

Complying with the Import Provisions of the US Marine Mammal Protection Act (MMPA): issues and challenges of the ASEAN Member States

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In 2017, the United States government through its National Oceanic and Atmospheric Administration (NOAA) Fisheries announced the final rule to implement the import provisions under the Marine Mammal Protection Act (MMPA) which prohibits importations of commercial fish or fish products from commercial fishing operations resulting in incidental killing or serious injury (bycatch) of marine mammals. MMPA established the conditions that the nations exporting fish and fish products to the United States must demonstrate they have a regulatory program for reducing marine mammal incidental mortality and serious injury that is comparable in effectiveness to United States standards. As of 21 October 2022, NOAA Fisheries announced the Modification of Deadlines Under the Fish and Fish Product Import Provisions of the Marine Mammal Protection Act and issued the final rule to revise the regulations implementing the import provisions of the MMPA. The final rule was extended for one year, with the exemption period ending on 31 December 2023.

Regarding the Import Provisions Rule of the Marine Mammal Protection Act (MMPA) which will enter into force in

2024, the United States requires the exporting countries to meet the new requirement including banning the seafood products that incidentally capture any marine mammal. However, this regulation could adversely affect the countries trading with the United States, especially Southeast Asian countries. The fisheries of Southeast Asia play important role in contributing to the protein food supply of the world and generating revenue for the national economy. Many ASEAN Member States (AMSs), *i.e.* Indonesia, Philippines, Thailand, and Viet Nam, are among the highest producers of fish and fishery products that are supplied to the world market including the United States, Europe, China, Japan, and others. As exporting countries, the AMSs made a tremendous effort in improving their legal frameworks and implementing necessary actions to comply with international trade measures such as the MMPA and EC Regulation 1005/2008 in order to access international markets. Therefore, SEAFDEC extended support to the AMSs by providing a regional platform to update the status of the MMPA and exchange information on major issues and challenges to comply with the MMPA.

The estimated global fishery production was 213 million t in 2019, dropping to 178 million t in 2020. Asian countries (excluding China) were the main producers, accounting for around 70 percent of the total fisheries and aquaculture production. For global marine capture fishery, the production was 78.8 million t in 2020, of which six AMSs, namely: Indonesia, Viet Nam, Philippines, Malaysia, Thailand, and Myanmar were among the top 25 producers (**Figure 1**) (FAO, 2022).

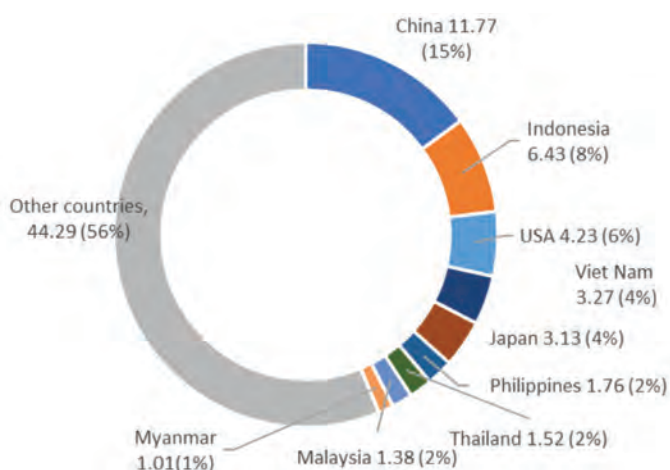


Figure 1. The quantity (t) and share (%) of top producers in global marine capture fisheries in 2020 (FAO, 2022)

In global seafood trading, Europe was the top exporter of fish and fishery products in 2019 with a share of 36 percent of the total exports in terms of quantity and value. Moreover, the Southeast Asian region shared 13–14 percent of the total exports in terms of quantity and value (**Figure 2**). In 2020, Viet Nam and Thailand were among the top ten exporting countries of aquatic products (FAO, 2022). The major exported products of Viet Nam were farmed pangasius and farmed shrimp, while Thailand exported canned tuna and farmed shrimp and supplied raw materials landed directly by fishing fleets in Thai ports. Thailand also played a key role in the international tuna trade of which the United States is the primary destination of processed tuna (FAO, 2022). Furthermore, Indonesia is recently one of the largest suppliers of farmed shrimp to the world market and an exporter of tuna and tilapia. For imports, **Figure 3** shows that Europe shared about 35 percent of the total imports in terms of quantity and 40 percent of the total imports in terms of value. While the Southeast Asian region shared about 10 percent of the total imports in terms of quantity and 6 percent of the total imports in terms of value (SEAFDEC, 2022a).

