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# U.S. Market Accessibility Marine Mammal Protection Act (MMPA)

December 6, 2018

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# Purpose

To provide an overview of:

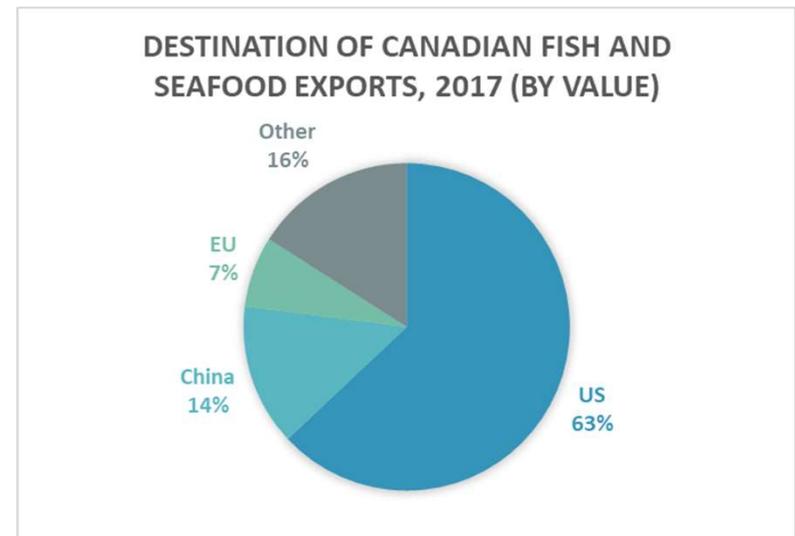
- The import provisions of the U.S. Marine Mammal Protection Act (MMPA), including processes and timelines
- Mechanics and requirements to maintain access to U.S. market
- Work completed to date and next steps

**Disclaimer:** This deck was prepared by Fisheries and Oceans Canada to assist Canadian fisheries in preparing for the new U.S. MMPA import provisions. This is not meant to be a replacement for information available from the U.S.



# Canada - U.S. Trade in Fish and Seafood

- In 2017, Canadian fish and seafood exports were valued at \$6.9 Billion.
- The U.S. is our primary market capturing 63% of our exports, valued at **\$4.3 Billion** in 2017 (\$2.1B lobster; \$1B snow crab).
- Canada is the largest supplier to the U.S. by value.
- A U.S. import ban on Canadian fish and seafood could be catastrophic for Canadian fisheries.





## History of MMPA

- The **MMPA of 1972** was enacted in response to increasing concerns among scientists and the public that significant declines in some species of marine mammals were caused by human activities.
- Reauthorized by the **MMPA Amendments of 1994**, which involved establishing a new regime to govern the **taking of marine mammals incidental to commercial fishing**.
- **MMPA Fish and Fish Products Import Provisions of 2016** establish requirements for exporting nations to have in place programs and measures to address bycatch of marine mammals that meet U.S. Standards in order to continue exporting in 2022.



## Context

- The rule to implement import provisions of the U.S. MMPA was finalized in 2016. The **5-year exemption period** for implementation ends on **Jan 1, 2022**.
  - applies to commercially harvested wild and aquaculture species.
- The goal of the MMPA is to reduce serious injury and mortality of marine mammals impacted by bycatch to insignificant levels (less than 10% of **Potential Biological Removal, PBR**, level).
  - **PBR** – the maximum number of individuals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population.



## Recent U.S. Legal Action

- **ENGOs** successfully brought **legal action against the U.S. federal government**, which resulted in the prohibition of imports of fish or fish products from a **Mexican commercial fishery**.
- The legal action affects Mexican fisheries that use gillnets within the range of the **critically endangered vaquita porpoise**.
- This is the consequence of Mexico's failure to limit vaquita bycatch below the Potential Biological Removal level.



## MMPA Mechanics

- Fisheries classified as either “Export” or “Exempt” based on frequency of marine mammal bycatch
  - **Export Fisheries** have more than a remote likelihood of marine mammal bycatch
  - **Insufficient information = classified as Export Fishery**
  - Gillnets, longline, trawl, purse seines, trap & pot
  - Develop a regulatory program comparable in effectiveness to the U.S. MMPA
- **Exempt Fisheries** have a remote likelihood of or no known marine mammal bycatch
  - 10% or less of any marine mammal stock’s bycatch limit
  - Hand lines, hook & line, dip nets, cast nets, diving
  - No regulatory program requirement



## Canada is under increased pressure to protect marine mammals:

- April 2018: letters by U.S. Senators and Congressmen called on NOAA to have a Marine Mammal Protection Act (MMPA) import provision **urgently apply to all Canadian fisheries** (in particular lobster and snow crab) that cause incidental harm to North Atlantic right whales.
- Further, if NOAA determines that such protections are not deemed comparable to those in the U.S., the members urge that a **ban on imports** of seafood from those fisheries should be imposed.



