

*Lastly, you ask for clarification on the U.S.'s guidance on use of non-lethal deterrence measures (including Acoustic Deterrent Devices (ADDs) and whether the regulation of ADDs will be required for foreign fisheries exporting to the U.S. and whether the steps the SG is taking is in accordance with the MMPA.*

Per MMPA section 101(a)(4), NMFS is currently developing guidelines for safely deterring marine mammals.<sup>2</sup> These guidelines will address both acoustic (e.g., ADDs) and non-acoustic deterrents, and the NMFS Office of Protected Resources is currently analyzing the expected impacts to individual animals of such devices and techniques. This analysis includes identifying the source level, frequency, duty cycle, etc. and evaluating whether these characteristics may result in onset of permanent threshold shift for each of the five marine mammal functional hearing groups (<https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance>). We expect some ADDs currently on the market may result in significant adverse effects to one or more functional hearing groups when used as directed. Until the NMFS has completed its analyses and finalized the guidelines for safely deterring marine mammals as well as any prohibited deterrents, we cannot advise which ADDs would be appropriate. We will be sure to alert you when the proposed rule publishes and is available for public comment. In the meantime, we suggest that you review the report of the Expert Workshop on Marine Mammal Non-lethal Deterrents and the proceedings of the Acoustic Deterrence of Harmful Marine Mammal-Fishery Interactions Workshop.

<https://www.fisheries.noaa.gov/resource/document/summary-technical-expert-workshop-marine-mammal-non-lethal-deterrents-10-12>

<https://www.fisheries.noaa.gov/resource/document/acoustic-deterrence-harmful-marine-mammal-fishery-interactions-proceedings>

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<sup>2</sup> 16 USC 1371(a)(4)(A) Except as provided in subparagraphs (B) and (C), the provisions of this Act shall not apply to the use of measures— (i) by the owner of fishing gear or catch, or an employee or agent of such owner, to deter a marine mammal from damaging the gear or catch; (ii) by the owner of other private property, or an agent, bailee, or employee of such owner, to deter a marine mammal from damaging private property; (iii) by any person, to deter a marine mammal from endangering personal safety; or (iv) by a government employee, to deter a marine mammal from damaging public property, so long as such measures do not result in the death or serious injury of a marine mammal. (B) The Secretary shall, through consultation with appropriate experts, and after notice and opportunity for public comment, publish in the Federal Register a list of guidelines for use in safely deterring marine mammals. In the case of marine mammals listed as endangered species or threatened species under the Endangered Species Act of 1973 [16 U.S.C. 1531 et seq.], the Secretary shall recommend specific measures which may be used to nonlethally deter marine mammals. Actions to deter marine mammals consistent with such guidelines or specific measures shall not be a violation of this Act. (C) If the Secretary determines, using the best scientific information available, that certain forms of deterrence have a significant adverse effect on marine mammals, the Secretary may prohibit such deterrent methods, after notice and opportunity for public comment, through regulation under this Act. (D) The authority to deter marine mammals pursuant to subparagraph (A) applies to all marine mammals, including all stocks designated as depleted under this Act.