

Pertinent Statutes and Implementing Regulations for Collection of Information 0648-0335

Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et. seq.*)

Title I - Conservation and Protection of Marine Mammals

Section 101. Moratorium on taking and importing marine mammals and marine mammal products

16 U.S.C. 1371 Sec. 101.

(a) Imposition; exceptions There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this chapter, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases:

(1) Consistent with the provisions of section 1374 of this title, permits may be issued by the Secretary for taking, and importation for purposes of scientific research, public display, photography for educational or commercial purposes, or enhancing the survival or recovery of a species or stock, or for importation of polar bear parts (other than internal organs) taken in sport hunts in Canada. Such permits, except permits issued under section 1374 (c)(5) of this title, may be issued if the taking or importation proposed to be made is first reviewed by the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under subchapter III of this chapter. The Commission and Committee shall recommend any proposed taking or importation, other than importation under section 1374 (c)(5) of this title, which is consistent with the purposes and policies of section 1361 of this title. If the Secretary issues such a permit for importation, the Secretary shall issue to the importer concerned a certificate to that effect in such form as the Secretary of the Treasury prescribes, and such importation may be made upon presentation of the certificate to the customs officer concerned.

(2) Marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued therefor under section 1374 of this title subject to regulations prescribed by the Secretary in accordance with section 1373 of this title, or in lieu of such permits, authorizations may be granted therefor under section 1387 of this title, subject to regulations prescribed under that section by the Secretary without regard to section 1373 of this title. Such authorizations may be granted under subchapter IV of this chapter with respect to purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, subject to regulations prescribed under that subchapter by the Secretary without regard to section 1373 of this title. In any event it shall be the immediate goal that the incidental kill or incidental serious injury of

marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate. The Secretary of the Treasury shall 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. For purposes of applying the preceding sentence, the Secretary—

(A) 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;

(B) in the case of yellowfin tuna harvested with purse seine nets in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

(i)

(I) the tuna or products therefrom were not banned from importation under this paragraph before the effective date of section 4 of the International Dolphin Conservation Program Act; or

(II) the tuna or products therefrom were harvested after the effective date of section 4 of the International Dolphin Conservation Program Act by vessels of a nation which participates in the International Dolphin Conservation Program, and such harvesting nation is either a member of the Inter-American Tropical Tuna Commission or has initiated (and within 6 months thereafter completed) all steps required of applicant nations, in accordance with article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

(ii) such nation is meeting the obligations of the International Dolphin Conservation Program and the obligations of membership in the Inter-American Tropical Tuna Commission, including all financial obligations; and

(iii) the total dolphin mortality limits, and per-stock per-year dolphin mortality limits permitted for that nation's vessels under the International Dolphin Conservation Program do not exceed the limits determined for 1997, or for any year thereafter, consistent with the objective of progressively reducing dolphin mortality to a level approaching zero through the setting of annual limits and the goal of eliminating dolphin mortality, and requirements of the International Dolphin Conservation Program;

(C) shall not accept such documentary evidence if—

(i) the government of the harvesting nation does not provide directly or authorize the Inter-American Tropical Tuna Commission to release complete and accurate information to the Secretary in a timely manner—

(I) to allow determination of compliance with the International Dolphin Conservation Program; and

(II) for the purposes of tracking and verifying compliance with the minimum requirements established by the Secretary in regulations promulgated under section 1385 (f) of this title; or

(ii) after taking into consideration such information, findings of the Inter-American Tropical Tuna Commission, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the International Dolphin Conservation Program, the Secretary, in consultation with the Secretary of State, finds that the harvesting nation is not in compliance with the International Dolphin Conservation Program.

(D) shall require the government of any intermediary nation to certify and provide reasonable proof to the Secretary that it has not imported, within the preceding six months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation to the United States under subparagraph (B);

(E) shall, six months after importation of yellowfin tuna or tuna products has been banned under this section, certify such fact to the President, which certification shall be deemed to be a certification for the purposes of section 1978 (a) of title 22 for as long as such ban is in effect; and

(F)

(i) except as provided in clause (ii), in the case of fish or products containing fish harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the fish or fish product was not harvested with a large-scale driftnet in the South Pacific Ocean after July 1, 1991, or in any other water of the high seas after January 1, 1993, and

(ii) in the case of tuna or a product containing tuna harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the tuna or tuna product was not harvested with a large-scale driftnet anywhere on the high seas after July 1, 1991. For purposes of subparagraph (F), the term "driftnet" has the meaning given such term in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note), except that, until January 1, 1994, the term "driftnet" does not include the use in the northeast Atlantic Ocean of gillnets with a total length not to exceed five kilometers if the use is in accordance with regulations adopted by the European Community pursuant to the October 28, 1991, decision by the Council of Fisheries Ministers of the Community.

Implementing MMPA regulations at 50 CFR 216.24:

PART 216 - REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Authority: [16 U.S.C. 1361](#) *et seq.*, unless otherwise noted.

Source: [39 FR 1852](#), Jan. 15, 1974, unless otherwise noted.

(f) Importation, purchase, shipment, sale and transport.

(1)

(i) It is illegal to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if the fish have been caught with commercial fishing technology that results in the incidental kill or incidental serious injury of marine mammals in excess of that allowed under this part for U.S. fishermen, or as specified at [paragraph \(f\)\(6\)](#) of this section.

(ii) For purposes of this [paragraph \(f\)](#), and in applying the definition of an “intermediary nation,” an import occurs when the fish or fish product is released from a nation's Customs' custody and enters into the commerce of the nation. For other purposes, “import” is defined in [§ 216.3](#).

(2) ***Imports requiring a Fisheries Certificate of Origin and an International Fisheries Trade Permit.*** Shipments of tuna, tuna products, and certain other fish products identified in [paragraphs \(f\)\(2\)\(i\)](#) through [\(iii\)](#) of this section may not be imported into the United States unless: a scanned copy of a properly completed Fisheries Certificate of Origin (FCO), NOAA Form 370, associated certifications and statements described in [§ 216.91\(a\)](#), and required data set are filed electronically with U.S. Customs and Border Protection (CBP) at the time of, or in advance of, importation as required under [§ 300.323](#); and the importer of record designated on the entry summary (Customs Form 7501) holds a valid International Fisheries Trade Permit as specified at [§ 300.322 of this title](#). “Required data set” has the same meaning as [§ 300.321 of this title](#) (*see* definition of “Documentation and data sets required”).

(i) ***Imports requiring a Fisheries Certificate of Origin, subject to yellowfin tuna embargo.*** All shipments containing yellowfin tuna or yellowfin tuna products (other than fresh tuna) imported into the United States must be accompanied by an FCO, including, but not limited to, those imported under the following Harmonized Tariff Schedule of the United States (HTS) numbers. Updated HTS numbers can be identified by referencing the most current HTS in effect at the time of importation, available at www.usitc.gov. The scope of yellowfin tuna embargoes and procedures for attaining an affirmative finding are described under [paragraphs \(f\)\(6\)](#) and [\(f\)\(8\)](#) of this section, respectively.

(A) ***Frozen:*** (products containing Yellowfin).

0303.42.0020 Yellowfin tunas, whole, frozen

0303.42.0040 Yellowfin tunas, head-on, frozen, except whole

0303.42.0060 Yellowfin tunas, other, frozen, except whole, head-on, fillets, livers and roes

0304.87.0000 Tuna fish fillets, frozen, not elsewhere specified or indicated (NESOI)

0304.99.1190 Tuna, frozen, in bulk or in immediate containers weighing with their contents over 6.8 kg each

(B) *Airtight Containers:* (products containing Yellowfin).

1604.14.1010 Tunas and skipjack, in oil, in airtight containers, in foil or other flexible containers weighing with their contents not more than 6.8 kg each

1604.14.1099 Tunas and skipjack, in oil, in airtight containers, NESOI

1604.14.2291 Other tunas and skipjack, no oil, in foil/flexible airtight containers, not over 6.8 kg, 4.8% of U.S. consumption of canned tuna during preceding year

1604.14.2299 Tunas, NESOI and skipjack, not in oil, in other airtight containers not over 7 kg, 4.8% of U.S. consumption of canned tuna during preceding year

1604.14.3091 Tunas and skipjack, NESOI, not in oil, in foil or other flexible airtight containers, weighing with their contents not more than 6.8 kg each

1604.14.3099 Other tunas and skipjack, not in oil, in airtight containers, NESOI

(C) *Loins:* (products containing Yellowfin).

1604.14.4000 Tunas and skipjacks, prepared or preserved, not in airtight containers, not in oil, in bulk or immediate containers with their contents over 6.8 kg each

1604.14.5000 Tunas and skipjack, prepared or preserved, not in airtight containers, NESOI

(D) *Other:* (products containing Yellowfin).