In 2020, the United States was the largest importing country, accounting for about 15 percent of the world import value of aquatic products, followed by China (10 percent), Japan (9 percent), Spain (5 percent), and France (4 percent) (FAO, 2020). In terms of quantity (live weight), China was the top importing country of aquatic products, far ahead of the United States. During 2017–2022, Indonesia was the top exporting

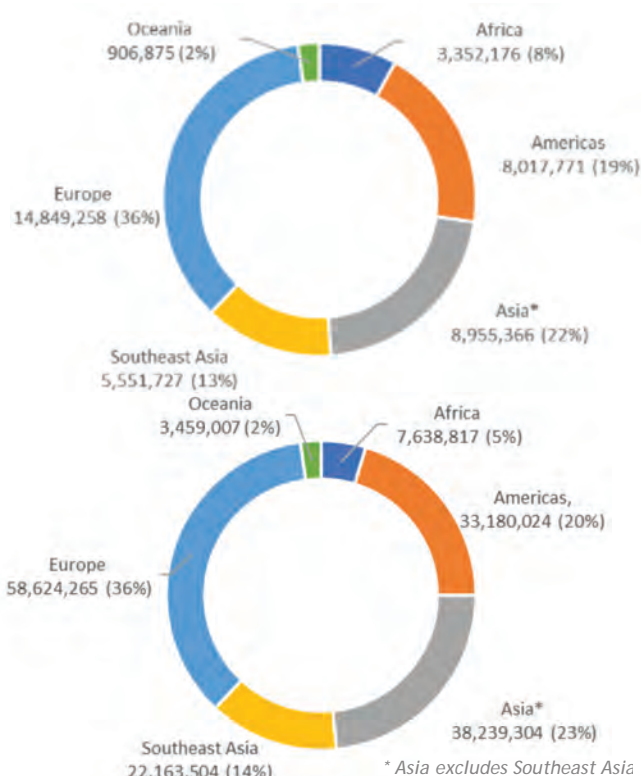


Figure 2. Percentage share by continent of export of fish and fishery products by quantity (t) (above) and value (USD thousand) (below) in 2019

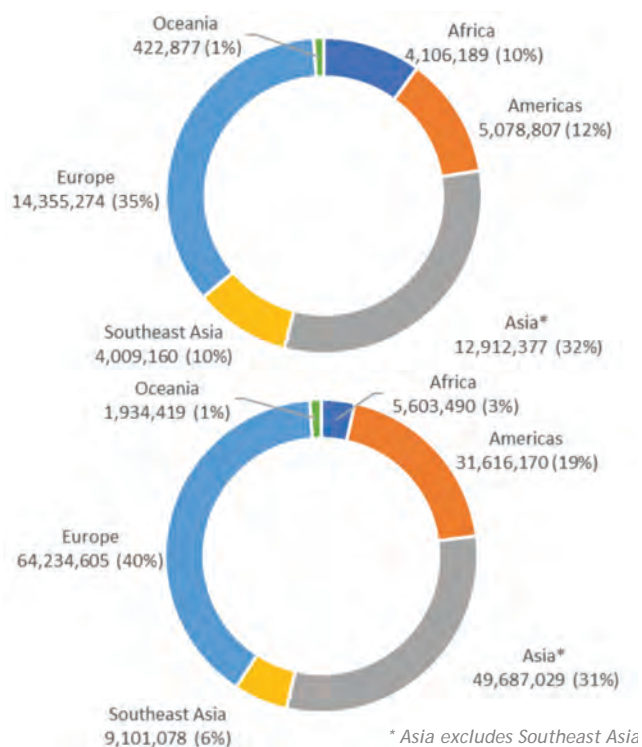


Figure 3. Percentage share by continent of import of fish and fishery products by quantity (t) (above) and value (USD thousand) (below) in 2019

country of seafood products to the United States market in terms of value, followed by Viet Nam, Japan, and Thailand; while in terms of quantity, Viet Nam was at the top followed by Indonesia and Thailand (USDA, 2022) (**Table**).

