

UNITED STATES COURT OF INTERNATIONAL TRADE

MĀUI AND HECTOR’S DOLPHIN
DEFENDERS NZ INC.

355 Foster Road, RD 1
Kumeu, 0891, New Zealand;

Plaintiff

v.

NATIONAL MARINE FISHERIES
SERVICE

1315 East-West Highway
Silver Spring, Montgomery County, MD
20910;

EUGENIO PIÑEIRO SOLER, in his
official capacity as ASSISTANT
ADMINISTRATOR for NATIONAL
OCEANIC AND ATMOSPHERIC
ADMINISTRATION FISHERIES
1315 East-West Highway
Silver Spring, Montgomery County, MD
20910;

HOWARD LUTNICK, in his official
capacity as the SECRETARY OF
COMMERCE
1401 Constitution Avenue, NW
Washington, DC 20230;

SCOTT BESSENT, in his official
capacity as the SECRETARY OF THE
TREASURY
1500 Pennsylvania Avenue, NW
Washington, DC 20220;

and

KRISTI NOEM, in her official capacity
as the SECRETARY OF HOMELAND
SECURITY
2707 Martin Luther King Jr. Avenue, SE
Washington, DC 20528,

Defendants.

Case No. 1:26-cv-00060

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

INTRODUCTION

1. The critically endangered Māui dolphin continues to face an existential threat from bycatch in New Zealand’s North Island set net and trawl fisheries. Its close relative, the imperiled Hector’s dolphin, is similarly declining in large part due to bycatch in New Zealand’s South Island set net and trawl fisheries.

2. The Marine Mammal Protection Act (MMPA) requires the U.S. government to ban seafood imports from any foreign fishery that harms or kills marine mammals in excess of U.S. standards. Yet despite significant bycatch of Māui and Hector’s dolphins in New Zealand’s fisheries, Defendants have repeatedly declined to ban seafood imports from the fisheries. By authorizing imports of seafood from these harmful fisheries, Defendants not only are neglecting their statutory duty, but are facilitating extinction of two of the world’s most endangered dolphins.

3. Time and time again, the Court of International Trade (CIT) has rejected Defendant National Marine Fisheries Service’s (NMFS) arbitrary findings that bycatch in New Zealand fisheries does not exceed U.S. standards. And time and time again, NMFS has issued new irrational and unjustified findings to allow seafood imports to continue.

4. This case challenges the most recent of these findings, published in September 2025 (the Comparability Finding). While prior findings considered only Māui dolphin bycatch in two fisheries (set net and trawl) on the west coast of New Zealand’s North Island, the new Comparability Finding’s scope is broader and includes *all* New Zealand fisheries that export to the United States. It now authorizes imports from South Island fisheries that catch and kill Hector’s dolphins. As with prior findings, the 2025 Comparability Finding violates the MMPA and Administrative Procedure Act (APA).

5. For Māui dolphin bycatch, the Comparability Finding repeats nearly all of the errors that the CIT identified when rejecting the 2020 and 2024 findings: it fails to address several key U.S. marine mammal bycatch standards; it fails to consider critical ways New Zealand’s regulatory limits on dolphin mortality in its fisheries differ from U.S. regulatory

limits; it uses an outdated and overly optimistic Māui dolphin population estimate to evaluate New Zealand's standards; and it arbitrarily compares New Zealand's Māui dolphin bycatch monitoring program to the wrong U.S. standards. Moreover, the Comparability Finding ignores recent evidence that clearly demonstrates that Māui dolphin bycatch rates exceed U.S. standards. The Comparability Finding also gives almost no attention to Hector's dolphin bycatch, failing to address multiple U.S. standards and lacking any reasoned basis for finding comparability.

6. NMFS may not whistle past the graveyard while New Zealand allows its fisheries to drive the Māui and Hector's dolphin populations toward extinction. The MMPA would not permit such levels of fisheries-related harm in the United States, and it does not permit imports of seafood from foreign fisheries with those levels of harm.

7. For the reasons herein, Plaintiff Māui and Hector's Dolphin Defenders NZ Inc. (MHDD) asks the Court to: (1) declare that NMFS's Comparability Finding is arbitrary and capricious and contrary to law, in violation of the MMPA and APA; (2) declare that Defendants have unlawfully failed to ban imports from New Zealand fisheries that catch Māui and Hector's dolphins; (3) vacate and remand the Comparability Finding; and (4) order Defendants to promptly ban imports from the New Zealand fisheries that harm or kill marine mammals in excess of U.S. standards.

JURISDICTION AND VENUE

8. This Court has exclusive jurisdiction over this action pursuant to 28 U.S.C. § 1581(i)(1)(C) because MHDD challenges an action of the United States government that arises out of law providing for embargoes "on the importation of merchandise for reasons other than the protection of the public health or safety." The final agency action is reviewable under the APA. 5 U.S.C. § 704.

9. This Court may grant the relief requested pursuant to the APA, 5 U.S.C. § 706, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.

PARTIES

10. Plaintiff MĀUI AND HECTOR’S DOLPHIN DEFENDERS NZ INC. is a registered New Zealand non-profit organization dedicated to obtaining improved protections for New Zealand dolphins. MHDD is headquartered in Kumeu, New Zealand. MHDD’s objectives are to support the protection, recovery, and stewardship of Māui and Hector’s dolphins and their habitats—and therefore also other marine species, including other marine mammals—and to improve the health and status of dolphin populations through public awareness, education, involvement, and collaboration with similar groups in New Zealand and overseas. To achieve these objectives, MHDD engages in political advocacy, public education, grass-roots activities, and direct action. MHDD is an Incorporated Society and registered Charity under New Zealand law. Committee membership in MHDD is open to anyone interested in the conservation and well-being of Māui and Hector’s dolphins. MHDD currently has ten committee members. MHDD brings this action for itself and as a representative of its members.

11. MHDD’s members live near and regularly visit Māui and Hector’s dolphin habitat along the coast of New Zealand’s North Island and Hector’s dolphin habitat along the coast of New Zealand’s South Island. Members enjoy and benefit from the continued presence of Māui and Hector’s dolphin populations for recreational, aesthetic, spiritual, artistic, cultural, commercial, scientific, and environmental purposes. MHDD’s members regularly engage in activities in the dolphins’ habitats, such as swimming, boating, photography, research, advocacy, education, documentary-making, and visiting cliffs and beaches with the objective of viewing dolphins. Members go out to beaches and spend hours looking for dolphins, and plan to do this increasingly over the austral summer as the dolphins come closer to shore. This has been and still is a big part of many of the members’ lives and activities. During these coastal visits, members also search for other marine species, including common dolphins, fur seals (at sea and resting on beaches and rocks), penguins of various types, orcas, southern right and humpback whales, and other types of marine mammals and seabirds. All of these species are impacted by New Zealand trawl and set net fisheries. Especially in the summer, MHDD members pursue these activities

almost every week, and often several times a week. They seek to experience wild animals in their natural environment; raise awareness of the dolphins' plight; celebrate marine biodiversity; promote citizen science; and encourage stewardship of the individual animals, the species, and intact functioning ecosystems distinct to New Zealand.

12. MHDD's members also plan and execute specific trips elsewhere in the country—in both the North Island and South Island—to speak with locals about Māui and Hector's dolphins, distribute pertinent information, and support related conservation efforts.

13. The ability of MHDD's members to pursue these interests hinges on the well-being of the Māui and Hector's dolphins and other marine mammals, and on the health of the marine ecosystems on which the species depend.

14. NMFS's failure to comply with the MMPA and APA has caused and is causing MHDD's members substantive and procedural harms connected to their conservation, recreational, spiritual, scientific, and aesthetic interests. NMFS has found that trawl vessels and set net vessels in New Zealand's fisheries interact with and harm or kill Māui and Hector's dolphins. In addition, the Government of New Zealand (GNZ) has reported that the fisheries catch and kill common dolphins, New Zealand fur seals, and other marine mammals. The United States continues to import seafood from New Zealand's trawl and set net fisheries that catch, harm, and kill marine mammals in excess of U.S. standards. The United States is a significant market for these fisheries. The MMPA requires NMFS to ensure that the U.S. seafood market does not encourage or sustain New Zealand fisheries that incidentally catch, injure, and kill dolphins and other marine mammals in excess of U.S. standards. GNZ has repeatedly indicated that avoiding an import ban is an important driver of its management choices for fisheries in Māui and Hector's dolphin habitats. NMFS's issuance of an arbitrary and unlawful Comparability Finding eliminates that driver, thereby allowing GNZ to continue management practices that harm Māui and Hector's dolphins while maintaining access to the U.S. seafood market.

15. The interests of MHDD, its members, and supporters have been, are being, and will be adversely affected by Defendants' violations of federal law, as described herein. These

harms can only be remedied if the Court orders Defendants to comply with the MMPA and APA. MHDD has no other adequate remedy at law.

16. Defendant NATIONAL MARINE FISHERIES SERVICE is the federal agency within the U.S. Department of Commerce responsible for administering and implementing the MMPA with respect to whales, dolphins, porpoises, seals, and sea lions. The MMPA and its implementing regulations charge the Secretary of Commerce with determining whether fish from an exporting nation have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of marine mammals in excess of U.S. standards. The Secretary has delegated that responsibility to NMFS. The principal offices of NMFS are located in Silver Spring, Maryland.

17. Defendant EUGENIO PIÑEIRO SOLER is sued in his official capacity as the National Oceanic and Atmospheric Administration's Assistant Administrator for Fisheries. The Assistant Administrator is responsible for implementing and fulfilling NMFS's duties under the MMPA. The office of the Assistant Administrator is located in Silver Spring, Maryland.

18. Defendant HOWARD LUTNICK is sued in his official capacity as the Secretary of Commerce. The Secretary of Commerce is responsible for implementing and fulfilling the Department of Commerce's duties under the MMPA and for overseeing NMFS. The office of the Secretary of Commerce is located in Washington, D.C.

19. Defendant SCOTT BESENT is sued in his official capacity as the Secretary of the Treasury. The Secretary of the Treasury is responsible for implementing and fulfilling the Department of the Treasury's duties under the MMPA. The office of the Secretary of the Treasury is located in Washington, D.C.

20. Defendant KRISTI NOEM is sued in her official capacity as the Secretary of Homeland Security. Pursuant to the Homeland Security Act, the Department of Homeland Security is responsible for certain functions of the Secretary of the Treasury relating to the United States Customs Service, which may include implementing import bans under the MMPA. 6 U.S.C. §§ 203(1), 212(a)(1). The office of the Secretary of Homeland Security is located in Washington, D.C.