0511.91.0090 Fish, shellfish products unfit for human consumption

1604.20.1000 Fish pastes

1604.20.1500 Fish balls, cakes and puddings, in oil

1604.20.2000 Fish balls, cakes and puddings, not in oil, less than 6.8 kg, in airtight containers

1604.20.2500 Fish balls, cakes and puddings, not in oil, not in airtight containers, in immediate containers weighing with their contents not over 6.8 kg each

1604.20.3000 Fish balls, cakes and puddings, NESOI

1604.20.4000 Fish sticks, not cooked, nor in oil

1604.20.5010 Fish sticks, cooked and frozen

1604.20.5090 Fish sticks, NESOI

2309.10.0010 Dog or cat food, in airtight containers

(ii) **Imports requiring a Fisheries Certificate of Origin, not subject to yellowfin tuna embargo.** All shipments containing tuna or tuna products (other than fresh tuna or yellowfin tuna identified in [paragraph \(f\)\(2\)\(i\)](#) of this section) imported into the United States must be accompanied by an FCO, including, but not limited to, those imported under the following HTS numbers. Updated HTS numbers can be identified by referencing the most current HTS in effect at the time of importation, available at www.usitc.gov.

(A) **Frozen:** (other than Yellowfin).

0303.41.0000 Albacore or longfinned tunas, frozen, except fillets, livers and roes

0303.43.0000 Skipjack tunas or stripe-bellied bonito, frozen, except fillets, livers and roes

0303.44.0000 Bigeye tunas, frozen, except fillets, livers and roes

0303.45.0110 Atlantic Bluefin, frozen, except fillets, livers and roes

0303.45.0150 Pacific Bluefin, frozen, except fillets, livers and roes

0303.46.0000 Southern bluefin tunas, frozen, except fillets, livers and roes

0303.49.0200 Tunas, frozen, except fillets, livers and roes, NESOI

0304.87.0000 Tuna fish fillets, frozen, NESOI

0304.99.1190 Tuna, frozen, in bulk or in immediate containers weighing with their contents over 6.8 kg each, NESOI

(B) **Airtight Containers:** (other than Yellowfin).

1604.14.1010 Tunas and skipjack, in oil, in airtight containers, in foil or other flexible containers weighing with their contents not more than 6.8 kg each

1604.14.1091 Tunas, albacore, in oil, in airtight containers, NESOI

1604.14.1099 Tunas and skipjack, in oil, in airtight containers, NESOI

1604.14.2251 Albacore tuna, not in oil, in foil/flexible airtight containers, weighing not over 6.8 kg, 4.8% of U.S. consumption of canned tuna during preceding year

1604.14.2259 Albacore tuna, not in oil, in airtight containers weighing not over 7 kg, NESOI, 4.8% of U.S. consumption of canned tuna during preceding year

1604.14.2291 Other tunas and skipjack, no oil, in foil/flexible airtight containers, not over 6.8 kg, 4.8% of U.S. consumption of canned tuna during preceding year

- 1604.14.2299 Tunas, NESOI and skipjack, not in oil, in other airtight containers, not over 7 kg, 4.8% of U.S. consumption of canned tuna during preceding year
- 1604.14.3051 Tuna, albacore not in oil, in foil or other flexible airtight containers, weighing with contents not more than 6.8 kg each, NESOI
- 1604.14.3059 Tuna, albacore not in oil, in airtight containers, NESOI
- 1604.14.3091 Tunas and skipjack, NESOI, not in oil, in foil or other flexible airtight containers, weighing with their contents not more than 6.8 kg each
- 1604.14.3099 Other tunas and skipjack, not in oil, in airtight containers, NESOI
- (C) *Loins*: (other than Yellowfin).
- 1604.14.4000 Tunas and skipjacks, prepared or preserved, not in airtight containers, not in oil, in bulk or immediate containers with their contents over 6.8 kg each
- 1604.14.5000 Tunas and skipjack, prepared or preserved, not in airtight containers, NESOI

(D) *Other*: (only if the product contains tuna).

0511.91.0090 Fish, shellfish products unfit for human consumption

1604.20.1000 Fish pastes

1604.20.1500 Fish balls, cakes and puddings, in oil

1604.20.2000 Fish balls, cakes and puddings, not in oil, less than 6.8 kg, in airtight containers

1604.20.2500 Fish balls, cakes and puddings, not in oil, not in airtight containers, in immediate containers weighing with their contents not over 6.8 kg each

1604.20.3000 Fish balls, cakes and puddings, NESOI

1604.20.4000 Fish sticks, not cooked, nor in oil

1604.20.5010 Fish sticks, cooked and frozen

1604.20.5090 Fish sticks, NESOI

2309.10.0010 Dog or cat food, in airtight containers

(iii) ***Exports from driftnet nations only, requiring a Fisheries Certificate of Origin and official certification.*** The following HTS numbers identify categories of fish and shellfish, in addition to those identified in [paragraphs \(f\)\(2\)\(i\)](#) and [\(f\)\(2\)\(ii\)](#) of this section, known to have been harvested using a large-scale driftnet and imported into the United States. Shipments exported from a large-scale driftnet nation, as identified under [paragraph \(f\)\(7\)](#) of this section, and imported into the United States, including but not limited to those imported into the United States under any of the HTS numbers listed in [paragraph \(f\)\(2\)](#) of

this section, must be accompanied by an FCO and the official statement described in [paragraph \(f\)\(4\)\(xiii\)](#) of this section.

(A) **Frozen:**

- 0303.11.0000 Sockeye (red) salmon (*Oncorhynchus nerka*), frozen, except fillets, livers and roes
- 0303.12.0012 Chinook (King) salmon (*Oncorhynchus tshawytscha*), frozen, except fillets, livers and roes
- 0303.12.0022 Chum (dog) salmon (*Oncorhynchus keta*), frozen, except fillets, livers and roes
- 0303.12.0032 Pink (humpie) salmon (*Oncorhynchus gorbuscha*), frozen, except fillets, livers and roes
- 0303.12.0052 Coho (silver) salmon (*Oncorhynchus kisutch*), frozen, except fillets, livers and roes
- 0303.12.0062 Pacific salmon (*Oncorhynchus masou*, *Oncorhynchus rhodurus*), frozen, except fillets, livers and roes, NESOI
- 0303.13.0000 Atlantic salmon (*Salmo salar*) and Danube salmon (*Hucho hucho*), frozen, except fillets, livers and roes
- 0303.14.0000 Trout (*Salmo trutta*; *Oncorhynchus mykiss*, *clarki*, *aguabonita*, *gilae*, *apache*, and *chrysogaster*), frozen, except fillets, livers and roes
- 0303.19.0100 Salmonidae, frozen, except fillets, livers and roes, NESOI
- 0303.57.0010 Swordfish steaks, frozen, except fillets
- 0303.57.0090 Swordfish, frozen, except steaks, fillets, livers and roes
- 0303.81.0010 Dogfish (*Squalus* spp.), frozen, except fillets, livers and roes
- 0303.81.0090 Sharks, frozen, except dogfish, fillets, livers and roes
- 0303.89.0079 Fish, other, frozen, except fillets, livers and roes, NESOI
- 0304.81.5010 Atlantic Salmonidae (*Salmo salar*) fillets, frozen, NESOI
- 0304.81.5090 Salmonidae fillets, frozen, except Atlantic salmon, NESOI
- 0304.89.1090 Fish fillets, skinned, frozen blocks weighing over 4.5 kg each, to be minced, ground or cut into pieces of uniform weights and dimensions, NESOI

0304.91.1000 Swordfish, frozen, in bulk or in immediate containers weighing over 6.8 kg each

0304.91.9000 Swordfish, frozen, NESOI

0304.99.9191 Fish fillets, ocean, frozen, NESOI

0307.49.0010 Squid fillets, frozen

0307.49.0022 Squid, *Loligo opalescens*, NESOI

0307.49.0024 Squid, *Loligo pealei*, NESOI

0307.49.0029 Squid, *Loligo*, other, NESOI

0307.49.0050 Squid, other, NESOI

(B) Canned:

1604.11.2020 Pink (humpie) salmon, whole or in pieces, but not minced, in oil, in airtight containers

1604.11.2030 Sockeye (red) salmon, whole or in pieces, but not minced, in oil, in airtight containers

1604.11.2090 Salmon NESOI, whole or in pieces, but not minced, in oil, in airtight containers

1604.11.4010 Chum (dog) salmon, not in oil, canned

1604.11.4020 Pink (humpie) salmon, not in oil, canned

1604.11.4030 Sockeye (red) salmon, not in oil, canned

1604.11.4040 Salmon, NESOI, not in oil, canned

1604.11.4050 Salmon, whole or in pieces, but not minced, NESOI

1604.19.2100 Fish, NESOI, not in oil, in airtight containers

1604.19.3100 Fish, NESOI, in oil, in airtight containers

1605.54.6020 Squid, *Loligo*, prepared or preserved

1605.54.6030 Squid, except *Loligo*, prepared or preserved

(C) Other:

0305.39.6080 Fish fillets, dried, salted or in brine, but not smoked, NESOI

0305.41.0000 Pacific salmon (*Oncorhynchus* spp.), Atlantic salmon (*Salmo salar*), and Danube salmon (*Hucho hucho*), including fillets, smoked

0305.49.4041 Fish including fillets, smoked, NESOI

0305.59.0000 Fish, dried, whether or not salted but not smoked, NESOI

0305.69.4000 Salmon, salted but not dried or smoked; in brine

0305.69.5001 Fish in immediate containers weighing with their contents 6.8 kg or less each, salted but not dried or smoked; in brine, NESOI

0305.69.6001 Fish, salted but not dried or smoked; in brine, NESOI

0305.71.0000 Shark fins, dried, whether or not salted but not smoked

0305.49.0010 Squid, frozen, fillets

0307.49.0022 Squid, *Loligo opalescens*, frozen (except fillets), dried, salted or in brine

0307.49.0024 Squid, *Loligo pealei*, frozen (except fillets), dried, salted or in brine

0307.49.0029 Squid, *Loligo*, frozen (except fillets), dried, salted or in brine, NESOI

0307.49.0050 Squid, other, frozen (except fillets), dried, salted or in brine, except *Loligo* squid

0307.49.0060 Cuttle fish (*Sepia officinalis*, *Rossia macrosoma*, *Sepiola* spp.), frozen, dried, salted or in brine

(3) ***Disposition of Fisheries Certificates of Origin.*** The FCO described in [paragraph \(f\)\(4\)](#) of this section may be obtained from the Administrator, West Coast Region, or downloaded from the internet at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/noaa-form-370-fisheries-certificate-origin>.

