www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov,* or email. The Federal *http://www.regulations.gov* website is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets/commenting-epa-dockets.*)

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov,* or in hard copy. You may view and copy the documents that form the basis for this authorization and codification and associated publicly available materials from 8:30 a.m. to 4 p.m. Monday through Friday at the following location: EPA, Region 6, 1201 Elm Street Suite 500, Dallas, Texas 75270, contact: Alima Patterson, phone number: (214) 665–8533. Interested persons wanting to examine these documents in person should contact Ms. Patterson to make an appointment.

FOR FURTHER INFORMATION CONTACT: Bruce Jones, Office of Regional Counsel (ORC), (214) 665–3184 and Email address *jones.bruced@epa.gov;* or Alima Patterson, Regional Authorization/Codification Coordinator, Permit Section (LCR–RP), Land, Chemical and Redevelopment (214) 665–8533 and Email address *patterson.alima@epa.gov;* EPA Region 6, 1201 Elms, Suite 500, Dallas, Texas 75202–2733.

SUPPLEMENTARY INFORMATION: On October 24, 2018 (83 FR 53595), the EPA published a Proposed Rule to approve state-initiated changes and incorporation by reference of the State of Texas hazardous waste program under (RCRA). EPA is reopening the comment period due to a comment noting the public needed additional time to comment and that some items were not in the docket on *www.regulations.gov.* EPA has now put these documents into the docket identified by Docket ID EPA–R06–RCRA–2016–0549 at *www.regulations.gov* and provided this additional comment period.

List of Subjects

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 272

Environmental protection, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Intergovernmental relations, Water pollution control, Water supply.

Authority: This document is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 28, 2019.

David Gray,

Acting Regional Administrator, Region 6.

[FR Doc. 2019–14422 Filed 7–9–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

RIN 0648–XG809

Notification of the Rejection of the Petition To Ban Imports of All Fish and Fish Products From New Zealand That Do Not Satisfy the Marine Mammal Protection Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Rejection of the petition to ban imports through emergency rulemaking.

SUMMARY: NMFS announces the rejection of a petition for emergency rulemaking under the Administrative Procedure Act. Sea Shepherd Legal, Sea Shepherd New Zealand Ltd., and Sea Shepherd Conservation Society petitioned the U.S. Department of Commerce and other relevant Departments to initiate emergency rulemaking under the Marine Mammal Protection Act (''MMPA''), to ban importation of commercial fish or products from fish that have been caught with commercial fishing technology that results in incidental mortality or serious injury of Māui dolphin (*Cephalorhynchus hectori Māui*) in excess of United States standards.

DATES: The petition for rulemaking was denied on June 18, 2019.

FOR FURTHER INFORMATION CONTACT: Nina Young, NMFS F/IASI (Office of International Affairs and Seafood Inspection) at *Nina.Young@noaa.gov* or 301–427–8383.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(2) of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1371(a)(2), states that: ''The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards.'' In August 2016, NMFS published a final rule (81 FR 54390; August 15, 2016) implementing the fish and fish product import provisions in section 101(a)(2) of the MMPA. This rule established conditions for evaluating a harvesting nation's regulatory programs to address incidental and intentional mortality and serious injury of marine mammals in fisheries operated by nations that export fish and fish products to the United States. In that rule's preamble, NMFS stated that it may consider emergency rulemaking to ban imports of fish and fish products from an export or exempt fishery having or likely to have an immediate and significant adverse impact on a marine mammal stock.

The Petition

NMFS received a petition on February 6, 2019, from Sea Shepherd Legal, Sea Shepherd New Zealand Ltd., and Sea

Shepherd Conservation Society, stating that the Secretaries of Commerce and other relevant federal Departments are required under section 101(a)(2) of the MMPA (16 U.S.C. 1371(a)(2)), to ''ban the importation of commercial fish or products from fish'' sourced in a manner that ''results in the incidental kill or incidental serious injury'' of Māui dolphin ''in excess of United States standards.'' The petition requested that the relevant Secretary ban the importation of all fish and fish products caught in set nets or trawls inside the Māui dolphin's range and from the west coast of New Zealand's North Island and the Cook Strait, unless affirmatively identified as having been caught with a gear type other than set nets or trawls within that area or affirmatively identified as caught outside the Māui dolphin's range.