STATUTORY BACKGROUND

I. MARINE MAMMAL PROTECTION ACT

21. Congress enacted the MMPA in 1972 to protect and restore marine mammal populations that “are, or may be, in danger of extinction or depletion as a result of man’s activities.” 16 U.S.C. § 1361(1). Congress sought to ensure that marine mammal species and populations “should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part, and, consistent with this major objective, they should not be permitted to diminish below their optimum sustainable population.” *Id.* § 1361(2).

22. Through the MMPA, Congress intended to protect marine mammal populations both within the U.S. and abroad, recognizing that “marine mammals have proven themselves to be resources of great international significance, esthetic and recreational as well as economic, and . . . they should be protected and encouraged to develop to the greatest extent feasible.” *Id.* § 1361(6).

23. To this end, the MMPA includes a provision designed to protect marine mammal populations outside of U.S. waters through leveraging the United States’ position as a major seafood importer. 16 U.S.C. § 1371(a)(2) requires the Secretary of the Treasury to “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”—hereinafter, the Import Provision.

24. In determining whether seafood imports should be banned, the Secretary of Commerce “shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States.” *Id.* § 1371(a)(2)(A).

A. United States Standards

25. “United States standards” within the meaning of 16 U.S.C. § 1371(a)(2) include, but are not limited to, the provisions of the MMPA that are applicable to managing incidental mortality and serious harm to marine mammals from commercial fisheries. *See Sea Shepherd N.Z. v. United States*, 606 F. Supp. 3d 1286, 1294–95 (Ct. Int’l Trade 2022) (identifying “statutory markers of ‘United States standards’” under the MMPA). The MMPA addresses incidental catch of marine mammals in commercial fisheries by requiring, among other things, a mandate to reduce bycatch to insignificant levels approaching zero, bycatch limits, take reduction plans, bycatch monitoring programs, and stock assessments.

1. *Zero Mortality Rate Goal*

26. First, the MMPA requires that commercial fisheries reduce incidental mortality and serious injury of marine mammals in a relatively short period of time (five to seven years) to “insignificant levels approaching a zero mortality and serious injury rate.” 16 U.S.C. § 1387(b), (f)(2); *accord id.* § 1371(a)(2). NMFS defines “insignificant levels approaching a zero mortality and serious injury rate” as 10% of the Potential Biological Removal (PBR) level—which is detailed below—for a given marine mammal stock. 50 C.F.R. § 229.2.

27. To effectuate the zero-rate mortality mandate, the MMPA requires NMFS to analyze, for each commercial fishery interacting with a marine mammal stock, “whether [the incidental mortality and serious injury] level is insignificant and is approaching a zero mortality and serious injury rate.” 16 U.S.C. § 1386(a)(4). If the rate of incidental mortality and serious injury is not achieving that objective, NMFS is required to develop and implement a take reduction plan—as described below—with appropriate actions to reduce incidental mortality and serious injury to insignificant levels within five years. *Id.* § 1387(b), (f).

2. *Potential Biological Removal Level*

28. Second, the MMPA requires that incidental mortality or serious injury of marine mammals incidentally taken in commercial fisheries be below the calculated PBR level. *Id.* § 1387(f)(2). The MMPA defines PBR as “the maximum number of animals, not including natural

mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population.” *Id.* § 1362(20).

29. NMFS must estimate the PBR for each marine mammal stock. *Id.* § 1386(a)(6). PBR is the mathematical product of three values: “the minimum population estimate of the stock,” “[o]ne-half the maximum theoretical or estimated net productivity rate of the stock at a small population size,” and a “recovery factor of between 0.1 and 1.0.” *Id.* § 1362(20).

30. The “minimum population estimate” is an estimate of the number of animals in a marine mammal stock that is “based on the best available scientific information on abundance” and “provides reasonable assurance that the stock size is equal to or greater than the estimate.” *Id.* § 1362(27). The “net productivity rate” is “the annual per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality.” *Id.* § 1362(26). The recovery factor is set at a value that will ensure the recovery of populations to their optimal sustainable populations. To ensure human-caused harms are addressed with the requisite level of urgency, the default value for threatened species is 0.5 and for endangered species is the lowest value, 0.1. NOAA, *Guidelines for Preparing Stock Assessment Reports Pursuant to the Marine Mammal Protection Act* 9 (Feb. 7, 2023), <https://www.fisheries.noaa.gov/s3/2023-05/02-204-01-Final-GAMMS-IV-Revisions-clean-1-kdr.pdf>.

31. If estimates of human-caused incidental mortality and serious injury exceed the calculated PBR for any stock, NMFS must enact measures to reduce mortality and serious injury in fisheries in a take reduction plan, as described below. 16 U.S.C. §1387(f)(5).

3. Negligible Impact Standard

32. Third, for marine mammals listed as threatened or endangered under the Endangered Species Act (ESA), the MMPA only allows incidental take in commercial fisheries “if the Secretary, after notice and opportunity for public comment, determines that the incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock.” *Id.* § 1371(a)(5)(E)(i).

33. Pursuant to NMFS Procedural Directive 02-204-02, NMFS uses a quantitative approach to determine if a fishery has a negligible impact. NMFS, *Criteria for Determining Negligible Impact under MMPA Section 101(a)(5)(E)*, Procedural Directive 02-204-02 (June 17, 2020), <https://media.fisheries.noaa.gov/dam-migration/02-204-02.pdf>. First, NMFS calculates a threshold for negligible impact for total human-caused mortality and serious injury. *Id.* at 4. For endangered species, this threshold uses the same calculation values as the PBR, so the threshold is equivalent to the PBR. *Id.* at 4–5, 12, 14 (tbl. 1). For threatened species, the threshold is 20% of PBR. *Id.* at 14 (tbl. 1). If the total human-caused mortality and serious injury for a stock exceeds this threshold, then NMFS will calculate a second, lower threshold to evaluate whether the effect of an individual commercial fishery is negligible. *Id.* at 4. For endangered species, this smaller threshold equals 13% of the PBR. *Id.* at 5, 14. For threatened species, the lower threshold equals 2.6% of the PBR. *Id.* at 14. If mortality and serious injury in a fishery exceeds that threshold, then it has more than a negligible impact. *Id.* at 9.

34. If the incidental mortality or serious injury from commercial fisheries “has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock,” NMFS is required to use its emergency authority “to protect such species or stock, and may modify any permit . . . as necessary.” 16 U.S.C. § 1371(a)(5)(E)(iii).

4. *Take Reduction Plans*

35. The MMPA requires NMFS to effectuate the zero-mortality rate goal and PBR limit by developing and implementing a “take reduction plan” for any marine mammal “strategic stock” that interacts with commercial fisheries. *Id.* § 1387(f). A strategic stock includes any species listed, or likely to be listed, as threatened or endangered under the ESA, as well as any other marine mammal stock suffering human-caused mortality exceeding the PBR. *Id.* § 1362(19). The Māui dolphin is listed as endangered under the ESA and the Hector’s dolphin is listed as threatened under the ESA. Both are therefore considered strategic stocks.

36. A take reduction plan must be designed to achieve two incidental take level goals. The “immediate goal” must be to reduce the level of incidental mortality and serious injury in

commercial fisheries below the PBR within six months of implementation. *Id.* § 1387(f)(2). The “long-term goal” must be to reduce the level of incidental mortality and serious injury in commercial fisheries “to insignificant levels approaching a zero mortality and serious injury rate” within five years. *Id.*

37. If the “incidental mortality and serious injury from commercial fisheries exceeds” the established PBR, the plan “shall include measures the Secretary expects will reduce . . . such mortality and serious injury to a level below” the PBR within six months. *Id.* § 1387(f)(5).

5. *Bycatch Monitoring*

38. The MMPA requires NMFS to establish “a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations.” *Id.* § 1387(d). One purpose of the monitoring program is to determine whether and when bycatch limits are exceeded.

39. The program must be sufficient to “obtain statistically reliable estimates of incidental mortality and serious injury.” *Id.* § 1387(d)(1)(A); *see also id.* § 1387(d)(3)(A) (requiring program implementation to be guided by a “requirement to obtain statistically reliable information”).

40. The MMPA does not define the term “statistically reliable.” Instead of committing to a definitive metric, NMFS determines observer monitoring coverage on a case-by-case basis depending on the relevant management objectives and science information needs. For example, NMFS requires high (in some cases, 100%) observer coverage when monitoring data are needed to estimate protected species bycatch, make in-season management decisions, close fisheries when bycatch limits are exceeded, or ensure regulatory compliance.

6. *Stock Assessments*

41. The MMPA requires NMFS to prepare a stock assessment for each marine mammal stock under the agency’s jurisdiction. *Id.* § 1386(a).

42. A stock assessment must contain several elements. It must: (1) describe the stock’s range; (2) provide a minimum population estimate, current and maximum productivity

rates, and the current population trend, with supporting information; (3) estimate the annual human-caused mortality and serious injury of the stock; (4) describe commercial fisheries that interact with the stock, including a) the number of vessels in the fishery, b) the estimated annual level of incidental mortality and serious injury by each fishery, c) seasonal or geographic differences in such incidental mortality or serious injury, and d) “the rate, based on the appropriate standard unit of fishing effort, of such incidental mortality and serious injury, and an analysis stating whether such level is insignificant and is approaching a zero mortality and serious injury rate”; (5) categorize the stock’s status (as either a “strategic stock” or a stock with a “level of human-caused mortality and serious injury that is not likely to cause the stock to be reduced below its optimum sustainable population”); and (6) estimate PBR, as described above.

Id.

43. Stock assessments must be based on the “best scientific information available.”

Id.

B. Marine Mammal Protection Act Regulations

44. NMFS has promulgated regulations (the Import Regulations) establishing a process for identifying whether each export fishery complies with the Import Provision. 81 Fed. Reg. 54390 (Aug. 15, 2016) (codified at 50 C.F.R. § 216.24(h)).

45. Every fishery that exports fish or fish products to the United States is considered to have incidental mortality or incidental serious injury of marine mammals in excess of U.S. standards unless NMFS has issued “a valid comparability finding” for the fishery. 50 C.F.R. § 216.24(h)(1)(i); *see also id.* § 216.24(h)(1)(ii) (making it unlawful to import fish from any fishery that does not have a valid comparability finding in effect).

