



## Massachusetts Lobstermen's Association

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August 5, 2026

Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service

**Docket No. 260723-0179**

**RIN 0648-BO43 Implementation of Fish and Fish Product Import Provisions of the Marine Mammal Protection Act**

Mr. Rauch III,

On behalf of the more than 1,800 members of the Massachusetts Lobstermen's Association (MLA), we appreciate the opportunity to provide comments regarding the implementation and application of the Marine Mammal Protection Act (MMPA) import provisions.

The Massachusetts lobster industry has lived with the most stringent marine mammal conservation requirements in the United States. Our members have repeatedly been asked to change how, where, and when they fish, invest in new gear and equipment, comply with increasingly burdensome monitoring and reporting requirements, and accept significant operational and economic impacts to reduce the risk of serious injury and mortality to marine mammals.

Established in 1963, the MLA is a member-driven organization that recognizes and supports the interdependence of marine resource conservation and the economic sustainability of Massachusetts' commercial fishing industry. For more than six decades, the MLA has worked collaboratively with the Massachusetts Division of Marine Fisheries, the Atlantic States Marine Fisheries Commission, and National Marine Fisheries Service (NMFS) to ensure that lobster management remains both environmentally responsible and economically viable.

Our members have not opposed conservation. Quite the opposite. The commercial lobster industry has demonstrated that it is willing to work with federal and state agencies, scientists, conservation organizations, and other stakeholders to develop and implement meaningful measures that protect marine mammals while allowing fishermen to continue their livelihoods.

However, conservation cannot be a one-way obligation.

It is fundamentally unfair to require American commercial fishermen to operate under stringent marine mammal protection standards while allowing seafood harvested in foreign fisheries under substantially weaker standards to enter the United States and compete directly against American fishermen.

The purpose of the MMPA import provisions must therefore be more than simply establishing a foreign regulatory program on paper. The provisions must create a genuine level playing field.

The MLA strongly believes that all seafood and seafood products imported into the United States should be held to marine mammal conservation standards comparable to those required of U.S. commercial fisheries. Foreign fisheries should be required to demonstrate that their actual fishing practices, gear, monitoring, reporting, mitigation, enforcement, and conservation outcomes are comparable in effectiveness to those required of U.S. fishermen.

Different countries may use different regulatory systems and different approaches to achieving conservation objectives. However, different approaches cannot be used to justify different levels of protection.

The standard should be based on measurable conservation outcomes and actual performance—not simply on whether a foreign government has adopted regulations.

The United States commercial lobster industry has already made substantial sacrifices to meet the nation's marine mammal conservation objectives. Our members should not be placed at a competitive disadvantage because foreign fisheries are permitted to operate under less protective standards.

If seafood is going to be sold in the United States, it should be harvested under marine mammal protection standards comparable to those required of American fishermen.

We respectfully urge NMFS to apply this principle consistently, fairly, and without delay across all imported seafood products and all foreign fisheries.

## **NMFS MMPA Import Provision Questions**

### **1. What changes should NMFS make to its regulations to improve marine mammal conservation outcomes while treating exporting nations fairly and consistently?**

From the perspective of the U.S. commercial lobster industry, NMFS should make one principle unmistakably clear: seafood imported into the United States must meet the same marine mammal conservation standards that U.S. commercial fishermen are required to meet.

U.S. lobster fishermen have invested heavily in gear modifications, risk-reduction measures, gear marking, monitoring, reporting, seasonal and area restrictions, and other requirements designed to reduce the risk of serious injury and mortality to marine mammals. These requirements impose real operational and economic costs on fishing businesses.

It is fundamentally unfair for a U.S. fisherman to be required to comply with stringent marine mammal requirements while imported seafood harvested under less protective standards is allowed to compete directly in the same U.S. marketplace.

NMFS should therefore:

- Establish a clear, measurable U.S. baseline standard for marine mammal conservation.
- Require foreign fisheries to demonstrate that their actual fishing practices meet that baseline.