(i) A properly completed FCO, and its attached certifications and statements as described in [§ 216.91\(a\)](#), must accompany the required CBP entry documents that are filed at the time of, or in advance of, importation.

(ii) FCOs and associated certifications and statements as described in [§ 216.91\(a\)](#) must be provided electronically to CBP as indicated in [paragraph \(f\)\(2\)](#) of this section.

(iii) FCOs that accompany imported shipments of tuna destined for further processing in the United States must be endorsed at each change in ownership and submitted to the

Administrator, West Coast Region, by the last endorser when all required endorsements are completed. Such FCOs must be submitted as specified in [§ 216.93\(d\)\(2\)](#).

(iv) Importers and exporters are required to retain their records, including FCOs, import or export documents, invoices, and bills of lading for 2 years, and such records must be made available within 30 days of a request by the Secretary or the Administrator, West Coast Region.

(4) ***Contents of Fisheries Certificate of Origin.*** An FCO, certified to be accurate by the exporter(s) of the accompanying shipment, must include the following information:

(i) CBP entry identification;

(ii) Date of entry;

(iii) Exporter's full name and complete address;

(iv) Importer's or consignee's full name and complete address;

(v) Species description, product form, and HTS number;

(vi) Total net weight of the shipment in kilograms;

(vii) Ocean area where the fish were harvested (ETP, western Pacific Ocean, south Pacific Ocean, north Pacific Ocean, eastern Atlantic Ocean, western Atlantic Ocean, Caribbean Sea, Indian Ocean, or other);

(viii) Type of fishing gear used to harvest the fish (purse seine, longline, baitboat, large-scale driftnet, gillnet, pole and line/hook and line, or other);

(ix) Country under whose laws the harvesting vessel operated based upon the flag of the vessel or, if a certified charter vessel, the country that accepted responsibility for the vessel's fishing operations;

(x) Dates on which the fishing trip began and ended;

(xi) The name of the harvesting vessel;

(xii) Dolphin-safe condition of the shipment, described by checking the appropriate statement on the form and attaching additional certifications as described in [§ 216.91\(a\)](#) if required;

(xiii) For shipments containing fish or fish products exported from, or harvested on the high seas by vessels of a nation known to use large-scale driftnets, as determined by the Secretary pursuant to [paragraph \(f\)\(7\)](#) of this section, the High Seas Driftnet Certification contained on the FCO must be dated and signed by a responsible government official of the

large-scale driftnet nation, certifying that the fish or fish products were harvested by a method other than large-scale driftnet; and

(xiv) Each importer, exporter, or processor who takes custody of the shipment must sign and date the form to certify that the form and attached documentation accurately describes the shipment of fish that they accompany.

(5) **Dolphin-safe label.** Tuna or tuna products sold in or exported from the United States that include on the label the term “dolphin-safe” or any other term or symbol that claims or suggests the tuna were harvested in a manner not injurious to dolphins are subject to the requirements of [subpart H of this part](#) ([§ 216.90](#) *et seq.*).

(6) **Scope of embargoes -**

(i) **ETP yellowfin tuna embargo.** Yellowfin tuna or products of yellowfin tuna harvested using a purse seine in the ETP identified by an HTS number listed in [paragraph \(f\)\(2\)\(i\)](#) of this section may not be imported into the United States if such tuna or tuna products were:

(A) Harvested on or after March 3, 1999, the effective date of section 4 of the IDCPA, and harvested by, or exported from, a nation that the Assistant Administrator has determined has jurisdiction over purse seine vessels of greater than 400 st (362.8 mt) carrying capacity harvesting tuna in the ETP, unless the Assistant Administrator has made an affirmative finding required for importation for that nation under [paragraph \(f\)\(8\)](#) of this section;

(B) Exported from an intermediary nation, as defined in Section 3 of the MMPA, and a ban is currently in force prohibiting the importation from that nation under [paragraph \(f\)\(9\)](#) of this section; or

(C) Harvested before March 3, 1999, the effective date of Section 4 of the IDCPA, and would have been banned from importation under Section 101(a)(2) of the MMPA at the time of harvest.

(ii) **Driftnet embargo.** A shipment containing fish or fish products identified by an HTS number listed in [paragraph \(f\)\(2\)](#) of this section may not be imported into the United States if it is harvested by a large-scale driftnet, or if it is exported from or harvested on the high seas by any nation determined by the Assistant Administrator to be engaged in large-scale driftnet fishing, unless a government official of the large-scale driftnet nation completes, signs and dates the High Seas Driftnet section of the FCO certifying that the fish or fish products were harvested by a method other than large-scale driftnet.

(iii) **Pelly certification.** After 6 months of an embargo being in place against a nation under this section, the Secretary will certify that nation under section 8(a) of the Fishermen's Protective Act ([22 U.S.C. 1978\(a\)](#)). When such an embargo is lifted, the Secretary will terminate the certification under Section 8(d) of that Act ([22 U.S.C. 1978\(d\)](#)).

(iv) **Coordination.** The Assistant Administrator will promptly advise the Department of State and the Department of Homeland Security of embargo decisions, actions, and finding determinations.

(7) **Large-scale driftnet nation: determination.** Based upon the best information available, the Assistant Administrator will determine which nations have registered vessels that engage in fishing using large-scale driftnets. Such determinations will be published in the Federal Register. A responsible government official of any such nation may certify to the Assistant Administrator that none of the nation's vessels use large-scale driftnets. Upon receipt of the certification, the Assistant Administrator may find, and publish such finding in the Federal Register, that none of that nation's vessels engage in fishing with large-scale driftnets.

(8) **Affirmative finding procedure for nations harvesting yellowfin tuna using a purse seine in the ETP.**

(i) The Assistant Administrator will determine, on an annual basis, whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation or by the IDCP and the IATTC, and will publish the finding in the Federal Register. A finding will remain valid for 1 year or for such other period as the Assistant Administrator may determine. An affirmative finding will be terminated if the Assistant Administrator determines that the requirements of this paragraph are no longer being met. Every 5 years, the government of the harvesting nation must submit such documentary evidence directly to the Assistant Administrator and request an affirmative finding. Documentary evidence must be submitted by the harvesting nation for the first affirmative finding application. The Assistant Administrator may require the submission of supporting documentation or other verification of statements made in connection with requests to allow importations. An affirmative finding applies to yellowfin tuna and yellowfin tuna products that were harvested by vessels of the nation after March 3, 1999. To make an affirmative finding, the Assistant Administrator must find that:

(A) The harvesting nation participates in the IDCP and is either a member of the IATTC or has initiated (and within 6 months thereafter completed) all steps required of applicant nations, in accordance with article V, paragraph 3, of the Convention establishing the IATTC, to become a member of that organization;

(B) The nation is meeting its obligations under the IDCP and its obligations of membership in the IATTC, including all financial obligations;

(C)

(1) The annual total dolphin mortality of the nation's purse seine fleet (including certified charter vessels operating under its jurisdiction) did not exceed the aggregated total of the mortality limits assigned by the IDCP for that nation's purse seine vessels for the year preceding the year in which the finding would start; or

(2)

(i) Because of extraordinary circumstances beyond the control of the nation and the vessel captains, the total dolphin mortality of the nation's purse seine fleet (including certified charter vessels operating under its jurisdiction) exceeded the aggregated total of the mortality limits assigned by the IDCP for that nation's purse seine vessels; and

(ii) Immediately after the national authorities discovered the aggregate mortality of its fleet had been exceeded, the nation required all its vessels to cease fishing for tuna in association with dolphins for the remainder of the calendar year; and

(D)

(1) In any years in which the parties agree to a global allocation system for per-stock per-year individual stock quotas, the nation responded to the notification from the IATTC that an individual stock quota had been reached by prohibiting any additional sets on the stock for which the quota had been reached;

(2) If a per-stock per-year quota is allocated to each nation, the annual per-stock per-year dolphin mortality of the nation's purse seine fleet (including certified charter vessels operating under its jurisdiction) did not exceed the aggregated total of the per-stock per-year limits assigned by the IDCP for that nation's purse seine vessels (if any) for the year preceding the year in which the finding would start; or

(3)

(i) Because of extraordinary circumstances beyond the control of the nation and the vessel captains, the per-stock per-year dolphin mortality of the nation's purse seine fleet (including certified charter vessels operating under its jurisdiction) exceeded the aggregated total of the per-stock per-year limits assigned by the IDCP for that nation's purse seine vessels; and

(ii) Immediately after the national authorities discovered the aggregate per-stock mortality limits of its fleet had been exceeded, the nation required all its vessels to cease fishing for tuna in association with the stocks whose limits had been exceeded, for the remainder of the calendar year.