46. A harvesting nation must apply for a comparability finding before NMFS can issue one. *Id.* § 216.24(h)(6)(ii). The application must include reasonable proof of the effects of the relevant fisheries on marine mammals and documentary evidence demonstrating that the conditions for a comparability finding have been met. *Id.* § 216.24(h)(6)(i); *see also* 16 U.S.C. § 1371(a)(2)(A) (requiring “reasonable proof”).

47. The regulations require NMFS to make specified findings and consider mandatory factors before it may issue a comparability finding. 50 C.F.R. § 216.24(h)(6)(iii), (h)(7). In doing so, NMFS “shall consider documentary evidence provided by the harvesting nation *and* relevant information readily available from other sources.” *Id.* § 216.24(h)(6)(ii) (emphasis added).

48. First, NMFS must find that the harvesting nation “[p]rohibits the intentional mortality or serious injury of marine mammals in the course of commercial fishing operations” and “[d]emonstrates that it has procedures to reliably certify that exports of fish and fish products to the United States are not the product of an intentional killing or serious injury of a marine mammal.” *Id.* § 216.24(h)(6)(iii)(A).

49. Second, NMFS must find that the harvesting nation “maintains a regulatory program with respect to the fishery that is comparable in effectiveness to the U.S. regulatory program with respect to incidental mortality and serious injury of marine mammals in the course of commercial fishing operations.” *Id.* § 216.24(h)(6)(iii)(B).

50. To qualify as “comparable in effectiveness” to the U.S. regulatory program, the harvesting nation’s regulatory program must “provide[] for, or effectively achieve[] comparable results as,” among other things: (1) “Marine mammal assessments that estimate population abundance for marine mammal stocks in waters under the harvesting nation’s jurisdiction that are incidentally killed or seriously injured in the export fishery”; (2) a calculation of “bycatch limits” (defined as the PBR or a “comparable scientific metric,” *id.* § 216.3) for marine mammal stocks that are incidentally killed or seriously injured by the fishery; (3) “A requirement to implement measures in the export fishery designed to reduce the total incidental mortality and serious injury of a marine mammal stock below the bycatch limit”; (4) “Implementation of monitoring procedures in the export fishery designed to estimate incidental mortality or serious injury in the export fishery, . . . including an indication of the statistical reliability of those estimates”; and (5) a comparison of the incidental mortality and serious injury levels in the fishery with the bycatch limit and a showing that the fishery does not exceed the bycatch limit. *Id.* § 216.24(h)(6)(iii)(C).

51. NMFS is also required to consider: (1) “U.S. implementation of its regulatory program for similar marine mammal stocks and similar fisheries”; (2) the extent to which the harvesting nation has successfully implemented measures to reduce incidental mortality and serious injury of marine mammals to levels below the bycatch limit; (3) whether measures for the export fishery “have reduced or will likely reduce the cumulative incidental mortality and serious injury of each marine mammal stock below the bycatch limit”; (4) “[o]ther relevant facts and circumstances, which may include the history and nature of interactions with marine mammals in th[e] export fishery, whether the level of incidental mortality and serious injury . . . exceeds the bycatch limit for a marine mammal stock, the population size and trend of the marine mammal stock, . . . the population level impacts of the incidental mortality or serious injury of marine mammals,” and the conservation status of the marine mammal stocks. *Id.* § 216.24(h)(7).

52. If NMFS issues a comparability finding, it is valid for four years from its publication, unless otherwise indicated. *Id.* § 216.24(h)(8)(iv). Fisheries for which NMFS has either denied a comparability finding application or issued a comparability finding that is invalid are out of compliance with the Import Provision. *Id.* § 216.24(h)(1)(i), (ii), (h)(9); *see Sea Shepherd*, 606 F. Supp. 3d at 1323–25 & nn.60–63. Those fisheries remain out of compliance until NMFS issues a new, valid comparability finding. 50 C.F.R. § 216.24(h)(9).

53. Absent a valid comparability finding, the Secretaries of the Treasury and Homeland Security shall prohibit the importation of fish and fish products until such time that NMFS issues a valid comparability finding for the fishery. *Id.* § 216.24(h)(1)(i), (h)(9).

II. ADMINISTRATIVE PROCEDURE ACT

54. The APA confers a right of judicial review on any person who is adversely affected by agency action. 5 U.S.C. § 702.

55. The APA provides that the reviewing court “shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” *Id.* § 706(2)(A).

56. The APA also provides that the reviewing court “shall compel agency action unlawfully withheld or unreasonably delayed.” *Id.* § 706(1).

FACTUAL BACKGROUND

I. MĀUI AND HECTOR’S DOLPHINS ARE AT HIGH RISK OF EXTINCTION.

57. Māui and Hector’s dolphins—two related subspecies—are among the most endangered marine mammals in the world.

58. The Māui dolphin is the world’s most endangered marine dolphin. There are less than 50 individuals ≥ 1 year old left in existence, with some estimates as low as 30.¹ The Māui dolphin population has experienced a 97.5% decline over the past 50 years from a population of approximately 2,000. This decline continues: over the past two decades, the population has declined by an average of 3 to 4% per year. The Māui dolphin’s historical and likely current range extends around the entire North Island of New Zealand. However, the few remaining individuals are primarily found along the North Island’s west coast, including harbors, and extending out to the 100-meter depth contour.



Figure 1. Photograph of Māui dolphin (by Steve Dawson, University of Otago)

¹ Hereinafter, “individuals” refers to individuals ≥ 1 year old.

59. The Hector's dolphin inhabits coastal waters around New Zealand's South Island, although individuals are occasionally seen around the North Island. There are at least four genetically distinct South Island populations: North Coast South Island, East Coast South Island, South Coast South Island, and West Coast South Island. *See* Figure 2. Only about 15,000 Hector's dolphins remain total, down from a population of about 50,000 in 1975. The entire population continues to decline.

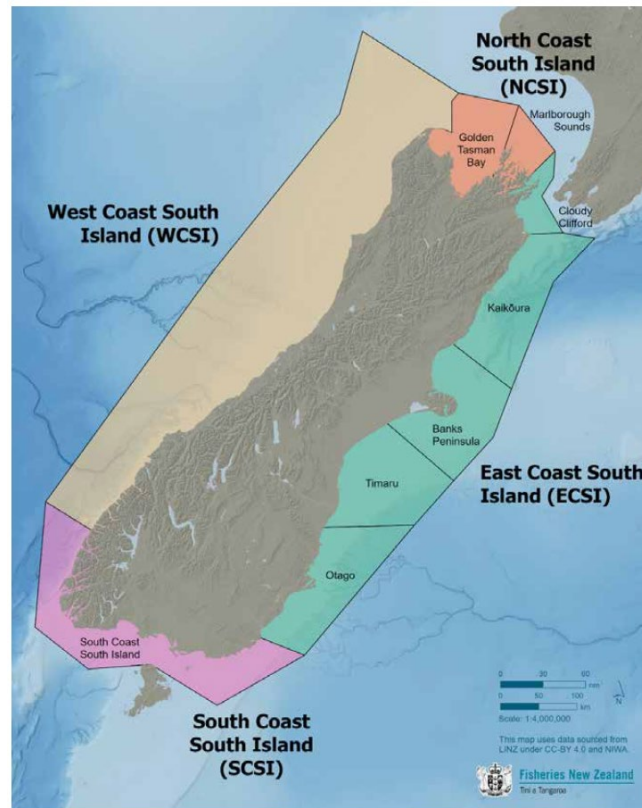


Figure 2. GNZ map of Hector's dolphin subpopulations

60. NMFS has listed the Māui dolphin as endangered under the ESA. 82 Fed. Reg. 43701 (Sep. 19, 2017). The International Union for the Conservation of Nature (IUCN) has listed the Māui dolphin as critically endangered, meaning it is “considered to be facing an extremely high risk of extinction in the wild.”

61. NMFS has listed the Hector's dolphin as threatened under the ESA. 82 Fed. Reg. 43701. The IUCN has listed the Hector's dolphin as endangered.

62. New Zealand's Department of Conservation classifies the Māui dolphin as "Nationally Critical" and the Hector's dolphin as "Nationally Vulnerable." Both are "protected species" under New Zealand's Marine Mammal Protection Act (1978) (New Zealand MMPA) and Fisheries Act (1996).

63. Māui and Hector's dolphins have a unique physical appearance with grey, white and black markings, a short snout, and a rounded dorsal fin. They are less than two meters long and weigh up to 60 kilograms.

64. Māui and Hector's dolphins are highly intelligent. They have a complex social system and typically live in small groups of two to eight individuals.

65. The dolphins' biology and distribution make them especially vulnerable to human impacts. They have a lifespan of roughly 25 years. Females do not reach sexual maturity until around eight years old and produce just one calf every two to four years. As a result, the populations have extremely low maximum growth rates. Even low levels of human-caused mortality can outpace the populations' natural growth rates, leading to their decline and ultimately, their extinction.

II. NEW ZEALAND FISHERIES INCIDENTALLY CATCH AND KILL MĀUI AND HECTOR'S DOLPHINS.

66. New Zealand's commercial fisheries incidentally catch, seriously injure, and kill Māui and Hector's dolphins.

67. Two types of fishing gear in particular pose a risk of bycatch to Māui and Hector's dolphins: set nets and trawl nets.

68. Set nets (also known as gillnets) are a type of non-selective fishing net, meaning they catch any animal that swims into them. They are hung vertically in the water and left unattended for hours or days at a time to harvest fish and other species. Dolphins are caught in set nets when they swim into them and become entangled.

69. Trawl fishing is another non-selective fishing method and involves dragging a large net through the water column or along the sea floor, catching nearly everything in the net's path. New Zealand's multi-species trawl fisheries overlap with areas where Māui and Hector's

dolphins forage and target the same prey species that the dolphins eat. Māui and Hector’s dolphins can spend many hours feeding around trawl nets. Other dolphin species have been filmed swimming into trawl nets to feed, and Māui and Hector’s dolphins may also engage in this activity. Feeding in and around where trawl nets are deployed is well known to result in dolphin bycatch.

70. Māui and Hector’s dolphins that are entangled in set nets or trawl nets can drown or, in their struggle to free themselves to reach the surface to breathe, suffer serious injuries. There are few reported incidents of dolphins being able to free themselves from nets before drowning, but even then, they can suffer serious health impacts. Some dolphins that drown in nets may be detected as bycatch when the net is retrieved, but others may go unobserved if they fall out of the net before retrieval (referred to as “cryptic mortality”).