As support for the need for this action, the petition cites several reports and studies, which note various estimates of decline. The petitioners assert that for the Māui dolphin, set net and trawl bycatch has driven the species from a population of approximately 2,000 individuals in 1971, to 111 in 2004, to 55 in 2011. Further, the petition notes that in 2018 the Scientific Committee of the International Whaling Commission reported an abundance estimate of 57 individuals, with a 95 percent confidence interval of 44 to 75 individuals, which equates to an average decline of 2 percent every year and a total decline of 59 percent over the 31-year period from 1985 to 2016.

The petitioners maintain that any fishery using set nets, trawls, or gillnets in the Māui dolphin range along the west coast of New Zealand's North Island violates U.S. standards under the MMPA. The petitioners provide a list of 11 fish species harvested within the Māui dolphin range by set nets, trawls, or gillnets that are potentially imported into the U.S. as fish or fish products.

NMFS Determination

NMFS reviewed the petition, supporting documents, previous risk assessments and threat management plans and New Zealand's 2019 risk assessment and Threat Management Plan (TMP). NMFS is rejecting the petition because the Government of New Zealand is implementing a regulatory program comparable in effectiveness to the United States and for the following reasons:

1. New Zealand has in place an existing regulatory program to reduce Māui dolphin bycatch.

2. Through its 2019 risk assessment, New Zealand evaluated the effectiveness of this regulatory program in meeting bycatch reduction targets defined as the Population Sustainability Threshold (PST).

3. Based on the 2019 assessment, New Zealand is now proposing additional regulatory measures which, when fully implemented, will likely further reduce risk and Māui dolphin bycatch below Potential Biological Removal level (PBR).

New Zealand has undertaken the same process as NMFS does through its take reduction team process: implemented a regulatory plan, evaluated whether the plan reduced bycatch below PBR, and revised the plan when it was determined that bycatch has not been reduced below PBR.

Since 2012, the Government of New Zealand has had in place measures restricting set nets and trawls in certain areas of Māui dolphin habitat, and required increased observer coverage and other monitoring mechanisms. From 1995/96 to present, there have been no observed captures of Māui dolphins in set net or trawl fisheries (Roberts et al. 2019).

According to the risk assessment, for Māui dolphins on the West Coast of the North Island (WCNI), the estimated annual deaths from commercial set nets was 0.09 individuals per year, (95 percent CI = 0.0–0.3) and for the inshore trawl fishery was 0.02 individuals per year (95 percent CI = 0.0–0.1). Therefore, estimated bycatch in set and trawl fisheries is approximately equivalent to the PBR level of 0.11 for Māui dolphin, assuming the distribution of Māui dolphins can be accurately approximated by the Hector's dolphin habitat preference model. The estimated bycatch is also less than New Zealand's PST (their PBR equivalent) of 0.28 (*i.e.,* assuming a calibration coefficient (Φ) value of 0.2 corresponding to a population recovery target at 90 percent of carrying capacity) or alternately the PST = 0.14 (if the population recovery objective for Māui dolphins is recovery to 95 percent of its carrying capacity). Therefore, the best estimate of annual mortalities for assessed commercial fisheries did not exceed the annual PST between 2014/15 and 2016/17, indicating that the recent mortality levels for these fisheries would not individually or collectively depress the equilibrium population below 90 percent of carrying capacity. For Māui dolphins, the estimated annual deaths, fishing effort, and risk ratios have declined through time since 1992/93.

