



# MARINE MAMMAL COMMISSION

1 March 2017

Ms. Nina Young  
Office of International Affairs  
NOAA Fisheries  
1315 East-West Hwy  
Silver Spring, MD 20910

Dear Ms. Young:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors (CSA) on Marine Mammals, has reviewed and offers the following comments on the National Marine Fisheries Service's (NMFS) 10 January 2017 *Federal Register* notice (82 Fed. Reg. 2961) requesting information on foreign commercial fishing operations. NMFS is seeking information on foreign fisheries from which products are exported to the U.S. market and which could cause incidental and intentional mortality and serious injury of marine mammals that is in excess of "U.S. standards." Those standards are established in [NMFS's final rule](#) of August 15, 2016, which also sets up the process of implementing the rulemaking. The Commission sent a [letter](#) on the proposed rule to establish these standards and procedures that identified some fisheries of particular concern.

The Commissioners, CSA members, and Commission staff have provided information on foreign fisheries with marine mammal bycatch that are, or could be, the source of seafood imports into the United States. The attached file is a compilation of this information, including the fishery or fisheries, marine mammal bycatch, and market information.

The Commission is particularly concerned with certain fisheries with known marine mammal mortality that exceeds or may exceed U.S. standards, as noted below<sup>1</sup>:

- (1) The gillnet fisheries of the upper Gulf of California (UGC) continue to cause high levels of bycatch mortality for the vaquita, the world's most endangered cetacean. Despite a two-year ban on gillnet fishing for species other than curvina in the upper Gulf, illegal gillnetting has continued, particularly targeting an endangered finfish, the totoaba, for its swim bladder which is exported (illegally) to China. Active and derelict gillnet gear continues to be found throughout these legally protected waters. In addition, the legal gillnet fishery for curvina, the only fishery that is exempt from the gillnet ban, has become a "cover" for illegal totoaba fishing. Prior to the gillnet ban, much of the shrimp and some of the finfish from the gillnet fishery in the UGC were sold in U.S. markets. U.S. buyers have indicated that some amount of gillnet-caught shrimp from the UGC is still entering the U.S. market despite the ban, although the exact source is unknown. Different curvina species from other locations in Mexico are also sold in the U.S.

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<sup>1</sup> The three cases listed in this letter were addressed in greater detail in the Commission's [letter](#) on the proposed rule.

market. The Commission therefore recommends that NMFS consider placing all UGC gillnet fisheries on the List of Foreign Fisheries, including the fisheries for shrimp and curvina. Given the estimated 50 percent decline in the vaquita population over the past year, it is highly unlikely that allowing a five-year grace period while information is compiled on these fisheries under the generally applicable regulatory provisions will help save the vaquita. We currently have sufficient information to indicate that all gillnet fisheries that incidentally catch vaquitas are employing a fishing technology that kills or seriously injures marine mammals in excess of U.S. standards. The Commission therefore also recommends that NMFS consider emergency rulemaking to make a finding that these fisheries do not meet the standards applicable under section 101(a)(2) of the MMPA. Prompt action is essential for addressing the impending extinction of the vaquita due to fishery bycatch.

- (2) The Canadian fisheries targeting lobsters in the Maritimes and Newfoundland-Labrador and snow crabs in the Gulf of St Lawrence are documented as having entangled and thus either killed or seriously injured endangered North Atlantic right whales (NARW). The products of these fisheries are sold in the U.S. market. In 2016, snow crab gear from a single Canadian-flagged fishing vessel was found on two NARWs, one dead and one live animal that was disentangled. This information was provided by an official from the Canadian Department of Fisheries and Oceans, as noted in the attached matrix. The Commission recommends that the Canadian snow crab and lobster fisheries be included in the List of Foreign Fisheries.
- (3) Artisanal and semi-industrial gillnet fisheries account for 30-40 percent of Indian Ocean tuna harvested, including tuna caught by fleets flagged to Pakistan, Oman, Sri Lanka, India, and Iran (<http://iss-foundation.org/about-tuna/fishing-methods/gillnet/>). As an example of the bycatch problems associated with these fisheries, an estimated 12,000 dolphins die annually in Pakistan's gillnet tuna fisheries (IOTC 2014); other marine mammals are impacted as well. There is a critical lack of data on marine mammal bycatch in the Indian Ocean tuna fisheries, despite IOTC resolution 13/04, which requires reporting of cetacean interactions (and also prohibits direct purse seine sets around cetaceans). The Commission therefore recommends that gillnet-caught tuna and other targeted highly migratory species (swordfish, billfish, sharks, mackerel) from the Indian Ocean be included in the List of Foreign Fisheries.

Given that bycatch and entanglement in fishing gear is the greatest source of direct mortality for marine mammals, the Commission is pleased that NMFS is making progress in implementing this important rule. Nevertheless, we remain concerned that the five-year grace period under the final rule, which started on 10 January 2017, provides too long a delay in addressing the most pressing cases of marine mammal bycatch. This five-year delay is particularly troublesome for species on the edge of extinction that may require quicker action, such as vaquita. Also, we believe that swifter action could be taken to address bycatch problems in fisheries for which significant

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information already is available. For example, for some marine mammals, estimates of the status of the population, mortality and serious injury, and some proxy for potential biological removal may be available (e.g. NARWs, vaquita). In addition, there may be relevant examples of gear modifications or gear deployment measures that have been effective in other fisheries to mitigate marine mammal bycatch.

We hope these recommendations and the background information provided in the table are useful as you prepare the draft List of Final Fisheries. Thank you for the opportunity to provide this input.

Sincerely,

A handwritten signature in blue ink that reads "Rebecca J. Lent". The signature is written in a cursive style with a large initial "R".

Rebecca J. Lent, Ph.D.  
Executive Director

Attachment