

US To Implement Dolphin-Safe Rules For Seafood Imports

The U.S. government settled with environmental groups on Monday in the U.S. Court of International Trade, agreeing to implement legislation that ensures seafood imported into the United States meets the country's standards for protecting whales and dolphins.

The government promised plaintiffs the [Center for Biological Diversity](#), Turtle Island Restoration Network and the [Natural Resources Defense Council](#) that it would issue rules that require foreign fisheries to meet the same marine mammal protection standards required of U.S. fishermen or be denied import privileges, thus implementing an as-yet unenforced provision of the 1972 Marine Mammal Protection Act.

"We're very pleased with this settlement," Sarah Uhlemann, senior attorney and international program director of the Center for Biological Diversity, told Law360 on Tuesday. "The U.S. has been under an obligation for forty years to ensure that seafood coming into the country is dolphin- and whale-safe. We believe this settlement is ultimately going to save the lives of hundreds of thousands of whales and dolphins each year."

According to the organizations' complaint, over 650,000 whales, dolphins and other marine mammals are caught and killed in fishing gear each year, as unintentional "bycatch" of commercial fisheries. The organizations say that Americans consume 5 billion pounds of seafood per year, roughly 90 percent of which is imported and half is wild-caught.

Under Monday's settlement, the government is required to make a final decision by August 2016 about how to implement the 1972 act's requirement that "[t]he Secretary of the Treasury shall ban the importation of commercial 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 2008, the Center for Biological Diversity and Turtle Island filed a rulemaking petition asking the Commerce, Treasury, and Homeland Security departments to immediately implement the MMPA's import ban for swordfish. The agencies failed to act, with Homeland Security saying it was the Treasury's responsibility and the Treasury delegating similar responsibilities to Homeland Security, according to the complaint.

In 2010, after the organizations sent a letter to the agency asking it to take action, the [National Marine Fisheries Service](#) responded by issuing an advance notice of public rulemaking on MMPA implementing regulation and seeking public comment, which it received from fisheries and advocacy groups in Japan, Brazil, the U.S. and other countries.

After reviewing these comments, the agency published an "International Marine

Mammal Action Plan” in 2012, in which it stated its first international priority was to “[r]educe the bycatch of marine mammals in international and foreign fisheries to sustainable levels.”

Despite promising the organizations a proposed rule during multiple meetings from 2011 to 2014, the NMFS never took action, the plaintiffs’ complaint said, so fish continued to be imported in violation of the MMPA.

According to the Center for Biological Diversity, the U.S. standards that will now be applied to international fish importers may include modifying fishing gear and ceasing fishing in “risk-prone habitats” to limit the risk of entanglement.

Zak Smith with the Natural Resources Defense Council said in a statement that the settlement will provide “real, enforceable protections for marine mammals and setting up an even playing field that allows our fishermen to be competitive in the U.S. market.”

Counsel for the government declined to comment on Tuesday.

The plaintiff organizations are represented by Sarah Uhlemann, senior counsel for the Center for Biological Diversity.

The government is represented by Joyce R. Branda, Jeanne E. Davidson, Patricia M. McCarthy and Stephen C. Tosini of the Civil Division of the Department of Justice.

The case is Center For Biological Diversity et al v. Pritzker et al, case number 1:14-cv-00157, in the Court of International Trade.

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