine mammals in those fisheries. NMFS will use this information to identify harvesting nations with commercial fishing operations that export fish and fish products to the United States and classify those fisheries based on their frequency of marine mammal interactions as either "exempt" or "export" fisheries.

DATES: Information should be received on or before March 1, 2017.

ADDRESSES: Information may be submitted by mail to: NMFS Office of International Affairs and Seafood Inspection, Attn: MMPA List of Foreign Fisheries Information, F/IS 1315 East-West Highway, Silver Spring, MD 20910, or electronically to:

Nina.Young@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Nina Young, phone 301-427-8383, or email *Nina.Young@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS published a final rule (81 FR 54390, August 15, 2016) implementing the import provisions of the Marine Mammal Protection Act (MMPA). This rule establishes conditions for evaluating a harvesting nation's regulatory program to address incidental and intentional mortality and serious injury of marine mammals in fisheries that export fish and fish products to the United States.

Under this rule, fish and fish products from fisheries identified by the Assistant Administrator for Fisheries in the List of Foreign Fisheries can only be imported into the United States if the harvesting nation has applied for and received a comparability finding from NMFS. The rule establishes procedures that a harvesting nation must follow and conditions to meet to receive a comparability finding for a fishery. The rule also establishes provisions for intermediary nations to ensure that intermediary nations do not import and re-export to the United States fish or fish products subject to an import prohibition.

NMFS will identify harvesting nations with commercial fishing operations that export fish and fish products to the United States and classify those fisheries based on the frequency of marine mammal interactions. NMFS will classify foreign commercial fishing operations exporting fish and fish products to

the United States as either an "exempt fishery" or "export fishery" based on the reliable information provided by the harvesting nation or other readily available information.

NMFS defines "exempt 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 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 10 percent of any marine mammal stock's bycatch limit, yet that fishery by itself removes 1 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 may determine whether the likelihood of incidental mortality and serious injury is "remote" by evaluating information concerning factors such as fishing

techniques, gear used, methods used to deter marine mammals, target 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.

A foreign fishery will not be classified as an exempt fishery unless the Assistant Administrator has reliable information from the harvesting nation, or other information to support such a finding.

Commercial fishing operations that NMFS determines meet the definition of an exempt fishery would still be required to obtain a comparability finding by having the harvesting nation demonstrate that it has either prohibited the intentional mortality or serious injury of marine mammals in the course of commercial fishing operations in these exempt fisheries, unless the intentional mortality or serious injury of a marine mammal is imminently necessary in self-defense or to save the life of a person in immediate danger; or that it has procedures to reliably certify that exports of fish and fish products to the United States are not the product of an intentional killing or serious injury of a marine mammal unless the intentional mortality or serious injury of a marine mammal is imminently necessary in self-defense or to save the life of a person in immediate danger.

Exempt fisheries would not have to meet the comparability finding requirement to have a regulatory program for incidental mortality and serious injury comparable in effectiveness to the U.S. regulatory program.

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 and to have more than a remote likelihood of incidental mortality and serious injury of marine mammals (as defined in the definition of an "exempt fishery") in the course of its commercial fishing operations. 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 may determine whether the likelihood of incidental mortality and serious injury is more than "remote" by evaluating information concerning factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or other factors at the discretion of the Assistant Administrator that may inform whether the likelihood of incidental mortality and serious injury of marine

mammals caused by the commercial fishing operation is more than "remote."

Commercial fishing operations not specifically identified in the current List of Foreign Fisheries as either exempt or export fisheries are deemed to be export fisheries until the next List of Foreign Fisheries is published unless the Assistant Administrator has reliable information from the harvesting nation to classify the foreign commercial fishing operation. Additionally, the Assistant Administrator may request additional information from the harvesting nation and may consider other relevant information about such commercial fishing operations and the frequency of incidental mortality and serious injury of marine mammals, to properly classify the foreign commercial fishing operation.

NMFS will publish in the **Federal Register** a List of Foreign Fisheries by harvesting nation, their fisheries, and their classifications. NMFS will publish a proposed List of Foreign Fisheries for public comment and a subsequent final List. To develop this list, NMFS has notified each harvesting nation with fisheries that export to the United States and requested that within 90 days of notification the harvesting nation submit reliable information about the commercial fishing operations identified, including the number of participants, number of vessels, gear type, target species, area of operation, fishing

season, and any information regarding the frequency of marine mammal incidental mortality and serious injury, including programs to assess marine mammal populations.

Harvesting nations will also be requested to submit copies of any laws, decrees, regulations, or measures to reduce incidental mortality and serious injury of marine mammals in those fisheries or prohibit the intentional killing or injury of marine mammals.

NMFS will evaluate each harvesting nation's submission, any readily available information, request additional information from the harvesting nations, as necessary, and use this information to classify the fisheries. In the absence of quantifiable information or reliable information from the harvesting nation, NMFS will classify fisheries by analogy with similar U.S. fisheries and gear types interacting with similar marine mammal stocks using readily available information or available observer or logbook information per the procedures outlined in 50 CFR 229.2. Where no information or analogous fishery or fishery information exists, NMFS will classify the commercial fishing operation as an export fishery until such time as the harvesting nation provides reliable information to classify the fishery or such information is readily available to the Assistant Administrator in the course of preparing the List of Foreign Fisheries.

In revising the list, NMFS may reclassify a fishery if new substantive information indicates the need to re-examine and possibly reclassify a fishery. The List of Foreign Fisheries will be organized by harvesting nation and other defining factors including geographic location of harvest, gear-type, target species or a combination thereof. Based upon the List of Foreign Fisheries, the Assistant Administrator will consult with harvesting nations, informing them of the regulatory requirements for exempt and export fisheries to import fish and fish products into the United States. More information regarding this process can be found in the regulations codified at 50 CFR 216.24.

NMFS is soliciting information from harvesting nations; other foreign, regional, and local governments; regional fishery management organizations; nongovernmental organizations; industry organizations; academic institutions; and citizens and citizen groups to identify commercial fishing operations with intentional or incidental mortality and serious injury of marine mammals. For each item we are requesting you identify the exporting nation as the harvesting nation, the processing or intermediary nation, or both. For fisheries exporting fish and fish products to the United States NMFS is requesting the following information:

- Number of participants,
- Number of vessels,
- Gear type,

- Target species,
- Area of operation,
- Fishing season, and
- Information regarding the frequency of marine mammal incidental and intentional mortality and serious injury.

Such information may include fishing vessel records; reports of on-board fishery observers; information from off-loading facilities, port-side government officials, enforcement agents, transshipment vessel workers and fish importers; government vessel registries; RFMO or intergovernmental agreement documents, reports, and statistical document programs; appropriate catch certification programs; and published literature and reports on commercial fishing operations with intentional or incidental mortality and serious injury of marine mammals.

NMFS will consider all available information, as appropriate, when making a classification. Information should be as specific as possible as this will assist NMFS in its review. NMFS will consider several criteria when determining whether information is appropriate for use in making identifications, including:

- Corroboration of information;
- Whether multiple sources have been able to provide information in support of an identification;

- The methodology used to collect the information;
- Specificity of the information provided;
- Susceptibility of the information to falsification and alteration; and
- Credibility of the individuals or organization providing the information.

Dated: January 4, 2017.

John Henderschedt,

Director, Office for International Affairs and Seafood

Inspection, National Marine Fisheries Service.

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