

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 07/26/2007

Department of Commerce  
National Oceanic and Atmospheric Administration  
FOR CERTIFYING OFFICIAL: Barry West  
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 04/10/2007

ACTION REQUESTED: Extension without change of a currently approved collection  
TYPE OF REVIEW REQUESTED: Regular  
ICR REFERENCE NUMBER: 200703-0648-001  
AGENCY ICR TRACKING NUMBER:  
TITLE: Fisheries Certificate of Origin  
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved with change  
OMB CONTROL NUMBER: 0648-0335

The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 07/31/2010

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	4,000	1,033	0
New	11,000	3,667	3,397
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	0	0	0
Change due to Agency Adjustment	7,000	2,634	3,397
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE: The agency must make greater effort to accurately complete the information for ROCIS. For example, in this submission, burden changes were incorrectly reported as due to agency discretion. In addition, the agency must make greater effort to report the number of small entities that are respondents to each information collection. The assertion in the supporting statement that the collection does not have a significant impact is not the equivalent of a collection not collecting information from any small entities.

OMB Authorizing Official:

John F. Morrall III  
Acting Deputy Administrator,  
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Fisheries Certificate of Origin	370	Fisheries Certificate of Origin	

# PAPERWORK REDUCTION ACT SUBMISSION

**Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.**

1. Agency/Subagency originating request	2. OMB control number <span style="float: right;">b. <input type="checkbox"/> None</span> a. _____ - _____
3. Type of information collection ( <i>check one</i> ) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested ( <i>check one</i> ) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) ( <i>if applicable</i> )	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	
10. Abstract	
11. Affected public ( <i>Mark primary with "P" and all others that apply with "x"</i> ) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond ( <i>check one</i> ) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden ( <i>in thousands of dollars</i> ) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection ( <i>Mark primary with "P" and all others that apply with "X"</i> ) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting ( <i>check all that apply</i> ) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission)  Name: _____ Phone: _____

## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

**NOTE:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT  
FISHERIES CERTIFICATE OF ORIGIN  
OMB CONTROL NO.: 0648-0335**

**A. JUSTIFICATION**

**1. Explain the circumstances that make the collection of information necessary.**

The purpose of this collection of information is to comply with the requirements of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361, and the Dolphin Protection Consumer Information Act (DPCIA), 16 U.S.C. 1385, as amended by the International Dolphin Conservation Program Act (IDCPA), 16 U.S.C. 1414. The MMPA and the DPCIA required the Secretary of Commerce to promulgate regulations that restricted the fishing, sale, importation, and transportation of tuna that is not dolphin-safe and of certain other fish and fish products when they have been harvested by high seas driftnets. The IDCPA primarily amends provisions in the MMPA and the DPCIA governing marine mammal mortality in the U.S. eastern tropical Pacific Ocean (ETP) tuna purse seine fishery and the importation of yellowfin tuna and yellowfin tuna products from other nations with vessels engaged in the ETP tuna purse seine fishery.

A final rule, affecting 50 CFR Part 216 published in the Federal Register on September 13, 2004 (amended by a final rule affecting 50 CFR Parts 216 and 300 published on April 12, 2005), implemented provisions of the IDCPA which allows the entry of ETP-caught yellowfin tuna into the United States under certain conditions and establishes a tuna tracking program to ensure adequate tracking and verification of dolphin-safe labeled tuna. This information collection documents the dolphin-safe status of tuna import shipments; verifies that import shipments of fish were not harvested by large scale, highseas driftnets; and verifies that tuna was not harvested by a nation under embargo or otherwise prohibited from exporting tuna to the United States.

**2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.**

The Fisheries Certificate of Origin (FCO) provides the National Marine Fisheries Service (NMFS) information concerning the origin, type, and quantity of the imported tuna. The FCO provides a mechanism for foreign exporters and government officials to use in documenting and certifying the fishing method and dolphin-safe status of the accompanying shipment. It requires U.S. importers to provide this information to the U.S. Customs and Border Protection (CBP) at the time of importation which assists the CBP in preventing tuna, not properly documented, from entering the United States. In addition, the CBP importer of record is required to send a copy of the FCO to NMFS within 30 days of the shipment. All parties that submit FCOs are required to retain a copy of the FCO for a period of two years and to provide such copies to the NMFS within thirty days of receiving a written request from the NMFS Regional Administrator, Southwest Region.

If the importer of record is not the final destination of the entire shipment, additional importers or processors who take custody of the shipment are asked to endorse and date the form to certify

that the form and attached documentation accurately describes the accompanying shipment. The additional endorsers are required to file the form but need not submit it unless it is requested at a later time during a tuna tracking audit.

If an importation includes tuna and/or tuna products harvested by a purse seine net outside of the ETP (where there is no requirement for an onboard observer), then a statement signed by the vessel captain certifying that no purse seine net was intentionally deployed on or to encircle dolphins during the fishing trip must be attached to the FCO.

If the importation includes tuna and/or tuna products harvested in the ETP by a purse seine vessel of more than 400 short tons carrying capacity, then valid documentation signed by a representative of the appropriate International Dolphin Conservation Program (IDCP)-member nation must be attached to the FCO certifying that 1) there was an IDCP-approved observer on board the vessel during the entire trip; 2) no purse seine net was intentionally deployed on or to encircle dolphins during the fishing trip and no dolphins were killed or seriously injured in the sets in which the tuna were caught; 3) a listing of the numbers for the associated Tuna Tracking Forms which contain the captain's and observer's certifications.

National Oceanic and Atmospheric Administration (NOAA) has made use of the FCO in documenting the entry of tuna and certain other fish products into the United States for a number of years. NOAA has also used the information collected on the FCO in litigation, fisheries management decisions, and international negotiation decisions.

The information collected will not be disseminated to the public since the individual forms contain no information useful to anyone outside of the involved federal agencies. The main purpose of the form is to satisfy the legal mandates of Congress.

In the event summarized information is used to support publicly disseminated information, then as explained in the preceding paragraphs, the information gathered can be shown to have utility. NOAA, NMFS will retain control over the information and safeguard it from improper use, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.**

The FCO form is available for online completion or downloading from the NMFS Southwest Region web site and the Dolphinsafe.gov web site for use on the respondent's own computer system. Respondents are encouraged to provide electronic copies to NMFS via a secure File Transfer Protocol (FTP) server. Currently, approximately 15% of the responses are received in this manner.

**4. Describe efforts to identify duplication.**

The FCO was one of the first forms developed by NMFS to document information regarding the importation of tuna products, to certify that certain fishery products were not harvested using high seas driftnets, and to declare the dolphin-safe status of the tuna import. The same or similar information is not available through any other known information collection.

**5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.**

This collection does not have a significant impact on small entities.

**6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.**

The Secretary of Commerce would not be able to meet the mandates of the applicable laws if the information collection was not conducted. Litigation against the Federal Government would likely ensue.

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

This information collection is consistent with Office of Management and Budget (OMB) guidelines (5 CFR 1320.6), except that submission is required for each shipment of tuna and covered fish products that enter the United States. This may be more frequent than quarterly for some importers.

**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

A Federal Register Notice, published on December 5, 2006 solicited public comment on this collection.

One comment was received due to the Notice (see below). No corrective action was taken by the agency since the comment was based on an incorrect assertion.

**Comment Received from December 5, 2006 Federal Register Notice**

From: John Beowulf <beowulfborealis@yahoo.com>  
Subject: Comments on "Dolphin Safe" Tuna

Date: 12/13/2006 02:19 PM

I think it is really unfortunate that NOAA still looks to the fishing industry to provide evidence that they do not kill dolphins (or other marine species needing protection) after all these years. The Sam La Buddy film of the Mexican tuna fishers came out in 1990 and here we are 16 years later, expecting this same fleet to admit to killing dolphins while using purse seine nets in the North Pacific Ocean? The only fleet that



willingly complied was the American tuna fleet based in San Diego, and ironically, they were the cleanest purse seine fleet of any that set nets on dolphins. Now, that fleet is gone and NOAA still thinks that the foreign fleets would comply? Ridiculous. I myself have observed Mexican tuna clippers operating on the Gordo Banks (near Cabo San Lucas) and killing dolphins. Incidentally, the Gordo Banks is supposed to be a fishing preserve for sport fishing and commercial ships are not supposed to fish there. Obviously, these foreign fleets just laugh at NOAA and it's silly rules. You can be sure that load of tuna ended up on American grocery shelves labeled "dolphin safe".

John Beowulf  
PO BOX 506  
Independence, CA 93526  
(760) 878-2074

### **Agency Response**

The ETP is the only ocean area in which there has been a determination that a regular and significant association occurs between dolphins and tuna. Whenever an importation contains tuna harvested in the ETP by a purse seine vessel of more than 400 short tons carrying capacity, a valid certification signed by a representative of the appropriate IDCP-member nation is required to be attached to the FCO. Thus, the assertion that NOAA relies on the "fishing industry to provide evidence that they do not kill dolphins" is not correct.

Since the last OMB approval, two final rules were published in the Federal Register (September 13, 2004 & April 12, 2005). The associated Proposed Rules solicited comments on the collection. No comments specifically addressing the estimated cost and burden were received.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

No payments or gifts are provided.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

None of the information collection is considered confidential; thus, there is no assurance of confidentiality provided to respondents. However, information collected is handled in compliance with agency filing and retention policy.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

No questions of a sensitive nature are included in this information collection.

**12. Provide an estimate in hours of the burden of the collection of information.**

In 2006, preliminary program data shows approximately 350 different respondents submitted approximately 11,000 responses. It is estimated that each response averages 20 minutes. Therefore, the estimate in hours of the burden of the collection of information is:

$(11,000 \text{ responses} \times 20 \text{ minutes}) / 60 \text{ minutes} = 3,667 \text{ hours.}$

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).**

Approximately 15% of responses are submitted electronically, so no cost involved. Also, respondents average 3 responses per mailing. Therefore, if 11,000 responses per year are received then the cost might be:

Copying:  $11,000 \times 85\% \times 2 \times \$0.10/\text{copy} = \$1,870/\text{yr}$   
Envelopes:  $11,000 \times 85\%$  divided by 3  $\times \$0.10/\text{envelope} = \$312/\text{yr}$   
Postage:  $11,000 \times 85\%$  divided by 3  $\times \$0.39$  (stamp) =  $\$1,215/\text{yr}$   
Total annual cost burden estimate:  $\$1,870 + \$312 + \$1,215 = \$3,397$

**14. Provide estimates of annualized cost to the Federal government.**

Staff hours to collect, analyze, input, & file 11,000 collections per year:

$11,000 \text{ forms} \times 10 \text{ minutes/form} = 1,826 \text{ staff hours/year}$

5 minutes analysis per collection @  $\$36.50/\text{hr}$  (GS-11/12)  
5 minutes =  $0.0833 \text{ hrs} \times \$36.50/\text{hr} = \$3.04$   
4 minutes data entry per collection @  $\$10.00/\text{hr}$  (Student Intern)  
4 minutes =  $0.0666 \text{ hr} \times \$10.00/\text{hr} = \$0.67$   
1 minute for filing per collection @  $\$10.00/\text{hr}$  (Student Intern)  
1 minute =  $0.0166 \text{ hrs} \times \$10.00/\text{hr} = \$0.17$

$11,000 \text{ responses/yr} \times (\$3.04 + \$0.67 + \$0.17) = \$42,680$

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

The adjustments shown on Items 13 and 14 of the OMB 83-I are due to a significant increase in the total number of responses received each year since the last estimation was made.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

Not applicable.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

Not applicable.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

Not applicable.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

*(If your collection does not employ statistical methods, just say that and delete the following five questions from the format.)*

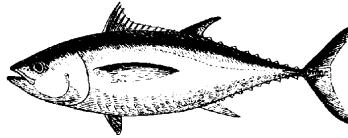
This collection does not employ statistical methods.

## Fisheries Certificate of Origin

U.S. DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC  
 ADMINISTRATION

NATIONAL MARINE FISHERIES SERVICE



1. Customs Entry Identification

\_\_\_\_\_  
 Customs Entry Number (11 digits)

\_\_\_\_\_  
 Date of Entry

2. Exporter (Name and Address)

Telephone Number:

3. Importer (Name and Address)

Telephone Number:

### 4. DESCRIPTION OF FISH

U.S. Tariff Schedule Number, Species Description, and Product Form	Weight (kg.)	Ocean Area	Fishing Gear	Vessel Flag	Trip Dates Begin-End	Vessel Name

### 5. DOLPHIN SAFE STATUS - check the statement that applies.

A. The tuna or tuna products described herein are not certified to be dolphin safe and contain no marks or labels that indicate otherwise.