New Zealand's 2019 spatial risk assessment of threats to Māui dolphin informs the revised TMP for this subspecies (Roberts et al. 2019). According to the 2019 assessment, bycatch of Māui dolphins in commercial fishing operations is currently at or below PBR and PST. However, because the population of Māui dolphins is very small, New Zealand is committed to reducing the risk of all human-induced deaths to as close as possible to zero to provide the best chance of preventing further population decline, and allow the population to increase as rapidly as possible. Based on the mortality estimates in the risk assessment, New Zealand is proposing to implement additional mitigation measures with the proposed outcome of reducing the current level of fisheries risk by at least 50 percent. On June 17, 2019, New Zealand published a TMP containing additional options to reduce Māui dolphin bycatch. New Zealand's Hector's and Māui dolphin Threat Management Plan is currently under public review and comment with final regulatory action by the New Zealand's Ministers scheduled for late 2019 (See: *https://www.fisheries.govt.nz/news-and-resources/consultations/hectors-and-maui-dolphins-threat-management-plan-review/).*

New Zealand's TMP proposes a range of bycatch mitigation measures to complement measures already in place and reduce the residual risk from both set netting and trawling. An additional mitigation measure, in addition to the mitigation options proposed in the 2019 TMP, is the inclusion of a trigger mechanism where set net and trawl fishing would be halted throughout the range of the Māui dolphins if a fisheries capture occurred. The TMP is the functional equivalent to a take reduction plan under the MMPA. The immediate goal of take reduction plans is to reduce, within six months of its implementation, the incidental mortality or serious injury of marine mammals from commercial fishing to less than the PBR level (16 U.S.C 1387(f)(2)). Most of the options contained in New Zealand's TMP, once implemented, would further reduce the risk of Māui dolphin bycatch. With the exception of the status quo option, all options within the TMP, once implemented, will likely further reduce Māui dolphin bycatch to well below PBR and PST.

Therefore, based on the current regulatory regime and assuming the implementation of additional measures outlined in the TMP, NMFS does not believe that import restrictions under the MMPA Import Provisions are warranted at this time and is rejecting the petition. As part of the MMPA Import Provisions, NMFS will continue to evaluate New Zealand's

implementation of its regulatory regime governing set net and trawl fisheries with the potential to interact with Māui dolphin to ensure that the regulatory regime is comparable in effectiveness to the U.S. regulatory regime.

Responses to Comments on the Notification of the Petition

NMFS received comments on the notification of the petition from fishing industry groups, environmental non-governmental organizations (NGOs), private citizens, the Marine Mammal Commission, and foreign governments.

General Comments

NMFS received comment letters and petitions from private citizens primarily through environmental NGOs supporting the petition. Specifically, the majority of commenters expressed their support for the petition and the application of trade restrictions. NMFS received more than 88,678 petitioners on the Care2 comments, most with minimal substantive comment. Forty-three public comments generally supported the petition. In addition, we received substantive comments from the Marine Mammal Commission, industry (2), marine mammal scientists (1) and environmental NGOs (3) for a total of 88,726 comments/petitioners. Comments received are available on the internet at *http://www.regulations.gov* under Docket ID ''NOAA–NMFS–2019–0013.'' In the following section, NMFS responds to those comments most applicable to this determination.

The Adequacy of Existing Measures Regulating Commercial Fishing Throughout the Range of the Māui Dolphin

Comment 1: The petitioners and the Marine Mammal Commission expressed concern about the adequacy of measures to mitigate Māui dolphin bycatch. The petitioners cited the 2018 report of the IWC Scientific Committee that stated: ''existing management measures in relation to bycatch mitigation fall short of what has been recommended previously'' (IWC 2018). Since 2015, the Scientific Committee expressed concerns about New Zealand's regulatory regime and in 2018 ''reiterate[d] its previous recommendation that highest priority should be assigned to immediate management actions to eliminate bycatch of Māui dolphins including closures of any fisheries within the range of Māui dolphins that are known to pose a risk of bycatch to dolphins (*i.e.,* set net and trawl fisheries).'' The petitioners and the Marine Mammal Commission expressed concern over the portion of Māui dolphin habitat closed to set net and trawl fishing (14 percent and 5 percent, respectively) stating that the current closures were insufficient to cover the range and density of Māui dolphins. Likewise, the petitioners and the Marine Mammal Commission expressed concern over the small percentage of observed set net and trawl fishery operations (12.7 percent and 14.6 percent, respectively) stating the coverage has been too low to estimate the magnitude of incidental catch of Māui dolphins precisely or accurately to detect trends in the catch.

