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## Title 50 —Wildlife and Fisheries

### Chapter II

#### —National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

### Subchapter C —Marine Mammals

#### Part 216 —Regulations Governing the Taking and Importing of Marine Mammals

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#### ● 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 cannery 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:

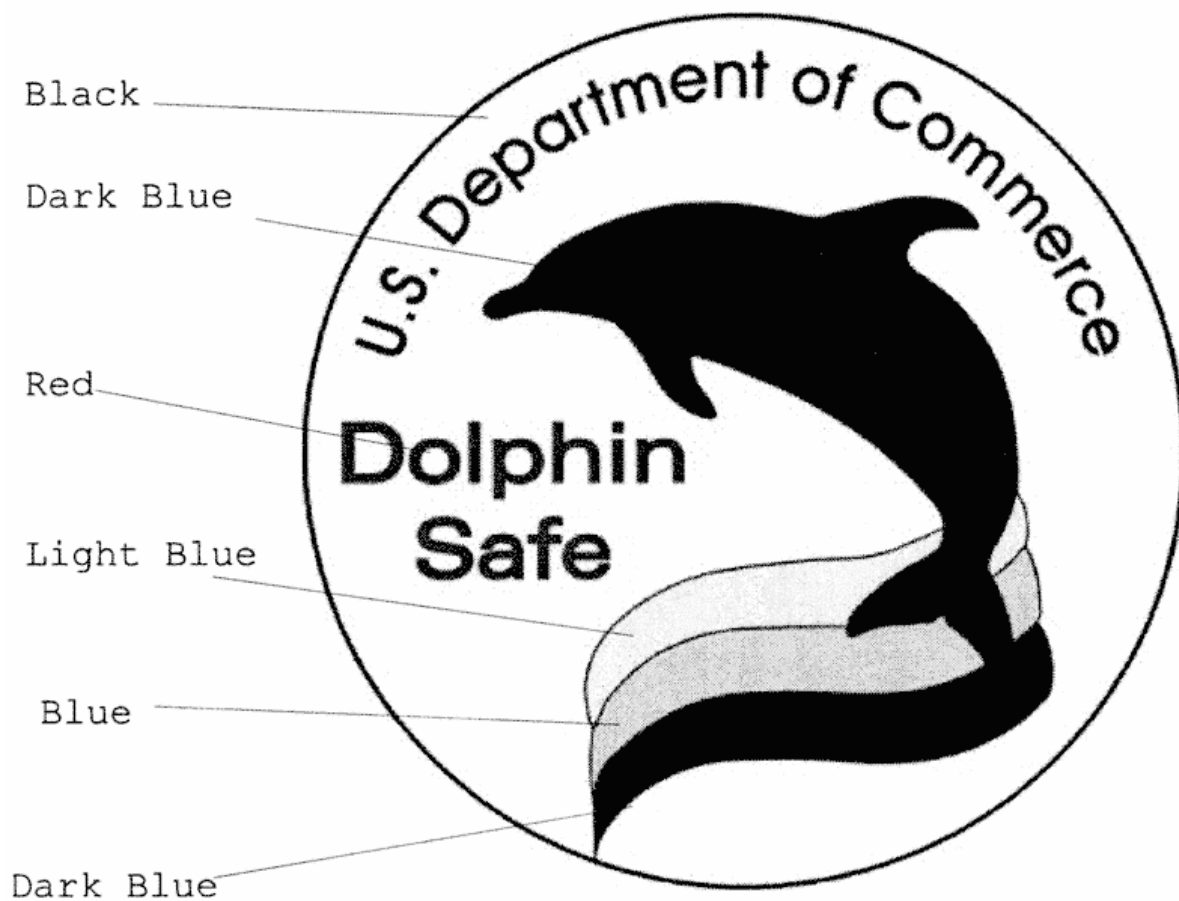


Figure 1.

- (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]