B. The tuna or tuna products described herein are certified to be dolphin safe:

- (1) Tuna not harvested with a purse seine net, and not harvested in any fishery that has been identified by the Assistant Administrator as causing a regular and significant mortality or serious injury to dolphins.
- (2) Tuna harvested using a purse seine net outside the Eastern Tropical Pacific Ocean (ETP), with valid documentation by the captain of the vessel certifying that no purse seine net was intentionally deployed on or to encircle dolphins during the fishing trip. **Captain's statement attached.**
- (3) Tuna harvested by purse seine vessel outside the ETP in a fishery in which there is a regular and significant association occurring between marine mammals and tuna, with valid documentation by an authorized observer and the captain of the vessel, certifying that no purse seine net was intentionally deployed on or to encircle dolphins during the fishing trip and no dolphins were killed or seriously injured in the sets in which the tuna were caught. **Observer's and captain's statements attached.**
- (4) Tuna harvested in the ETP by a purse seine vessel having a carrying capacity of 400 short tons (362.8mt) or less.
- (5) Tuna harvested in the ETP by a purse seine vessel of more than 400 short tons (362.8mt) carrying capacity with valid documentation signed by a representative of the appropriate IDCP-member nation certifying that: (1) there was an IDCP-approved observer on board the vessel during the entire trip; (2) no purse seine net was intentionally deployed on or to encircle dolphins during the fishing trip and no dolphins were killed or seriously injured in the sets in which the tuna were caught; (3) listing the numbers for the associated Tuna Tracking Forms which contain the captain's and observer's certifications. **IDCP Member Nation Certification attached.**

6. EXPORTER CERTIFICATION - I certify that the above information is complete, true, and correct to the best of my knowledge and belief.

Exporter Name (Print or Type)

Signature and Date:

7. HIGH SEAS DRIFTNET CERTIFICATION - For fish or fish products harvested by, or exported from, a designated large-scale driftnet nation. I attest that the fish or fish products described herein were not harvested by a large-scale driftnet on the high seas.

Name and title of Government Representative (Print or Type)

Signature and Date:

### 8. IMPORTER/PROCESSOR ENDORSEMENT

(Name and Address)

Signature and Date:

(Name and Address)

Signature and Date:

(Name and Address)

Signature and Date:

GENERAL INFORMATION – The information requested on this form is necessary to substantiate the origin and method of harvest of tuna and certain other fish products as required by 50 CFR Part 216.24(f). This form is required for all tuna and tuna products entered into the United States under an HTS number listed in 216.24(f)(2)(i) or (ii) and for any fish exported from a large-scale driftnet nation entered under any of the HTS numbers listed in 216.24(f)(2). This form may also be used to document U.S. domestic landings and shipments of certain tuna and tuna products as required by 50 CFR Part 216.92(a). The information submitted on the form will be used to determine whether or not the listed shipment will be allowed entry into the United States. The information provided will be treated as confidential in accordance with NOAA Administrative Order 216-100. Mail a copy of each form and attached statements to: National Marine Fisheries Service, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. Questions concerning the use of the form may be directed to (562) 980-4030. This form may be downloaded from the Internet at <http://swr.nmfs.noaa.gov/noaa370.htm> and reproduced as necessary.

## **INSTRUCTIONS.**

1. CUSTOMS ENTRY IDENTIFICATION - Importer must enter the shipment's assigned U.S. Customs Entry Number and the projected date of entry (day/month/year, i.e., 15/Jan/2000)
2. EXPORTER - Enter company name and address of exporter and contact phone number of responsible company representative.
3. IMPORTER - Enter name and address of importer or consignee and contact phone number of responsible company representative.
4. DESCRIPTION OF FISH -

U.S. HARMONIZED TARIFF SCHEDULE NUMBER, SPECIES DESCRIPTION AND PRODUCT FORM - Enter U.S. HTS Number of fish or fish product, the species description and product form in English. HTS numbers are listed in 50 CFR 216.24(f)(2). Only shipments from countries that use large-scale driftnets are required to be accompanied by this form for other species of fish and fish products. **This form is not required for fresh tuna.**

WEIGHT - Enter the total **net** weight of the shipment **in kilograms.**

OCEAN AREA OF CATCH - Enter the ocean area in which the fish contained in this shipment were harvested:

- EA - Eastern Atlantic (east of 45E W. longitude)
- WA - Western Atlantic (west of 45E W. longitude)
- ETP - Eastern Tropical Pacific (east of 160E W. longitude, between 40E N. and 40E S. latitude)
- NP - North Pacific Ocean (north of 40E N. latitude)
- SP - South Pacific Ocean (west of 160E W. longitude, south of 15E S. latitude and east of 160E W. longitude, south of 40E S. latitude)
- WP - Western Pacific Ocean (west of 160E W. longitude and north of 15E S. latitude)
- IND - Indian Ocean
- CAR - Caribbean Sea
- OTH - Other- Describe Area \_\_\_\_\_

FISHING GEAR - Enter gear used to harvest fish

- PL - Pole and Line, Hook and Line
- PS - Purse Seine Net
- GN - Gillnet less than 1.5 miles (2.4 km) in total length
- DN - Large Scale Driftnet (High Seas)
- LL - Longline
- OTH - Other Type. Describe \_\_\_\_\_

VESSEL FLAG - Enter the country under whose laws the fishing vessel operated, or for certified charter vessels, enter the country that accepted responsibility for the vessels' fishing operations.

TRIP DATES - Enter the **exact** beginning and ending dates (day/month/year, i.e., 15/Jan/2000) of the fishing trip during which the described shipment of fish was harvested.

VESSEL NAME - Enter the name of the **fishing vessel.**

5. DOLPHIN SAFE STATUS - Must be completed for all tuna or tuna products. Check only **one** appropriate statement. Use a separate form if more than one statement applies. Statements or certifications required when box No. 5B(2), 5B(3), or 5B(5) is checked must accompany this form at all times.
6. EXPORTER CERTIFICATION - Must be signed and dated (day/month/year, i.e., 15/Jan/2000) by a responsible official of the export company listed in block 2.
7. HIGH SEAS DRIFTNET CERTIFICATION - If the shipment includes fish harvested by vessels of, or exported from a nation identified by NOAA in a Federal Register notice as a nation fishing with large-scale driftnets, a responsible government official of the harvesting nation must certify here.
8. IMPORTER/PROCESSOR ENDORSEMENT - Each additional importer or processor who takes custody of the shipment must sign and date the form to certify that the form and attached documentation accurately describe the shipment of fish that they accompany.

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Public reporting burden for this collection of information is estimated to average 20 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the above address. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

- CITE-  
16 USC CHAPTER 31 - MARINE MAMMAL PROTECTION 01/03/05
  
- EXPCITE-  
TITLE 16 - CONSERVATION  
CHAPTER 31 - MARINE MAMMAL PROTECTION
  
- HEAD-  
CHAPTER 31 - MARINE MAMMAL PROTECTION
  
- MISC1-  
SUBCHAPTER I - GENERALLY Sec.  
1361. Congressional findings and declaration of policy.  
1362. Definitions.  
  
SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS 1371.  
Moratorium on taking and importing marine mammals and  
marine mammal products.
  - (a) Imposition; exceptions.
  - (b) Exemptions for Alaskan natives.
  - (c) Taking in defense of self or others.
  - (d) Good Samaritan exemption.
  - (e) Chapter not to apply to incidental takings by  
United States citizens employed on foreign vessels  
outside United States EEZ.
  - (f) Exemption of actions necessary for national  
defense.
- 1372. Prohibitions.
  - (a) Taking.
  - (b) Importation of pregnant or nursing mammals;  
depleted species or stock; inhumane taking.
  - (c) Importation of illegally taken mammals.
  - (d) Nonapplicability of prohibitions.
  - (e) Retroactive effect.
  - (f) Commercial taking of whales.
- 1373. Regulations on taking of marine mammals.
  - (a) Necessity and appropriateness.
  - (b) Factors considered in prescribing regulations.
  - (c) Allowable restrictions.
  - (d) Procedure.
  - (e) Periodic review.
  - (f) Report to Congress.
- 1374. Permits.
  - (a) Issuance.
  - (b) Requisite provisions.
  - (c) Importation for scientific research, public  
display, or enhancing survival or recovery of  
species or stock.
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-End-

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Sec. 1361. Congressional findings and declaration of policy

- STATUTE-

The Congress finds that -

(1) certain species and population stocks of marine mammals are, or may be, in danger of extinction or depletion as a result of man's activities;

(2) such species and population stocks should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part, and, consistent with this major objective, they should not be permitted to diminish below their optimum sustainable population. Further measures should be immediately taken to replenish any species or population stock which has already diminished below that population. In particular, efforts should be made to protect essential habitats, including the rookeries, mating grounds, and areas of similar significance for each species of marine mammal from the adverse effect of man's actions;

(3) there is inadequate knowledge of the ecology and population dynamics of such marine mammals and of the factors which bear upon their ability to reproduce themselves successfully;

(4) negotiations should be undertaken immediately to encourage the development of international arrangements for research on, and conservation of, all marine mammals;

(5) marine mammals and marine mammal products either -

(A) move in interstate commerce, or

(B) affect the balance of marine ecosystems in a manner which is important to other animals and animal products which move in interstate commerce,

and that the protection and conservation of marine mammals and their habitats is therefore necessary to insure the continuing availability of those products which move in interstate commerce; and

(6) marine mammals have proven themselves to be resources of great international significance, esthetic and recreational as well as economic, and it is the sense of the Congress that they should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem. Whenever consistent with this primary objective, it should be the goal to obtain an optimum sustainable population keeping in mind the carrying capacity of the habitat.

- SOURCE-

(Pub. L. 92-522, Sec. 2, Oct. 21, 1972, 86 Stat. 1027; Pub. L. 97-58, Sec. 1(b)(1), Oct. 9, 1981, 95 Stat. 979; Pub. L. 103-238, Sec. 3, Apr. 30, 1994, 108 Stat. 532.)

- MISCL-

AMENDMENTS

1994 - Par. (2). Pub. L. 103-238, Sec. 3(1), inserted "essential habitats, including" after "made to protect".

Par. (5). Pub. L. 103-238, Sec. 3(2), inserted "and their habitats" before "is therefore necessary" in concluding provisions. 1981 -

Par. (6). Pub. L. 97-58 substituted "carrying capacity"  
for "optimum carrying capacity".

Section 4 of Pub. L. 92-522 provided that: "The provisions of this Act [enacting this chapter] shall take effect upon the expiration of the sixty-day period following the date of its enactment [ Oct. 21, 1972] ."

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106-555, Sec. 1, Dec. 21, 2000, 114 Stat. 2765, provided that: "This Act [enacting section 1421f-1 of this title, amending sections 1362, 1421g, 1421h, 1433, 1434, 5101 to 5103, 5106, 5107a to 5108, and 5156 of this title, enacting provisions set out as notes under this section and sections 917a, 1433, 5101, and 5107 of this title, and amending provisions set out as a note under section 1855 of this title] may be cited as the 'Striped Bass Conservation, Atlantic Coastal Fisheries Management, and Marine Mammal Rescue Assistance Act of 2000'."

Pub. L. 106-555, title II, Sec. 201, Dec. 21, 2000, 114 Stat. 2767, provided that: "This title [enacting section 1421f-1 of this title, amending sections 1362, 1421g, 1421h, 1433, and 1434 of this title, enacting provisions set out as notes under sections 917a and 1433 of this title, and amending provisions set out as a note under section 1855 of this title] may be cited as the 'Marine Mammal Rescue Assistance Act of 2000'."

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105-42, Sec. 1(a), Aug. 15, 1997, 111 Stat. 1122, provided that: "This Act [enacting sections 962, 1412, 1413, 1414a to 1416 of this title, amending sections 952, 953, 1362, 1371, 1374, 1378, 1380, 1385, 1411, and 1417 of this title, repealing sections 1412 to 1416 and 1418 of this title, and enacting provisions set out as notes under this section and section 1362 of this title] may be cited as the 'International Dolphin Conservation Program Act'."

SHORT TITLE OF 1994 AMENDMENT

Section 1 of Pub. L. 103-238 provided that: "This Act [enacting sections 1386 to 1389 of this title, amending this section and sections 1362, 1371, 1372, 1374, 1375, 1379, 1380, 1382 to 1384, 1407, 1421 to 1421h, and 4107 of this title, repealing sections 1384 and 1407 of this title, and enacting provisions set out as notes under this section and sections 1362, 1374, 1538, and 1539 of this title] may be cited as the 'Marine Mammal Protection Act Amendments of 1994'."