## U.S. MMPA requirements for a comparability finding

- **Exempt fisheries**

- Required to prohibit the intentional mortality or serious injury of marine mammals (incl. seals) in the course of commercial fishing operations
- Re-apply for comparability finding every 4 years.

- **Export fisheries**

- Required to prohibit the intentional mortality or serious injury of marine mammals (incl. seals) in the course of commercial fishing operations
- **Provide scientifically valid data to measure marine mammal bycatch**
- **Have marine mammal bycatch mitigation measures in place**
- Re-apply for comparability finding every 4 years.



## MMPA – Scientifically Valid Data

### ***According to the Section 118 of MMPA:***

*“(d) MONITORING OF INCIDENTAL TAKES: (1) The Secretary shall establish a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations. The purposes of the monitoring program shall be to —*

*(A) obtain **statistically reliable estimates of incidental mortality and serious injury;***

*(B) determine the reliability of reports of incidental mortality and serious injury;”*

- **Data availability:**

- Monitoring and reporting of bycatch/ incidental takes of marine mammals
- Science data on minimum population estimates, Potential Biological Removal, population trends, distribution, residency times

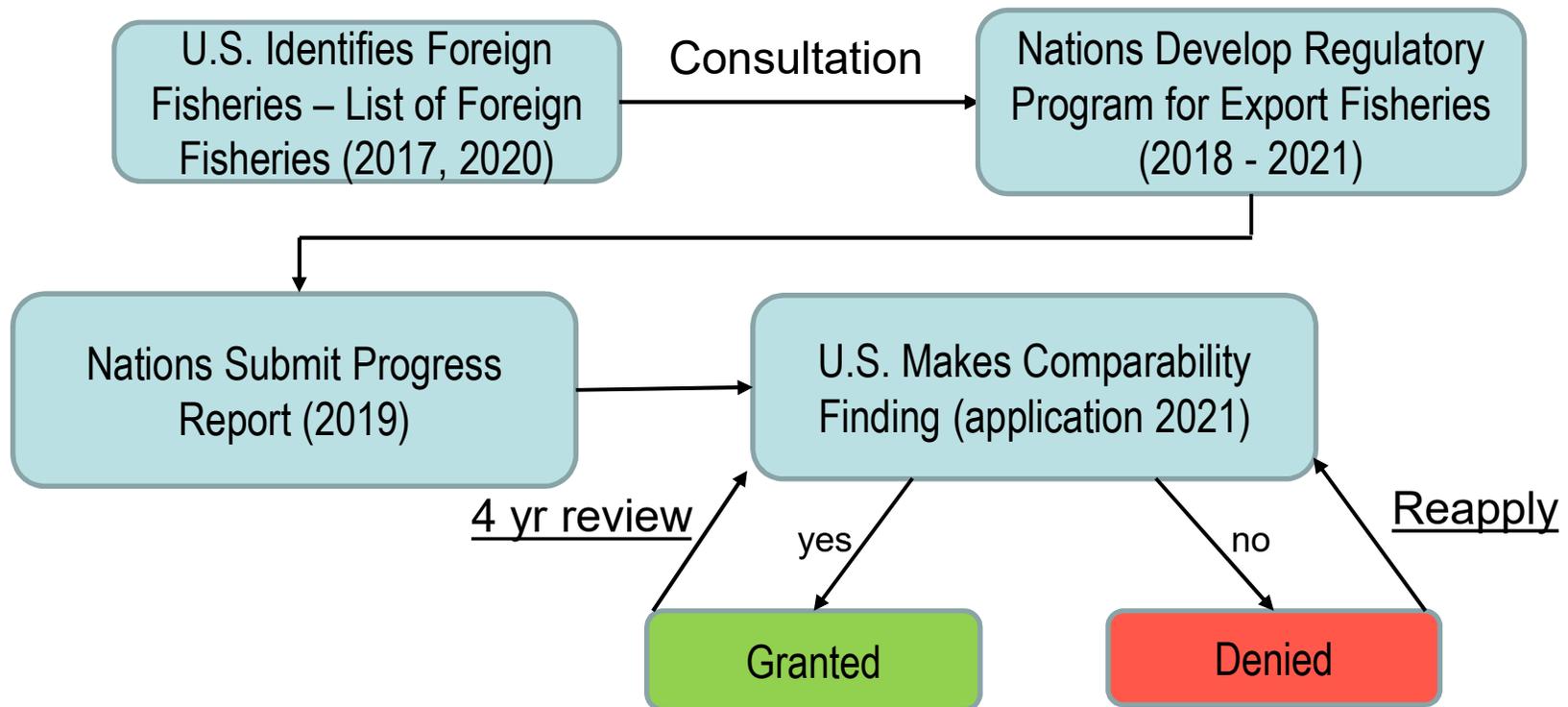


## Comparability Finding

- To receive a comparability for an export fishery, the onus is on harvesting nation to demonstrate that it has a regulatory program with respect to a given fishery that is comparable in **effectiveness** to the U.S. regulatory program for reducing incidental marine mammal bycatch.
- An export fishery that interacts with a transboundary marine mammal stock needs to demonstrate that it has mitigation measures to reduce the incidental mortality and serious injury of that stock that are the **same or are comparable in effectiveness** to measures the U.S. requires its domestic fisheries to take.