(ii) ***Documentary Evidence and Compliance with the IDCP -***

(A) ***Documentary Evidence.*** The Assistant Administrator will make an affirmative finding under [paragraph \(f\)\(8\)\(i\)](#) of this section only if the government of the harvesting nation provides directly to the Assistant Administrator, or authorizes the IATTC to release to the Assistant Administrator, complete, accurate, and timely information that enables the Assistant Administrator to determine whether the harvesting nation is meeting the obligations of the IDCP, and whether ETP-harvested tuna imported from such nation comports with the tracking and verification regulations of [subpart H of this part](#).

(B) **Revocation.** After considering the information provided under [paragraph \(f\)\(8\)\(ii\)\(A\)](#) of this section, each party's financial obligations to the IATTC, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations that diminish the effectiveness of the IDCP, the Assistant Administrator, in consultation with the Secretary of State, will revoke an affirmative finding issued to a nation that is not meeting the obligations of the IDCP.

(iii) A harvesting nation may apply for an affirmative finding at any time by providing to the Assistant Administrator the information and authorizations required in [paragraphs \(f\)\(8\)\(i\)](#) and [\(f\)\(8\)\(ii\)](#) of this section, allowing at least 60 days from the submission of complete information to NMFS for processing.

(iv) The Assistant Administrator will make or renew an affirmative finding for the period from April 1 through March 31 of the following year, or portion thereof, if the harvesting nation has provided all the information and authorizations required by [paragraphs \(f\)\(8\)\(i\)](#) and [\(f\)\(8\)\(ii\)](#) of this section, and has met the requirements of [paragraphs \(f\)\(8\)\(i\)](#) and [\(f\)\(8\)\(ii\)](#) of this section.

(v) **Reconsideration of finding.** The Assistant Administrator may reconsider a finding upon a request from, and the submission of additional information by, the harvesting nation, if the information indicates that the nation has met the requirements under [paragraphs \(f\)\(8\)\(i\)](#) and [\(f\)\(8\)\(ii\)](#) of this section.

(9) **Intermediary nation.** Except as authorized under this paragraph, no yellowfin tuna or yellowfin tuna products harvested by purse seine in the ETP classified under one of the HTS numbers listed in [paragraph \(f\)\(2\)\(i\)](#) of this section may be imported into the United States from any intermediary nation.

(i) An “intermediary nation” is a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to Section 101(a)(2)(B) of the MMPA.

(ii) Shipments of yellowfin tuna that pass through any nation (e.g. on a 'through Bill of Lading') and are not entered for consumption in that nation are not considered to be imports to that nation and thus, would not cause that nation to be considered an intermediary nation under the MMPA.

(iii) The Assistant Administrator will publish in the Federal Register a notice announcing when NMFS has determined, based on the best information available, that a nation is an “intermediary nation.” After the effective date of that notice, the import restrictions of this paragraph shall apply.

(iv) **Changing the status of intermediary nation determinations.** Imports from an intermediary nation of yellowfin tuna and yellowfin tuna products classified under any of the HTS numbers in [paragraph \(f\)\(2\)\(i\)](#) of this section may be imported into the United

States only if the Assistant Administrator determines, and publishes a notice of such determination in the Federal Register, that the intermediary nation has provided certification and reasonable proof that it has not imported in the preceding 6 months yellowfin tuna or yellowfin tuna products that are subject to a ban on direct importation into the United States under Section 101(a)(2)(B) of the MMPA. At that time, the nation shall no longer be considered an “intermediary nation” and these import restrictions shall no longer apply.

(v) The Assistant Administrator will review decisions under this paragraph upon the request of an intermediary nation. Such requests must be accompanied by specific and detailed supporting information or documentation indicating that a review or reconsideration is warranted. For purposes of this paragraph, the term “certification and reasonable proof” means the submission to the Assistant Administrator by a responsible government official from the nation of a document reflecting the nation's customs records for the preceding 6 months, together with a certification attesting that the document is accurate.

(10) ***Fish refused entry.*** If fish is denied entry under [paragraph \(f\)\(2\)](#) of this section, the Port Director of CBP shall refuse to release the fish for entry into the United States.

(11) ***Disposition of fish refused entry into the United States.*** Fish that is denied entry under [paragraph \(f\)\(2\)](#) of this section and that is not exported under CBP supervision within 90 days shall be disposed of under CBP laws and regulations at the importer's expense. Provided, however, that any disposition shall not result in an introduction into the United States of fish caught in violation of the MMPA.

(12) ***Market Prohibitions.***

(i) It is unlawful for any person to sell, purchase, offer for sale, transport, or ship in the United States, any tuna or tuna products unless the tuna products are either:

(A) Dolphin-safe under [subpart H of this part](#); or

(B) Harvested in compliance with the IDCP by vessels under the jurisdiction of a nation that is a member of the IATTC or has initiated, and within 6 months thereafter completes, all steps required by an applicant nation to become a member of the IATTC.

(ii) It is unlawful for any exporter, transshipper, importer, processor, or wholesaler/distributor to possess, sell, purchase, offer for sale, transport, or ship in the United States, any tuna or tuna products bearing a label or mark that refers to dolphins, porpoises, or marine mammals unless the label or mark complies with the requirements of [16 U.S.C. 1385\(d\)](#).

16 USC 1385: Dolphin protection

Text contains those laws in effect on April 4, 2022

From Title 16-CONSERVATION

CHAPTER 31-MARINE MAMMAL PROTECTION

SUBCHAPTER II-CONSERVATION AND PROTECTION OF MARINE MAMMALS

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§1385. Dolphin protection

(a) Short title

This section may be cited as the "Dolphin Protection Consumer Information Act".

(b) Findings

The Congress finds that-

- (1) dolphins and other marine mammals are frequently killed in the course of tuna fishing operations in the eastern tropical Pacific Ocean and high seas driftnet fishing in other parts of the world;
- (2) it is the policy of the United States to support a worldwide ban on high seas driftnet fishing, in part because of the harmful effects that such driftnets have on marine mammals, including dolphins; and
- (3) consumers would like to know if the tuna they purchase is falsely labeled as to the effect of the harvesting of the tuna on dolphins.

(c) Definitions

For purposes of this section-

- (1) the terms "driftnet" and "driftnet fishing" have the meanings given those terms in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note);
- (2) the term "eastern tropical Pacific Ocean" means the area of the Pacific Ocean bounded by 40 degrees north latitude, 40 degrees south latitude, 160 degrees west longitude, and the western coastlines of North, Central, and South America;
- (3) the term "label" means a display of written, printed, or graphic matter on or affixed to the immediate container of any article;
- (4) the term "Secretary" means the Secretary of Commerce; and
- (5) the term "tuna product" means a food item which contains tuna and which has been processed for retail sale, except perishable sandwiches, salads, or other products with a shelf life of less than 3 days.

(d) Labeling standard

- (1) It is a violation of section 45 of title 15 for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term "dolphin safe" or any other term or symbol that falsely claims or suggests that the tuna contained in the product were harvested using a method of fishing that is not harmful to dolphins if the product contains tuna harvested-
 - (A) on the high seas by a vessel engaged in driftnet fishing;
 - (B) outside the eastern tropical Pacific Ocean by a vessel using purse seine nets-
 - (i) in a fishery in which the Secretary has determined that a regular and significant association occurs between dolphins and tuna (similar to the association between dolphins and tuna in the eastern tropical Pacific Ocean), unless such product is accompanied by a written statement, executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Secretary, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna were caught and no dolphins were killed or seriously injured in the sets in which the tuna were caught; or
 - (ii) in any other fishery (other than a fishery described in subparagraph (D)) unless the product is accompanied by a written statement executed by the captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna was harvested;

(C) in the eastern tropical Pacific Ocean by a vessel using a purse seine net unless the tuna meet the requirements for being considered dolphin safe under paragraph (2); or

(D) by a vessel in a fishery other than one described in subparagraph (A), (B), or (C) that is identified by the Secretary as having a regular and significant mortality or serious injury of dolphins, unless such product is accompanied by a written statement executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Secretary that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught, provided that the Secretary determines that such an observer statement is necessary.