- Apply the standard consistently regardless of the exporting country's size, economic status, or political relationship with the United States.
- Evaluate the actual gear and fishing practices, not simply whether a country has regulations on paper.
- Consider documented marine mammal mortality and serious injury, monitoring, reporting, enforcement, mitigation measures, and compliance.
- Immediately prohibit imports from fisheries that cannot demonstrate comparability.

The objective should not be to impose identical regulations on every country. Rather, different countries may use different regulatory mechanisms, but they must achieve comparable marine mammal conservation outcomes.

## **2. What opportunities or challenges have the MMPA import provisions introduced?**

The MMPA import provisions provide an important opportunity to correct a longstanding inequity facing U.S. commercial fishermen.

For years, American fishermen have been asked to absorb the costs of increasingly stringent conservation requirements while competing against seafood produced in countries where comparable protections may not exist or may not be effectively enforced.

The import provisions can create a level playing field by ensuring that imported seafood is not produced at the expense of marine mammals.

The principal challenge is ensuring that comparability determinations are meaningful, transparent, scientifically defensible, and consistently enforced.

The commercial lobster industry is particularly concerned that foreign fisheries not be allowed to receive favorable treatment simply because they use different terminology, have different regulatory structures, or lack sufficient data.

A lack of data should never automatically be interpreted as proof that a fishery has little or no marine mammal impact.

## **3. How else could NMFS define "U.S. standards" and assess comparability?**

NMFS should establish a minimum U.S. Marine Mammal Conservation Standard that is measurable and applicable across fisheries.

Comparability should be based on outcomes and core requirements, including:

1. Documented marine mammal interactions;
2. Incidental mortality and serious injury;
3. Gear-specific risk;
4. Required mitigation measures;
5. Monitoring and observer coverage;
6. Reporting requirements;
7. Enforcement and penalties;
8. Compliance history;
9. Ability to identify affected marine mammal species and stocks; and

10. Demonstrated implementation—not merely written regulations.

A foreign fishery should not be considered comparable simply because its government has regulations that appear similar to U.S. regulations.

The test should be whether the fishery achieves comparable conservation results.

This is particularly important because U.S. lobster fishermen have been required to implement extensive measures to reduce risk to North Atlantic right whales and other marine mammals. The benchmark must reflect the level of conservation performance expected of U.S. fishermen.

**4. How can NMFS make evaluations more straightforward while maintaining conservation outcomes?**

NMFS should develop a standardized, gear-specific comparability matrix.

The matrix should identify:

- Fishing gear;
- Target species;
- Marine mammal species potentially affected;
- Known bycatch;
- Serious injury and mortality;
- Fishing area;
- Fishing effort;
- Mitigation measures;
- Monitoring coverage;
- Reporting requirements;
- Enforcement;
- Compliance history; and
- Scientific uncertainty.

The same criteria should be applied to U.S. and foreign fisheries.

Importantly, data deficiency should not be treated as evidence of low risk. Where reliable information is unavailable, NMFS should apply a precautionary approach until adequate information is provided.

U.S. commercial fishermen should not be disadvantaged because they have been required to document and address their impacts while foreign fisheries have historically had less monitoring.

**5. Should NMFS prioritize fisheries based on conservation status and risk of bycatch?**

Yes.

NMFS should prioritize fisheries based on:

- Marine mammal conservation status;

- Known or suspected bycatch;
- Gear type;
- Frequency of fishing effort;
- Overlap between fishing grounds and marine mammal habitat;
- Historical mortality and serious injury;
- Lack of mitigation;
- Lack of monitoring; and
- Scientific uncertainty.

High-risk fisheries and fisheries interacting with endangered or threatened marine mammals should receive the greatest scrutiny.

At the same time, all fisheries seeking to export seafood to the United States must ultimately satisfy the applicable U.S. standard.

## **6. Are there other factors NMFS should consider?**

Yes. NMFS should consider economic fairness to U.S. fishermen as part of the overall structure of the program, even though economic impacts should not be used to weaken conservation standards.

