



October 23, 2024

Shannon Bettridge, Ph.D., Chief  
Marine Mammal and Sea Turtle Conservation Division  
Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

RE: Proposed Marine Mammal Protection Act List of Fisheries for 2025  
Docket Number NOAA–NMFS–2024–0037

Dear Dr. Bettridge:

Please accept and act favorably upon the following requests and comments by the National Aquaculture Association.<sup>1</sup>

We value and appreciate the authority provided by Congress to protect and conserve marine mammals as expressed in the Marine Mammal Protection Act. And we believe, as you must, federal agencies must act within the confines of that authority. Supreme Court,<sup>2</sup> U.S. District Court<sup>3</sup> and U.S. Court of Appeals<sup>4</sup> rulings confirm when Congress has directly spoken to this issue. These several Courts have ruled that when Congressional intent is clear, then the language of the law must be adhered to by an agency.

We request:

- Prior List of Fisheries that included regulations governing marine aquaculture be removed from regulations.
- The current proposed regulations to govern marine aquaculture be acknowledged within your final rule as not being activities authorized by Congress for agency regulatory action.

In support of these requests, we point specifically to the plain language in the Act where no ambiguity of interpretation can be argued:

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<sup>1</sup> The [National Aquaculture Association](https://www.naa.org/) (NAA) is a U.S. producer-based, non-profit trade association founded in 1991 that supports the establishment of governmental programs that further the common interest of our membership, both as individual producers and as members of the aquaculture community. For over 33 years NAA has been the united voice of the domestic aquaculture sector committed to the continued growth of our industry, working with state and federal governments to create a business climate conducive to our success, and fostering cost-effective environmental stewardship and sustainability.

<sup>2</sup> *Loper Bright Enterprises et al. v. Raimondo, Secretary of Commerce et al.* No. 22-451

<sup>3</sup> *Gulf Fishermens Association et al., vs National Marine Fisheries Service et al.* No. 16-1271

<sup>4</sup> *Gulf Fishermens Association et al., vs. National Marine Fisheries Association et al.* No. 19-30006

U.S. Code  
Title 16-Conservation  
Chapter 31-Marine Mammal Protection  
Subchapter I-Generally  
§1362. Definitions

(16) The term "fishery" means-

- (A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and
- (B) any fishing for such stocks.

The plain meaning and usage of the words “stocks” and “fishing” do not encompass farming of aquatic animals and plants. The National Aquaculture Policy Act of 1980 defines aquaculture in Section 3(1) as being “the propagation and rearing of aquatic species in controlled or selected environments, including, but not limited to, ocean ranching (except private ocean ranching of Pacific salmon for profit in those States where such ranching is prohibited by law).”

We also note within the current List of Fisheries a definition for aquaculture is presented that does not include the terms “stock” or “fishing:”

“Aquaculture is the controlled propagation and rearing of aquatic organisms for any commercial, recreational, or public purpose. This definition covers all production of finfish, shellfish, plants, algae, and other marine organisms for 1) food and other commercial products, 2) wild stock replenishment for commercial and recreational fisheries, 3) rebuilding populations of threatened or endangered fin-fish species under species recovery and conservation plans, and 4) restoration and conservation of marine and habitat.”

We believe prior agency rulemaking has erroneously included the farming of aquatic animals. To the best of our efforts to research this topic, these prior regulations include, but may not be limited to, the following farming activities mistakenly defined as Marine Aquaculture Fisheries:

- Hawaii Offshore Pen Culture
- California Marine Shellfish Aquaculture
- California Salmon Enhancement Rearing Pen
- California White Seabass Enhancement Pet Pens
- Washington Salmon Net Pens
- Washington and Oregon Shellfish Aquaculture
- Finfish Aquaculture prior designated as Gulf of Maine Atlantic Salmon
- Shellfish Aquaculture

We request in the final rule these listed “fisheries” be removed from the Code of Federal Regulations for the lack of Congressional authorization.

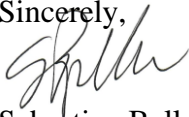
We also note the terms “farm,” or any derivation, do not appear in the Act. The term “aquaculture” does appear in 16 U.S. Code §1389(h) where Congress directed the Secretary of Commerce to “...establish a Pinniped-Fishery Interaction Task Force to advise the Secretary on issues or problems regarding pinnipeds interacting in a dangerous or damaging manner with aquaculture resources in the Gulf of Maine.” This usage clearly indicates Congress recognized the stark difference between a fishery and aquaculture. The terms were not intermixed or substituted one for the other in this section or within the Act as a whole.

If you and staff disagree with the plain reading of the Act, we request the final rule include a clear, concise and succinct explanation supporting an interpretation of the Act to include farming or prior litigation that supports interpreting the Act to encompass farming activities.

We note, as the regulated public, marine mammal protections are imposed through federal permitting authorized by Congress specifically to govern aquaculture or our activities in federal or state marine waters through the Clean Water Act (U.S. Environmental Protection Agency), Rivers and Harbors Act (U.S. Army Corps of Engineers) and the National Environmental Policy Act (all pertinent executive agencies). Our federal permits (individual or programmatic) require marine mammal protection and reporting in the event of extremely rare entanglement or mortality. In addition, coastal states may impose more restrictive conditions for their marine aquaculture permitting or the leasing of state sovereign submerged lands and waters for aquaculture production.

We also recommend that in the final rule and future notices of rulemaking, the authorities granted by Congress be included in notices to the public. We did not find in your current notice language describing the meaning of the term “fishery” as defined by Congress within the Marine Mammal Protection Act.

When the National Marine Fisheries Service has accepted and acted favorably upon our several requests, we invite a presentation by your staff, and hosted by our Association, to present the several responsibilities under the Act related to protecting marine mammals and §1371 (c) Taking in defense of self or other and (d) Good Samaritan exemption. We know and believe that as good environmental stewards the marine aquaculture community will greatly benefit from the educational effort and that we can work in partnership with your division to protect marine mammals.

Sincerely,  
  
Sebastian Belle  
President

cc: Terry Boyd, Executive Director, Gulf Shellfish Farmers Association  
Jeanne McKnight, Executive Director, Northwest Aquaculture Alliance  
Margaret Pilaro, Executive Director, Pacific Coast Shellfish Growers Association  
Bob Rheault, Executive Director, East Coast Shellfish Growers Association