SHORT TITLE OF 1992 AMENDMENTS

Pub. L. 102-587, title III, Sec. 3001, Nov. 4, 1992, 106 Stat. 5059, provided that: "This title [enacting subchapter V of this chapter, amending sections 1362, 1372, 1379, and 1382 of this title and section 183c of Title 46, Appendix, Shipping, and enacting provisions set out as notes under sections 1421 and 1421a of this title] may be cited as the 'Marine Mammal Health and Stranding Response Act'."

Pub. L. 102-523, Sec. 1, Oct. 26, 1992, 106 Stat. 3425, provided that: "This Act [enacting subchapter IV of this chapter and amending sections 952, 953, 973r, and 1362 of this title] may be cited as the 'International Dolphin Conservation Act of 1992'."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-711, Sec. 1, Nov. 23, 1988, 102 Stat. 4755, provided: "That this Act [enacting sections 1383a and 1383b of this title, amending sections 1166, 1371, 1372, 1374, 1378 to 1380, 1384, 1402, and 1407 of this title and section 1978 of Title 22, Foreign Relations and Intercourse, enacting provisions set out as a note under this section, and amending provisions set out as a note under section 1384 of this title] may be cited as the 'Marine Mammal Protection Act Amendments of 1988'."



Section 1 of Pub. L. 92-522 provided in part that: "This Act [enacting this chapter] may be cited as the 'Marine Mammal Protection Act of 1972'."

#### REGULATIONS

Section 15(b) of Pub. L. 103-238 provided that: "Except as provided otherwise in this Act [see Short Title of 1994 Amendment note above], or the amendments to the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) made by this Act, the Secretary of Commerce or the Secretary of the Interior, as appropriate, shall, after notice and opportunity for public comment, promulgate regulations to implement this Act and the amendments made by this Act by January 1, 1995."

#### PURPOSES AND FINDINGS

Pub. L. 105-42, Sec. 2, Aug. 15, 1997, 111 Stat. 1122, provided that:

"(a) Purposes. - The purposes of this Act [see Short Title of 1997 Amendment note above] are -

"(1) to give effect to the Declaration of Panama, signed October 4, 1995, by the Governments of Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, the United States of America, Vanuatu, and Venezuela, including the establishment of the International Dolphin Conservation Program, relating to the protection of dolphins and other species, and the conservation and management of tuna in the eastern tropical Pacific Ocean;

"(2) to recognize that nations fishing for tuna in the eastern tropical Pacific Ocean have achieved significant reductions in dolphin mortality associated with that fishery; and

"(3) to eliminate the ban on imports of tuna from those nations that are in compliance with the International Dolphin Conservation Program.

"(b) Findings. - The Congress finds that -

"(1) the nations that fish for tuna in the eastern tropical Pacific Ocean have achieved significant reductions in dolphin mortality associated with the purse seine fishery from hundreds of thousands annually to fewer than 5,000 annually;

"(2) the provisions of the Marine Mammal Protection Act of 1972 [16 U.S.C. 1361 et seq.] that impose a ban on imports from nations that fish for tuna in the eastern tropical Pacific Ocean have served as an incentive to reduce dolphin mortalities;

"(3) tuna canners and processors of the United States have led the canning and processing industry in promoting a dolphin-safe tuna market; and

"(4) 12 signatory nations to the Declaration of Panama, including the United States, agreed under that Declaration to require that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean not exceed 5,000 animals, with the objective of progressively reducing dolphin mortality to a level approaching zero through the setting of annual limits and with the goal of eliminating dolphin mortality."

#### RELATIONSHIP OF MARINE MAMMAL PROTECTION ACT AMENDMENTS OF 1994 TO OTHER LAW

Section 2(b) of Pub. L. 103-238 provided that: "Except as otherwise expressly provided, nothing in this Act [see Short Title of 1994 Amendment note above] is intended to amend, repeal, or otherwise affect any other provision of law."

#### INDIAN TREATY RIGHTS; ALASKA NATIVE SUBSISTENCE

Section 14 of Pub. L. 103-238 provided that: "Nothing in this Act [see Short Title of 1994 Amendment note above], including any amendments to the Marine Mammal Protection Act of 1972 [16 U.S.C. 1361 et seq.] made by this Act -

"(1) alters or is intended to alter any treaty between the

United States and one or more Indian tribes; or

"(2) affects or otherwise modifies the provisions of section 101(b) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371(b)), except as specifically provided in the amendment made by section 4(b) of this Act [amending section 1371 of this title] . "

STUDY ON EFFECTS OF DOLPHIN FEEDING

Pub. L. 102-567, title III, Sec. 306, Oct. 29, 1992, 106 Stat. 4284, directed Secretary of Commerce to conduct a study in the eastern Gulf of Mexico on the effects of feeding of noncaptive dolphins by human beings, such study to be designed to detect any behavior or diet modification resulting from this feeding and to identify the effects, if any, of these modifications on the health and well-being of the dolphins, directed Secretary to consult with National Academy of Sciences and Marine Mammal Commission in design and conduct of the study, and directed Secretary, within 18 months after Oct. 29, 1992, to submit to Congress a report on results of the study.

STUDY ON MORTALITY OF ATLANTIC DOLPHIN

Pub. L. 100-711, Sec. 7, Nov. 23, 1988, 102 Stat. 4771, directed Secretary of Commerce to conduct a study regarding east coast epidemic during 1987 and 1988 which caused substantial mortality within North Atlantic coastal population of Atlantic bottle-nosed dolphin, such study to examine (1) cause or causes of epidemic, (2) effect of epidemic on coastal and offshore populations of Atlantic bottle-nosed dolphin, (3) extent to which pollution may have contributed to epidemic, (4) whether other species and populations of marine mammals were affected by those factors which contributed to epidemic, and (5) any other matters pertaining to causes and effects of epidemic, with Secretary to submit on or before Jan. 1, 1989, to Committee on Commerce, Science, and Transportation of the Senate and Committee on Merchant Marine and Fisheries of the House of Representatives a plan for conducting the study.

INTERNATIONAL DISCUSSION TO ADVANCE UNDERSTANDING OF CETACEAN LIFE

Pub. L. 95-426, title VI, Sec. 602, Oct. 7, 1978, 92 Stat. 985, provided that: "It is the sense of the Congress that the President should convey to all countries having an interest in cetacean sea life the serious concern of the Congress regarding the continuing destruction of these marine mammals (highlighted by the recent slaughter of dolphins in the Sea of Japan by Japanese fishermen) and should encourage such countries -

"(1) to join in international discussions with other such countries in order to advance general understanding of cetacean life and thereby facilitate an effective use of the living marine resources of the world which does not jeopardize the natural balance of the aquatic environment;

"(2) to participate in an exchange of information with the National Marine Fisheries Service of the United States Department of Commerce, including cooperation in studies of -

"(A) the impact of cetaceans on ecologically related human foodstuffs, and

"(B) alternative methods of dealing with cetacean problems as they occur;

"(3) to cooperate in establishing an international cetacean commission to advance understanding of cetacean life and to insure the effective conservation and protection of cetaceans on a global scale; and

"(4) to adopt comprehensive marine mammal protection legislation."

-EXPCITE-

TITLE 16 - CONSERVATION  
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Sec. 1362. Definitions

-STATUTE-

For the purposes of this chapter -

(1) The term "depletion" or "depleted" means any case in which -

(A) the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under subchapter III of this chapter, determines that a species or population stock is below its optimum sustainable population;

(B) a State, to which authority for the conservation and management of a species or population stock is transferred under section 1379 of this title, determines that such species or stock is below its optimum sustainable population; or

(C) a species or population stock is listed as an endangered species or a threatened species under the Endangered Species Act of 1973 [ 16 U.S.C. 1531 et seq.] .

(2) The terms "conservation" and "management" means the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations of marine mammals at their optimum sustainable population. Such terms include the entire scope of activities that constitute a modern scientific resource program, including, but not limited to, research, census, law enforcement, and habitat acquisition and improvement. Also included within these terms, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.

(3) The term "district court of the United States" includes the District Court of Guam, District Court of the Virgin Islands, District Court of Puerto Rico, District Court of the Canal Zone, and, in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii.

(4) The term "humane" in the context of the taking of a marine mammal means that method of taking which involves the least possible degree of pain and suffering practicable to the mammal involved.

(5) The term "intermediary nation" means 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 1371(a)(2)(B) of this title.

(6) The term "marine mammal" means any mammal which (A) is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia and Cetacea), or (B) primarily inhabits the marine environment (such as the polar bear); and, for the purposes of this chapter, includes any part of any such marine mammal, including its raw, dressed, or dyed fur or skin.

(7) The term "marine mammal product" means any item of merchandise which consists, or is composed in whole or in part, of any marine mammal.

(8) The term "moratorium" means a complete cessation of the taking of marine mammals and a complete ban on the importation into the United States of marine mammals and marine mammal products, except as provided in this chapter.

(9) The term "optimum sustainable population" means, with respect

to any population stock, the number of animals which will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.

(10) The term "person" includes (A) any private person or entity, and (B) any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(11) The term "population stock" or "stock" means a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that interbreed when mature.

(12)(A) Except as provided in subparagraph (B), the term "Secretary" means -

(i) the Secretary of the department in which the National Oceanic and Atmospheric Administration is operating, as to all responsibility, authority, funding, and duties under this chapter with respect to members of the order Cetacea and members, other than walruses, of the order Pinnipedia, and

(ii) the Secretary of the Interior as to all responsibility, authority, funding, and duties under this chapter with respect to all other marine mammals covered by this chapter.

(B) in (!1) section 1387 of this title and subchapter V of this chapter (other than section 1421f-1 of this title) the term "Secretary" means the Secretary of Commerce.

(13) The term "take" means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

(14) The term "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, American Samoa, Guam, and Northern Mariana Islands.

(15) The term "waters under the jurisdiction of the United States" means -

(A) the territorial sea of the United States;

(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the other boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured; and

(C) the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured, except that this subparagraph shall not apply before the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States.

(16) The term "fishery" means -

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

(B) any fishing for such stocks.

(17) The term "competent regional organization" -

(A) for the tuna fishery in the eastern tropical Pacific Ocean, means the Inter-American Tropical Tuna Commission; and

(B) in any other case, means an organization consisting of those

nations participating in a tuna fishery, the purpose of which is the conservation and management of that fishery and the management of issues relating to that fishery.

(18)(A) The term "harassment" means any act of pursuit, torment, or annoyance which -

(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or

(ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

(B) In the case of a military readiness activity (as defined in section 315(f) of Public Law 107-314; 16 U.S.C. 703 note) or a scientific research activity conducted by or on behalf of the Federal Government consistent with section 1374(c)(3) of this title, the term "harassment" means -

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild; or

(ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered.

(C) The term "Level A harassment" means harassment described in subparagraph (A)(i) or, in the case of a military readiness activity or scientific research activity described in subparagraph (B), harassment described in subparagraph (B)(i).

(D) The term "Level B harassment" means harassment described in subparagraph (A)(ii) or, in the case of a military readiness activity or scientific research activity described in subparagraph (B), harassment described in subparagraph (B)(ii).

(19) The term "strategic stock" means a marine mammal stock -

(A) for which the level of direct human-caused mortality exceeds the potential biological removal level;

(B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973 [16 U.S.C. 1531 et seq.] within the foreseeable future; or

(C) which is listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or is designated as depleted under this chapter.

(20) The term "potential biological removal level" means the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. The potential biological removal level is the product of the following factors:

(A) The minimum population estimate of the stock.

(B) One-half the maximum theoretical or estimated net productivity rate of the stock at a small population size.

(C) A recovery factor of between 0.1 and 1.0.

(21) The term "Regional Fishery Management Council" means a Regional Fishery Management Council established under section 1852 of this title.

(22) The term "bona fide research" means scientific research on marine mammals, the results of which -

(A) likely would be accepted for publication in a referred scientific journal;

(B) are likely to contribute to the basic knowledge of marine mammal biology or ecology; or

(C) are likely to identify, evaluate, or resolve conservation problems.

(23) The term "Alaska Native organization" means a group designated by law or formally chartered which represents or consists of Indians, Aleuts, or Eskimos residing in Alaska.

(24) The term "take reduction plan" means a plan developed under section 1387 of this title.

(25) The term "take reduction team" means a team established under section 1387 of this title.

(26) The term "net productivity rate" means the annual per capita rate of increase in a stock resulting from additions due to reproduction, less losses due to mortality.

(27) The term "minimum population estimate" means an estimate of the number of animals in a stock that -

(A) is based on the best available scientific information on abundance, incorporating the precision and variability associated with such information; and

(B) provides reasonable assurance that the stock size is equal to or greater than the estimate.