(2) For purposes of paragraph (1)(C), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets is dolphin safe if-

(A) the vessel is of a type and size that the Secretary has determined, consistent with the International Dolphin Conservation Program, is not capable of deploying its purse seine nets on or to encircle dolphins; or

(B)(i) the product is accompanied by a written statement executed by the captain providing the certification required under subsection (h);

(ii) the product is accompanied by a written statement executed by-

(I) the Secretary or the Secretary's designee;

(II) a representative of the Inter-American Tropical Tuna Commission; or

(III) an authorized representative of a participating nation whose national program meets the requirements of the International Dolphin Conservation Program,

which states that there was an observer approved by the International Dolphin Conservation Program on board the vessel during the entire trip and that such observer provided the certification required under subsection (h); and

(iii) the statements referred to in clauses (i) and (ii) are endorsed in writing by each exporter, importer, and processor of the product; and

(C) the written statements and endorsements referred to in subparagraph (B) comply with regulations promulgated by the Secretary which provide for the verification of tuna products as dolphin safe.

(3)(A) The Secretary of Commerce shall develop an official mark that may be used to label tuna products as dolphin safe in accordance with this section.¹

(B) A tuna product that bears the dolphin safe mark developed under subparagraph (A) shall not bear any other label or mark that refers to dolphins, porpoises, or marine mammals.

(C) It is a violation of section 45 of title 15 to label a tuna product with any label or mark that refers to dolphins, porpoises, or marine mammals other than the mark developed under subparagraph (A) unless-

(i) no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught;

(ii) the label is supported by a tracking and verification program which is comparable in effectiveness to the program established under subsection (f); and

(iii) the label complies with all applicable labeling, marketing, and advertising laws and regulations of the Federal Trade Commission, including any guidelines for environmental labeling.

(D) If the Secretary determines that the use of a label referred to in subparagraph (C) is substantially undermining the conservation goals of the International Dolphin Conservation Program, the Secretary shall report that determination to the United States Senate Committee on Commerce, Science, and Transportation and the United States House of Representatives Committees on Resources and on Commerce, along with recommendations to correct such problems.

(E) It is a violation of section 45 of title 15 willingly and knowingly to use a label referred to in subparagraph (C) in a campaign or effort to mislead or deceive consumers about the level of protection afforded dolphins under the International Dolphin Conservation Program.

(e) Additional prohibitions and enforcement

For additional prohibitions relating to this section ¹ and enforcement of this section, ¹ see section 1826g of this title.

(f) Regulations

The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement this section, ¹ including regulations to establish a domestic tracking and verification program that provides for the effective tracking of tuna labeled under subsection (d). In the development of these regulations, the Secretary shall establish appropriate procedures for ensuring the confidentiality of proprietary information the submission of which is voluntary or mandatory. The regulations shall address each of the following items:

- (1) The use of weight calculation for purposes of tracking tuna caught, landed, processed, and exported.
- (2) Additional measures to enhance current observer coverage, including the establishment of criteria for training, and for improving monitoring and reporting capabilities and procedures.
- (3) The designation of well location, procedures for sealing holds, procedures for monitoring and certifying both above and below deck, or through equally effective methods, the tracking and verification of tuna labeled under subsection (d).
- (4) The reporting, receipt, and database storage of radio and facsimile transmittals from fishing vessels containing information related to the tracking and verification of tuna, and the definition of set.
- (5) The shore-based verification and tracking throughout the fishing, transshipment, and canning process by means of Inter-American Tropical Tuna Commission trip records or otherwise.
- (6) The use of periodic audits and spot checks for caught, landed, and processed tuna products labeled in accordance with subsection (d).
- (7) The provision of timely access to data required under this subsection by the Secretary from harvesting nations to undertake the actions required in paragraph (6) of this paragraph.²

The Secretary may make such adjustments as may be appropriate to the regulations promulgated under this subsection to implement an international tracking and verification program that meets or exceeds the minimum requirements established by the Secretary under this subsection.

(g) Secretarial findings

(1) Between March 1, 1999, and March 31, 1999, the Secretary shall, on the basis of the research conducted before March 1, 1999, under section 1414a(a) of this title, information obtained under the International Dolphin Conservation Program, and any other relevant information, make an initial finding regarding whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean. The initial finding shall be published immediately in the Federal Register and shall become effective upon a subsequent date determined by the Secretary.

(2) Between July 1, 2001, and December 31, 2002, the Secretary shall, on the basis of the completed study conducted under section 1414a(a) of this title, information obtained under the International Dolphin Conservation Program, and any other relevant information, make a finding regarding whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean. The finding shall be published immediately in the Federal Register and shall become effective upon a subsequent date determined by the Secretary.

(h) Certification by captain and observer

(1) Unless otherwise required by paragraph (2), the certification by the captain under subsection (d)(2)(B)(i) and the certification provided by the observer as specified in subsection (d)(2)(B)(ii) shall be that no dolphins were killed or seriously injured during the sets in which the tuna were caught.

(2) The certification by the captain under subsection (d)(2)(B)(i) and the certification provided by the observer as specified under subsection (d)(2)(B)(ii) shall be that no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphins, and that no dolphins were killed or seriously injured during the sets in which the tuna were caught, if the tuna were caught on a trip commencing-

(A) before the effective date of the initial finding by the Secretary under subsection (g)(1);

(B) after the effective date of such initial finding and before the effective date of the finding of the Secretary under subsection (g)(2), where the initial finding is that the intentional deployment on or encirclement of dolphins is having a significant adverse impact on any depleted dolphin stock; or

(C) after the effective date of the finding under subsection (g)(2), where such finding is that the intentional deployment on or encirclement of dolphins is having a significant adverse impact on any such depleted stock.

(Pub. L. 101–627, title IX, §901, Nov. 28, 1990, 104 Stat. 4465 ; Pub. L. 105–42, §5, Aug. 15, 1997, 111 Stat. 1125 ; Pub. L. 114–81, title I, §109, Nov. 5, 2015, 129 Stat. 659 .)

EDITORIAL NOTES

REFERENCES IN TEXT

This section, referred to in subsecs. (d)(3)(A), (e), and (f), was in the original "this Act", and was translated as referring to the Dolphin Protection Consumer Information Act, which is classified to this section, to reflect the probable intent of Congress.

CODIFICATION

Section was not enacted as part of the Marine Mammal Protection Act of 1972 which comprises this chapter.

AMENDMENTS

2015-Subsec. (e). Pub. L. 114–81 amended subsec. (e) generally. Prior to amendment, text read as follows: "Any person who knowingly and willfully makes a statement or endorsement described in subsection (d)(2)(B) that is false is liable for a civil penalty of not to exceed \$100,000 assessed in an action brought in any appropriate district court of the United States on behalf of the Secretary."

1997-Subsec. (d). Pub. L. 105–42, §5(a), amended heading and text of subsec. (d) generally. Prior to amendment, text read as follows:

"(1) It is a violation of section 45 of title 15 for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term 'Dolphin Safe' or any other term or symbol that falsely claims or suggests that the tuna contained in the product was harvested using a method of fishing that is not harmful to dolphins if the product contains-

"(A) tuna harvested on the high seas by a vessel engaged in driftnet fishing; or

"(B) tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets which do not meet the requirements for being considered dolphin safe under paragraph (2).

"(2) For purposes of paragraph (1)(B), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a fishing vessel using purse seine nets is dolphin safe if-

"(A) the vessel is of a type and size that the Secretary has determined is not capable of deploying its purse seine nets on or to encircle dolphin; or

"(B)(i) the product is accompanied by a written statement executed by the captain of the vessel which harvested the tuna certifying that no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphin;

"(ii) the product is accompanied by a written statement executed by-

"(I) the Secretary or the Secretary's designee, or

"(II) a representative of the Inter-American Tropical Tuna Commission,

which states that there was an approved observer on board the vessel during the entire trip and that purse seine nets were not intentionally deployed during the trip on or to encircle dolphin; and

"(iii) the statements referred to in clauses (i) and (ii) are endorsed in writing by each exporter, importer, and processor of the product."

Subsec. (f). Pub. L. 105–42, §5(b), amended heading and text of subsec. (f) generally. Prior to amendment, text read as follows: "The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement this section not later than 6 months after November 28, 1990, including regulations establishing procedures and requirements for ensuring that tuna products are labeled in accordance with subsection (d) of this section."

Subsec. (g). Pub. L. 105–42, §5(c), added subsec. (g) and struck out former subsec. (g), which had amended section 1371 of this title.

Subsecs. (h), (i). Pub. L. 105–42, §5(c), added subsec. (h) and struck out former subsecs. (h) and (i) which read as follows:

"(h) **NEGOTIATIONS.**-The Secretary of State shall immediately seek, through negotiations and discussions with appropriate foreign governments, to reduce and, as soon as possible, eliminate the practice of harvesting tuna through the use of purse seine nets intentionally deployed to encircle dolphins.

"(i) **EFFECTIVE DATE.**-Subsections (d) and (e) of this section shall take effect 6 months after November 28, 1990."