Table. United States import of fish and fishery products by value (USD thousand) and quantity (t) during 2017-2022

Countries	2017		2018		2019	
	Value (USD thousand)	Quantity (t)	Value (USD thousand)	Quantity (t)	Value (USD thousand)	Quantity (t)
Brunei Darussalam	8	0.9	0	0	172	31.8
Cambodia	0	0	16	1.8	12	0.7
Indonesia	1,853,957	178,277.50	1,943,417	192,435.90	1,856,943	199,729.90
Japan	305,290	21,417.80	292,918	20,130.80	338,008	23,938.00
Malaysia	24,023	4,565.50	28,075	5,166.60	37,280	6,139.10
Philippines	252,714	30,902.40	244,190	28,140.30	236,207	30,902.30
Thailand	1,439,273	211,937.40	1,238,375	192,122.10	1,250,646	203,305.70
Viet Nam	1,393,000	228,099.10	1,570,173	236,507.20	1,282,770	205,631.80

Countries	2020		2021		January - August 2022	
	Value (USD thousand)	Quantity (t)	Value (USD thousand)	Quantity (t)	Value (USD thousand)	Quantity (t)
Brunei Darussalam	355	67.7	0	0	0	0
Cambodia	120	6.5	16	1.2	31	4.2
Indonesia	2,103,965	231,250.40	2,448,285	249,943.50	1,905,519	174,996.30
Japan	231,486	17,641.00	382,310	27,401.90	404,708	24,526.70
Malaysia	30,320	5,769.40	29,536	6,282.00	19,561	3,737.50
Philippines	177,306	31,008.40	258,467	30,348.80	191,339	21,259.90
Thailand	1,379,923	237,131.80	1,194,673	195,932.20	925,865	151,691.40
Viet Nam	1,396,099	227,968.30	1,863,623	280,626.30	1,603,024	222,035.80

United States Fisheries Laws

In line with international policies, treaties, and conventions relevant to fisheries *e.g.* 1982 United Nations Convention on the Law of the Sea (UNCLOS), 1995 UN Fish Stock Agreement (UNFSA), among others, States and international organizations put their effort to meet the requirements for effective fisheries management by sustaining and rebuilding marine fishery resources. Likewise, the fisheries of the United States are an important sector providing food supply within the country and international trade communities. The United States is one of the leading countries in implementing fisheries

management under several laws including the Magnuson-Stevens Fishery Conservation and Management Act, Marine Mammal Protection Act, and Endangered Species Act to prevent overfishing, restore overfished stocks, increase the long-term benefits of fisheries, and ensuring a safe and sustainable seafood supply.

One of the important fisheries laws of the United States is the Marine Mammal Protection Act (MMPA) which was enacted on 21 October 1972. The MMPA prevents marine mammal species and population stocks from declining beyond the point where they ceased to be significant functioning elements of the ecosystems of which they are a part. Moreover, the MMPA prohibits the taking and importation of marine mammals and marine mammal products, where “take” means to harass, feed, hunt, capture, or kill any marine mammal. This Act bans seafood products from exporting countries that incidentally capture marine mammals at a level above what is set in the United States for allowable bycatch.

In August 2016, the United States National Marine Fisheries Service (NMFS) and the National Oceanic and Atmospheric Administration (NOAA) published a final rule “Fish and Fish Product Import Provisions of the Marine Mammal Protection Act” effective from 1 January 2017 (NOAA, 2016). The Rule established conditions for evaluating a harvesting nation’s regulatory program for reducing marine mammal incidental mortality and serious injury in fisheries that export fish and





fish products to the United States. Under this Rule, fish and fish products from fisheries identified by the Assistant Administrator in the List of Foreign Fisheries can only be imported by the United States if the harvesting nation has applied for and received a Comparability Finding from NMFS. The Rule establishes procedures that a harvesting nation must follow and conditions it must meet to receive a Comparability Finding for a fishery. The Rule also established provisions for intermediary nations to ensure that such nations do not import and re-export to the United States fish or fish products subject to an import prohibition. The Rule provided a five-year exemption period from 1 January 2017 that allowed harvesting nations to develop regulatory programs and provide data on fisheries and their impacts on marine mammals. In addition, NOAA Fisheries identified fisheries that have interactions with marine mammals and export fish and fish products to the United States and consulted with harvesting nations with such fisheries to gather information about their marine mammal bycatch. The deadline for the Comparability Finding application was on 30 November 2021 and NOAA Fisheries is in the progress of reviewing Comparability Finding applications from more than 130 nations.