Response: 50 CFR 216.24(h)(7) outlines additional considerations for comparability finding determinations. Those considerations include the extent to which the harvesting nation has successfully implemented measures in the export fishery to reduce the incidental mortality and serious injury of marine mammals caused by the harvesting nation's export fisheries to levels below the bycatch limit; and whether the measures adopted by the harvesting nation for its export fishery have reduced or will likely reduce the cumulative incidental mortality and serious injury of each marine mammal stock below the bycatch limit, and the progress of the regulatory program toward achieving its objectives (50 CFR 216.24(h)(7)(i–ii)).

As noted by the Marine Mammal Commission, the two population estimates produced since the establishment of the prohibition zones, made five years apart, were very similar (Slooten and Dawson 2018), suggesting that protection provided by the current regulatory regime may have slowed or halted the population's decline. This observation is supported by the bycatch estimates in the current risk assessment, which now estimate Māui dolphin bycatch at 0.1 animals annually over the last three years. Additionally, the 2019 TMP contains additional options for bycatch mitigation, which, with the exception of the status quo, extends protection over a larger portion of Māui dolphin habitat. The evidence presented in terms of abundance estimates and risk assessments supports the adequacy of existing protection measures. Therefore, NMFS believes the existing and the proposed regulatory regime is sufficient to maintain Māui dolphin bycatch below PBR.

Comment 2: The National Fisheries Institute (NFI) claims that in multiple recent studies assessing various nations for management of their Exclusive Economic Zones, determining whether countries' fisheries management systems are compliant with the United Nations Food and Agriculture Organization's code of conduct, and ranking the overall effectiveness of fishery management regimes, New Zealand is in the first rank of nations. NFI questioned, ''if New Zealand/MPI cannot meet American requirements for effective conservation of the Māui dolphin, it is not clear what country's fishery management regulators could meet those requirements as to their marine mammals.'' NFI also states if NMFS is ''badgered'' into imposing multiple embargoes of the kind Petitioners seek, then the commercial damage to the U.S. seafood industry—and the tens of millions of consumers it serves—will be significant indeed. NFI also claimed that ''repeated establishment of unwarranted MMPA embargoes of this nature, moreover, eventually will trigger similar requirements aimed at the United States and its seafood exports. That will raise costs and create uncertainty for U.S. harvesters who seek predictable access to their own export markets, and who stand to lose that access if the U.S. fishery management system is found similarly, and arbitrarily, wanting by foreign fishery management agencies.''

Response: NFI's comments have misinterpreted the MMPA Import Provisions. These provisions do not evaluate a nation's overall fishery management regime, but rather the management measures that apply to the bycatch of marine mammals in its fisheries that export fish and fish products to the United States. It is those management measures that must be comparable in effectiveness to the U.S. regulatory program.

Comment 3: The petitioners and the Marine Mammal Commission state that ''while the New Zealand management system includes many of the elements found in the U.S. system, the dire situation facing Māui dolphins, and their declining trend and the lack of confidence in the measures in place to reverse this trend, suggests that New Zealand's program is not comparably effective.'' To support this assertion, the Commission again cites the IWC 2018 Scientific Committee report, noting that New Zealand had not implemented any new protective measures for the subspecies since 2013 (IWC 2018). As well as the Scientific Committee conclusion that the ''existing management measures in relation to bycatch mitigation fall short of what has been recommended previously''; the Committee expressed ''continued grave concern over the status of this small, severely depleted subspecies'' (IWC 2018).

The Marine Mammal Commission states that ''to address the unacceptably

high level of mortality and serious injury of a subspecies such as Māui dolphin, it is likely that NMFS long ago would have (i) assigned highest priority to developing a take reduction plan to reduce mortality and (ii) invoked the emergency rulemaking provisions under MMPA section 118(g) given the apparent ''immediate and significant adverse effect'' of fisheries on the population. It is also likely that NMFS would have substantially increased observer coverage to better understand and track the impacts of fisheries interactions. It is not clear that New Zealand's efforts to date have been comparable to what is required of NMFS and U.S. fisheries under the MMPA.''