(28) The term "International Dolphin Conservation Program" means the international program established by the agreement signed in LaJolla, California, in June, 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama.

(29) The term "Declaration of Panama" means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.

-SOURCE-

(Pub. L. 92-522, Sec. 3, Oct. 21, 1972, 86 Stat. 1028; Pub. L. 93-205, Sec. 13(e)(1), Dec. 28, 1973, 87 Stat. 903; Pub. L. 94-265, title IV, Sec. 404(a), Apr. 13, 1976, 90 Stat. 360; Pub. L. 97-58, Sec. 1(a), (b)(2), Oct. 9, 1981, 95 Stat. 979; Pub. L. 102-251, title III, Sec. 304, Mar. 9, 1992, 106 Stat. 65; Pub. L. 102-523, Sec. 2(c), Oct. 26, 1992, 106 Stat. 3432; Pub. L. 102-582, title IV, Sec. 401(a), Nov. 2, 1992, 106 Stat. 4909; Pub. L. 102-587, title III, Sec. 3004(b), Nov. 4, 1992, 106 Stat. 5067; Pub. L. 103-238, Secs. 12, 16(a), 24(a)(2), Apr. 30, 1994, 108 Stat. 557, 559, 565; Pub. L. 104-208, div. A, title I, Sec. 101(a) [title II, Sec. 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41; Pub. L. 104-297, title IV, Sec. 405(b)(2), (3), Oct. 11, 1996, 110 Stat. 3621; Pub. L. 105-42, Sec. 3, Aug. 15, 1997, 111 Stat. 1123; Pub. L. 106-555, title II, Sec. 202(b), Dec. 21, 2000, 114 Stat. 2768; Pub. L. 108-136, div. A, title III, Sec. 319(a), Nov. 24, 2003, 117 Stat. 1433.)

-REFTEXT-

REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in pars. (1)(C) and (19)(B), (C), is Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified generally to chapter 35 (Sec. 1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

-MISC1-

AMENDMENTS

2003 - Par. (18)(B) to (D). Pub. L. 108-136 added subpars. (B) to (D) and struck out former subpars. (B) and (C) which read as follows:

"(B) The term 'Level A harassment' means harassment described in subparagraph (A) (i) .

"(C) The term 'Level B harassment' means harassment described in subparagraph (A) (ii) ."

2000 - Par. (12)(B). Pub. L. 106-555 inserted "(other than section 1421f-1 of this title)" after "subchapter V of this chapter".

1997 - Pars. (28), (29). Pub. L. 105-42 added pars. (28) and (29) .

1996 - Par. (15). Pub. L. 104-297, Sec. 405(b)(2), repealed Pub. L. 102-251, Sec. 304. See 1992 Amendment note below.

Pub. L. 104-297, Sec. 404(b)(3), amended par. (15) generally. Prior to amendment, par. (15) read as follows: "The term 'waters under the jurisdiction of the United States' means -

"(A) the territorial sea of the United States, and

"(B) the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured."

Par. (21). Pub. L. 104-208 made technical amendment to reference in original act which appears in text as reference to section 1852 of this title.

1994 - Par. (12)(B). Pub. L. 103-238, Sec. 24(a)(2), substituted "in section 1387 of this title and subchapter V of this chapter" for "in subchapter V of this chapter".

Pars. (15) to (17). Pub. L. 103-238, Sec. 16(a), redesignated par. (15) defining "fishery", and par. (16), as pars. (16) and (17), respectively, and struck out former par. (17) which defined "intermediary nation".

Pars. (18) to (27). Pub. L. 103-238, Sec. 12, added pars. (18) to (27) .

1992 - Pars. (5) to (11). Pub. L. 102-582 added par. (5) and redesignated former pars. (5) to (10) as (6) to (11), respectively.

Par. (12). Pub. L. 102-587 substituted "(A) Except as provided in subparagraph (B), the term" for "The term", redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B). See Construction of Amendment by Pub. L. 102-587 note below.

Pub. L. 102-582 redesignated par. (11) as (12). Former par. (12) redesignated (13).

Pars. (13), (14). Pub. L. 102-582 redesignated pars. (12) and (13) as (13) and (14), respectively. Former par. (14) redesignated (15) .

Par. (15). Pub. L. 102-582 redesignated par. (14), defining waters under the jurisdiction of the United States, as (15). Pub. L. 102-523 added par. (15) defining fishery.

Pub. L. 102-251, Sec. 304, which directed the general amendment of par. (15) by reenacting the introductory provisions and subpars. (A) and (B) without substantial change and adding subpar. (C) which read "the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.", was repealed by Pub. L. 104-297, Sec. 405 (b) (2) .

Pars. (16), (17). Pub. L. 102-523 added pars. (16) and (17).

1981 - Par. (1). Pub. L. 97-58, Sec. 1(b)(2)(A), substituted a single management standard, that is, the maintenance of species at their optimum sustainable population, for the former management standard which had included the decline of a species or population stock that had declined to a significant degree over a period of years, the decline of a species or population stock which, if continued or resumed, would place the species or stock within the provisions of the Endangered Species Act of 1973, and a species or population stock that was below the optimum carrying capacity for the species or stock within its environment.

Par. (2). Pub. L. 97-58, Sec. 1(b)(2)(B), substituted "their optimum sustainable population" for "the optimum carrying capacity of their habitat".

Par. (8) . Pub. L. 97-58, Sec. 1 (a) , (b) (2) (C) , (D) , redesignated par. (9) as (8) and substituted "carrying capacity" for "optimum carrying capacity". Former par. (8), which defined "optimum carrying capacity" was struck out.

Pars. (9) to (12) . Pub. L. 97-58, Sec. 1(b) (2) (C) , redesignated pars. (9)



to (13) as (8) to (12), respectively.

Par. (13) . Pub. L. 97-58, Sec. 1(b) (2) (C) , (E) , redesignated par. (14) as (13) and substituted "the Virgin Islands of the United States, American Samoa, Guam, and Northern Mariana Islands" for "the Canal Zone, the possessions of the United States, and the Trust Territory of the Pacific Islands". Former par. (13) redesignated (12).

Pars. (14) , (15) . Pub. L. 97-58, Sec. 1(b) (2) (C) , redesignated pars. (14) and (15) as (13) and (14), respectively.

1976 - Par. (15)(B). Pub. L. 94-265 substituted "the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured" for "the fisheries zone established pursuant to the Act of October 14, 1966".

1973 - Par. (1)(B). Pub. L. 93-205 substituted "Endangered Species Act of 1973" for "Endangered Species Conservation Act of 1969".

#### EFFECTIVE DATE OF 1997 AMENDMENT

Section 8 of Pub. L. 105-42 provided that:

"(a) Amendments to Take Effect When IDCP in Force. - Sections 3 through 7 of this Act [enacting sections 962, 1412, 1413, 1414a to 1416 of this title, amending sections 952, 953, 1362, 1371, 1374, 1378, 1380, 1385, 1411, and 1417 of this title, and repealing sections 1412 to 1416 and 1418 of this title] (except for section 304 of the Marine Mammal Protection Act of 1972 as added by section 6 of this Act [section 1414a of this title]) shall become effective upon -

"(1) certification by the Secretary of Commerce that -

"(A) sufficient funding is available to complete the first year of the study required under section 304(a) of the Marine Mammal Protection Act of 1972, as so added; and

"(B) the study has commenced; and

"(2) certification by the Secretary of State to Congress that a binding resolution of the Inter-American Tropical Tuna Commission or other legally binding instrument establishing the International Dolphin Conservation Program has been adopted and is in force.

"(b) Special Effective Date. - Notwithstanding subsection (a), the Secretary of Commerce may issue regulations under -

"(1) subsection (f)(2) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)(2)), as added by section 5(b) of this Act;

"(2) section 303(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1413(a)), as added by section 6(c) of this Act, at any time after the date of enactment of this Act [Aug. 15, 1997] . "

[The Secretary of Commerce made the certification referred to in section 8(a)(1) of Pub. L. 105-42, set out above, on July 27, 1998, and the Secretary of State made the certification referred to in section 8(a)(2) of Pub. L. 105-42 on Mar. 3, 1999.]

#### EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, Sec. 211(b)] of div. A of Pub. L. 104-208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Section 24(e) of Pub. L. 103-238 provided that: "The amendments made by subsection (a) [amending this section] shall be effective as if enacted as part of section 3004 of the Marine Mammal Health and Stranding Response Act (106 Stat. 5067) [Pub. L. 102-587]."

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-251 effective on date on which Agreement between United States and Union of Soviet Socialist Republics on the Maritime

Boundary, signed June 1, 1990, enters into force for United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until date on which Agreement enters into force for United States, see section 308 of Pub. L. 102-251, set out as a note under section 773 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 404(b) of Pub. L. 94-265 provided that the amendment made by section 404(a) of Pub. L. 94-265 to this section was to take effect Mar. 1, 1977, prior to the general amendment of title IV of Pub. L. 94-265 by Pub. L. 104-297.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-205 effective Dec. 28, 1973, see section 16 of Pub. L. 93-205, set out as an Effective Date note under section 1531 of this title.

CONSTRUCTION OF AMENDMENT BY PUB. L. 102-587

Section 24(a)(1) of Pub. L. 103-238 provided that: "The amendments set forth in section 3004(b) of the Marine Mammal Health and Stranding Response Act (106 Stat. 5067) [Pub. L. 102-587, amending this section] -

"(A) are deemed to have been made by that section to section 3(12) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(12)); and

"(B) shall not be considered to have been made by that section to section 3(11) of that Act (16 U.S.C. 1362(11))."

-TRANS-

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the "transition period", being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96-70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

-MISC2-

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

-EXEC- TERRITORIAL SEA AND CONTIGUOUS ZONE OF UNITED STATES

For extension of territorial sea and contiguous zone of United States, see Proc. No. 5928 and Proc. No. 7219, respectively, set out as notes under section 1331 of Title 43, Public Lands.

- FOOTNOTE-

(!1) So in original. Probably should be capitalized.

-End-

- CITE-

16 USC SUBCHAPTER II - CONSERVATION AND PROTECTION OF  
MARINE MAMMALS 01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION  
CHAPTER 31 - MARINE MAMMAL PROTECTION  
SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

- HEAD-

SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

-End-

- CITE-

16 USC Sec. 1371 01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION  
CHAPTER 31 - MARINE MAMMAL PROTECTION  
SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

- HEAD-

Sec. 1371. Moratorium on taking and importing marine mammals and  
marine mammal products

-STATUTE-

(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 January 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.

(3)(A) The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, is authorized and directed, from time to time, having due regard to the distribution, abundance, breeding habits, and times and lines of migratory movements of such marine mammals, to determine when, to what extent, if at all, and by what means, it is compatible with this chapter to waive the requirements of this section so as to allow taking, or importing of any marine mammal, or any marine mammal product, and to adopt suitable regulations, issue permits, and make determinations in accordance with sections 1372, 1373, 1374, and 1381 of this title permitting and governing such taking and importing, in accordance with such determinations: Provided, however, That the Secretary, in making such determinations must be assured that the taking of such marine mammal is in accord with sound principles of resource protection and conservation as provided in the purposes and policies of this chapter: Provided, further, however, That no marine mammal or no marine mammal product may be imported into the United States unless the Secretary certifies that the program for taking marine mammals in the country of origin is consistent with the provisions and policies of this chapter. Products of nations not so certified may not be imported into the United States for any purpose, including processing for exportation.

(B) Except for scientific research purposes, photography for educational or commercial purposes, or enhancing the survival or recovery of a species or stock as provided for in paragraph (1) of this subsection, or as provided

for under paragraph (5) of this subsection, during the moratorium no permit may be issued for the taking of any marine mammal which has been designated by the Secretary as depleted, and no importation may be made of any such mammal.

(4)(A) Except as provided in subparagraphs (B) and (C), the provisions of this chapter shall not apply to the use of measures -

(i) by the owner of fishing gear or catch, or an employee or agent of such owner, to deter a marine mammal from damaging the gear or catch;

(ii) by the owner of other private property, or an agent, bailee, or employee of such owner, to deter a marine mammal from damaging private property;

(iii) by any person, to deter a marine mammal from endangering personal safety; or

(iv) by a government employee, to deter a marine mammal from damaging public property,

so long as such measures do not result in the death or serious injury of a marine mammal.

(B) The Secretary shall, through consultation with appropriate experts, and after notice and opportunity for public comment, publish in the Federal Register a list of guidelines for use in safely deterring marine mammals. In the case of marine mammals listed as endangered species or threatened species under the Endangered Species Act of 1973 [16 U.S.C. 1531 et seq.], the Secretary shall recommend specific measures which may be used to nonlethally deter marine mammals. Actions to deter marine mammals consistent with such guidelines or specific measures shall not be a violation of this chapter.