Nonetheless, to provide an additional one-year extension to harvesting nations to receive a Comparability Finding for their commercial fishing operations to export fish and fish products to the United States, NOAA Fisheries issued a final rule on “Modification of Deadlines Under the Fish and Fish Product Import Provisions of the Marine Mammal Protection Act” on 21 October 2022 (NOAA, 2022). NOAA Fisheries needs additional time to review and evaluate these applications, correspond with nations, make its final determination, and notify nations of its findings. With this extension, nations will have until 31 December 2023 to receive a Comparability Finding for their commercial fishing operations to export fish and fish products to the United States. However, due to the COVID-19 pandemic, the effective date of the Rule would be on 1 January 2024, when any exporting nations to the United States have to comply with a new import rule that mandates the requirements concerning marine mammal bycatch.

Considering that the fisheries situations and trading in the Southeast Asian countries differed from country to country, the respective countries submitted the application on a comparability and regulation program to the NOAA Fisheries by end of November 2021. The review and clarification are ongoing bilaterally between NOAA Fisheries and countries.

Issues and challenges of the ASEAN Member States

SEAFDEC, with the support of the Japanese Trust Fund, organized the Webinar on Regional Responses to the U.S. MMPA on 2–3 November 2021. The Webinar was attended by representatives from the AMSs as well as officials from the SEAFDEC Secretariat, Training Department, and

Box. Issues and challenges of the ASEAN Member States in response to the United States Marine Mammal Protection Act
<p>Issues and challenges</p> <ul style="list-style-type: none"> • Trade barrier for fishery products entering the United States market and continued export to the United States • Comparability Findings for all listed fisheries under the list of foreign fisheries (LOFF) and flexible space for currently not listed under a LOFF of the other future fisheries as harvesting nations • Non-compliance with most fisheries • Consideration of the United States of fish and fish products from an intermediary nation (re-export country) that will not be contaminated with fish from the banned area (export fishery) after MMPA implementation • Limited data on national and regional marine mammal abundance • Cross-sectoral issues (fisheries, environment, among others) that could delay the information-gathering process and consider the need to enhance multiagency coordination • Lack of monitoring mechanisms • Lack of bycatch, mortality, and injured data • Ways to deal with wide-range small-scale fisheries • Limited experts on marine mammals
<p>Technical assistance needed</p> <ul style="list-style-type: none"> • Marine mammal abundance survey • Determination of bycatch limit • Monitoring Program • Methods for marine mammal population estimate and stock assessment • Marine mammal surveys and stranded animal necropsies for the cause of death • Research on marine mammal bycatch based on fishing gear, especially in small-scale fisheries • Gear modifications and technologies to lessen marine mammal interaction in fishing operations • Development of mitigation measures and monitoring programs to reduce the bycatch, especially fishing industry where the total bycatch exceeds the limited bycatch based on biological parameters • Improved programs for identifying priorities and long-term conservation strategies • Stranding network along coastal regions • Roll out of the relevant FAO Technical Guideline to prevent and reduce bycatch of marine mammals in capture fisheries • Good handling practices to mitigate serious injuries and mortalities of marine mammal bycatch • Cooperation among the AMSs on the study of the distribution of transboundary marine mammals in Southeast Asian waters • Collaboration among the AMSs on catch certification that fish and fish products do not originate from MMPA-banned areas



Participants of the Webinar on Regional Responses to U.S. Marine Mammal Protection Act organized by SEAFDEC on 2-3 November 2021

Marine Fishery Resources Development and Management Department. During the Webinar, the status of the MMPA regarding “Implementation of Fish and Fish Product Import Provisions of the Marine Mammal Protection Act” as well as information on major issues and challenges of the AMSs related to MMPA (SEAFDEC, 2022b). The major issues and concerns of the AMSs are summarized in the **Box**. Generally, the key issues and challenges on MMPA faced by the AMSs include the improvement of data collection methodology and system to accommodate information on bycatch of marine mammals. This would help in assessing the status and stock of marine mammals and their interaction with various fishing gear and practices in the region. Another challenge is the establishment of a collaborative mechanism to work with national authorities in dealing with the issues of conservation of marine mammals. This is because, in most of the countries in the region, the national fisheries agency has no mandate in conserving and protecting marine mammals. Lastly, the livelihoods of small-scale fishers in the region who contribute a high proportion of fisheries products could be indirectly impacted by the MMPA.

Way Forward

The AMSs are in the progress of consultation with NOAA Fisheries for the final approval of the Comparability Finding. Meanwhile, SEAFDEC would continue to explore the technical and capacity-building support to be extended to the AMSs. The support could include marine mammal abundance stock assessment as a sub-regional or regional program, bycatch limit estimation, enhancement of the existing networks (e.g. fishing gear/practices modification for reducing mortality by fishing gear), provision of regional fora for sharing information, and enhancement of the cooperation among international and regional organizations for technical support.

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