Response: While the Commission may be correct in stating that NMFS would likely have convened a take reduction team, any assertion as to the outcome of that process is speculative. New Zealand has implemented a functional equivalent to the take reduction process, its risk assessment and TMP. Similarly, since 2012 New Zealand has successfully increased fisheries observer coverage in West Coast North Island set net and trawl fisheries since 2012. The TMP will inform further modifications to its existing regulatory program. New Zealand is proposing additional bycatch mitigation options that would implement bycatch mitigation over a larger portion of the Māui dolphin's range. Such actions should address any perceived uncertainty in the risk assessment model or its assumptions, and any unaccounted for bycatch risk such as that associated with recreational and illegal fishing. This iterative process to implement, reconsider, and refine bycatch reduction measures, is similar to the take reduction process for marine mammal stocks such as the Gulf of Maine harbor porpoise and the North Atlantic right whale.

Comment 4: The petitioners claim that PBR and PST are not comparable and states that the New Zealand Government readily admits that PST is not equivalent to PBR. The Ministry for Primary Industries (MPI), the lead authority for New Zealand fisheries, summarizes PST as follows: The PST is an index of the population productivity, adapted from the PBR. It is an estimate of the maximum number of human-caused mortalities that will allow populations to recover to and/or stabilize and remain at or above a defined population target. The PST differs from the PBR by explicitly including the uncertainty in population size, instead of using a conservative point estimate of population size, and by utilizing a scaling factor that can be tuned to achieve different population recovery outcomes, reflecting a policy decision (Sharp 2018). The petitioners state that ''the PST differs from PBR by (1) fixing the end-goal as maintenance of population at only half of 'carrying capacity,' as opposed to including a recovery factor that aims to 'allow that stock to reach or maintain its optimum sustainable population'; (2) including a two-century time horizon no matter the specific context; and (3) using the full distribution of the population size estimate, rather than an estimated minimum.'' The petitioners claim that to be ''consistent with U.S. standards (as required by the MMPA Imports Provision), New Zealand must adopt the PBR methodology.''

Response: The MMPA Import Provisions do not require harvesting nations to use PBR. These provisions define ''Bycatch limit'' as the calculation of a potential biological removal level for a particular marine mammal stock, as defined in § 229.2 of this chapter, or comparable scientific metric established by the harvesting nation or applicable regional fishery management organization or intergovernmental agreement. As noted, the PST differs in using mean populations estimate (N) rather than Nmin and Φ as a general policy parameter instead of a recovery factor (F_r). The choice for the policy parameter is left to managers. In the current 2019 Hector's-Māui dolphin risk assessment, New Zealand reports PST values based on a default value of 0.2 for Φ, corresponding to a population recovery goal at 90 percent of carrying capacity. In the officials' advice to policy makers (New Zealand government ministers) under the TMP, New Zealand officials recommend use of the default value for Hector's dolphins, and a more precautionary value of Φ = 0.1 for Māui dolphins, reflecting their urgent conservation status. The greatest differences between the PST and the PBR calculation come from different values for Rmax (one-half the maximum theoretical or estimated net productivity rate of the stock at a small population size) and the level of protection conferred by Fr (or Φ). In the case of Māui dolphin the PBR is 0.11 while the PST is 0.28 (Φ = 0.2) or 0.14 (Φ = 0.1). At this level, the difference between PBR and PST is negligible.

Whether the Apparent Decline in the Māui Dolphin Population Due to Commercial Fishing Meets the Standard of ''Immediate and Significant Adverse Impact on a Marine Mammal Stock'' Within the Meaning of the MMPA

Comment 5: The petitioners, Marine Mammal Commission, and other environmental NGOs cited the 2012 Māui dolphins Threat Management Plan (MPI/DOC 2012). Citing that approximately 95 percent of human-induced Māui dolphin mortalities were caused by fishing (commercial, recreational, customary and illegal fishing combined) and an estimated that 5 Māui dolphins, on average, were killed each year due to fisheries interactions, these groups used the Currey et al. (2012) assessment as the foundation for their conclusion that fishing is the primary cause of the decline in Māui dolphins and that this threat has had an ''immediate and significant adverse impact'' on the subspecies. The petitioners stated that ''current estimates of mortalities from fisheries (ranging from two to five individuals per year) exceed PBR several times over.''