(C) If the Secretary determines, using the best scientific information available, that certain forms of deterrence have a significant adverse effect on marine mammals, the Secretary may prohibit such deterrent methods, after notice and opportunity for public comment, through regulation under this chapter.

(D) The authority to deter marine mammals pursuant to subparagraph (A) applies to all marine mammals, including all stocks designated as depleted under this chapter.

(5)(A)(i) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specified geographical region, the Secretary shall allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking by citizens while engaging in that activity within that region of small numbers of marine mammals of a species or population stock if the Secretary, after notice (in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the coastal areas that may be affected by such activity) and opportunity for public comment -

(I) finds that the total of such taking during each five-year (or less) period concerned will have a negligible impact on such species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section

or section 1379(f) of this title or, in the case of a cooperative agreement under both this chapter and the Whaling Convention Act of 1949 (16 U.S.C. 916 et seq.), pursuant to section 1382(c) of this title; and

(II) prescribes regulations setting forth -

(aa) permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses; and

(bb) requirements pertaining to the monitoring and reporting of such taking.

(ii) For a military readiness activity (as defined in section 315(f) of

Public Law 107-314; 16 U.S.C. 703 note), a determination of "least practicable adverse impact on such species or stock" under clause (i)(II)(aa) shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Before making the required determination, the Secretary shall consult with the Department of Defense regarding personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

(iii) Notwithstanding clause (i), for any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107-314; 16 U.S.C. 703 note), the Secretary shall publish the notice required by such clause only in the Federal Register.

(B) The Secretary shall withdraw, or suspend for a time certain (either on an individual or class basis, as appropriate) the permission to take marine mammals under subparagraph (A) pursuant to a specified activity within a specified geographical region if the Secretary finds, after notice and opportunity for public comment (as required under subparagraph (A) unless subparagraph (C)(i) applies), that -

(i) the regulations prescribed under subparagraph (A) regarding methods of taking, monitoring, or reporting are not being substantially complied with by a person engaging in such activity; or

(ii) the taking allowed under subparagraph (A) pursuant to one or more activities within one or more regions is having, or may have, more than a negligible impact on the species or stock concerned.

(C)(i) The requirement for notice and opportunity for public comment in subparagraph (B) shall not apply in the case of a suspension of permission to take if the Secretary determines that an emergency exists which poses a significant risk to the well-being of the species or stock concerned.

(ii) Sections 1373 and 1374 of this title shall not apply to the taking of marine mammals under the authority of this paragraph.

(D)(i) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specific geographic region, the Secretary shall authorize, for periods of not more than 1 year, subject to such conditions as the Secretary may specify, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock by such citizens while engaging in that activity within that region if the Secretary finds that such harassment during each period concerned -

(I) will have a negligible impact on such species or stock, and

(II) will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section, or section 1379(f) of this title or pursuant to a cooperative agreement under section 1388 of this title.

(ii) The authorization for such activity shall prescribe, where applicable -

(I) permissible methods of taking by harassment pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379(f) of this title or pursuant to a cooperative agreement under section 1388 of this title,

(II) the measures that the Secretary determines are necessary to ensure no unmitigable adverse impact on the availability of the species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379(f) of this title or pursuant to a cooperative agreement under section 1388 of this title, and

(III) requirements pertaining to the monitoring and reporting of such

taking by harassment, including requirements for the independent peer review of proposed monitoring plans or other research proposals where the proposed activity may affect the availability of a species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379(f) of this title or pursuant to a cooperative agreement under section 1388 of this title.

(iii) The Secretary shall publish a proposed authorization not later than 45 days after receiving an application under this subparagraph and request public comment through notice in the Federal Register, newspapers of general circulation, and appropriate electronic media and to all locally affected communities for a period of 30 days after publication. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in clause (i), the Secretary shall issue an authorization with appropriate conditions to meet the requirements of clause (ii).

(iv) The Secretary shall modify, suspend, or revoke an authorization if the Secretary finds that the provisions of clauses (i) or (ii) are not being met.

(v) A person conducting an activity for which an authorization has been granted under this subparagraph shall not be subject to the penalties of this chapter for taking by harassment that occurs in compliance with such authorization.

(vi) For a military readiness activity (as defined in section 315(f) of Public Law 107-314; 16 U.S.C. 703 note), a determination of "least practicable adverse impact on such species or stock" under clause (i)(I) shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Before making the required determination, the Secretary shall consult with the Department of Defense regarding personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

(vii) Notwithstanding clause (iii), for any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107-314; 16 U.S.C. 703 note), the Secretary shall publish the notice required by such clause only in the Federal Register.

(E)(i) During any period of up to 3 consecutive years, the Secretary shall allow the incidental, but not the intentional, taking by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 1824(b) of this title, while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) if the Secretary, after notice and opportunity for public comment, determines that -

(I) the incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;

(II) a recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973; and

(III) where required under section 1387 of this title, a monitoring program is established under subsection (d) of such section, vessels engaged in such fisheries are registered in accordance with such section, and a take reduction plan has been developed or is being developed for such species or stock.

(ii) Upon a determination by the Secretary that the requirements of clause (i) have been met, the Secretary shall publish in the Federal Register a list of those fisheries for which such determination was made, and, for vessels required to register under section 1387 of this title, shall issue an appropriate permit for each authorization granted under such section to vessels to which this paragraph applies. Vessels engaged in a fishery included in the notice published by the Secretary under this clause which are not required to register under section 1387 of this title shall not be



subject to the penalties of this chapter for the incidental taking of marine mammals to which this paragraph applies, so long as the owner or master of such vessel reports any incidental mortality or injury of such marine mammals to the Secretary in accordance with section 1387 of this title.

(iii) If, during the course of the commercial fishing season, the Secretary determines that the level of incidental mortality or serious injury from commercial fisheries for which a determination was made under clause (i) has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock, the Secretary shall use the emergency authority granted under section 1387 of this title to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

(iv) The Secretary may suspend for a time certain or revoke a permit granted under this subparagraph only if the Secretary determines that the conditions or limitations set forth in such permit are not being complied with. The Secretary may amend or modify, after notice and opportunity for public comment, the list of fisheries published under clause (ii) whenever the Secretary determines there has been a significant change in the information or conditions used to determine such list.

(v) Sections 1373 and 1374 of this title shall not apply to the taking of marine mammals under the authority of this subparagraph.

(vi) This subparagraph shall not govern the incidental taking of California sea otters and shall not be deemed to amend or repeal the Act of November 7, 1986 (Public Law 99-625; 100 Stat. 3500).

(F) Notwithstanding the provisions of this subsection, any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107-314; 16 U.S.C. 703 note) shall not be subject to the following requirements:

(i) In subparagraph (A), "within a specified geographical region" and "within that region of small numbers".

(ii) In subparagraph (B), "within a specified geographical region" and "within one or more regions".

(iii) In subparagraph (D), "within a specific geographic region", "of small numbers", and "within that region".

(6)(A) A marine mammal product may be imported into the United States if the product -

(i) was legally possessed and exported by any citizen of the United States in conjunction with travel outside the United States, provided that the product is imported into the United States by the same person upon the termination of travel;

(ii) was acquired outside of the United States as part of a cultural exchange by an Indian, Aleut, or Eskimo residing in Alaska; or

(iii) is owned by a Native inhabitant of Russia, Canada, or Greenland and is imported for noncommercial purposes in conjunction with travel within the United States or as part of a cultural exchange with an Indian, Aleut, or Eskimo residing in Alaska.

(B) For the purposes of this paragraph, the term -

(i) "Native inhabitant of Russia, Canada, or Greenland" means a person residing in Russia, Canada, or Greenland who is related by blood, is a member of the same clan or ethnological grouping, or shares a common heritage with an Indian, Aleut, or Eskimo residing in Alaska; and

(ii) "cultural exchange" means the sharing or exchange of ideas, information, gifts, clothing, or handicrafts between an Indian, Aleut, or Eskimo residing in Alaska and a Native inhabitant of Russia, Canada, or Greenland, including rendering of raw marine mammal parts as part of such exchange into clothing or handicrafts through carving, painting, sewing, or decorating.

(b) Exemptions for Alaskan natives

Except as provided in section 1379 of this title, the provisions of this chapter shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of

the North Pacific Ocean or the Arctic Ocean if such taking -

(1) is for subsistence purposes; or

(2) is done for purposes of creating and selling authentic native articles of handicrafts and clothing: Provided, That only authentic native articles of handicrafts and clothing may be sold in interstate commerce: And provided further, That any edible portion of marine mammals may be sold in native villages and towns in Alaska or for native consumption. For the purposes of this subsection, the term "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to weaving, carving, stitching, sewing, lacing, beading, drawing and painting; and

(3) in each case, is not accomplished in a wasteful manner.

Notwithstanding the preceding provisions of this subsection, when, under this chapter, the Secretary determines any species or stock of marine mammal subject to taking by Indians, Aleuts, or Eskimos to be depleted, he may prescribe regulations upon the taking of such marine mammals by any Indian, Aleut, or Eskimo described in this subsection. Such regulations may be established with reference to species or stocks, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the purposes of this chapter. Such regulations shall be prescribed after notice and hearing required by section 1373 of this title and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared. In promulgating any regulation or making any assessment pursuant to a hearing or proceeding under this subsection or section 1386(b)(2) of this title, or in making any determination of depletion under this

subsection or finding regarding unmitigable adverse impacts under subsection (a)(5) of this section that affects stocks or persons to which this subsection applies, the Secretary shall be responsible for demonstrating that such regulation, assessment, determination, or finding is supported by substantial evidence on the basis of the record as a whole. The preceding sentence shall only be applicable in an action brought by one or more Alaska Native organizations representing persons to which this subsection applies.

(c) Taking in defense of self or others

It shall not be a violation of this chapter to take a marine mammal if such taking is imminently necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported to the Secretary within 48 hours. The Secretary may seize and dispose of any carcass.

(d) Good Samaritan exemption

It shall not be a violation of this chapter to take a marine mammal if

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(1) such taking is imminently necessary to avoid serious injury, additional injury, or death to a marine mammal entangled in fishing gear or debris;

(2) reasonable care is taken to ensure the safe release of the marine mammal, taking into consideration the equipment, expertise, and conditions at hand;

(3) reasonable care is exercised to prevent any further injury to the marine mammal; and

(4) such taking is reported to the Secretary within 48 hours.

(e) Chapter not to apply to incidental takings by United States citizens employed on foreign vessels outside United States EEZ

The provisions of this chapter shall not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations outside the United States exclusive economic zone (as defined in section 1802 of this title) when employed on a foreign fishing vessel of a harvesting nation which is in compliance with the International Dolphin Conservation Program.

(f) Exemption of actions necessary for national defense

(1) The Secretary of Defense, after conferring with the Secretary of Commerce, the Secretary of the Interior, or both, as appropriate, may exempt any action or category of actions undertaken by the Department of Defense or its components from compliance with any requirement of this chapter, if the Secretary determines that it is necessary for national defense.

(2) An exemption granted under this subsection -

(A) subject to subparagraph (B), shall be effective for a period specified by the Secretary of Defense; and

(B) shall not be effective for more than 2 years.

(3)(A) The Secretary of Defense may issue additional exemptions under this subsection for the same action or category of actions, after -

(i) conferring with the Secretary of Commerce, the Secretary of the Interior, or both as appropriate; and

(ii) making a new determination that the additional exemption is necessary for national defense.

(B) Each additional exemption under this paragraph shall be effective for a period specified by the Secretary of Defense, of not more than 2 years.

(4) Not later than 30 days after issuing an exemption under paragraph (1) or an additional exemption under paragraph (3), the Secretary of Defense shall submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate notice describing the exemption and the reasons therefor. The notice may be provided in classified form if the Secretary of Defense determines that use of the classified form is necessary for reasons of national security.