71. GNZ stated in its 2021 Aquatic Environment and Biodiversity Annual Review, “Fisheries bycatch, particularly in recreational and commercial set net fisheries and to a lesser extent in commercial trawls, is a known threat to Hector’s and Māui dolphins.”

72. In 2022, GNZ published a report estimating levels of bycatch for all marine mammal species found in New Zealand waters. This report estimated an average bycatch rate of 0.38 Māui dolphins per year (roughly one dolphin every three years) and 53.48 Hector’s dolphins per year. Darryl I. MacKenzie et al., *Updated spatially explicit fisheries risk assessment for New Zealand marine mammal populations*, New Zealand Aquatic Environment and Biodiversity Report No. 290, at 87 tbl. 38 (2022).

73. NMFS listed the Māui and Hector’s dolphins under the ESA in part because of the harm caused by bycatch in trawl and set net fisheries and because existing regulatory mechanisms for those fisheries are inadequately protective. 82 Fed. Reg. at 43708; 81 Fed. Reg. 64110, 64113–19, 64122–23 (Sept. 19, 2016). For the Māui dolphin, NMFS explained that “it is considered unlikely that this subspecies will recover unless sources of anthropogenic mortality are eliminated.” 82 Fed. Reg. at 43708. For the Hector’s dolphin, NMFS explained that “management measures have not halted population declines” and the “Hector’s dolphin is likely to continue to decline unless bycatch mortality is reduced.” *Id.*

74. In 2012, the IUCN’s World Conservation Congress urged the New Zealand Government to “urgently extend dolphin protection measures, with an emphasis on banning gill net and trawl net use from the shoreline to the 100 metre depth contour in all areas where Hector’s and Maui’s [*sic*] Dolphins are found, including harbours.” IUCN, *Actions to avert the extinctions of rare dolphins: Maui’s dolphins, Hector’s dolphins, Vaquita porpoises and South Asian river and freshwater dependent dolphins and porpoises*, WCC-2012-Rec-142-EN (2012), https://portals.iucn.org/library/sites/library/files/resrecfiles/WCC_2012_REC_142_EN.pdf. NMFS recently echoed the need to implement this recommendation in its 2024 5-Year Review of Māui’s and Hector’s dolphins required under the ESA. NMFS, *Māui’s dolphin (Cephalorhynchus hectori maui) and South Island Hector’s dolphin (Cephalorhynchus hectori hectori) – 5-Year Review: Summary and Evaluation* § 4.2 (2024), <https://www.fisheries.noaa.gov/resource/document/mauis-dolphin-and-south-island-hectors-dolphin-5-year-review-2024>.

75. In 2023, the International Whaling Commission (IWC) Scientific Committee recommended that “highest priority should be assigned to management actions that immediately eliminate bycatch of Māui dolphins, including closure 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)” and emphasized “the need for precautionary management given the critically endangered status of this subspecies and the inherent and irresolvable uncertainty which surrounds information on most small populations.”

76. New Zealand set net and trawl fisheries also catch and kill other species of marine mammals. GNZ has reported incidental captures of common dolphins, New Zealand fur seals, seals or sea lions (unidentified to species), and baleen whales in the set net and trawl fisheries that also catch Māui and Hector’s dolphins.

III. NEW ZEALAND HAS IMPLEMENTED LIMITED PROTECTIONS FOR MĀUI AND HECTOR’S DOLPHINS.

77. The New Zealand government has a history of taking only small, inadequate steps to protect Māui and Hector’s dolphins.

78. Rather than developing a Population Management Plan (PMP) for the Māui and Hector’s dolphins—which would impose a strict limit on fishing-related mortality and other statutory measures to achieve recovery—GNZ elected to develop a non-statutory and non-binding “planning framework” to inform management of bycatch risk. That framework is referred to as a Threat Management Plan (TMP) for the dolphins, and the latest version was issued in 2020.

79. In 2020, GNZ issued regulations that marginally extended set net and trawl restrictions in a portion of the Māui dolphin’s and Hector’s dolphin’s ranges. *See* Figure 3. The closures do not include harbors. The closures fall short of the IWC Scientific Committee, IUCN, and NMFS recommendations.

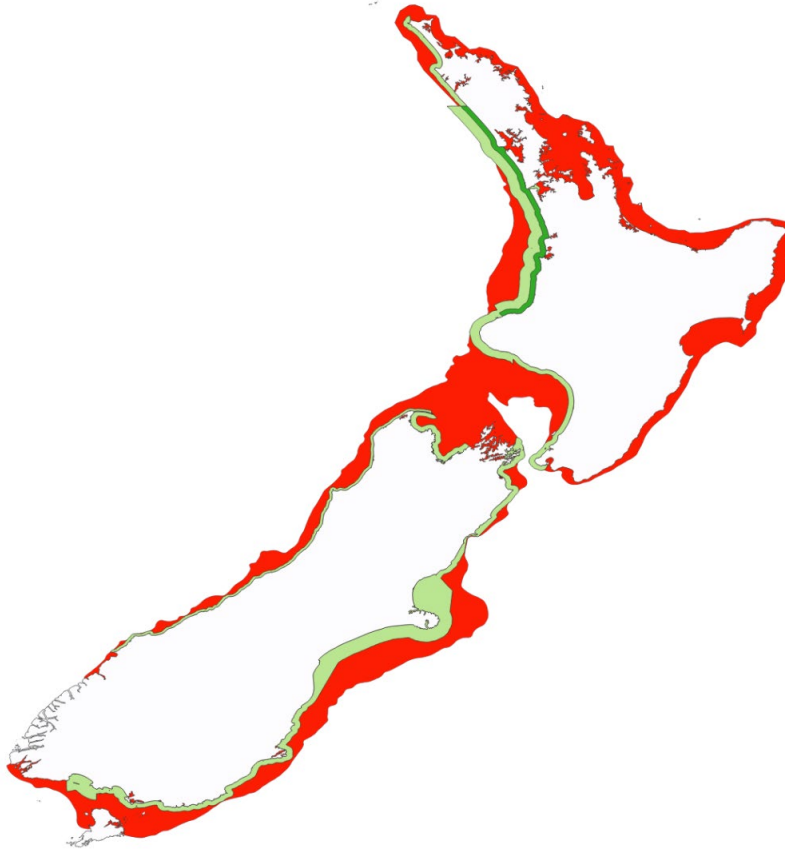


Figure 3. Areas within the Māui and Hector’s dolphins’ range that are closed to set netting (light green), closed to both set netting and trawling (dark green), and left unprotected under current regulations (red).

80. As a “backstop measure,” the regulations also specify a “fishing-related mortality limit” (FRML) within certain zones.

81. The only FRML in the North Island is a limit of one Hector’s or Māui dolphin within a defined “Māui dolphin habitat zone.” Fisheries (Fishing-related Mortality Limits of Marine Mammals and Other Wildlife) Regulations 2022 (2022/313) Part 1(7) (N.Z.), http://www.nzlii.org/nz/legis/consol_reg/fmlommaowr2022829/. The delineated Māui Dolphin Habitat Zone covers just a subset of the Māui dolphin’s distribution. *See* Figure 4 (showing Māui Dolphin Habitat Zone).

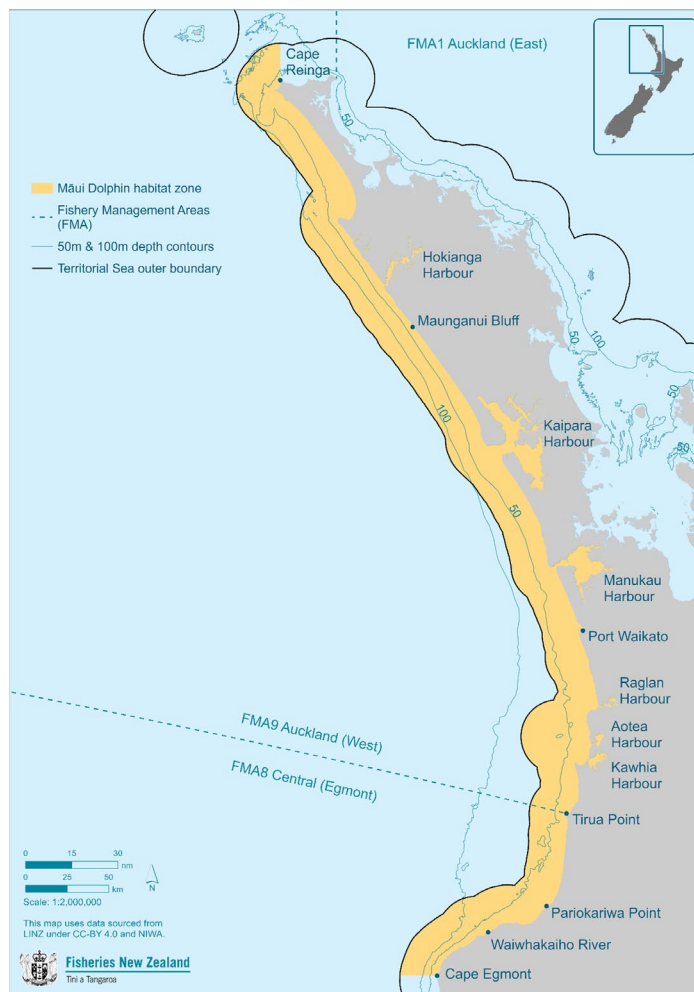


Figure 4. Map of the delineated Māui Dolphin Habitat Zone

82. The regulations specify a separate Hector’s dolphin FRML for each of six zones for the East Coast South Island and South Coast South Island subpopulations. The FRMLs range

from “3 in any 2 consecutive fishing years” to “20 in any fishing year.” Fisheries (Fishing-related Mortality Limits of Marine Mammals and Other Wildlife) Regulations 2022 (2022/313) Part 2 (N.Z.), http://www.nzlii.org/nz/legis/consol_reg/fmlommaowr2022829/. The FRML zones do not encompass the entirety of the Hector’s dolphin’s range. No FRMLs have been set for the North Coast South Island or West Coast South Island subpopulations.

83. The remainder of New Zealand’s measures are aimed at monitoring.

84. The West Coast North Island set net and trawl fleets have 0% human observer coverage. Department of Conservation, *Conservation Services Programme Annual Plan 2024/25*, at 17, 25 (N.Z.).