Response: The previous multi-threat risk assessment for Māui dolphins used an expert panel to estimate threat-specific annual deaths for a range of perceived key threats to this subspecies, relative to a PBR (Currey et al. 2012). Changes in data availability (*e.g.,* longer time series of fisheries information, more comprehensive necropsy methods, and improvements to habitat-based spatial distribution information parameterized using data from new aerial surveys) and advances in scientific approaches to risk assessment (Sharp 2018) have resulted in a new risk assessment with revised estimates of Māui dolphins bycatch, and the conclusion that toxoplasmosis is a major cause of death for Māui dolphins (Roe et al. 2013). It is mortality associated with disease, not commercial fisheries bycatch, that results in the annual mortality of Māui dolphins exceeding PBR.

Specific Fisheries Are or May Be Directly Associated With Potential Mortality of Māui Dolphin and Therefore Fall Within the Scope of the Petition for Emergency Action

Comment 6: Sea Shepherd asserts that eleven fish species may be the source of exports to the United States. Ten of those species are drawn from a list prepared by Sanford Ltd and Moana Ltd when they prepared their Māui Protection Plan. The Marine Mammal Commission agrees with the petitioners that the specific fisheries which are, or may be, directly associated with mortality of Māui dolphins are the gillnet and trawl fisheries that operate within the core range of the Māui dolphin. The Commission states that although the MMPA Import Provisions focuses on identifying particular offending fisheries, it is the statutory

language that should be controlling. ''In this case, the language of the MMPA states, '[t]he Secretary . . . shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards.' '' The Commission states that it ''recognizes that it may be difficult at this time to track fish and fish products to specific offending fisheries. If that is the case and NMFS does move forward with a ban, the Commission recommends that NMFS include imports of fish and fish products from all gillnet and trawl fisheries that operate, even partially, in the core of the Māui dolphin's range.'' Fisheries Inshore New Zealand stated that its information indicates that products sourced from Māui habitat are not exported to the United States.

Response: NMFS disagrees. NMFS cannot implement import restrictions that affect fisheries that do not export to the United States. Both the MMPA Import Provisions and the statute turn on the importation of fish and fish products from a specific fishery, not just any fishery, and certainly not all fisheries operating within the range of a marine mammal regardless of whether they export product to the United States. While there are set net and trawl fisheries on the List of Foreign Fisheries that operate within the Māui dolphin range, NMFS, working with the Government of New Zealand, has not been able to establish conclusively that these fisheries export to the United States.

Comment 7: NFI expressed concern over the petitioners' reliance on industry information to supply the statutorily required nexus between specific fisheries and the habitat of the Māui dolphin. NFI asks what purpose NMFS's determination related to the LOFF serves if petitioners can simply jettison them in favor of more attractive data points. NFI states that ''if Petitioners in this instance can meet their MMPA burden by relying primarily on information obtained outside of, and in contradiction to, final LOFF determinations, then no stakeholder in this process can rely on those determinations.''

Response: NMFS disagrees. The MMPA Import Provisions at 50 CFR 216.24(h)(3)(iv) clearly state that NMFS may consider other readily available and relevant information about such commercial fishing operations and the frequency of incidental mortality and serious injury of marine mammals, including: Fishing vessel records; reports of on-board fishery observers; information from off-loading facilities, port-side officials, enforcement agents and officers, transshipment vessel workers and fish importers; government vessel registries; regional fisheries management organizations documents and statistical document programs; and appropriate certification programs. Other sources may include published literature and reports on fishing vessels with incidental mortality and serious injury of marine mammals from government agencies; foreign, state, and local governments; regional fishery management organizations; nongovernmental organizations; industry organizations; academic institutions; and citizens and citizen groups.