(Pub. L. 92-522, title I, Sec. 101, Oct. 21, 1972, 86 Stat. 1029; Pub. L. 93-205, Sec. 13(e)(2), Dec. 28, 1973, 87 Stat. 903; Pub. L. 97-58, Sec. 2, Oct. 9, 1981, 95 Stat. 979; Pub. L. 98-364, title I, Sec. 101, July 17, 1984, 98 Stat. 440; Pub. L. 99-659, title IV, Sec. 411(a), Nov. 14, 1986, 100 Stat. 3741; Pub. L. 100-711, Secs. 4(a), 5(c), (e)(1), Nov. 23, 1988, 102 Stat. 4765, 4769, 4771; Pub. L. 101-627, title IX, Sec. 901(g), Nov. 28, 1990, 104 Stat. 4467; Pub. L. 102-582, title I, Sec. 103, title IV, Sec. 401(b), Nov. 2, 1992, 106 Stat. 4903, 4909; Pub. L. 103-238, Sec. 4, Apr. 30, 1994, 108 Stat. 532; Pub. L. 104-208, div. A, title I, Sec. 101(a) [title II, Sec. 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41; Pub. L. 105-18, title II, Sec. 2003, June 12, 1997, 111 Stat. 174; Pub. L. 105-42, Sec. 4(a)-(c), Aug. 15, 1997, 111 Stat. 1123, 1124; Pub. L. 108-136, div. A, title III, Sec. 319(b), (c), Nov. 24, 2003, 117 Stat. 1434.)

-REFTEXT-

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a), means the effective date of Pub. L. 92-522. See section 4 of Pub. L. 92-522, set out as an Effective Date note under section 1361 of this title.

For effective date of section 4 of the International Dolphin Conservation Program Act [Pub. L. 105-42], referred to in subsec. (a)(2)(B)(i), see section 8 of Pub. L. 105-42 set out as an Effective Date of 1997 Amendment note under section 1362 of this title.

The Endangered Species Act of 1973, referred to in subsec. (a)(4)(B), (5)(E)(i), is Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified principally to chapter 35 (Sec. 1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

The Whaling Convention Act of 1949, referred to in subsec. (a)(5)(A)(i)(I), is act Aug. 9, 1950, ch. 653, 64 Stat. 421, as amended, which is classified generally to subchapter II (Sec. 916 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 916 of this title and Tables.

Act of November 7, 1986, referred to in subsec. (a)(5)(E)(vi), is Pub. L. 99-625, Nov. 7, 1986, 100 Stat. 3500, which amended section 718b of this title and provisions listed in a table of National Wildlife Refuges set out under section 668dd of this title and enacted provisions set out as a note under section 1536 of this title. For complete classification of this Act to the Code, see Tables.

-MISC1-

AMENDMENTS

2003 - Subsec. (a)(5)(A). Pub. L. 108-136, Sec. 319(c)(1), designated existing provisions as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, redesignated former subcls. (I) and (II) of former cl. (ii) as items (aa) and (bb) of subcl. (II), respectively, and added cls. (ii) and (iii).

Subsec. (a) (5) (D) (vi) , (vii) . Pub. L. 108-136, Sec. 319 (c) (2) , added cls. (vi) and (vii).

Subsec. (a)(5)(F). Pub. L. 108-136, Sec. 319(c)(3), added subpar. (F) .

Subsec. (f). Pub. L. 108-136, Sec. 319(b), added subsec. (f).

1997 - Subsec. (a) (2) . Pub. L. 105-42, Sec. 4(a) , (b) (4) , in introductory provisions, inserted after first sentence "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." and struck out "; provided that this goal shall be satisfied in the case of the incidental taking of marine mammals in the course of purse seine fishing for yellowfin tuna by a continuation of the

application of the best marine mammal safety techniques and equipment that are economically and technologically practicable" after "serious injury rate" and, in closing provisions, substituted "For purposes of subparagraph (F)" for "For purposes of subparagraph (E)".

Subsec. (a) (2) (B) . Pub. L. 105-42, Sec. 4(b) (1) , added subpar. (B) and struck out former subpar. (B) which contained requirement that nations exporting yellowfin tuna harvested with purse seines in eastern tropical Pacific Ocean provide documentary evidence of adoption of regulatory program governing incidental taking of other mammals and comparison of the average rates of incidental taking between harvesting nation and United States.

Subsec. (a) (2) (C) to (F) . Pub. L. 105-42, Sec. 4 (b) (2) , (3) , added subpar. (C) and redesignated former subpars. (C) to (E) as (D) to (F), respectively.

Subsec. (d). Pub. L. 105-18 added subsec. (d).

Subsec. (e). Pub. L. 105-42, Sec. 4(c), added subsec. (e).

1996 - Subsec. (a)(5)(E)(i). Pub. L. 104-208 made technical amendment to reference in original act which appears in text as reference to section 1824(b) of this title.

1994 - Subsec. (a)(1). Pub. L. 103-238, Sec. 4(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "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, or enhancing the survival or recovery of a species or stock if -

"(A) the taking proposed in the application for any such permit,  
or

"(B) the 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 which is consistent with the purposes and policies of section 1361 of this title. The Secretary shall, if he grants approval for importation, issue to the importer concerned a certificate to that effect which shall be 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."

Subsec. (a)(2). Pub. L. 103-238, Sec. 4(a)(2), inserted before period at end of first sentence ", 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".

Subsec. (a)(3)(B). Pub. L. 103-238, Sec. 4(a)(3), inserted ",  
photography for educational or commercial purposes," after "purposes" and "or as provided for under paragraph (5) of this subsection," after "subsection,".

Subsec. (a)(4). Pub. L. 103-238, Sec. 4(a)(4), amended par. (4) generally. Prior to amendment, par. (4) read as follows:

"(4)(A) During any period of five consecutive years, the Secretary shall allow the incidental, but not the intentional, taking, by citizens of the United States while engaging in commercial fishing operations, of small numbers of marine mammals of a species or population stock that is not depleted if the Secretary, after notice and opportunity for public comment

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"(i) finds that the total of such taking during such five-year period will have a negligible impact on such species or stock;  
and

"(ii) provides guidelines pertaining to the establishment of a cooperative system among the fishermen involved for the monitoring of such taking.

"(B) The Secretary shall withdraw, or suspend for a time certain, the permission to take marine mammals under subparagraph (A) if the Secretary finds, after notice and opportunity for public comment,

that -

"(i) the taking allowed under subparagraph (A) is having more than a negligible impact on the species or stock concerned; or

"(ii) the policies, purposes and goals of this chapter would be better served through the application of this title without regard to this subsection.

Sections 1373 and 1374 of this title shall not apply to the taking of marine mammals under the authority of this paragraph."

Subsec. (a)(5)(D), (E). Pub. L. 103-238, Sec. 4(a)(5), added subpars. (D) and (E).

Subsec. (a)(6). Pub. L. 103-238, Sec. 4(a)(6), added par. (6).

Subsec. (b). Pub. L. 103-238, Sec. 4(b), inserted at end "In promulgating any regulation or making any assessment pursuant to a hearing or proceeding under this subsection or section 1386(b)(2) of this title, or in making any determination of depletion under this subsection or finding regarding unmitigable adverse impacts under subsection (a)(5) of this section that affects stocks or persons to which this subsection applies, the Secretary shall be responsible for demonstrating that such regulation, assessment, determination, or finding is supported by substantial evidence on the basis of the record as a whole. The preceding sentence shall only be applicable in an action brought by one or more Alaska Native organizations representing persons to which this subsection applies."

Subsec. (c). Pub. L. 103-238, Sec. 4(c), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: "In order to minimize undue economic hardship to persons subject to this chapter, other than those engaged in commercial fishing operations referred to in subsection (a)(2) of this section, the Secretary, upon any such person filing an application with him and upon filing such information as the Secretary may require showing, to his satisfaction, such hardship, may exempt such person or class of persons from provisions of this chapter for no more than one year from October 21, 1972, as he determines to be appropriate."

1992 - Subsec. (a)(2). Pub. L. 102-582, Sec. 103(2), inserted before period at end ", 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".

Subsec. (a)(2)(C). Pub. L. 102-582, Sec. 401(b), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "shall require the government of any intermediary nation from which yellowfin tuna or tuna products will be exported to the United States to certify and provide reasonable proof that it has acted to prohibit the importation of such tuna and tuna products from any nation from which direct export to the United States of such tuna and tuna products is banned under this section within sixty days following the effective date of such ban on importation to the United States;".

Subsec. (a) (2) (E) (i) . Pub. L. 102-582, Sec. 103 (1) , substituted "January 1, 1993" for "July 1, 1992".

1990 - Subsec. (a)(2). Pub. L. 101-627 added subpar. (E) and concluding provisions.

1988 - Subsec. (a)(1). Pub. L. 100-711, Sec. 5(c), which directed that par. (1) be amended generally to read as follows: "(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, or enhancing the survival or recovery of a species or stock if - ", was executed as the probable intent of Congress by substituting such provisions for provisions of par. (1) before subpar. (A) which read as follows: "Permits may be issued by the Secretary for taking and importation for purposes of scientific research and for public display if - ".

Subsec. (a)(2). Pub. L. 100-711, Sec. 4(a), inserted provisions at end of subpar. (B) relating to finding by Secretary that regulatory program, or average rate of incidental taking by vessels, of harvesting

nation is comparable to that of United States, and added subpars. (C) and (D).

Subsec. (a)(3)(B). Pub. L. 100-711, Sec. 5(e)(1), inserted "or enhancing the survival or recovery of a species or stock" after "scientific research purposes".

1986 - Subsec. (a)(5)(A). Pub. L. 99-659, Sec. 411(a)(1), in provisions preceding cl. (i) struck out "that is not depleted" after "population stock".

Subsec. (a)(5)(A)(i). Pub. L. 99-659, Sec. 411(a)(2), substituted "will not have an unmitigable adverse impact" for "its habitat, and", and inserted "or, in the case of a cooperative agreement under both this chapter and the Whaling Convention Act of 1949 (16 U.S.C. 916 et seq.), pursuant to section 1382(c) of this title".

Subsec. (a)(5)(A)(ii)(I). Pub. L. 99-659, Sec. 411(a)(3), inserted ", and on the availability of such species or stock for subsistence uses".

1984 - Subsec. (a)(2). Pub. L. 98-364 amended last sentence generally, restating existing provisions in cl. (A) and adding cl. (B).

1981 - Subsec. (a)(2). Pub. L. 97-58, Sec. 2(1)(A), provided that the immediate goal of reducing to insignificant levels approaching a zero mortality and serious injury rate the incidental kill or serious injury of marine mammals permitted in the course of commercial fishing operations be satisfied in the case of purse seine fishing for yellowfin tuna by a continuation of the application of the best marine mammal safety techniques and equipment that are economically and technologically practicable.

Subsec. (a)(3)(B). Pub. L. 97-58, Sec. 2(1)(B), struck out "is classified as belonging to an endangered species or threatened species pursuant to the Endangered Species Act of 1973 or" after "the taking of any marine mammal which".

Subsec. (a)(4), (5). Pub. L. 97-58, Sec. 2(1)(C), added pars. (4) and (5).

Subsec. (b). Pub. L. 97-58, Sec. 2(2), substituted "Except as provided in section 1379 of this title, the provisions of this chapter shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and" for "The provisions of this chapter shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo" in provisions preceding par. (1) and, in par. (1), substituted "is for subsistence purposes; or" for "is for subsistence purposes by Alaskan natives who reside in Alaska, or".

1973 - Subsec. (a)(3)(B). Pub. L. 93-205 substituted "or threatened species pursuant to the Endangered Species Act of 1973" for "pursuant to the Endangered Species Conservation Act of 1969".

#### 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.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, Sec. 211(b)] of div. A of Pub. L. 104-208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

#### EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-205 effective Dec. 28, 1973, see section 16 of Pub. L. 93-205, set out as an Effective Date note under section 1531 of this title.

#### TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the

President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year

period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

-End-

- CITE-

16 USC Sec. 1372

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION  
CHAPTER 31 - MARINE MAMMAL PROTECTION  
SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

- HEAD-

Sec. 1372. Prohibitions

-STATUTE-

(a) Taking

Except as provided in sections 1371, 1373, 1374, 1379, 1381, 1383, 1383a, and 1387 of this title and subchapter V of this chapter, it is unlawful -

(1) for any person subject to the jurisdiction of the United States or any vessel or other conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas;

(2) except as expressly provided for by an international treaty, convention, or agreement to which the United States is a party and which was entered into before the effective date of this subchapter or by any statute implementing any such treaty, convention, or agreement

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(A) for any person or vessel or other conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States; or

(B) for any person to use any port, harbor, or other place under the jurisdiction of the United States to take or import marine mammals or marine mammal products; and

(3) for any person, with respect to any marine mammal taken in violation of this subchapter, to possess that mammal or any product from that mammal;

(4) for any person to transport, purchase, sell, export, or offer to purchase, sell, or export any marine mammal or marine mammal product -

(A) that is taken in violation of this chapter; or

(B) for any purpose other than public display, scientific research, or enhancing the survival of a species or stock as provided for under subsection 1374(c) of this title; and

(5) for any person to use, in a commercial fishery, any means or methods of fishing in contravention of any regulations or limitations, issued by the Secretary for that fishery to achieve the purposes of this chapter.