85. Since 2017, New Zealand has mandated the installation of cameras on certain vessels within the North and South Island set net and trawl fleets to monitor bycatch. Cameras are now required on all set net fishing vessels greater than eight meters in length and on all trawl fishing vessels less than 32 meters in length. Fisheries (Electronic Monitoring on Vessels) Regulations 2017 (LI 2017/156) (N.Z.). However, in February 2024, GNZ reported that only 38 of the 136 vessels it identified from the West Coast North Island trawl and set net fisheries had been outfitted with cameras. GNZ has not publicly published information showing what proportion of South Island vessels have onboard cameras.

86. Under the regulations, GNZ reviews only a portion of video footage from vessel cameras in certain fishing areas that overlap with the Hector’s and Māui dolphin’s distribution to detect if there has been a dolphin capture.

IV. THE COURT OF INTERNATIONAL TRADE REPEATEDLY FINDS NMFS’S COMPARABILITY FINDINGS FOR NEW ZEALAND’S FISHERIES ARBITRARY AND CONTRARY TO LAW.

87. In 2020, in response to action by Sea Shepherd New Zealand and Sea Shepherd Conservation Society (collectively, Sea Shepherd), NMFS issued a comparability finding determination concluding that the West Coast North Island set net and trawl fisheries do not catch Māui dolphins in excess of U.S. standards. Sea Shepherd challenged that finding in the CIT and moved for a preliminary injunction to enjoin imports from the two fisheries.

88. On November 28, 2022, the CIT granted the preliminary injunction, finding the comparability finding was likely arbitrary and capricious. *Sea Shepherd*, 606 F. Supp. 3d 1286.

89. NMFS issued a new comparability finding for the West Coast North Island set net and trawl fisheries in January 2024, and the injunction accordingly was lifted in April 2024. *Sea Shepherd New Zealand v. United States*, 693 F. Supp. 3d 1364 (Ct. Int'l Trade 2024). According to GNZ, the import prohibition resulted in over USD \$1 million in costs to exporters. Hon. Todd McClay & Hon. Shane Jones, *United States Lifts Ban on New Zealand Fish Exports* (Apr. 3, 2024), <https://www.beehive.govt.nz/release/united-states-lifts-ban-new-zealand-fish-exports>. *Sea Shepherd* later agreed to voluntarily dismiss the case, at which point the CIT observed that the “disposition . . . is far from bill of health for a species teetering on the brink of extinction.” *Sea Shepherd N.Z. v. United States*, 723 F. Supp. 3d 1374, 1381 (Ct. Int'l Trade 2024).

90. MHDD filed a challenge to the 2024 comparability finding in the CIT on December 4, 2024. The CIT granted summary judgment to MHDD on August 26, 2025, ruling that the comparability finding was arbitrary and unlawful in multiple respects. *MHDD v. NMFS*, 799 F. Supp. 3d 1327 (Ct. Int'l Trade 2025). Specifically, the CIT held NMFS's determinations that New Zealand's regulatory program achieves comparable results to the MMPA's (1) zero mortality rate goal, (2) negligible impact standard, (3) bycatch limit and regulatory plan to reduce bycatch, (4) monitoring requirements, and (5) stock assessment standards were arbitrary and contrary to law. *Id.* at 1337–46. The CIT also found that NMFS arbitrarily used a Māui dolphin population estimate of 54 animals when assessing comparability to U.S. standards and that NMFS arbitrarily concluded the fisheries do not kill or seriously injure other marine mammal species in excess of U.S. standards. *Id.* at 1342–43, 1346–48. The CIT vacated the Decision Memorandum for the comparability finding but declined to compel Defendants to implement an import ban at that time. *Id.* at 1348–49. The CIT noted, however, that its “conclusion that the Decision Memorandum is arbitrary and not in accordance with law may merit the implementation of an import ban going forward, if the agency continues to rely on an arbitrary and unlawful Decision Memorandum that could be regarded as equivalent to denying a comparability finding.” *Id.* at 1349. The CIT ordered NMFS to file remand comparability

findings on or before November 24, 2025. *Id.* at 1350. The CIT subsequently extended that deadline to January 6, 2026, due to the government shutdown.

V. NMFS ISSUES A NEW COMPARABILITY FINDING FOR ALL OF NEW ZEALAND’S FISHERIES.

91. Just three days after the CIT’s *MHDD* ruling, NMFS announced on August 29, 2025, that it had made comparability finding determinations for approximately 2,500 foreign fisheries from 135 nations. NMFS granted a full comparability finding for all of New Zealand’s export fisheries. NMFS published an official notice of the findings in the Federal Register on September 2, 2025. 90 Fed. Reg. 42395 (Sept. 2, 2025). The new comparability findings became effective on January 1, 2026, and “will remain in effect until December 31, 2029, or for such other period as NMFS may specify.” *Id.* at 42395–96.

92. The “Comparability Finding,” as used herein, consists of a Federal Register notice and a Decision Memorandum that provide information on the process applicable to all nations, and a Marine Mammal Protection Act Import Provisions Comparability Finding Application Final Report for New Zealand.

93. The Decision Memorandum for issuance of the comparability findings is dated July 3, 2025. It addresses the *MHDD* litigation by stating that the parties “are awaiting a decision from the court.” The Decision Memorandum contains no further discussion of New Zealand’s fisheries or Māui dolphins aside from a description of the *Sea Shepherd* and *MHDD* litigation history.

94. The Comparability Finding states: “NMFS has determined that all of New Zealand’s exempt and export fisheries are comparable to U.S. standards.” The findings include both the West Coast North Island fisheries that were the subject of prior litigation (Fishery IDs 1969 and 1977 [hereinafter the West Coast North Island Fisheries]) and all other export fisheries, including South Island set net and trawl fisheries known to pose a bycatch risk to Hector’s dolphins (Fishery IDs 1883, 1969, 1977, 1978, 2041, 2046, 2047, 2051, 2052, 2067, and 2077 [hereinafter the South Island Fisheries]) and other North Island set net and trawl fisheries that pose a bycatch risk to Māui dolphins (Fishery IDs 1968, 2053, 2054, 2064).

95. Because the Comparability Finding does not address the CIT’s rulings in *MHDD*, and because the U.S. government indicated it would continue relying on the new Comparability Finding to allow imports from New Zealand’s fisheries until the end of 2029, MHDD filed a motion to amend the August 26 order to compel Defendants to implement an import ban. Along with their opposition to the motion, Defendants filed a motion to dismiss asserting the proper course is for MHDD to file a new lawsuit challenging the 2025 Comparability Finding.

96. The Comparability Finding is contrary to the MMPA’s Import Provision and its implementing regulations in several ways and is based on arbitrary and inaccurate analyses.

A. The Comparability Finding for the West Coast North Island Fisheries Is Flawed in Multiple Respects.

1. *NMFS Did Not Establish that the West Coast North Island Fisheries Have a Standard Comparable to the MMPA’s Zero Mortality Rate Goal.*

97. The Comparability Finding contains no assessment or indication of whether the West Coast North Island Fisheries have a comparable standard to the MMPA’s requirement to reduce incidental mortality and serious harm from commercial fishing “to insignificant levels approaching a zero mortality and serious injury rate.” 16 U.S.C. § 1371(a)(2).

98. In its 2021 application for a comparability finding for the West Coast North Island Fisheries, New Zealand responded to a question asking whether it has “an overarching regulation the goal of which is to reduce the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate” by answering, “No.”

99. The *MHDD* court concluded NMFS failed to address the zero mortality rate goal or New Zealand’s response to the question in the 2024 comparability finding.

100. The 2025 Comparability Finding similarly does not address the zero mortality rate goal or New Zealand’s response to the zero mortality rate question in any way.

2. *NMFS Failed to Establish that Māui Dolphin Bycatch in the West Coast North Island Fisheries Will Have No More Than a Negligible Impact on the Stock.*

101. Because the Māui dolphin is endangered under the ESA, the MMPA would only allow incidental take by commercial fisheries if the level of incidental mortality and serious injury from the fisheries has no more than a negligible impact on the stock. *Id.* § 1371(a)(5)(E)(i).

102. The *MHDD* court concluded NMFS failed to address the negligible impact standard in the 2024 comparability finding.

103. The 2025 Comparability Finding similarly lacks any analysis of whether the level of incidental mortality and serious injury of Māui dolphins in the West Coast North Island Fisheries has more than a negligible impact on the stock.

104. Applying NMFS's Procedural Directive 02-204-02 to the data in New Zealand's comparability finding application would produce a finding that the level of incidental mortality and serious injury of Māui dolphins in the West Coast North Island Fisheries exceeds the negligible impact threshold under U.S. standards.

105. The threshold for total human-caused mortality under the guidance would be 0.1 Māui dolphins per year—the equivalent of the PBR value NMFS lists in the Comparability Finding. According to GNZ, total human-caused mortality of Māui dolphins is at least 4.16 dolphins per year²—more than 440 times the PBR value in the Comparability Finding.

106. Because the total human-caused mortality threshold is exceeded, incidental mortality and serious injury from the West Coast North Island Fisheries could only be deemed negligible if it is less than 13% of the PBR. Based on NMFS's PBR value, the negligible impact

² New Zealand reports 0.1 deaths per year from set nets and 4.06 deaths per year from other human causes in its application, which does not include an additional 1.90 deaths per year from toxoplasmosis, a disease transmitted from domestic cats. *See J.O. Roberts et al., Fisheries New Zealand, Spatial risk assessment of threats to Hector's and Māui dolphins (Cephalorhynchus hectori)* 50 tbl. 15 (2019).

threshold would thus be 0.013 Māui dolphins per year³—or approximately one dolphin per 77 years.

107. NMFS did not evaluate whether Māui dolphin incidental mortality and serious injury in the West Coast North Island Fisheries exceeds the 0.013 negligible impact threshold. Data in the Comparability Finding (particularly Tables 2 and 4) demonstrate that Māui dolphin bycatch in the fisheries exceeds the negligible impact threshold.

108. In addition, NMFS did not evaluate whether New Zealand applies a regulatory measure comparable to the MMPA’s negligible impact standard or whether it requires action to protect a species in the event bycatch levels exceed the negligible impact standard, as the MMPA mandates for listed species.

3. *NMFS Ignored Available Evidence that New Zealand Fisheries Are Exceeding the Bycatch Limit for the Māui Dolphin.*

109. The latest available official assessment of Māui dolphin bycatch by GNZ (Mackenzie 2022) estimates bycatch in the West Coast North Island Fisheries is occurring at a rate of 0.38 dolphins per year. This bycatch rate is more than three times higher than the PBR limit (0.10) and nearly 30 times higher than the negligible impact limit (0.013) that would apply under U.S. standards.