Concerns About Further Delay in the Implementation of Bycatch by Deferring Action on the Petition

Comment 8: Fisheries Inshore New Zealand recommended deferring action on the petition until the TMP process has been completed and the decisions of the New Zealand Government are known. The NFI claimed the petition is badly flawed and fails to establish the statutorily required nexus between the Māui dolphin and most of the fisheries to which it is supposed to apply. NFI urged NMFS to deny the Petition in whole. The petitioners, several environmental NGOs, and the Marine Mammal Commission urged NMFS to conclude its consultations and accelerate emergency rulemaking to ban imports of fish and fish products from fisheries known or likely to take Māui dolphin in excess of U.S. standards. The Marine Mammal Commission stated it ''recognizes that New Zealand is currently developing a revised threat management plan (the TMP) expected to contain further measures to reduce the impact of fishing on Māui dolphins.'' The Commission noted that ''such processes often take much longer than expected and do not always achieve the desired results.'' The Commission believes that Māui dolphins are at too great a risk of further decline and extinction to allow for customary, but potentially drawn-out procedures that, in the end, may not sufficiently mitigate the main threats facing Māui dolphins.''

Response: NMFS disagrees with the comments from petitioners, the Commission, and environmental NGOs on this point. NMFS sees no benefit at this time in imposing import restrictions on fisheries operating within the range of Māui dolphins. The risk assessment clearly identifies that disease, not commercial fisheries, is the primary factor causing the annual mortality of Māui dolphins to exceed PBR. Nevertheless, New Zealand has published the current TMP for public comments and expects to implement additional regulations by October 2019. With the exception of the status quo, all options move, to some extent, set net and trawl fisheries out of Māui dolphin habitat, further reducing the bycatch risk and increasing the likelihood that the annual mortality from commercial fisheries will remain below PBR. NMFS will continue to evaluate New Zealand's implementation of its regulatory regime governing set net and trawl fisheries with the potential to interact with Māui dolphin to ensure that the regulatory regime is comparable in effectiveness to the U.S. regulatory regime.

Literature Cited

Baird SJ, Bradford E (2000) Estimation of Hector's dolphin bycatch from inshore fisheries, 1997–98 fishing year. Published Client Report on Contract 3024, Funded by Conservation Services Levy. Department of Conservation, Wellington, NZ, *www.doc.govt.nz/upload/documents/science-and-technical/CSL3024.pdf.*

Cooke, J.G., D. Steel, R. Hamner, R. Constantine, and C.S. Scott. 2018. Population estimates and projections of Māui dolphin (Cephalorhyncus hectori Māui) based on genotype capture-recapture, with implications for management of mortality risk. Unpublished document submitted to the International Whaling Commission Scientific Committee. Document SC/67b/ASI/05. 15pp.

Currey RJC, Boren LJ, Sharp BR, Peterson D (2012) A risk assessment of threats to Māui's dolphins. Ministry for Primary Industries and Department of Conservation, *www.doc.govt.nz/getting-involved/consultations/current/threat-management-plan-review-for-Māuis-dolphin/.*

Currey, R. and D. Lundquist. 2016. Māui dolphin: 2016 update on New Zealand's research and management approach. International Whaling Commission Scientific Committee submission available at: *https://www.doc.govt.nz/nature/native-animals/marine-mammals/dolphins/Māuidolphin/resources/.*

Dawson SM, Slooten E (1988) Hector's Dolphin Cephalorhynchus hectori: Distribution and abundance. Reports of the International Whaling Commission, Special Issue 9: 315–324.

IWC (International Whaling Commission). 2018. Report of the Scientific Committee. Journal of Cetacean Research and Management 19 (Supplement):1–428.

IWC (International Whaling Commission). In press. Report of the Scientific Committee. Journal of Cetacean Research and Management 20 (Supplement).

IWC (2018) Report of the Scientific Committee Annex M Report of the Sub-committee on small cetaceans. IWC/67b/

Rep01, Annex M. Summary of the 67th meeting of the International Whaling Commission: 10–14 September 2018 Vol. 34 No. 2 Online at: *http://enb.iisd.org/iwc/67/* IWC. 2017. Annex J: Report of the Working Group on Non-Deliberate Human-Induced Mortality of Cetaceans. Bled, Slovenia.

