

Net Loss:

The Killing of Marine Mammals in Foreign Fisheries



California Sea Lion in LA Harbor with a gillnet cutting into its neck.

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Sperm whale entangled in driftnet.

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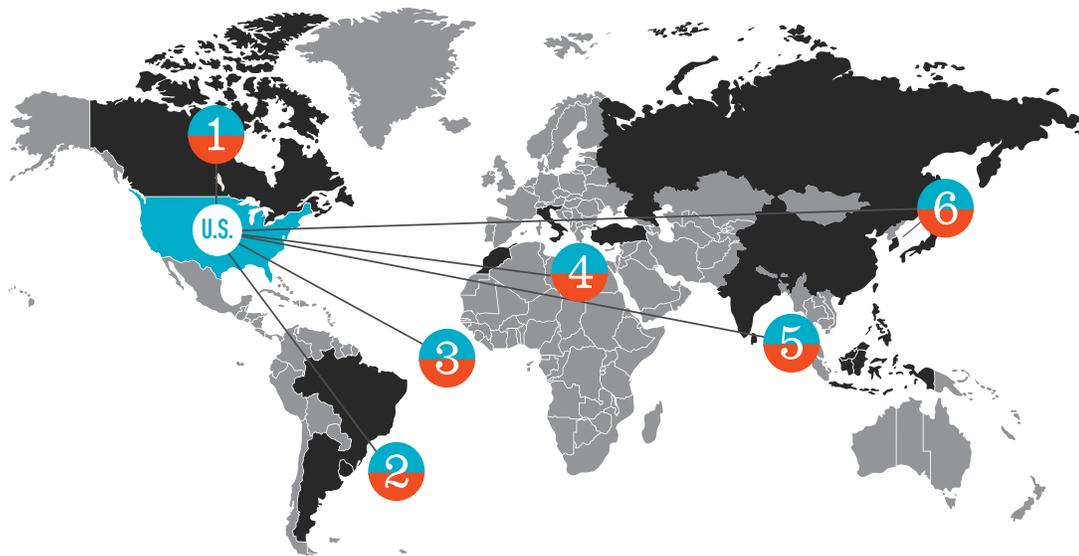


The Harbor Porpoise Take Reduction Plan requires the use of acoustic net alarms, called "pingers," which are attached to gillnets in certain fisheries along the Atlantic Coast to reduce the incidence of harbor porpoise bycatch.

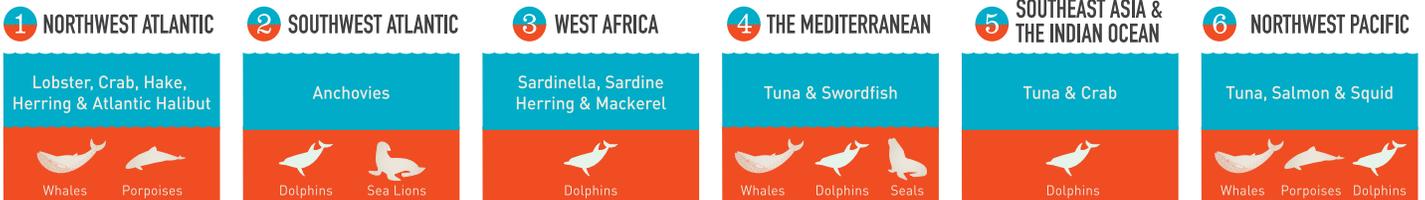
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Few realize it, but nearly every foreign fish product sold in the United States enters the U.S. market in violation of federal law. From the cod and haddock that go into the fish sticks enjoyed by children to the sea bass served at fine restaurants, if it was imported, it probably entered this country illegally. The reason is simple: The Marine Mammal Protection Act (MMPA) requires that all imported fish or fish products be accompanied by proof that the technology used to land the catch does not kill or seriously injure whales, dolphins, and other marine mammals in excess of U.S. standards. Collecting dust for more than 40 years, this measure has never been enforced by the federal government, with predictable results: Foreign fisheries fail to invest in measures limiting harm to whales and dolphins; U.S. fisheries, which do make these investments, are placed at a disadvantage; and Americans unwittingly consume foreign fish or fish products caught using techniques that needlessly kill a multitude of marine mammals each year.

HOW U.S. SEAFOOD IMPORTS ARE CONTRIBUTING TO MARINE MAMMAL DEATHS



SEAFOOD IMPORTS POPULATIONS AT KNOWN RISK



THE SEAFOOD WE ARE EATING...