110. NMFS did not address this bycatch estimate in the Comparability Finding. Instead, it relied on an older, 2019 bycatch estimate of 0.10 in the Comparability Finding.

4. *NMFS Found that New Zealand’s Māui Dolphin Bycatch Limit Is Comparable to U.S. Standards Despite Evidence to the Contrary.*

111. In the Comparability Finding, NMFS found that New Zealand implements a bycatch limit for the Māui dolphin that is comparable to U.S. standards. The rationale in the 2025 Comparability Finding is substantially the same as that in the 2024 comparability finding, which the *MHDD* court found to be arbitrary and unlawful.

112. New Zealand’s fishing regulations set a “fishing-related mortality limit” (FRML) of one “Hector’s dolphin or Māui dolphin within the Māui dolphin habitat zone.” Fisheries

³ 13% x 0.1 dolphins/year = 0.013 dolphins/year.

(Fishing-related Mortality Limits of Marine Mammals and Other Wildlife) Regulations 2022, Part 1(7) (N.Z.).

113. NMFS did not explain how New Zealand's FRML of one dolphin death is comparable to a PBR limit of 0.1 dolphins per year or a negligible impact limit of 0.013 dolphins per year that would apply under U.S. standards.

114. NMFS did not consider or evaluate that New Zealand law does not specify a timeframe for the FRML—whether it is one dolphin per year, one dolphin every ten years, or some other metric. Under U.S. standards, bycatch limits apply on an annual basis.

115. NMFS did not consider or evaluate that the FRML, by its own terms, applies only to mortalities within the designated Māui Dolphin Habitat Zone. Dolphins incidentally caught outside of the Habitat Zone do not count towards the FRML. Bycatch limits under the MMPA, by contrast, limit mortality for an entire stock no matter where the mortality occurs.

116. NMFS also did not establish that exceedance of the FRML triggers mandated mitigation comparable in effectiveness to U.S. standards. New Zealand law gives the Minister for Oceans and Fisheries discretion to implement measures if the FRML is exceeded. By contrast, the MMPA mandates discrete and immediate action if either the PBR or negligible impact thresholds are exceeded.

117. Ultimately, the Comparability Finding does not address deficiencies in the values, timeframes, and geographic scope for the FRML when concluding that New Zealand implements a comparable bycatch limit for Māui dolphins.

5. *NMFS Used an Inappropriate Population Estimate to Evaluate Whether Māui Dolphin Bycatch Is in Excess of the U.S. Standard for a Bycatch Limit.*

118. In the Comparability Finding, NMFS compared the estimated mean annual deaths from the set net and trawl fisheries to the PBR for the Māui dolphin. For that comparison, NMFS used a PBR of 0.10—or one Māui dolphin death per 10 years.

119. The Māui dolphin PBR NMFS used appears to be sourced from New Zealand's 2021 application for a comparability finding. The 2021 application states that the PBR of 0.10

“provided in this Comparability Application is based on the new 2021 Māui dolphin abundance estimate.” The 2021 abundance estimate referenced in the application is “54 dolphins aged 1+, with a 95 percent confidence that the number of dolphins over one year old is between 49 and 64.” NMFS used a value of 54 individuals for the population estimate in calculating the PBR of 0.1.

120. The IWC Scientific Committee published a report in 2023 that estimated the Māui dolphin population at 48 individuals.

121. The *MHDD* court found NMFS failed to justify using an estimate of 54 individuals to calculate PBR for the 2024 comparability finding. The 2025 Comparability Finding also does not explain why an estimate of 54 dolphins was chosen as the population estimate for the PBR calculation over other, lower estimates.

122. Using a higher population estimate in the PBR equation necessarily results in a higher PBR value.⁴

123. NMFS found that the combined mean annual deaths of Māui dolphins in the set net and trawl fisheries is 0.056 with a 95% confidence interval of 0.030 to 0.098. NMFS found that the “Total mortality + injury” for Māui dolphins is 0.10.

124. If NMFS had used a smaller population size to calculate Māui dolphin PBR, the PBR value necessarily would have been smaller than the 0.10 PBR value that NMFS used.⁵ The smaller PBR would have been less than the 0.1 “Total mortality + injury” value and likely would have fallen within the 95% confidence interval of the lethal bycatch estimate.⁶ In either case,

⁴ Because $PBR = \text{minimum population size} \times \text{recovery factor} \times \text{population growth rate factor}$, an increase in any of the inputs (e.g., minimum population size) results in a higher PBR value.

⁵ Because the same population size value is also a component of the negligible impact and zero mortality rate goal equations, using a smaller population size would also make these threshold numbers smaller than the values discussed above (which were based on the PBR value NMFS used). See ¶¶ 105, 106.

⁶ According to GNZ, new measures are necessary whenever estimated bycatch falls within the confidence interval of PBR. This is because “to achieve the population objective with 95 percent certainty, the 95th percentile estimate of current fisheries deaths must be less than [PBR].” GNZ, *Hector’s and Māui Dolphin Threat Management Plan: Technical Advice, Part B3: West Coast North Island (Māui Dolphin)* 3 (2019).

NMFS could not have concluded that the incidental mortality or incidental serious injury of Māui dolphins does not exceed PBR.

6. *NMFS Used the Wrong U.S. Standards for a Monitoring Program When Finding that the Monitoring Program for the West Coast North Island Fisheries Is Comparable to U.S. Standards.*

125. As in the 2024 comparability finding, NMFS concluded in the 2025 Comparability Finding that “New Zealand’s overall monitoring program for Māui dolphin bycatch is comparable to or exceeds the U.S. regulatory program standards.”

126. NMFS based that conclusion on its assessment that New Zealand’s percentage monitoring coverage for Māui dolphin bycatch is greater than the 10% level of observer coverage that NMFS asserts it generally uses. The *MHDD* court found NMFS’s similar assessment in the 2024 comparability finding was arbitrary and failed to consider all relevant issues.

127. In the 2025 Comparability Finding, NMFS again did not explain why a 10% monitoring standard would be the applicable U.S. standard to monitor bycatch of a species like the Māui dolphin, nor did it evaluate whether a higher monitoring level would be required under U.S. standards.

128. NMFS requires much higher levels of monitoring coverage—as high as 100%—in certain circumstances, such as when managing bycatch of endangered species, when in-season management (e.g., fishery closures) is supported by observer data, when higher levels of precision for bycatch estimates may be desired, or when monitoring for regulatory compliance is a priority.

129. According to NMFS’s Guidelines for Preparing Stock Assessment Reports, a monitoring coverage level of 10% is too low when a species has a very small population or a low PBR.

130. For a critically endangered species like the Māui dolphin, where fisheries interactions may be rare but just one death can have significant population-level effects, monitoring must be as near to 100% as possible to be able to detect if a dolphin is caught in the

fishery. In fact, the New Zealand government has stated in publicly available documents that, to be able to close fisheries if a bycatch limit is exceeded, there must be “100% monitoring of vessels fishing using trawl or set net in areas of risk.” Dep’t of Conservation & Fisheries New Zealand, *Protecting Hector’s and Māui Dolphins: Supporting Information and Rationale* 30 (June 17, 2019).

131. NMFS did not evaluate whether circumstances involved with Māui dolphin bycatch in the West Coast North Island Fisheries would, under U.S. standards, require a higher level of observer coverage than 10%.

132. NMFS also did not evaluate whether New Zealand’s monitoring program produces statistically reliable results given the circumstances of the Māui dolphin and the fisheries.

133. NMFS based its finding that New Zealand’s monitoring program is comparable to or exceeds the U.S. regulatory program standards on its finding that “New Zealand has attained 90% monitoring coverage . . . within the [Māui Dolphin Habitat Zone].” NMFS’s 90% assumption does not account for the lack of monitoring on vessels fishing in harbors or on vessels fishing in the Māui dolphin’s range outside the designated Habitat Zone. NMFS did not evaluate whether monitoring outside the Māui Dolphin Habitat Zone is necessary to sufficiently detect bycatch. Māui dolphins can be caught and killed by set nets and trawls outside the designated Habitat Zone. The incidental death or serious injury of a Māui dolphin outside the Habitat Zone would not be detected by New Zealand’s monitoring program.

134. NMFS did not evaluate whether greater than 90% monitoring coverage in the Māui Dolphin Habitat Zone, greater than 0% monitoring outside the Māui Dolphin Habitat Zone, or both, are necessary to meet U.S. standards for monitoring bycatch of a critically endangered species.

135. In addition, NMFS did not evaluate the degree to which the electronic monitoring method New Zealand primarily uses is comparable to the human observer monitoring method the United States primarily uses. Electronic monitoring has limitations in its ability to record captures that human observers do not. And even recorded captures may not be detected by

regulators because only a subset of camera footage is reviewed for the West Coast North Island and other New Zealand fisheries. NMFS did not address the effect of these differences, particularly evidence of actual footage review rates, when concluding the monitoring programs are comparable in effectiveness.

7. *NMFS Failed to Evaluate Whether New Zealand's Regulatory Program Provides for Comparable Māui Dolphin Stock Assessments.*

136. The *MHDD* court found the 2024 comparability finding's vague conclusions that New Zealand's program meets U.S. stock assessment standards were unsupported by any sufficient explanation or record evidence. The 2025 Comparability Finding similarly does not contain any reasonable, supported assessment of whether New Zealand's regulatory program provides for Māui dolphin stock assessments that are comparable to the MMPA's stock assessment requirements.

137. The Comparability Finding does not identify any standards under New Zealand's regulatory program for estimating the population size or trend for the Māui dolphin.

8. *NMFS Failed to Evaluate Whether Bycatch of Marine Mammals Other than Māui Dolphins in the West Coast North Island Fisheries Exceeds U.S. Standards.*

138. The Comparability Finding certifies that the West Coast North Island Fisheries trawl and set net fisheries meet the standards in the MMPA Import Provision.

139. Just as the *MHDD* court found for the 2024 comparability finding, the 2025 Comparability Finding contains no evaluation of whether these fisheries meet the Import Provision's or Import Regulations' requirements with respect to the Hector's dolphin, common dolphin, dusky dolphin, orca, New Zealand sea lion, New Zealand fur seal, or other marine mammals that are caught and killed in New Zealand fisheries. The Comparability Finding contains no conclusion that bycatch of those species in the West Coast North Island Fisheries or other New Zealand fisheries does not exceed U.S. standards.