(b) Importation of pregnant or nursing mammals; depleted species or stock; inhumane taking

Except pursuant to a permit for scientific research, or for enhancing the survival or recovery of a species or stock, issued under section 1374(c) of this title, it is unlawful to import into the United States



any marine mammal if such mammal was -

- (1) pregnant at the time of taking;
- (2) nursing at the time of taking, or less than eight months old, whichever occurs later;
- (3) taken from a species or population stock which the Secretary has, by regulation published in the Federal Register, designated as a depleted species or stock; or
- (4) taken in a manner deemed inhumane by the Secretary.

Notwithstanding the provisions of paragraphs (1) and (2), the Secretary may issue a permit for the importation of a marine mammal, if the Secretary determines that such importation is necessary for the protection or welfare of the animal.

(c) Importation of illegally taken mammals

It is unlawful to import into the United States any of the following:

- (1) Any marine mammal which was -
  - (A) taken in violation of this subchapter; or
  - (B) taken in another country in violation of the law of that country.

- (2) Any marine mammal product if -
  - (A) the importation into the United States of the marine mammal from which such product is made is unlawful under paragraph (1) of this subsection; or
  - (B) the sale in commerce of such product in the country of origin of the product is illegal;

- (3) Any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner which the Secretary has proscribed for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

(d) Nonapplicability of prohibitions

Subsections (b) and (c) of this section shall not apply -

- (1) in the case of marine mammals or marine mammal products, as the case may be, to which subsection (b)(3) of this section applies, to such items imported into the United States before the date on which the Secretary publishes notice in the Federal Register of his proposed rulemaking with respect to the designation of the species or stock concerned as depleted; or

- (2) in the case of marine mammals or marine mammal products to which subsection (c)(1)(B) or (c)(2)(B) of this section applies, to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

(e) Retroactive effect

This chapter shall not apply with respect to any marine mammal taken before the effective date of this chapter, or to any marine mammal product consisting of, or composed in whole or in part of, any marine mammal taken before such date.

(f) Commercial taking of whales

It is unlawful for any person or vessel or other conveyance to take any species of whale incident to commercial whaling in waters subject to the jurisdiction of the United States.

-SOURCE-

(Pub. L. 92-522, title I, Sec. 102, Oct. 21, 1972, 86 Stat. 1032; Pub. L. 93-205, Sec. 13(e)(3), Dec. 28, 1973, 87 Stat. 903; Pub. L. 95-136, Sec. 4, Oct. 18, 1977, 91 Stat. 1167; Pub. L. 97-58, Sec. 3(a), Oct. 9, 1981, 95 Stat. 981; Pub. L. 100-711, Secs. 2(b), 5(b), (e)(2), Nov. 23, 1988, 102 Stat. 4763, 4769, 4771; Pub. L. 102-587, title III, Sec. 3004(a)(1),

Nov. 4, 1992, 106 Stat. 5067; Pub. L. 103-238, Secs. 5(a), 13(c), 24(c)(9), Apr. 30, 1994, 108 Stat. 536, 558, 566.)

-REFTEXT-

REFERENCES IN TEXT

The effective date of this subchapter, referred to in subsec. (a)(2), means the effective date of title I of Pub. L. 92-522. See section 4 of Pub. L. 92-522, set out as an Effective Date note under section 1361 of this title.

The effective date of this chapter referred to in subsec. (e), means the effective date of Pub. L. 92-522. See section 4 of Pub. L. 92-522, set out as an Effective Date note under section 1361 of this title.

-MISC1-

AMENDMENTS

1994 - Subsec. (a). Pub. L. 103-238, Sec. 24(c)(9), which directed technical amendment to reference to subchapter V of this chapter in introductory provisions to reflect renumbering of corresponding title of original act, could not be executed to text because of prior amendment by section 13(c) of Pub. L. 103-238. See below.

Pub. L. 103-238, Sec. 13(c), in introductory provisions inserted reference to section 1387 of this title and made technical amendment to reference to subchapter V of this chapter to reflect renumbering of corresponding title of original act.

Subsec. (a)(2)(B). Pub. L. 103-238, Sec. 5(a)(1), substituted "to take or import" for "for any purpose in any way connected with the taking or importation of".

Subsec. (a)(4). Pub. L. 103-238, Sec. 5(a)(2), substituted "export, or offer to purchase, sell, or export" for "or offer to purchase or sell" and "product - " for "product; and" and added subpars. (A) and (B).

1992 - Subsec. (a). Pub. L. 102-587 inserted "or subchapter V of this chapter" in introductory provisions.

1988 - Subsec. (a). Pub. L. 100-711, Sec. 2(b), substituted "1383, and 1383a" for "and 1383".

Subsec. (b). Pub. L. 100-711, Sec. 5(e)(2), substituted "research, or for enhancing the survival or recovery of a species or stock," for "research".

Pub. L. 100-711, Sec. 5(b), inserted sentence at end authorizing Secretary to issue permit for importation of marine mammal.

1981 - Subsec. (a). Pub. L. 97-58, Sec. 3(a)(1), inserted reference to section 1379 of this title in the enumeration of sections preceding par. (1), redesignated par. (4) as (5), and revised as pars. (3) and (4) the provisions of former par. (3) amending those provisions so as to make it illegal for any person to possess a marine mammal, or any product from that mammal, and for any person to transport, purchase, sell, or offer to purchase or sell any marine mammal or marine mammal product.

Subsec. (b)(3). Pub. L. 97-58, Sec. 3(a)(2), struck out "or which has been listed as an endangered species or threatened species pursuant to the Endangered Species Act of 1973" after "designated as a depleted species or stock".

Subsec. (d)(1). Pub. L. 97-58, Sec. 3(b)(3), struck out "or endangered" after "concerned as depleted".

1977 - Subsec. (f). Pub. L. 95-136 added subsec. (f).

1973 - Subsec. (b)(3). Pub. L. 93-205 substituted "an endangered species or threatened species pursuant to the Endangered Species Act of 1973" for "endangered under the Endangered Species Conservation Act of 1969".

Amendment by Pub. L. 93-205 effective Dec. 28, 1973, see section 16 of Pub. L. 93-205, set out as an Effective Date note under section 1531 of this title.

-End-

- CITE-

16 USC Sec. 1373

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 31 - MARINE MAMMAL PROTECTION

SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

- HEAD-

Sec. 1373. Regulations on taking of marine mammals

-STATUTE-

(a) Necessity and appropriateness

The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, shall prescribe such regulations with respect to the taking and importing of animals from each species of marine mammal (including regulations on the taking and importing of individuals within population stocks) as he deems necessary and appropriate to insure that such taking will not be to the disadvantage of those species and population stocks and will be consistent with the purposes and policies set forth in section 1361 of this title.

(b) Factors considered in prescribing regulations

In prescribing such regulations, the Secretary shall give full consideration to all factors which may affect the extent to which such animals may be taken or imported, including but not limited to the effect of such regulations on -

(1) existing and future levels of marine mammal species and population stocks;

(2) existing international treaty and agreement obligations of the United States;

(3) the marine ecosystem and related environmental considerations;

(4) the conservation, development, and utilization of fishery resources; and

(5) the economic and technological feasibility of implementation.

(c) Allowable restrictions

The regulations prescribed under subsection (a) of this section for any species or population stock of marine mammal may include, but are not limited to, restrictions with respect to -

(1) the number of animals which may be taken or imported in any calendar year pursuant to permits issued under section 1374 of this title;

(2) the age, size, or sex (or any combination of the foregoing) of animals which may be taken or imported, whether or not a quota prescribed under paragraph (1) of this subsection applies with respect to such animals;

(3) the season or other period of time within which animals may be taken or imported;

(4) the manner and locations in which animals may be taken or imported; and

(5) fishing techniques which have been found to cause undue fatalities to any species of marine mammal in a fishery.

(d) Procedure

Regulations prescribed to carry out this section with respect to any species or stock of marine mammals must be made on the record after opportunity for an agency hearing on both the Secretary's determination to waive the moratorium pursuant to section 1371(a)(3)(A) of this title and on such regulations, except that, in addition to any other requirements, imposed by law with respect to agency rulemaking, the Secretary shall publish and make available to the public either before or concurrent with the Publication of notice in the Federal Register of his intention to prescribe regulations under this section -

(1) a statement of the estimated existing levels of the species and population stocks of the marine mammal concerned;

(2) a statement of the expected impact of the proposed regulations on the optimum sustainable population of such species or population stock;

(3) a statement describing the evidence before the Secretary upon which he proposes to base such regulations; and

(4) any studies made by or for the Secretary or any recommendations made by or for the Secretary or the Marine Mammal Commission which relate to the establishment of such regulations.

(e) Periodic review

Any regulation prescribed pursuant to this section shall be periodically reviewed, and may be modified from time to time in such manner as the Secretary deems consistent with and necessary to carry out the purposes of this chapter.

(f) Report to Congress

Within six months after the effective date of this chapter and every twelve months thereafter, the Secretary shall report to the public through publication in the Federal Register and to the Congress on the current status of all marine mammal species and population stocks subject to the provisions of this chapter. His report shall describe those actions taken and those measures believed necessary, including where appropriate, the issuance of permits pursuant to this subchapter to assure the well-being of such marine mammals.

- SOURCE-

(Pub. L. 92-522, title I, Sec. 103, Oct. 21, 1972, 86 Stat. 1033.)

-REFTEXT-

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (f), means the effective date of Pub. L. 92-522, See section 4 of Pub. L. 92-522, set out as an Effective Date note under section 1361 of this title.

-MISC1-

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (f) of this section relating to the Secretary reporting to Congress on the current status of marine mammal species and population stocks subject to this chapter, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and pages 54 and 107 of House Document No. 103-7.

MARINE MAMMAL POPULATIONS REPORT

Pub. L. 101-627, title XI, Sec. 1101, Nov. 28, 1990, 104 Stat. 4468, directed Secretary of Commerce, in consultation with Secretary of the Interior, to provide to Congress within 12 months after Nov. 28, 1990, a report assessing population sizes and trends of harbor seals, sea otters, California sea lions, and northern sea lions off the coast of the State of Washington; assessing the effectiveness of 16 U.S.C. 1371(a)(3)(A)

and 1379(h); and specifying long range management plans for the species of marine mammals listed.

-End-

- CITE-

16 USC Sec. 1374

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 31 - MARINE MAMMAL PROTECTION

SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

- HEAD-

Sec. 1374. Permits

-STATUTE-

(a) Issuance

The Secretary may issue permits which authorize the taking or importation of any marine mammal. Permits for the incidental taking of marine mammals in the course of commercial fishing operations may only be issued as specifically provided for in sections (!1) 1371(a)(5) or 1416 of this title, or subsection (h) of this section.

(b) Requisite provisions

Any permit issued under this section shall -

(1) be consistent with any applicable regulation established by the Secretary under section 1373 of this title, and

(2) specify -

(A) the number and kind of animals which are authorized to be taken or imported,

(B) the location and manner (which manner must be determined by the Secretary to be humane) in which they may be taken, or from which they may be imported,

(C) the period during which the permit is valid, and

(D) any other terms or conditions which the Secretary deems appropriate.

In any case in which an application for a permit cites as a reason for the proposed taking the overpopulation of a particular species or population stock, the Secretary shall first consider whether or not it would be more desirable to transplant a number of animals

(but not to exceed the number requested for taking in the application) of that species or stock to a location not then inhabited by such species or stock but previously inhabited by such species or stock.

(c) Importation for scientific research, public display, or enhancing survival or recovery of species or stock

(1) Any permit issued by the Secretary which authorizes the taking or importation of a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall specify, in addition to the conditions required by subsection (b) of this section, the methods of capture, supervision, care, and transportation which must be observed pursuant to such taking or importation. Any person authorized to take or import a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall furnish to the Secretary a report on all activities carried out by him pursuant to that authority.

(2)(A) A permit may be issued to take or import a marine mammal for the purpose of public display only to a person which the Secretary determines -

(i) offers a program for education or conservation purposes that is based on professionally recognized standards of the public display community;

(ii) is registered or holds a license issued under 7 U.S.C. 2131 et seq.; and

(iii) maintains facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and that access to such facilities is not limited or restricted other than by charging of an admission fee.

(B) A permit under this paragraph shall grant to the person to which it is issued the right, without obtaining any additional permit or authorization under this chapter, to -

(i) take, import, purchase, offer to purchase, possess, or transport the marine mammal that is the subject of the permit; and

(ii) sell, export, or otherwise transfer possession of the marine mammal, or offer to sell, export, or otherwise transfer possession of the marine mammal -

(I) for the purpose of public display, to a person that meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A);

(II) for the purpose of scientific research, to a person that meets the requirements of paragraph (3); or

(III) for the purpose of enhancing the survival or recovery of a species or stock, to a person that meets the requirements of paragraph (4).