NMFS should also examine:

- Whether regulations are actually enforced;
- Whether fishermen are required to report marine mammal interactions;
- Whether violations result in meaningful penalties;
- Whether independent monitoring exists;
- Whether gear can be traced to the harvesting fishery;
- Whether a country's reported data is independently verifiable;
- Whether the fishery has changed gear or fishing practices since its original application; and
- Whether seafood can be reliably traced through intermediary countries.

## **7. Should NMFS allow conditional comparability findings?**

Generally, no—not when a fishery currently exceeds U.S. standards.

The United States has already given its own fishermen years to comply with increasingly stringent marine mammal protections. It would be inequitable to give foreign fisheries an additional period in which they can continue exporting seafood while operating below the standard required of U.S. fishermen.

Conditional findings could create an unintended incentive for countries to delay compliance.

If NMFS provides any limited corrective period, no fishery that is actively causing marine mammal mortality or serious injury in excess of U.S. standards should continue receiving unrestricted access to the U.S. market during that period.

The conservation standard should apply immediately.

## **8. Should certain fisheries be categorically excluded?**

Yes, but only where NMFS has a strong scientific basis to conclude that the fishery has a de minimis or remote likelihood of marine mammal mortality or serious injury.

Low-risk fisheries should not be burdened with unnecessary administrative requirements.

However, an exemption should not be based merely on an assertion by a foreign government that a fishery is low risk.

Where the fishery is genuinely low risk, the evidence should be sufficient to demonstrate that conclusion.

## **9. How should the four-year cycle be changed?**

The four-year cycle can provide stability, but it should not prevent NMFS from responding to significant changes.

NMFS should retain the four-year comprehensive review while requiring:

- Regular progress reporting;
- Immediate notification of significant changes;
- Immediate review when new information demonstrates significant marine mammal impacts;
- Periodic monitoring of compliance; and
- Authority to modify or revoke comparability when a fishery materially deteriorates.

A four-year approval should not function as a four-year safe harbor from enforcement.

## **10. How should trade-related measures be structured?**

Trade restrictions should be automatic, timely, and enforceable when a fishery fails to meet U.S. standards.

The commercial lobster industry strongly supports a system where:

If a foreign fishery cannot demonstrate that it meets U.S. marine mammal standards, its seafood should not enter the U.S. market.

There should not be lengthy discretionary delays after NMFS determines that a fishery is not comparable.

This is necessary both for marine mammal conservation and for fairness to American fishermen.

## **11. Should economic impacts influence comparability findings?**

Economic impacts should be considered when designing implementation and transition procedures, but they should not lower the conservation standard.

The economic impact on U.S. commercial fishing businesses must also be considered.

The question cannot simply be:

"What will an import restriction cost the importer?"

It must also be:

"What has the U.S. commercial fishing industry already paid to comply with these conservation requirements, and what happens when foreign competitors are permitted to operate under weaker standards?"

U.S. fishermen should not be required to subsidize marine mammal conservation costs for foreign competitors through lost market share.

## **12. How should NMFS address intermediary nations?**

NMFS should require full chain-of-custody documentation sufficient to establish the harvesting origin of seafood.

An intermediary country should not be able to circumvent a U.S. import prohibition simply by processing, repacking, relabeling, or transshipping seafood from a prohibited fishery.

Certification should identify:

- Harvesting country;
- Specific fishery;
- Vessel;
- Gear type;
- Harvest date or period;
- Species;
- Processing facility;
- Chain of custody; and
- Final exporter.

If the intermediary cannot reliably demonstrate that the product did not originate from a prohibited fishery, the product should not be admitted.

## **13. How should NMFS address uncertainty and incomplete information?**

NMFS should apply a precautionary approach.

The absence of reliable data should not become a competitive advantage.

This is especially important for U.S. lobster fishermen because American fishermen are subject to extensive reporting, monitoring, and conservation requirements. A foreign fishery should not receive a more favorable determination merely because it lacks the monitoring necessary to document its marine mammal interactions.

Unknown risk is not the same as zero risk.

Where credible information is incomplete, NMFS should require additional information or apply conservative assumptions until sufficient information is available.

#### **14. How can public input be improved?**

NMFS should establish a more formal process for incorporating information from U.S. commercial fishermen and fishing organizations.