B. The Comparability Finding Lacks the Required Analysis of Whether Hector’s Dolphin and Other Marine Mammal Bycatch in the South Island Fisheries Is in Excess of U.S. Standards.

140. In its findings for fisheries other than the West Coast North Island Fisheries, the Comparability Finding states the measures in the Threat Management Plan for “both species”—the Māui dolphin and Hector’s dolphin—are comparable in effectiveness to U.S. standards for Take Reduction Plans. NMFS provided no explanation or analysis to support that assertion with respect to the South Island Fisheries.

141. The Comparability Finding lacks any discussion or analysis of bycatch of Hector’s dolphins in the South Island Fisheries. It lacks any findings that bycatch of Hector’s dolphins in the South Island Fisheries does not exceed any of the applicable U.S. standards, including the zero mortality rate goal, the negligible impact standard (which is applicable because the Hector’s dolphin is listed as threatened under the ESA), a bycatch limit, regulatory measures to achieve the bycatch limit, monitoring, and stock assessments. It lacks any of the required, specific findings under the Import Regulations (50 C.F.R. § 216.24(h)(6)) that management of Hector’s dolphin bycatch in the South Island Fisheries is comparable in effectiveness to U.S. standards. And it does not show that NMFS considered any of the mandatory factors under the Import Regulations (50 C.F.R. § 216.24(h)(7)) to evaluate Hector’s dolphin bycatch in the South Island Fisheries.

142. Available data demonstrate that bycatch is exceeding both PBR and the negligible impact standard that would apply to the Hector’s dolphin under U.S. standards.

143. Available evidence shows that New Zealand lacks a comparable monitoring program for Hector’s dolphin bycatch.

144. New Zealand does not require regular population surveys for Hector’s dolphins or conduct comparable assessments of the stock. It is currently relying on data from a 2013 survey to manage the East Coast South Island population.

145. The TMP does not achieve comparable effectiveness to U.S. standards in addressing Hector’s dolphin bycatch in the South Island Fisheries. For example, the TMP

manages the population with a goal of limiting bycatch below a “Population Sustainability Threshold” (PST), which is greater than the Hector’s dolphin PBR and negligible impact threshold that would apply under U.S. standards.

146. Further, the Comparability Finding contains no evaluation of whether the South Island Fisheries meet the Import Provision’s or Import Regulations’ requirements with respect to the common dolphin, bottlenose dolphin, orca, pilot whale, New Zealand sea lion, New Zealand fur seal, or other marine mammals that are caught and killed in the fisheries. The Comparability Finding contains no conclusion that bycatch of those species in the South Island Fisheries does not exceed U.S. standards.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION – The Comparability Finding for the West Coast North Island Fisheries with Respect to the Māui Dolphin Is Arbitrary and Capricious and Contrary to Law, in Violation of the MMPA and APA.

147. The allegations made in paragraphs 1–146 are realleged and incorporated by this reference.

148. The MMPA requires Defendants to ban the importation of seafood products caught by a fishery “which results in the incidental kill or incidental serious injury” of marine mammals “in excess of United States standards.” 16 U.S.C. § 1371(a)(2). The Secretary of Commerce must require “reasonable proof from the government of [the harvesting nation] of the effects on ocean mammals” from the fishery to determine if the import standard is met. *Id.* § 1371(a)(2)(A).

149. The Import Regulations prohibit importation of seafood from a fishery “that does not have a valid comparability finding in effect.” 50 C.F.R. § 216.24(h)(1)(ii)(A). To issue a valid comparability finding, NMFS must reasonably find “that the harvesting nation for an export . . . fishery has met the applicable conditions specified in § 216.24(h)(6)(iii) subject to the additional considerations for comparability determinations set out in § 216.24(h)(7).” *Id.* § 216.3.

150. The Comparability Finding is a final agency action as defined by the APA, for which there is no other adequate remedy in a court.

151. NMFS did not insist on reasonable proof from GNZ of the effects of the West Coast North Island Fisheries on marine mammals that are caught in the fisheries. 16 U.S.C. § 1371(a)(2)(A).

152. The Comparability Finding for the West Coast North Island Fisheries is arbitrary and capricious and contrary to law in multiple respects.

153. First, NMFS was required to evaluate whether the West Coast North Island Fisheries have a standard comparable to the U.S. standard that incidental mortality and serious injury of marine mammals in commercial fisheries must be reduced to “insignificant levels approaching a zero mortality and serious injury rate.” 16 U.S.C. §§ 1371(a)(2), 1387(b), (f). NMFS did not do so. And the West Coast North Island Fisheries lack an equivalent to this U.S. standard.

154. Second, NMFS was required to evaluate whether the West Coast North Island Fisheries have a standard comparable to the U.S. standard that incidental mortality and serious injury of endangered marine mammals in commercial fisheries have no more than a “negligible impact” on the species. *Id.* § 1371(a)(2), (a)(5)(E)(i); 50 C.F.R. § 216.24(h)(7)(i). NMFS did not do so. And the West Coast North Island Fisheries lack an equivalent standard. Based on available values for PBR, total human-caused mortality, and fisheries-related mortality or serious injury, Māui dolphin mortality and serious injury in the West Coast North Island Fisheries exceeds the threshold for a negligible impact finding under NMFS’s policy guidance.

155. Third, NMFS was required to insist on reasonable proof from GNZ and consider readily available and relevant information about bycatch of marine mammals in issuing its Comparability Finding. NMFS concluded that Māui dolphin bycatch is not in excess of U.S. standards based on bycatch estimates from 2019. NMFS did not consider or address more recent readily available evidence that Māui dolphin bycatch exceeds U.S. standards.

156. Fourth, NMFS was required to evaluate whether the West Coast North Island Fisheries have a bycatch limit that is comparable to the U.S. standard for a bycatch limit. *See* 16 U.S.C. § 1371(a)(2); 50 C.F.R. § 216.24(h)(6)(iii)(C)(5), (6). The Import Regulations specify that the bycatch limit must be the PBR or a comparable metric. 50 C.F.R. § 216.3. NMFS found

New Zealand's FRML limit of "one" death of a "Hector's dolphin or Māui dolphin within the Māui dolphin habitat zone" in the West Coast North Island Fisheries is comparable to the U.S. standard for a bycatch limit. NMFS did not and could not establish that a limit of one dolphin mortality is comparable to either the Māui dolphin PBR of 0.1 dolphins per year or the stricter negligible impact bycatch limit of 0.013 dolphins per year. NMFS did not consider or address the fact that the West Coast North Island Fisheries' FRML lacks a timeframe, unlike bycatch limits under U.S. standards. NMFS did not consider or address the fact that the West Coast North Island Fisheries' FRML applies only to mortalities and injuries within a geographically constrained area, unlike bycatch limits under U.S. standards.

157. Fifth, NMFS was required to evaluate whether the rate of mortality or serious injury of Māui dolphins is in excess of U.S. standards. *See* 16 U.S.C. § 1371(a)(2); *see also* 50 C.F.R. § 216.24(h)(6)(iii)(C)(6). NMFS compared mortality and injury rates of Māui dolphins in the West Coast North Island Fisheries to its calculated PBR of 0.1 dolphins per year and found the PBR is not being exceeded. NMFS's calculation of PBR was based on an older Māui dolphin population estimate that is higher than more recent estimates. NMFS must use the best available science for the population estimates. *See* 16 U.S.C. § 1362(27). NMFS did not explain why it did not use the more recent, available population numbers to calculate the PBR, which would have resulted in a PBR value less than 0.1 dolphins per year. A lower PBR value may have resulted in a finding that mortality and serious injury of Māui dolphins in the West Coast North Island Fisheries is in excess of U.S. standards. In addition, NMFS failed to consider evidence that the rate of mortality and serious injury to Māui dolphins in the West Coast North Island Fisheries is greater than 0.1 dolphins per year. That evidence establishes that the rate of Māui dolphin mortality and serious injury in the West Coast North Island Fisheries exceeds the permissible rate under U.S. standards.

158. Sixth, NMFS was required to evaluate whether the West Coast North Island Fisheries have monitoring procedures comparable to U.S. standards for monitoring in similar circumstances. *Id.* §§ 1371(a)(2), 1387(f)(2), (5); 50 C.F.R. § 216.24(h)(7)(i). NMFS found New Zealand's monitoring procedures for the West Coast North Island Fisheries are comparable to

U.S. standards because it believed there is 90% monitoring coverage in the Māui Dolphin Habitat Zone that exceeds the 10% observer coverage that NMFS generally requires. NMFS failed to consider that available evidence shows monitoring coverage is much lower than 90% in the Māui Dolphin Habitat Zone. NMFS failed to consider that the 10% comparison is inapt under the circumstances present here, involving a critically endangered species. NMFS did not evaluate whether New Zealand's monitoring program in the West Coast North Island Fisheries produces statistically reliable results given the circumstances and the need to be able to detect any and every instance of Māui dolphin bycatch.

159. Seventh, NMFS was required to evaluate whether New Zealand's regulatory program provides for Māui dolphin assessments that are comparable to the MMPA's stock assessment requirements. 16 U.S.C. §§ 1371(a)(2), 1386(a). NMFS did not do so. New Zealand lacks an equivalent stock assessment requirement for Māui dolphins.

160. Accordingly, NMFS's Comparability Finding for New Zealand's West Coast North Island Fisheries is arbitrary and capricious and contrary to law, in violation of the MMPA, its implementing regulations, and the APA. 5 U.S.C. § 706(2)(A); 16 U.S.C. 1371(a)(2); 50 C.F.R. § 216.24(h).

SECOND CAUSE OF ACTION – The Comparability Finding for the South Island Fisheries with Respect to the Hector's Dolphin Is Arbitrary and Capricious and Contrary to Law, in Violation of the MMPA and APA.

161. The allegations made in paragraphs 1–160 are realleged and incorporated by this reference.

162. NMFS did not insist on reasonable proof from GNZ of the effects of the South Island Fisheries on Hector's dolphins that are caught in the fisheries. 16 U.S.C. § 1371(a)(2)(A).

163. The Comparability Finding for the South Island Fisheries with respect to the Hector's dolphin is arbitrary and capricious and contrary to law in multiple respects.