STATUTORY NOTES AND RELATED SUBSIDIARIES

CHANGE OF NAME

Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1997 AMENDMENT

For effective date of amendment by Pub. L. 105–42, see section 8 of Pub. L. 105–42, set out as a note under section 1362 of this title.

¹ *See References in Text note below.*

² *So in original. Probably should be "this subsection".*

50 CFR 216 Subpart H - Dolphin Safe Tuna Labeling

Authority: [16 U.S.C. 1385](#).

§ 216.90 Purposes.

This subpart governs the requirements for using the official mark described in [§ 216.95](#) or an alternative mark that refers to dolphins, porpoises, or marine mammals, to label tuna or tuna products offered for sale in or exported from the United States using the term dolphin-safe or suggesting the tuna were harvested in a manner not injurious to dolphins.

[[69 FR 55307](#), Sept. 13, 2004]

§ 216.91 Dolphin-safe labeling standards.

(a) It is a violation of Section 5 of the Federal Trade Commission Act ([15 U.S.C. 45](#)) for any producer, importer, exporter, wholesaler/distributor, or seller of any tuna products that are exported from or offered for sale in the United States to include on the label of those products the term “dolphin-safe” or any other term or symbol that claims or suggests that the tuna contained in the products were harvested using a method of fishing that is not harmful to dolphins if the products contain tuna harvested:

(1) ***ETP large purse seine vessel.*** In the ETP by a purse seine vessel of greater than 400 st (362.8 mt) carrying capacity unless:

(i) The documentation requirements for dolphin-safe tuna under [§§ 216.92](#) and [216.93](#) are met;

(ii) No dolphins were killed or seriously injured during the sets in which the tuna were caught; and

(iii) None of the tuna were caught on a trip using a purse seine net intentionally deployed on or to encircle dolphins, provided that this [paragraph \(a\)\(1\)\(iii\)](#) will not apply if the Assistant Administrator publishes a notification in the Federal Register announcing a finding under [16 U.S.C. 1385\(g\)\(2\)](#) that the intentional deployment of purse seine nets on or encirclement of dolphins is not having a significant adverse impact on any depleted stock.

(2) ***Driftnet.*** By a vessel engaged in large-scale driftnet fishing; or

(3) ***Other fisheries.*** By a vessel in a fishery other than one described in [paragraph \(a\)\(1\)](#) or [\(2\)](#) of this section unless such product is accompanied as described in [§ 216.93\(d\)](#), [\(e\)](#), or [\(f\)](#), as appropriate, by:

(i) For tuna caught in a purse seine fishery outside the ETP by a vessel on a fishing trip that began before July 13, 2013, a written statement executed by the Captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna was harvested.

(ii) For tuna caught by a vessel on a fishing trip that began on or after July 13, 2013, and before May 21, 2016, a written statement executed by the Captain of the vessel certifying:

(A) For a purse seine vessel outside the ETP, that no purse seine net was intentionally deployed on or used to encircle dolphins during the fishing trip in which the tuna were caught, and that no dolphins were killed or seriously injured in the sets in which the tuna were caught;

(B) For a vessel other than one described in [paragraph \(a\)\(3\)\(ii\)\(A\)](#) of this section, that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught.

(iii) For tuna caught by a vessel on a fishing trip that began on or after May 21, 2016, a written statement executed by the Captain of the vessel certifying that:

(A) No purse seine net or other fishing gear was intentionally deployed on or used to encircle dolphins during the fishing trip in which the tuna were caught, and that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught; and

(B) The Captain of the vessel has completed the NMFS Tuna Tracking and Verification Program dolphin-safe captain's training course. The NMFS Tuna Tracking and Verification Program dolphin-safe captain's training course is available on the website of the NMFS Tuna Tracking and Verification Program at <https://www.fisheries.noaa.gov/dolphin-safe>.

(iv) For tuna caught in a fishery where the Assistant Administrator has determined that observers participating in a national or international observer program are qualified and authorized to issue observer statements for purposes of the dolphin-safe labeling program, and where such an observer is on board the vessel, a written statement executed by the observer, or by an authorized representative of a nation participating in the observer program based on information from the observer. Any determination by the Assistant Administrator shall be announced in a notice published in the Federal Register. Determinations under this [paragraph \(a\)\(3\)\(iv\)](#) will also be publicized on the website of the NMFS Tuna Tracking and Verification Program (<https://www.fisheries.noaa.gov/dolphin-safe>). The written statement shall certify:

(A) That no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught; and,

(B) In purse seine fisheries, that no purse seine net was intentionally deployed on or used to encircle dolphins during the trip on which the tuna were caught.

(v) For tuna caught in a fishery in which the Assistant Administrator has determined that either a regular and significant association between dolphins and tuna (similar to the association between dolphins and tuna in the ETP) or a regular and significant mortality or serious injury of dolphins is occurring, a written statement, executed by the Captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, unless the Assistant Administrator determines an observer statement is unnecessary. Determinations under this [paragraph \(a\)\(3\)\(v\)](#) will also be publicized on the website of the NMFS Tuna Tracking and Verification Program (<https://www.fisheries.noaa.gov/dolphin-safe>). The written statement shall certify that:

(A) No fishing gear was intentionally deployed on or used to encircle dolphins during the trip on which the tuna were caught;

(B) No dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught; and

(C) Any relevant requirements of [paragraph \(a\)\(4\)](#) of this section were complied with during the trip on which the tuna were caught.

(4) ***Other fisheries - segregation.*** In a fishery other than one described in [paragraph \(a\)\(1\)](#) or [\(2\)](#) of this section on a fishing trip that began on or after July 13, 2013 unless the tuna caught in sets or gear deployments designated as dolphin-safe was stored physically separate from tuna caught in a non-dolphin-safe set or other gear deployment by the use of netting, other material, or separate storage areas from the time of capture through unloading. If tuna caught in a set or other gear deployment where a dolphin was killed or seriously injured is not stored physically separate from dolphin-safe tuna as stated in [§ 216.93\(c\)\(2\)\(i\)](#) or [\(c\)\(3\)\(i\)](#), as applicable, all tuna inside the storage well or other storage location shall be considered non-dolphin-safe.

(5) ***Other fisheries - chain of custody recordkeeping.*** By a vessel in a fishery other than one described in [paragraph \(a\)\(1\)](#) or [\(2\)](#) of this section unless:

(i) For tuna designated dolphin-safe that was harvested on a fishing trip that began on or after May 21, 2016, in addition to any other applicable requirements:

(A) The importer of record or U.S. processor of tuna or tuna products, as applicable, maintains information on the complete chain of custody, including storage facilities, transshippers, processors, re-processors, and wholesalers/distributors to enable dolphin-safe tuna to be distinguished from non-dolphin-safe tuna from the time it is caught to the time it is ready for retail sale;

(B) The importer of record or the U.S. processor, as appropriate, ensures that information is readily available to NMFS upon request to allow it to trace any non-dolphin-safe tuna

loaded onto the vessel back to one or more storage wells or other storage locations for a particular fishing trip and to show that such non-dolphin-safe tuna was kept physically separate from dolphin-safe tuna through unloading.

(ii) For tuna designated dolphin-safe that was harvested in a fishery about which the Assistant Administrator made a determination under [paragraph \(a\)\(3\)\(v\)](#) of this section, and harvested on a fishing trip that begins on or after 60 days after the date of the Federal Register notice of that determination, the tuna or tuna products are accompanied by valid documentation signed by a representative of the vessel flag nation or the processing nation (if processed in another nation) certifying that:

(A) The catch documentation is correct;

(B) The tuna or tuna products meet the dolphin-safe labeling standards under this section; and

(C) The chain of custody information is correct.

(iii) The information referred to in [paragraphs \(a\)\(5\)\(i\)](#) and [\(ii\)](#) of this section is maintained at the place of business of the importer of record or the U.S. processor, as applicable, for a period of 2 years from the date of the import or receipt, and be made available to NMFS for inspection upon request.

(b) It is a violation of section 5 of the Federal Trade Commission Act ([15 U.S.C. 45](#)) to willingly and knowingly use a label referred to in this section in a campaign or effort to mislead or deceive consumers about the level of protection afforded dolphins under the IDCP.

(c) A tuna product that is labeled with the official mark, described in [§ 216.95](#), may not be labeled with any other label or mark that refers to dolphins, porpoises, or marine mammals.

[[81 FR 15448](#), Mar. 23, 2016, as amended at [81 FR 15449](#), Mar. 23, 2016; [83 FR 3626](#), Jan. 26, 2018]

[§ 216.92 Dolphin-safe requirements for tuna harvested in the ETP by large purse seine vessels.](#)

(a) *U.S. vessels.* Tuna products that contain tuna harvested by U.S. flag purse seine vessels of greater than 400 st (362.8 mt) carrying capacity in the ETP may be labeled dolphin-safe only if the following requirements are met:

(1) Tuna Tracking Forms containing a complete record of all the fishing activities on the trip, certified by the vessel Captain and the observer, are submitted to the Administrator, Southwest Region, at the end of the fishing trip during which the tuna was harvested;

(2) The tuna is delivered for processing to a U.S. tuna processor in a plant located in one of the 50 states, Puerto Rico, or American Samoa that is in compliance with the tuna tracking and verification requirements of [§ 216.93](#); and

(3) The tuna or tuna products meet the dolphin-safe labeling standards under [§ 216.91](#).