Leathers, A. and A. Leslie. 2017. Gear switching to remove threats to Māui dolphin and address the socio-economic barriers to effective conservation. Unpublished document submitted to the International Whaling Commission Scientific Committee. Document SC/67a/HIM14. 17 pp.

National Marine Fisheries Service. 2017. Final Rule to List the Māui Dolphin as Endangered and the South Island Hector's Dolphin as Threatened Under the Endangered Species Act. Docket No. 160614520–7805–02.

Nelson, W. and C. Radford. 2018. Occurrence of Cephalorhynchus hectori in the coastal waters of Manukau and Taranaki, New Zealand. Second Deployment. Identifying temporal and spatial information for review of the 2012 Threat Management Plan.Department of Conservation, University of Auckland, and National Institute of Water and Atmospheric Research. 22 pp.

NZDOC (New Zealand Department of Conservation). 2007. New Zealand Threat Classification System lists—2005. Wellington: Science & Technical Publishing, Department of Conservation. p.32. ISBN 978–0–478–14128–3.

Roberts, J.O., D.N. Webber, C.T.T. Edwards, W.D. Roe, I.J. Doonan (2019). Spatial risk assessment of threats to Hector's and Māui dolphins (Cephalorhynchus hectori). New Zealand Aquatic Environment and Biodiversity Report No. 214. Ministry for Primary Industries, New Zealand.

''Scientists Argue about New Zealand Fisheries,'' Sustainable Fisheries, University of Washington (July 3, 2017) (including links to referenced studies) (*https://sustainablefisheries-uw.org/new-zealand-fisheries-fight/*).

Sharp, BR (2018). Spatially Explicit Fisheries Risk Assessment: A framework for quantifying and managing incidental commercial fisheries impacts on non-target species'. Chapter 3 in: Aquatic Environment and Biodiversity Annual Review 2018. Ministry for Primary Industries, New Zealand.

Slooten E (2013) Effectiveness of area-based management in reducing bycatch of the New Zealand dolphin. Endangered Species Research 20: 121–130.

Slooten E., S.M. Dawson, and W.J. Rayment. 2004. Aerial surveys for coastal dolphins: Abundance of Hector's dolphins off the South Island west coast, New Zealand. Marine Mammal Science 20: 117–130.

Slooten E. and N. Davies. 2011. Hector's dolphin risk assessments: Old and new analyses show consistent results. Journal of the Royal Society of New Zealand 42: 49–60.

Slooten E, Dawson SM (2010) Assessing the effectiveness of conservation management decisions: Likely effects of new protection measures for Hector's dolphin. Aquatic Conservation: Marine and Freshwater Ecosystems 20: 334–347.

Slooten E, Dawson SM, Rayment WJ, Childerhouse SJ (2006) A new abundance estimate for Māui's dolphin: What does it mean for managing this critically endangered species? Biological Conservation 128: 576–581.

Slooten, E. and S.M. Dawson. 2018a. Updated population viability analysis, population trends and PBRs for Hector's and Māui Dolphin. Available at: *https://www.regulations.gov/document?D=NOAA-NMFS-2016-0118-0076*.

Slooten, E. and S.M. Dawson. 2017. Bycatch and PBRs for Māui and Hector's dolphin. Unpublished document submitted to the International Whaling Commission Scientific Committee. Document SC/67a/HIM07rev1. 16 pp.

Taylor B, Lonergan M, Reeves R (2018) Panel comments and recommendations. Report to New Zealand Ministry for Primary Industries and Department of Conservation. *https://www.doc.govt.nz/globalassets/documents/conservation/native-animals/marine-mammals/Māui-tmp/hectors-risk-assessment-workshop-panel-recommendations-appendix-1.pdf*.

Dated: July 5, 2019.

Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2019–14720 Filed 7–9–19; 8:45 am]

BILLING CODE 3510–22–P