164. First, NMFS was required to evaluate whether the South Island Fisheries have a standard comparable to the U.S. standard that incidental mortality and serious injury of marine mammals in commercial fisheries must be reduced to "insignificant levels approaching a zero

mortality and serious injury rate.” 16 U.S.C. §§ 1371(a)(2), 1387(b), (f). NMFS did not do so. And the South Island Fisheries lack an equivalent to this U.S. standard.

165. Second, NMFS was required to evaluate whether the South Island Fisheries have a standard comparable to the U.S. standard that incidental mortality and serious injury of listed marine mammals in commercial fisheries have no more than a “negligible impact” on the species. *Id.* § 1371(a)(2), (a)(5)(E)(i); 50 C.F.R. § 216.24(h)(7)(i). NMFS did not do so. And the South Island Fisheries lack an equivalent standard. Based on available information, Hector’s dolphin mortality and serious injury in the South Island Fisheries exceed the threshold for a negligible impact finding under NMFS’s policy guidance.

166. Third, NMFS was required to evaluate whether the South Island Fisheries have a bycatch limit that is comparable to the U.S. standard for a bycatch limit. *See* 16 U.S.C. § 1371(a)(2); 50 C.F.R. § 216.24(h)(6)(iii)(C)(5), (6). NMFS did not do so. And the South Island Fisheries do not have a bycatch limit for Hector’s dolphins that is comparable to PBR or the negligible impact threshold.

167. Fourth, NMFS was required to evaluate whether the rate of mortality or serious injury of Hector’s dolphins in the South Island Fisheries is in excess of U.S. standards. *See* 16 U.S.C. § 1371(a)(2); *see also* 50 C.F.R. § 216.24(h)(6)(iii)(C)(6). NMFS did not do so.

168. Fifth, NMFS was required to evaluate whether the South Island Fisheries have monitoring procedures comparable to U.S. standards for monitoring in similar circumstances. *Id.* §§ 1371(a)(2), 1387(f)(2), (5); 50 C.F.R. § 216.24(h)(7)(i). NMFS did not do so.

169. Sixth, NMFS was required to evaluate whether New Zealand’s regulatory program provides for Hector’s dolphin assessments that are comparable to the MMPA’s stock assessment requirements. 16 U.S.C. §§ 1371(a)(2), 1386(a). NMFS did not do so. New Zealand lacks an equivalent stock assessment requirement for Hector’s dolphins.

170. Accordingly, NMFS’s Comparability Finding for New Zealand’s South Island Fisheries is arbitrary and capricious and contrary to law, in violation of the MMPA, its implementing regulations, and the APA. 5 U.S.C. § 706(2)(A); 16 U.S.C. 1371(a)(2); 50 C.F.R. § 216.24(h).

THIRD CAUSE OF ACTION – The Comparability Finding for New Zealand’s Set Net and Trawl Fisheries with Respect to Bycatch of Other Marine Mammals Is Arbitrary and Capricious and Contrary to Law, in Violation of the MMPA and APA.

171. The allegations made in paragraphs 1–170 are realleged and incorporated by this reference.

172. The MMPA requires the Defendants to ban the importation of seafood products caught by a fishery “which results in the incidental kill or incidental serious injury” of *any* marine mammals “in excess of United States standards.” 16 U.S.C. § 1371(a)(2).

173. New Zealand’s North Island and South Island set net and trawl fisheries catch and kill marine mammals other than Māui and Hector’s dolphins, including common dolphins, bottlenose dolphins, orca, pilot whales, New Zealand sea lions, New Zealand fur seals, and others.

174. NMFS did not evaluate whether or establish that New Zealand has met the applicable conditions for a comparability finding for the South Island or West Coast North Island Fisheries for these other marine mammal species. 50 C.F.R. §§ 216.3, 216.24(h)(6)(iii), (7). Nor did NMFS establish that the level of incidental mortality or incidental serious injury of these other marine mammals in the South Island or West Coast North Island Fisheries is not in excess of United States standards. 16 U.S.C. § 1371(a)(2).

175. NMFS did not insist on reasonable proof from GNZ of the effects of the South Island or West Coast North Island Fisheries on common dolphins, bottlenose dolphins, orca, pilot whales, New Zealand sea lions, New Zealand fur seals, or other marine mammal species that are caught in the fisheries. *Id.* § 1371(a)(2)(A).

176. Nonetheless, NMFS issued a Comparability Finding that New Zealand’s fisheries, including its South Island and West Coast North Island Fisheries, “met the applicable procedure[s] and conditions specified in the MMPA Import Provisions.”

177. The Comparability Finding for the South Island and West Coast North Island Fisheries is arbitrary and capricious and contrary to law because it fails to assess bycatch of marine mammal species other than the Māui dolphin, in violation of the MMPA, its

implementing regulations, and the APA. 5 U.S.C. § 706(2)(A); 16 U.S.C. 1371(a)(2); 50 C.F.R. § 216.24(h).

FOURTH CAUSE OF ACTION – Defendants Failed to Ban the Importation of Fish from the West Coast North Island Fisheries as Required by the MMPA.

178. The allegations made in paragraphs 1–177 are realleged and incorporated by this reference.

179. The MMPA requires the Secretary of the Treasury to ban the importation of seafood products caught by a fishery “which results in the incidental kill or incidental serious injury” of marine mammals “in excess of United States standards.” 16 U.S.C. § 1371(a)(2). The Homeland Security Act imposes a responsibility on the Department of Homeland Security to implement import bans. 6 U.S.C. §§ 203(1), 212(a)(1).

180. A fishery without a “valid comparability finding” in effect is deemed to “result[] in the incidental mortality or incidental serious injury of marine mammals in excess of U.S. standards.” 50 C.F.R. § 216.24(h)(1)(i); *see also id.* § 216.24(h)(1)(ii)(A) (making it unlawful to import fish from “a fishery that does not have a valid comparability finding in effect at the time of import”).

181. To issue a valid comparability finding, NMFS must reasonably establish “that the harvesting nation for an export . . . fishery has met the applicable conditions specified in § 216.24(h)(6)(iii) subject to the additional considerations for comparability determinations set out in § 216.24(h)(7).” 50 C.F.R. § 216.3. Further, a comparability finding is only valid if NMFS establishes that the fishery does not “result[] in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards” within the meaning of the MMPA. 16 U.S.C. § 1371(a)(2).

182. NMFS did not reasonably and lawfully establish that New Zealand’s West Coast North Island Fisheries meet the applicable conditions specified in 50 C.F.R. § 216.24(h)(6) and (7) or in 16 U.S.C. § 1371(a)(2) with respect to bycatch of Māui dolphins or other marine mammals. Accordingly, the West Coast North Island Fisheries do not have a valid comparability finding in effect.

183. In addition, the fisheries incidentally kill or seriously injure Māui dolphins and other marine mammals in excess of U.S. standards.

184. The MMPA accordingly requires Defendants to ban the importation of seafood caught by the West Coast North Island Fisheries for two independent reasons: (1) because they do not meet the MMPA's statutory requirement and (2) because they lack a valid comparability finding under the implementing regulations.

185. Defendants have not banned the importation of seafood caught by the West Coast North Island Fisheries.

186. An import ban is a discrete, legally required final agency action that can be compelled under the APA. 5 U.S.C. § 706(1).

187. Defendants' failure to implement an import ban on seafood caught by the West Coast North Island Fisheries constitutes "agency action unlawfully withheld or unreasonably delayed," for which this Court may order relief under the APA. *Id.*

FIFTH CAUSE OF ACTION – Defendants Failed to Ban the Importation of Fish from the South Island Fisheries as Required by the MMPA.

188. The allegations made in paragraphs 1–187 are realleged and incorporated by this reference.

189. NMFS did not reasonably and lawfully establish that New Zealand's South Island Fisheries meet the applicable conditions specified in 50 C.F.R. § 216.24(h)(6) and (7) or in 16 U.S.C. § 1371(a)(2) with respect to bycatch of Hector's dolphins and other marine mammals. Accordingly, the South Island Fisheries do not have a valid comparability finding in effect.

190. In addition, the fisheries incidentally kill or seriously injure Hector's dolphins and other marine mammals in excess of U.S. standards.

191. The MMPA accordingly requires Defendants to ban the importation of seafood caught by the South Island Fisheries for two independent reasons: (1) because they do not meet the MMPA's statutory requirement and (2) because they lack a valid comparability finding under the implementing regulations.

192. Defendants have not banned the importation of seafood caught by the South Island Fisheries.

193. Defendants' failure to implement an import ban on seafood caught by the South Island Fisheries constitutes "agency action unlawfully withheld or unreasonably delayed," for which this Court may order relief under the APA. 5 U.S.C. § 706(1).

REQUEST FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

1. Declare that the Comparability Finding violates the MMPA, its implementing regulations, and the APA;
2. Vacate the Comparability Finding, in full or in part;
3. Remand the Comparability Finding to NMFS;
4. Declare that Defendants failed to ban imports from the West Coast North Island Fisheries as required by the MMPA, its implementing regulations, and the APA;
5. Order Defendants to ban imports from the West Coast North Island Fisheries;
6. Grant any injunctive relief necessary to effect an import ban from the West Coast North Island Fisheries;
7. Declare that Defendants failed to ban imports from the South Island Fisheries as required by the MMPA, its implementing regulations, and the APA;
8. Order Defendants to ban imports from the South Island Fisheries;
9. Grant any injunctive relief necessary to effect an import ban from the South Island Fisheries;
10. Maintain jurisdiction over this action until Defendants are in compliance with the MMPA, APA, and every order of this Court;
11. Award Plaintiff its costs and reasonable attorney fees pursuant to 28 U.S.C. § 2412; and
12. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted this 5th day of January, 2026.

/s/ Sabrina Devereaux

Sabrina Devereaux

Christopher Eaton

Earthjustice

810 Third Ave., Suite 610

Seattle, WA 98104

T (206) 343-7340

sdevereaux@earthjustice.org

ceaton@earthjustice.org

Natalie Barefoot

Earthjustice

180 Steuart St. #194330

San Francisco, CA 94105

T (415) 217-2000

nbarefoot@earthjustice.org

/s/ Brett Sommermeyer

Brett Sommermeyer

Catherine Pruett

Law of the Wild

7511 Greenwood Avenue North, #4214

Seattle, WA 98103

T (206) 774-0048

brett@lawofthewild.org

catherine@lawofthewild.org

*Attorneys for Plaintiff Māui and Hector's Dolphin
Defenders NZ Inc.*