Lobster	Crab	Hake
Halibut	Herring	
Tuna	Swordfish	Salmon
Squid	Sardine	Mackerel
	Sardinella	Anchovies

...IS KILLING:

Whales	Dolphins	Porpoises
Seals	Sea Lions	

The numbers are staggering: Scientists estimate that more than 650,000 marine mammals are killed or seriously injured every year in foreign fisheries after being hooked or entangled or trapped in fishing gear. Some of the harm is intentional—as is the case when fishing fleets using massive gillnets set upon dolphins as indicators that fish are present—while other harm is incidental, as when North Atlantic right whales are entangled in crab and lobster pots. This unintentional capture of animals in fishing gear, or bycatch, is pushing some marine mammal populations to the brink of extinction. And it is unacceptable, given the global importance of marine mammals and the availability of various technologies and methods for reducing harm.

When it passed the Marine Mammal Protection Act, Congress intended to do more than protect whales and dolphins in U.S. waters; it wanted to encourage other nations to put in place measures to increase protections for marine mammals by harnessing the power of the U.S. economy. Section 101 of the MMPA sets forth a straightforward

requirement that foreign fisheries meet U.S. standards for bycatch if they wish to export products to the United States. Thus, foreign fisheries that want access to the vast U.S. market must put in place measures that are at least as protective as those adopted within the United States for limiting or eliminating the bycatch of marine mammals.

In addition to reducing bycatch abroad, the provision was also intended to serve two critical domestic purposes. It addresses the concerns of U.S. consumers who do not want their dollars contributing to the decline of marine mammal populations through the purchase of imported seafood. And it addresses U.S. fishers' concerns that they are at a competitive disadvantage when operating under various domestic rules and regulations that foreign fishers are free to ignore.

It is time to enforce this important provision of the MMPA. American consumers and commercial fishers deserve to realize the benefits of this law, and the world's marine mammals are in critical need of relief from poorly



Harbor porpoises bycaught in the Black Sea .

regulated foreign fisheries. Fortunately, after years of neglect, the federal government is in the process of developing regulations to enforce the provision.

A new report from NRDC's Marine Mammal Protection Project tells part of the story of why moving forward with enforcement is so critical. It identifies species at risk of extinction from bycatch resulting in part from foreign commercial fishing operations that export products to the United States, and it identifies problem areas of the world where bycatch is indiscriminate and substantial. Specifically, enforcing the MMPA's foreign bycatch provision could help save North Atlantic right whales, New Zealand sea lions, Mediterranean sperm whales, vaquitas, spinner dolphins in the Indian Ocean, Baltic and Black Sea harbor porpoises, and J-stock minke whales. It is also likely to significantly reduce the number of marine mammals killed or seriously injured from fishing operations in the Northwest Atlantic, the Mediterranean, the Northwest Pacific, Southeast Asia and the Indian Ocean, West Africa, and the Southwest Atlantic, where populations of whales, dolphins, and other marine mammals are currently being threatened.

While ostensibly straightforward—meet U.S. bycatch standards if you want to bring your fish into the United States—the law presents a number of challenges to effective enforcement that must be addressed in order to realize its full benefits. First, regulators must enforce the law while keeping in mind U.S. international trade obligations. Second, regulators must promulgate a definition of “U.S. standards” that holds foreign exporters accountable for their bycatch, producing the equity Congress intended for U.S. fishers and the conservation benefits demanded by the American public. And finally, regulators must explicitly identify the data they need to support their determinations on whether imports meet U.S. standards and clearly communicate to foreign nations what information they must submit to secure access to the U.S. market.

KEY FINDINGS AND RECOMMENDATIONS

Enforcement of the foreign bycatch provision of the Marine Mammal Protection Act will benefit whale, dolphin, sea lion, and other marine mammal populations around the world—including some that have been hard hit by foreign fisheries and are near the breaking point. This belief is based in part on the following facts:

- **Bycatch kills hundreds of thousands of marine mammals every year.** Scientists estimate that commercial fisheries around the world kill or seriously injure more than 650,000 marine mammals every year.
- **Bycatch threatens the survival of numerous marine mammal populations.** Bycatch is the leading anthropogenic contributor to the decline of many marine mammal populations, including the New Zealand sea lion, Mediterranean sperm whale, vaquita, and J-stock minke whale. If not properly limited, bycatch will cause the extinction of these populations. While not necessarily the leading contributor to decline, bycatch could similarly spell the end for numerous other populations, such as the North Atlantic right whale, distinct spinner dolphin populations in the Indian Ocean, the Baltic Sea harbor porpoise, and the Black Sea harbor porpoise.
- **Fisheries contributing to the bycatch problem are found around the world and are not limited to poorer regions.** Marine mammal populations are threatened by bycatch around the globe, and few countries or regions are off the hook. With countries like Canada failing to require any specific measures to protect threatened populations, and nations like Italy failing to enforce protective mandates that do exist, bycatch rates are too often the product of policy choices rather than the result of meager resources.
- **The multibillion-dollar fish industry has the resources to reduce marine mammal bycatch.** In 2010, capture fisheries and aquaculture produced 148 million tons of fish valued at \$217.5 billion, and in 2012 the United States imported more than \$31 billion of fish products. An industry worth hundreds of billions of dollars should be able to find resources for bycatch reduction, especially in the case of large, industrial-scale fisheries.
- **U.S. bycatch reduction efforts have been successful in many ways.** The United States has established an aggressive, population-based regime for bycatch reduction, focusing on marine mammals and other species like turtles that are in the most need of protection. The United States has reduced marine mammal bycatch by nearly 30 percent over roughly two decades. U.S. efforts have demonstrated that real progress on this problem is practicable across numerous commercial fisheries.

- **By transferring U.S. bycatch practices to commercial fisheries exporting to the United States, bycatch reduction successes can be transferred globally.**

While not a panacea, the foreign bycatch provision of the MMPA can help save threatened populations worldwide by requiring that fish and fish products exported to the United States meet U.S. bycatch standards. In doing so, it will also level the playing field for U.S. fishers as intended by Congress.

To achieve the full benefits offered by the MMPA's foreign bycatch provision, NRDC recommends the following:

- **Hold nations exporting fish to the United States to the rigorous bycatch standards applicable to U.S. domestic fishers.** The National Marine Fisheries Service, the federal agency with jurisdiction over the interpretation and enforcement of the MMPA, should define "U.S. standards" for bycatch as reducing the incidental kill or serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate through the application of the bycatch reduction regime set forth in Section 117 (Stock assessments) and Section 118 (Taking of marine mammals incidental to commercial fishing operations) of the MMPA.
- **Treat all nations exporting fish products to the United States equally.** To ensure that the United States does not run afoul of the World Trade Organization when regulating the importation of fish, the National Marine Fisheries Service must treat all exporters equally and must allow for flexibility in the means by which exporters meet U.S. bycatch standards.
- **Identify the categories of data and information that must be collected to prove that exporters are meeting U.S. bycatch standards.** The National Marine Fisheries Service relies upon specific categories of data and information, such as observer-sourced bycatch estimates and population abundance data, to determine whether domestic fisheries are meeting U.S. bycatch standards. Reasonable proof from foreign nations exporting to the United States must be based on the same type of data and information.

- **Understand that nations seeking to comply with the foreign bycatch provision are not starting from scratch.**

While this report identifies areas where data are lacking, it also shows that there is a wealth of data on species at risk and geographic regions of concern. The National Marine Fisheries Service should encourage a review of existing findings and recommendations on regional fisheries and marine mammal populations that identify specific actions that could be taken to address some of the most pressing bycatch concerns, such as those found in the paper *Global Priorities for Reduction of Cetacean Bycatch* by Randall Reeves and his colleagues.

- **Communicate at the highest levels that the enforcement of this provision is coming.** The State Department should instruct U.S. ambassadors in countries exporting fish to the United States to discuss the impending enforcement of the foreign bycatch provision, to make it clear that in many cases continued access to the U.S. market for foreign fish products will require significant data collection and changes to fishing practices.
- **Utilize the expertise developed over decades by U.S. fishers, regulators, and researchers.** The National Marine Fisheries Service should sponsor regional workshops open to all countries and regional fishery management bodies to fully explain the requirements and help interested countries build capacity. The workshops should include panels of researchers and U.S. fishers who can share their experiences and discuss best practices for data collection and bycatch reduction. Such workshops would benefit countries like China—where data on fisheries and bycatch are not publicly available—by providing details on how the U.S. manages a rigorous monitoring program and relies on stakeholders to help manage fisheries. If necessary, additional appropriations should be directed to the Fisheries Service to organize and conduct these workshops.
- **Take advantage of consultation opportunities to help address some of the most pressing bycatch problems, like those presented by artisanal fisheries.** While local artisanal fisheries are unlikely to export products to the United States, and thus will not be directly affected by enforcement of the MMPA foreign bycatch provision, they nonetheless represent a significant threat to numerous marine mammal populations. When the Fisheries Service engages with countries about the enforcement of the foreign bycatch provision, it should help them not only understand what they need to do to keep the U.S. market open to exports, but also take the opportunity to help them focus on how to limit bycatch in some of the most destructive artisanal fisheries.



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