

European Parliament event briefing

US Marine Mammal Protection Act import provisions rule and cetacean bycatch in EU waters



From 1 January 2022, a new US import rule will apply to fish and fish products imported from the EU to the US, mandating stricter requirements in relation to cetacean bycatch. In order to ensure that fish and fish products can continue to be exported to the US after this deadline, the EU must urgently take measures to ensure that its bycatch prevention procedures are comparable to the US.

The **US Marine Mammal Protection Act (MMPA) import provisions 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 (US). Under this rule, fish and fish products from fisheries can only be imported into the US if the harvesting nation has applied for and received a 'comparability finding' from the US National Marine and Fisheries Service (NMFS). The rule establishes procedures that a harvesting nation must comply with in order 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 US, fish or fish products subject to an import prohibition.

NMFS has published a list of Foreign Fisheries, and is allowing a one-time only, initial five-year exemption period effective from 1 January 2017. During the exemption period, the prohibitions of this rule will not apply to imports from the harvesting nation. Nonetheless, harvesting nations are expected to develop regulatory programs to comply with the requirements to obtain a comparability finding during this time period. After the exemption period lapses on 1 January 2022, fish or fish products cannot be exported to the US unless reliable information has been provided demonstrating

that they are **not the product of an intentional killing or serious injury of a marine mammal**. These regulations, which come in to force on 1 January 2022, present an economic case for the EU to support the suggestions below relating to EU fisheries bycatch.

The broad objectives of EU legislation are comparable with the US MMPA, but the legislation has not been adequately implemented by Member States. This has resulted in a failure to achieve these objectives and ongoing high levels of bycatch in some fisheries.

The ICES Bycatch Working Group has identified a number of cetacean populations for which bycatch is at levels that cause concern for the population. These include the Baltic harbour porpoise, Iberian porpoise, Celtic porpoise, Andalusian bottlenose dolphin and NE Atlantic common dolphin.

Bycatch data are too poor for many European cetacean populations to be confident of rates of bycatch or the conservation implications. There is also no agreed method across Member States for assessing the conservation implications. Indeed, with respect to assessment of the implications of bycatch, the Scientific, Technical and Economic Committee for Fisheries (STECF) Expert Working Group (EWG 19-07) concluded in 2019 that: '*in the absence of reliable population estimates, current conservation status and stated conservation objectives for cetacean populations in EU waters, there is no objective scientific basis to propose reliable estimates for maximum potential bycatch thresholds for all the cetacean species most typically bycaught (i.e. harbour porpoises, common, striped and bottlenose dolphins and humpback whales)*'.

Steps required that would make EU bycatch measures comparable to the US MMPA

As the US import provisions rule will apply from 1 January 2022, the European Commission and Member States must act with urgency, taking steps as soon as possible to ensure that the EU's bycatch prevention regime is comparable to the US.

The European Commission should provide guidance on the implementation of all the current Directives and Regulations relevant to marine mammal bycatch. Independent bycatch experts, on behalf of the European Commission, should produce best practice guidance. The intention of the Commission guidance would be to provide detail on specific actions to be taken that are consistent with EU legislation and would enable the objectives required of the legislation to be achieved. European Maritime and Fisheries Funding (EMFF) should be made available to prevent, monitor, reduce, and ultimately eliminate bycatch.

The three areas where specific guidance is needed can broadly be described as:

1. Monitoring to establish the level of marine mammal bycatch across all fisheries that may have a bycatch problem.

With respect to monitoring bycatch there have been a number of expert workshops that have provided recommendations on how this should be addressed. The legislative requirements in the Habitats Directive and MSFD are clear that monitoring needs to be adequate. The current monitoring deficiencies are a result of poor implementation rather than problems with the legislation.

2. Assessing the implications from both a conservation and welfare perspective, based on estimates of the total number animals involved, population size, structure and demographic parameters.

With respect to assessment of the implications of bycatch, the MSFD requires a process to assess Good Environmental Status (GES). There is ongoing work by organisations including OSPAR, HELCOM and ASCOBANS but this needs to be prioritised and completed. To be comparable with the US MMPA the conservation objectives need to be at least as ambitious as those used by the US when developing the Potential Biological Removal (PBR) method.

3. The necessary steps and timeline to effectively minimise or eliminate marine mammal bycatch, prioritising the fisheries where the assessment of the implications of the bycatch are most severe.

With respect to measures to minimise and where possible eliminate marine mammal bycatch (that are required by the EU legislation) the legislation enables appropriate measures but does not require anything specific except for those carried over into Regulation 2019/1241 from 812/2004 which have been found to be limited in their efficacy. Guidance on a process and timeline could be based on the US Take Reduction Plans.