(b) ***Imported tuna.***

(1) Yellowfin tuna or tuna products harvested in the ETP by vessels of greater than 400 st (362.8 mt) carrying capacity and presented for import into the United States may be labeled dolphin-safe only if the yellowfin tuna was harvested by a U.S. vessel fishing in compliance with the requirements of the IDCP and applicable U.S. law, or by a vessel belonging to a nation that has obtained an affirmative finding under [§ 216.24\(f\)\(8\)](#).

(2) Tuna or tuna products, other than yellowfin tuna, harvested in the ETP by purse seine vessels of greater than 400 st (362.8 mt) carrying capacity and presented for import into the United States may be labeled dolphin-safe only if:

(i) The tuna was harvested by a U.S. vessel fishing in compliance with the requirements of the IDCP and applicable U.S. law, or by a vessel belonging to a nation that is a Party to the Agreement on the IDCP or has applied to become a Party and is adhering to all the requirements of the Agreement on the IDCP Tuna Tracking and Verification Plan;

(ii) The tuna or tuna products are accompanied as described in [§ 216.24\(f\)\(3\)](#) by a properly completed FCO; and

(iii) The tuna or tuna products are accompanied as described in [§ 216.24\(f\)\(3\)](#) by valid documentation signed by a representative of the appropriate IDCP member nation, containing the harvesting vessel names and tuna tracking form numbers represented in the shipment, and certifying that:

(A) There was an IDCP approved observer on board the vessel(s) during the entire trip(s); and

(B) The tuna contained in the shipment were caught according to the dolphin-safe labeling standards of [§ 216.91](#).

[[69 FR 55307](#), Sept. 13, 2004, as amended at [74 FR 1617](#), Jan. 13, 2009]

[§ 216.93 Tracking and verification program.](#)

The Administrator, Southwest Region, has established a national tracking and verification program to accurately document the dolphin-safe condition of tuna, under the standards set forth in [§§ 216.91](#) and [216.92](#). The tracking program includes procedures and reports for use when importing tuna into the United States and during U.S. fishing, processing, and marketing in the United States and abroad. Verification of tracking system operations is attained through the

establishment of audit and document review requirements. The tracking program is consistent with the international tuna tracking and verification program adopted by the Parties to the Agreement on the IDCP.

(a) ***Tuna tracking forms.*** Whenever a U.S. flag tuna purse seine vessel of greater than 400 st (362.8 mt) carrying capacity fishes in the ETP, IDCP approved Tuna Tracking Forms (TTFs), bearing a unique number assigned to that trip, are used by the observer to record every set made during that trip. One TTF is used to record dolphin-safe sets and a second TTF is used to record non-dolphin-safe sets. The information entered on the TTFs following each set includes the date, well number, weights by species composition, estimated tons loaded, and additional notes, if any. The observer and the vessel engineer initial the entry as soon as possible following each set, and the vessel captain and observer review and sign both TTFs at the end of the fishing trip certifying that the information on the forms is accurate. TTFs are confidential official documents of the IDCP, consistent with Article XVIII of the Agreement on the IDCP, and the Agreement on the IDCP Rules of Confidentiality.

(b) ***Dolphin-Safe Certification.*** Upon request, the Office of the Administrator, Southwest Region, will provide written certification that tuna harvested by U.S. purse seine vessels greater than 400 st (362.8 mt) carrying capacity is dolphin-safe, but only if NMFS' review of the TTFs for the subject trip shows that the tuna for which the certification is requested is dolphin-safe under the requirements of the Agreement on the IDCP and U.S. law.

(c) ***Tracking fishing operations.***

(1) ***ETP large purse seine vessel.*** In the ETP by a purse seine vessel of greater than 400 st (362.8 mt) carrying capacity:

(i) During fishing trips, any part of which included fishing in the ETP, by purse seine vessels greater than 400 st (362.8 mt) carrying capacity, tuna caught in sets designated as dolphin-safe by the vessel observer must be stored separately from tuna caught in non-dolphin-safe sets from the time of capture through unloading. Vessel personnel will decide into which wells tuna will be loaded. The observer will initially designate whether each set is dolphin-safe or not, based on his/her observation of the set. The observer will initially identify a vessel fish well as dolphin-safe if the first tuna loaded into the well during a trip was captured in a set in which no dolphin died or was seriously injured. The observer will initially identify a vessel fish well as non-dolphin-safe if the first tuna loaded into the well during a trip was captured in a set in which a dolphin died or was seriously injured. Any tuna loaded into a well previously designated non-dolphin-safe is considered non-dolphin-safe tuna. The observer will change the designation of a dolphin-safe well to non-dolphin-safe if any tuna are loaded into the well that were captured in a set in which a dolphin died or was seriously injured.

(ii) The captain, managing owner, or vessel agent of a U.S. purse seine vessel greater than 400 st (362.8 mt) returning to port from a trip, any part of which included fishing in the ETP, must provide at least 48 hours' notice of the vessel's intended place of landing, arrival time, and schedule of unloading to the Administrator, Southwest Region.

(iii) If the trip terminates when the vessel enters port to unload part or all of its catch, new TTFs will be assigned to the new trip, and any information concerning tuna retained on the vessel will be recorded as the first entry on the TTFs for the new trip. If the trip is not terminated following a partial unloading, the vessel will retain the original TTFs and submit a copy of those TTFs to the Administrator, Southwest Region, within 5 working days. In either case, the species and amount unloaded will be noted on the respective originals.

(iv) Tuna offloaded to trucks, storage facilities, or carrier vessels must be loaded or stored in such a way as to maintain and safeguard the identification of the dolphin-safe or non-dolphin-safe designation of the tuna as it left the fishing vessel.

(v) The handling of TTFs and the tracking and verification of tuna caught in the Convention Area by a U.S. purse seine vessel greater than 400 st (362.8 mt) carrying capacity shall be conducted consistent with the international tuna tracking and verification program adopted by the Parties to the Agreement on the IDCP.

(2) ***Purse seine vessel other than ETP large purse seine vessel.*** This [paragraph \(c\)\(2\)](#) applies to tuna product labeled dolphin-safe that includes tuna harvested on a fishing trip that began on or after July 13, 2013, in the ETP by a purse seine vessel of 400 st (362.8 mt) or less carrying capacity or by a purse seine vessel outside the ETP of any carrying capacity.

(i) Tuna caught in sets designated as dolphin-safe must be stored separately from tuna caught in non-dolphin-safe sets from the time of capture through unloading. Tuna caught in sets where a dolphin died or was seriously injured must be stored in a well designated as non-dolphin-safe by the captain or, where applicable, by a qualified and authorized observer under [§ 216.91](#). Any tuna loaded into a well previously designated non-dolphin-safe is considered non-dolphin-safe tuna. The captain or, where applicable, a qualified and authorized observer under [§ 216.91](#), will change the designation of a dolphin-safe well to non-dolphin-safe if any tuna are loaded into the well that were captured in a set in which a dolphin died or was seriously injured. If a purse seine vessel has only one well used to store tuna, dolphin-safe tuna must be kept physically separate from non-dolphin-safe tuna by using netting or other material. If a purse seine vessel has more than one well used to store tuna, all tuna inside a well shall be considered non-dolphin-safe, if at any time non-dolphin-safe tuna is loaded into the well, regardless of the use of netting or other material inside the well.

(ii) Tuna offloaded to trucks, storage facilities, or carrier vessels must be loaded or stored in such a way as to maintain and safeguard the identification of the dolphin-safe or non-dolphin-safe designation of the tuna as it left the fishing vessel.

(3) ***Other vessels.*** This [paragraph \(c\)\(3\)](#) applies to tuna product labeled dolphin-safe that includes tuna harvested by a vessel on a fishing trip that began on or after July 13, 2013 other than ones described in [paragraphs \(c\)\(1\)](#) or [\(2\)](#) of this section:

(i) Tuna caught in sets or other gear deployments designated as dolphin-safe must be stored separately from tuna caught in non-dolphin-safe sets or other gear deployments from the time of capture through unloading. Dolphin-safe tuna must be kept physically separate from non-dolphin-safe tuna by using netting, other material, or separate storage areas. The captain or, where applicable, a qualified and authorized observer under [§ 216.91](#), must designate the storage areas for dolphin-safe and non-dolphin-safe tuna.

(ii) Tuna offloaded to trucks, storage facilities, or carrier vessels must be loaded or stored in such a way as to maintain and safeguard the identification of the dolphin-safe or non-dolphin-safe designation of the tuna as it left the fishing vessel.

(d) ***Tracking cannery operations.***

(1) Whenever a U.S. tuna canning company in the 50 states, Puerto Rico, or American Samoa receives a domestic or imported shipment of tuna for processing, a NMFS representative may be present to monitor delivery and verify that dolphin-safe and non-dolphin-safe tuna are clearly identified and remain segregated. Such inspections may be scheduled or unscheduled, and canners must allow the NMFS representative access to all areas and records.