Commercial fishermen often have firsthand knowledge of:

- Gear interactions;
- Marine mammal behavior;
- Fishing effort;
- Changes in fishing practices;
- Gear configurations;
- Seasonal interactions;
- Areas of concern; and
- Practical effectiveness of mitigation measures.

NMFS should actively solicit information from U.S. fishing organizations during foreign comparability reviews.

Public comments should also be summarized and addressed in the final determination so stakeholders can understand how their information was considered.

#### **15. How should the COA process be improved?**

The Certification of Admissibility process should be simple, electronic, auditable, and difficult to manipulate.

A COA should provide enough information to establish the product's harvesting origin and demonstrate that it is not associated with a prohibited fishery.

NMFS should also conduct periodic audits and cross-check COAs against:

- Vessel records;
- Export records;
- Processing records;
- Harvesting records;
- Customs information; and
- Other traceability systems.

The COA process should not become a loophole that permits seafood from prohibited fisheries to enter the United States.

#### **16. What capacity-building assistance should NMFS prioritize?**

NMFS should prioritize assistance that enables foreign fisheries to meet the same fundamental conservation expectations imposed on U.S. commercial fisheries.

Priority areas should include:



1. Marine mammal stock assessments;
2. Bycatch monitoring;
3. Observer and electronic monitoring systems;
4. Accurate mortality and serious-injury reporting;
5. Gear modification;
6. Gear marking and identification;
7. Fishermen education;
8. Enforcement;
9. Compliance monitoring;
10. Vessel and seafood traceability; and
11. Scientific data collection.

Technical assistance is appropriate and can help foreign nations achieve compliance. However, capacity-building assistance should not be used as a reason to indefinitely postpone trade restrictions.

The U.S. commercial lobster industry has already demonstrated that conservation requirements can be implemented, even when those requirements impose substantial operational and economic burdens.

The more than 1,800 members of the Massachusetts Lobstermen's Association respectfully ask NMFS to remember the fishermen who are directly affected by these decisions.

Our members have spent years adapting their businesses and their fishing practices to meet increasingly stringent marine mammal conservation requirements. They have invested in gear, technology, monitoring, reporting, and operational changes. They have accepted restrictions and economic hardships because they understand that protecting marine mammals and maintaining a healthy ocean are essential to the future of commercial fishing.

But American fishermen cannot be expected to continually shoulder those responsibilities while competing against seafood harvested under weaker standards overseas.

That is not a level playing field, and it is not equitable conservation.

The MMPA import provisions provide NMFS with an important opportunity to ensure that marine mammal conservation is not simply a requirement imposed on American fishermen, but a standard expected of every fishery seeking access to the American marketplace.

The MLA therefore urges NMFS to establish and enforce a clear principle:

Foreign seafood entering the United States must meet marine mammal conservation standards comparable to those required of U.S. commercial fisheries.

There should be no loopholes based on geography, nationality, processing location, or transshipment. There should be no system in which a foreign fishery can avoid meaningful scrutiny because it lacks the data necessary to demonstrate its impact. And there should not be prolonged conditional arrangements that allow fisheries operating below U.S. standards to continue competing against American fishermen.

If American fishermen are required to meet the highest standards, imported seafood must meet those same standards.

We further urge NMFS to implement these requirements immediately and consistently. The commercial lobster industry has already done its part. Our members have demonstrated their willingness to conserve marine mammals while maintaining a viable and sustainable commercial fishery.

Now it is time to ensure that the same commitment is expected from those who seek to sell seafood in the United States.

The MLA believes that strong marine mammal conservation and a strong American commercial fishing industry are not mutually exclusive. We can and must have both.

Protect marine mammals. Protect American fishermen. Protect the integrity of the U.S. seafood market.

Above all, do not ask American fishermen to meet a standard that foreign competitors are not required to meet.

The Massachusetts Lobstermen's Association and its more than 1,800 members respectfully urge NMFS to adopt a fair, consistent, enforceable, and immediate approach to MMPA import requirements that ensures every seafood producer competing in the American marketplace plays by the same rules.

Sincerely,

*Beth Casoni,*

Executive Director