# MMPA Comparability Finding Process





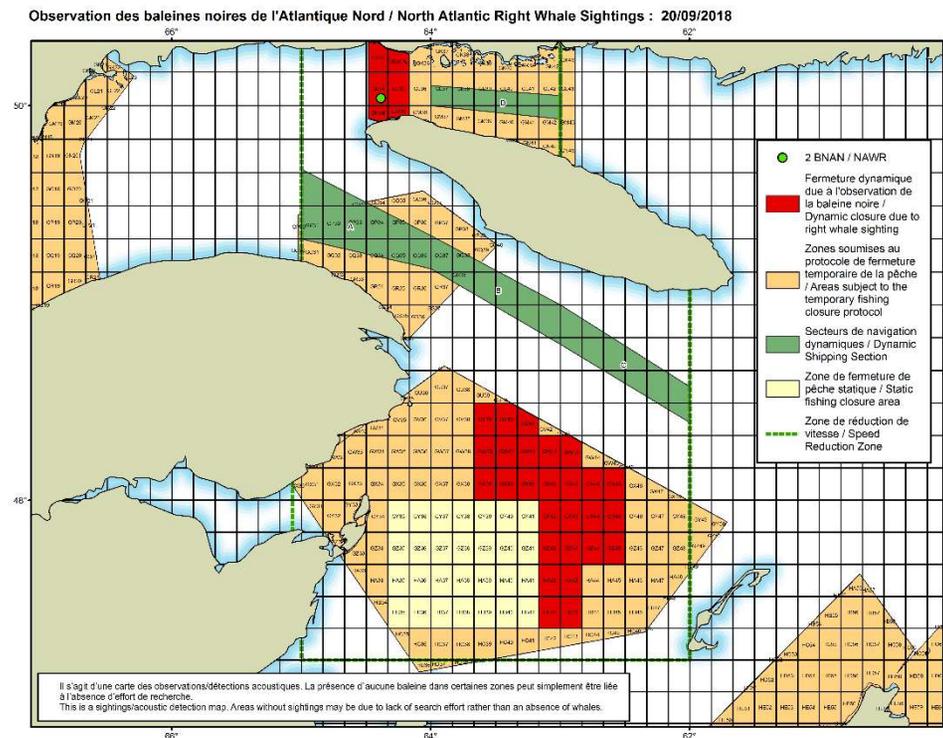
## Re-exporting to the US

- **Intermediary nations** are defined as: nations that import fish or fish products from a fishery in the List of Foreign Fisheries and re-exports such fish or fish products to the United States.
- Under U.S. MMPA import provisions intermediary nations must **certify** that their exports of fish and fish products to the United States do not contain fish or fish products caught or harvested in a fishery subject to an import prohibition.



# Current Status: Completed Work

- ✓ Implemented new mitigation measures for NARW (2018):
  - Reduced floating line, gear marking and numbering of buoys, reporting lost gear
  - Static fishing area closure in NARW potential foraging areas, and dynamic fishing area closure protocol for NARW sightings





## Current Status: Completed Work

- ✓ Provided data for the U.S. List of Foreign Fisheries (2017):
  - Out of 349 fisheries 35% are exempt, 65% are export;
  - Out of 38 Pacific wild catch fisheries 34% are exempt, 66% are export.
  
- ✓ Standardized reporting of marine mammal interactions (2018):
  - Implemented new licence conditions mandating reporting of all marine mammal interactions
  - Developed web-based marine mammal identification training for At-Sea Observers, C&P officers, harvesters
  
- ✓ Finalized amendments to the Marine Mammal Regulations (2018):
  - Minimum approach distances for all marine mammals
  - Mandatory reporting of marine mammal interactions, not already captured in logbook data



## Next Steps

- Dec. 2018: develop mitigation and management measures, if needed
- Feb. 2019: second round of stakeholder consultations, if needed
- 2019/2020: discussion at Advisory Committee meetings on potential measures and progress
- Jul. 2019: submit progress report to NOAA
- 2020/2021: submission to Second List of Foreign Fisheries
- **Mar. 1, 2021**: submit applications for comparability finding for each fishery



# Key Next Steps





# Questions