(2) Tuna processors must submit a report to the Administrator, Southwest Region, of all tuna received at their processing facilities in each calendar month whether or not the tuna is actually canned or stored during that month. Monthly cannery receipt reports must be submitted electronically or by mail before the last day of the month following the month being reported. Monthly reports must contain the following information:

(i) ***Domestic receipts:*** whether the tuna is eligible to be labeled dolphin-safe under [§ 216.91](#), species, condition (round, loin, dressed, gilled and gutted, other), weight in short tons to the fourth decimal, ocean area of capture (ETP, western Pacific, Indian, eastern and western Atlantic, other), catcher vessel, gear type, trip dates, carrier name, unloading dates, and location of unloading. Where the processor indicates the tuna is eligible to be labeled dolphin-safe under [§ 216.91](#), it must enclose the certifications required by that section.

(ii) ***Import receipts:*** In addition to the information required in [paragraph \(d\)\(2\)\(i\)](#) of this section, a copy of the FCO for each imported receipt must be provided.

(3) Tuna processors must report on a monthly basis the amounts of ETP-caught tuna that were immediately utilized upon receipt or removed from cold storage. This report may be submitted in conjunction with the monthly report required in [paragraph \(d\)\(2\)](#) of this section. This report must contain:

(i) The date of removal from cold storage or disposition;

(ii) Storage container or lot identifier number(s) and dolphin-safe or non-dolphin-safe designation of each container or lot; and

(iii) Details of the disposition of fish (for example, canning, sale, rejection, etc.).

(4) During canning activities, non-dolphin-safe tuna may not be mixed in any manner or at any time during processing with any dolphin-safe tuna or tuna products and may not share the same storage containers, cookers, conveyers, tables, or other canning and labeling machinery.

(e) **Tracking processor operations other than cannery operations.** U.S. tuna processors other than cannery operations engaged in processing tuna products, including frozen, dried, or smoked tuna products, must submit a report to the Administrator, Southwest Region that includes the information set out in [§ 216.93\(d\)\(2\)](#) and [\(3\)](#) on a monthly basis for all tuna received at their processing facilities that will be included in any tuna product labeled dolphin-safe.

(f) **Tracking imports.** All tuna products, except fresh tuna, that are imported into the United States must be accompanied as described in [§ 216.24\(f\)\(3\)](#) by a properly certified FCO as required by [§ 216.24\(f\)\(2\)](#). For tuna tracking purposes, copies of FCOs and associated certifications and statements must be submitted by the importer of record to U.S. Customs and Border Protection as described in and required by [§ 216.24\(f\)\(2\)](#).

(g) **Verification requirements.**

(1) **Record maintenance.** Any exporter, transshipper, importer, processor, or wholesaler/distributor of any tuna or tuna products must maintain records related to that tuna for at least 2 years. These records include, but are not limited to: FCOs and required certifications, any reports required in [paragraphs \(a\), \(b\), \(d\) and \(e\)](#) of this section, invoices, other import documents, and trip reports.

(2) **Record submission.** At the time of, or in advance of, importation of a shipment of tuna or tuna products, any importer of tuna or tuna products must submit all corresponding FCOs and required certifications and statements for those tuna or tuna products as required by [§ 216.24\(f\)\(2\)](#).

(3) **Audits and spot checks.** Upon request of the Administrator, Southwest Region, any exporter, transshipper, importer, processor, or wholesaler/distributor of tuna or tuna products must provide the Administrator, Southwest Region, timely access to all pertinent records and facilities to allow for audits and spot-checks on caught, landed, stored, and processed tuna.

(h) **Confidentiality of proprietary information.** Information submitted to the Assistant Administrator under this section will be treated as confidential in accordance with NOAA Administrative Order 216-100 “Protection of Confidential Fisheries Statistics.”

[[78 FR 41002](#), July 9, 2013, as amended at [81 FR 51133](#), Aug. 3, 2016]

[§ 216.94 False statements or endorsements.](#)

Any person who knowingly and willfully makes a false statement or false endorsement required by [§ 216.92](#) is liable for a civil penalty not to exceed \$100,000, that may be assessed in an action brought in any appropriate District Court of the United States on behalf of the Secretary.

[[61 FR 27794](#), June 3, 1996. Redesignated at [69 FR 55307](#), Sept. 13, 2004]

§ 216.95 Official mark for “Dolphin-safe” tuna products.

(a) This is the “official mark” (see figure 1) designated by the United States Department of Commerce that may be used to label tuna products that meet the “dolphin-safe” standards set forth in the Dolphin Protection Consumer Information Act, [16 U.S.C. 1385](#), and implementing regulations at [§§ 216.91](#) through [216.94](#):

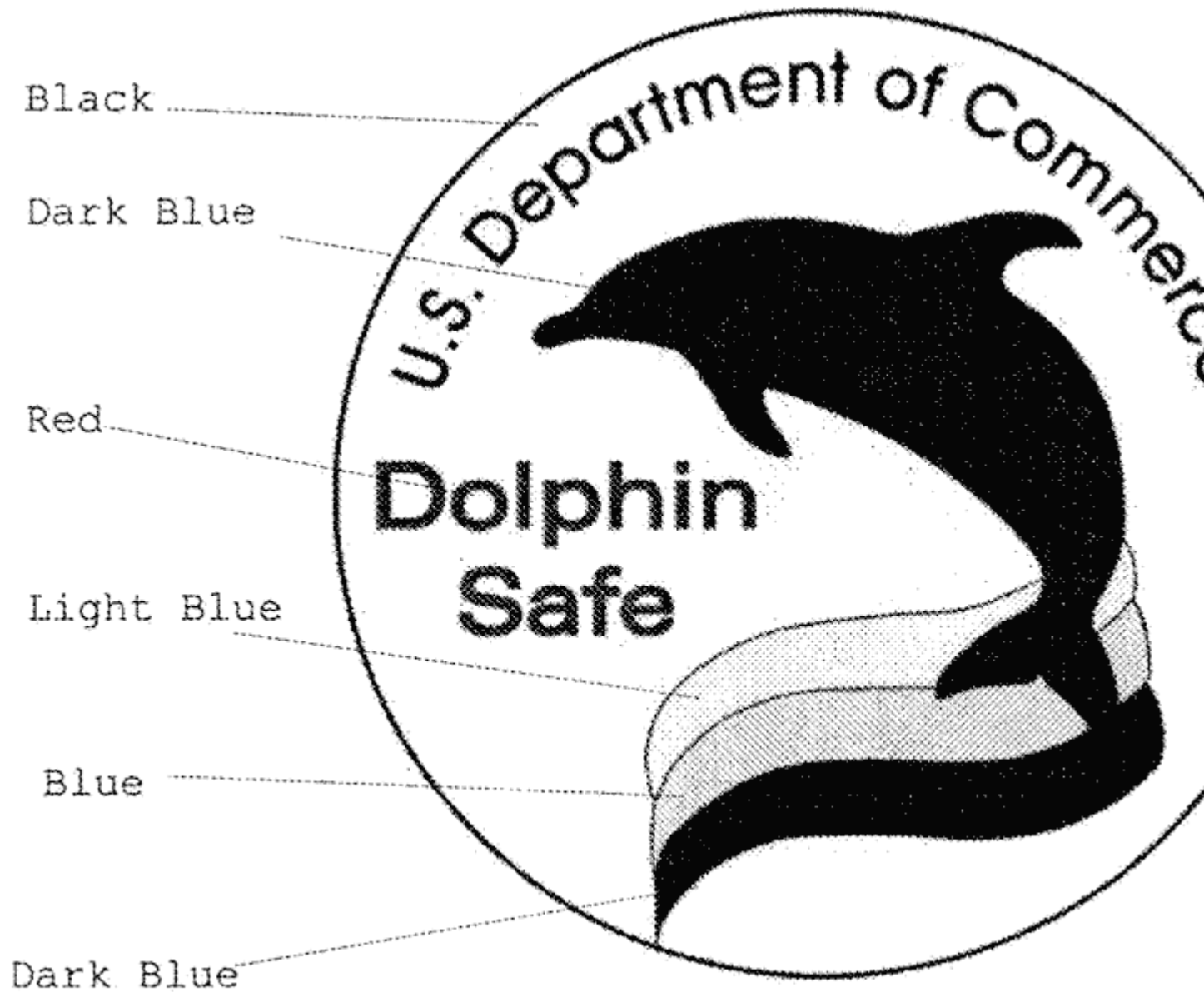


Figure 1.

(b) **Location and size of the official mark.** The official mark on labels must allow the consumer to identify the official mark and be similar in design and scale to figure 1. A full color version of the official mark is available at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/dolphin-safe-official-mark>.

[[65 FR 34410](#), May 30, 2000. Redesignated at [69 FR 55307](#), Sept. 13, 2004, as amended at [83 FR 3626](#), Jan. 26, 2018]