(C) A person to which a marine mammal is sold or exported or to which possession of a marine mammal is otherwise transferred under the authority of subparagraph (B) shall have the rights and responsibilities described in subparagraph (B) with respect to the marine mammal without obtaining any additional permit or authorization under this chapter. Such responsibilities shall be limited to -

(i) for the purpose of public display, the responsibility to meet the requirements of clauses (i), (ii), and (iii) of subparagraph (A),

(ii) for the purpose of scientific research, the responsibility to meet the requirements of paragraph (3), and

(iii) for the purpose of enhancing the survival or recovery of a species or stock, the responsibility to meet the requirements of paragraph (4).

(D) If the Secretary -

(i) finds in concurrence with the Secretary of Agriculture, that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A)(ii) and is not reasonably likely to meet those requirements in the near future, or

(ii) finds that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A)(i) or (iii) and is not reasonably likely to meet those requirements in the near future,

the Secretary may revoke the permit in accordance with subsection (e) of this section, seize the marine mammal, or cooperate with other persons authorized to hold marine mammals under this chapter for disposition of the marine mammal. The Secretary may recover from the person expenses incurred by the Secretary for that seizure.

(E) No marine mammal held pursuant to a permit issued under subparagraph (A), or by a person exercising rights under subparagraph (C), may be sold, purchased, exported, or transported unless the Secretary is notified of such action no later than 15 days before such action, and such action is for purposes of public display, scientific research, or enhancing the survival or recovery of a species or stock. The Secretary may only require the

notification to include the information required for the inventory established under paragraph (10).

(3)(A) The Secretary may issue a permit under this paragraph for scientific research purposes to an applicant which submits with its permit application information indicating that the taking is required to further a bona fide scientific purpose. The Secretary may issue a permit under this paragraph before the end of the public review and comment period required under subsection (d)(2) of this section if delaying issuance of the permit could result in injury to a species, stock, or individual, or in loss of unique research opportunities.

(B) No permit issued for purposes of scientific research shall authorize the lethal taking of a marine mammal unless the applicant demonstrates that a nonlethal method of conducting the research is not feasible. The Secretary shall not issue a permit for research which involves the lethal taking of a marine mammal from a species or stock that is depleted, unless the Secretary determines that the results of such research will directly benefit that species or stock, or that such research fulfills a critically important research need.

(C) Not later than 120 days after April 30, 1994, the Secretary shall issue a general authorization and implementing regulations allowing bona fide scientific research that may result only in taking by Level B harassment of a marine mammal. Such authorization shall apply to persons which submit, by 60 days before commencement of such research, a letter of intent via certified mail to the Secretary containing the following:

- (i) The species or stocks of marine mammals which may be harassed.
- (ii) The geographic location of the research.
- (iii) The period of time over which the research will be conducted.
- (iv) The purpose of the research, including a description of how the definition of bona fide research as established under this chapter would apply.
- (v) Methods to be used to conduct the research.

Not later than 30 days after receipt of a letter of intent to conduct scientific research under the general authorization, the Secretary shall issue a letter to the applicant confirming that the general authorization applies, or, if the proposed research is likely to result in the taking (including Level A harassment) of a marine mammal, shall notify the applicant that subparagraph (A) applies.

(4)(A) A permit may be issued for enhancing the survival or recovery of a species or stock only with respect to a species or stock for which the Secretary, after consultation with the Marine Mammal Commission and after notice and opportunity for public comment, has first determined that -

- (i) taking or importation is likely to contribute significantly to maintaining or increasing distribution or numbers necessary to ensure the survival or recovery of the species or stock; and
- (ii) taking or importation is consistent (I) with any conservation plan adopted by the Secretary under section 1383b(b) of this title or any recovery plan developed under section 1533(f) of this title for the species or stock, or (II) if there is no conservation or recovery plan in place, with the Secretary's evaluation of the actions required to enhance the survival or recovery of the species or stock in light of the factors that would be addressed in a conservation plan or a recovery plan.

(B) A permit issued in accordance with this paragraph may allow the captive maintenance of a marine mammal from a depleted species or stock only if the Secretary -

- (i) determines that captive maintenance is likely to contribute to the survival or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing biological information, or establishing animal reserves;
- (ii) determines that the expected benefit to the affected species or

stock outweighs the expected benefit of alternatives which do not require removal of animals from the wild; and

(iii) requires that the marine mammal or its progeny be returned to the natural habitat of the species or stock as soon as feasible, consistent with the objectives of any applicable conservation plan or recovery plan, or of any evaluation by the Secretary under subparagraph (A).

The Secretary may allow the public display of such a marine mammal only if the Secretary determines that such display is incidental to the authorized maintenance and will not interfere with the attainment of the survival or recovery objectives.

(5)(A) The Secretary may issue a permit for the importation of polar bear parts (other than internal organs) taken in sport hunts in Canada to an applicant which submits with its permit application proof that the polar bear was legally harvested in Canada by the applicant. Such a permit shall be issued if the Secretary, in consultation with the Marine Mammal Commission and after notice and opportunity for public comment, finds that -

(i) Canada has a monitored and enforced sport hunting program consistent with the purposes of the Agreement on the Conservation of Polar Bears;

(ii) Canada has a sport hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level;

(iii) the export and subsequent import are consistent with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and other international agreements and conventions; and

(iv) the export and subsequent import are not likely to contribute to illegal trade in bear parts.

(B) The Secretary shall establish and charge a reasonable fee for permits issued under this paragraph. All fees collected under this paragraph shall be available to the Secretary until expended for use in developing and implementing cooperative research and management programs for the conservation of polar bears in Alaska and Russia pursuant to section 1383(d) of this title.

(C)(i) The Secretary shall undertake a scientific review of the impact of permits issued under this paragraph on the polar bear population stocks in Canada within 2 years after April 30, 1994. The Secretary shall provide an opportunity for public comment during the course of such review, and shall include a response to such public comment in the final report on such review.

(ii) The Secretary shall not issue permits under this paragraph after September 30, 1996, if the Secretary determines, based on the scientific review, that the issuance of permits under this paragraph is having a significant adverse impact on the polar bear population stocks in Canada. The Secretary may review such determination annually thereafter, in light of the best scientific information available, and shall complete the review not later than January 31 in any year a review is undertaken. The Secretary may issue permits under this paragraph whenever the Secretary determines, on the basis of such annual review, that the issuance of permits under this paragraph is not having a significant adverse impact on the polar bear population stocks in Canada.

(D) The Secretary of the Interior shall, expeditiously after the expiration of the applicable 30 day period under subsection (d)(2) of this section, issue a permit for the importation of polar bear parts (other than internal organs) from polar bears taken in sport hunts in Canada before February 18, 1997, to each applicant who submits, with the permit application, proof that the polar bear was legally harvested in Canada by the applicant. The Secretary shall issue such permits without regard to the provisions of subparagraphs (A) and (C)(ii) of this paragraph, subsection (d)(3) of this section, and sections 1371 and 1372 of this title. This subparagraph shall not apply to polar bear parts that were imported before June 12, 1997.



(6) A permit may be issued for photography for educational or commercial purposes involving marine mammals in the wild only to an applicant which submits with its permit application information indicating that the taking will be limited to Level B harassment, and the manner in which the products of such activities will be made available to the public.

(7) Upon request by a person for a permit under paragraph (2), (3), or (4) for a marine mammal which is in the possession of any person authorized to possess it under this chapter and which is determined under guidance under section 1421a(a) of this title not to be releasable to the wild, the Secretary shall issue the permit to the person requesting the permit if that person -

(A) meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A), in the case of a request for a permit under paragraph (2);

(B) meets the requirements of paragraph (3), in the case of a request for a permit under that paragraph; or

(C) meets the requirements of paragraph (4), in the case of a request for a permit under that paragraph.

(8)(A) No additional permit or authorization shall be required to possess, sell, purchase, transport, export, or offer to sell or purchase the progeny of marine mammals taken or imported under this subsection, if such possession, sale, purchase, transport, export, or offer to sell or purchase is -

(i) for the purpose of public display, and by or to, respectively, a person which meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A);

(ii) for the purpose of scientific research, and by or to, respectively, a person which meets the requirements of paragraph (3); or

(iii) for the purpose of enhancing the survival or recovery of a species or stock, and by or to, respectively, a person which meets the requirements of paragraph (4).

(B)(i) A person which has a permit under paragraph (2), or a person exercising rights under paragraph (2)(C), which has possession of a marine mammal that gives birth to progeny shall -

(I) notify the Secretary of the birth of such progeny within 30 days after the date of birth; and

(II) notify the Secretary of the sale, purchase, or transport of such progeny no later than 15 days before such action.

(ii) The Secretary may only require notification under clause (i) to include the information required for the inventory established under paragraph (10).

(C) Any progeny of a marine mammal born in captivity before April 30, 1994, and held in captivity for the purpose of public display shall be treated as though born after April 30, 1994.

(9) No marine mammal may be exported for the purpose of public display, scientific research, or enhancing the survival or recovery of a species or stock unless the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit under this subsection for that purpose.

(10) The Secretary shall establish and maintain an inventory of all marine mammals possessed pursuant to permits issued under paragraph (2)(A), by persons exercising rights under paragraph (2)(C), and all progeny of such marine mammals. The inventory shall contain, for each marine mammal, only the following information which shall be provided by a person holding a marine mammal under this chapter:

(A) The name of the marine mammal or other identification.

(B) The sex of the marine mammal.

(C) The estimated or actual birth date of the marine mammal.

(D) The date of acquisition or disposition of the marine mammal by the permit holder.

(E) The source from whom the marine mammal was acquired including the location of the take from the wild, if applicable.

(F) If the marine mammal is transferred, the name of the recipient.

(G) A notation if the animal was acquired as the result of a stranding.

(H) The date of death of the marine mammal and the cause of death when determined.

(d) Application procedures; notice; hearing; review

(1) The Secretary shall prescribe such procedures as are necessary to carry out this section, including the form and manner in which application for permits may be made.

(2) The Secretary shall publish notice in the Federal Register of each application made for a permit under this section. Such notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data or views, with respect to the taking or importation proposed in such application.

(3) The applicant for any permit under this section must demonstrate to the Secretary that the taking or importation of any marine mammal under such permit will be consistent with the purposes of this chapter and the applicable regulations established under section 1373 of this title.

(4) If within thirty days after the date of publication of notice pursuant to paragraph (2) of this subsection with respect to any application for a permit any interested party or parties request a hearing in connection therewith, the Secretary may, within sixty days following such date of publication, afford to such party or parties an opportunity for such a hearing.

(5) As soon as practicable (but not later than thirty days) after the close of the hearing or, if no hearing is held, after the last day on which data, or views, may be submitted pursuant to paragraph (2) of this subsection, the Secretary shall (A) issue a permit containing such terms and conditions as he deems appropriate, or (B) shall deny issuance of a permit. Notice of the decision of the Secretary to issue or to deny any permit under this paragraph must be published in the Federal Register within ten days after the date of issuance or denial.

(6) Any applicant for a permit, or any party opposed to such permit, may obtain judicial review of the terms and conditions of any permit issued by the Secretary under this section or of his refusal to issue such a permit. Such review, which shall be pursuant to chapter 7 of title 5, may be initiated by filing a petition for review in the United States district court for the district wherein the applicant for a permit resides, or has his principal place of business, or in the United States District Court for the District of Columbia, within sixty days after the date on which such permit is issued or denied.

(e) Modification, suspension, and revocation

(1) The Secretary may modify, suspend, or revoke in whole or in part any permit issued by him under this section -

(A) in order to make any such permit consistent with any change made after the date of issuance of such permit with respect to any applicable regulation prescribed under section 1373 of this title,

(B) in any case in which a violation of the terms and conditions of the permit is found, or

(C) if, in the case of a permit under subsection (c)(5) of this section authorizing importation of polar bear parts, the Secretary, in consultation with the appropriate authority in Canada, determines that the sustainability of Canada's polar bear population stocks are being adversely affected or that sport hunting may be having a detrimental effect on maintaining polar bear population stocks throughout their range.

(2) Whenever the Secretary shall propose any modification, suspension, or revocation of a permit under this subsection, the permittee shall be afforded opportunity, after due notice, for a hearing by the Secretary with respect to such proposed modification, suspension, or revocation. Such proposed action by the Secretary shall not take effect until a decision is

issued by him after such hearing. Any action taken by the Secretary after such a hearing is subject to judicial review on the same basis as is any action taken by him with respect to a permit application under paragraph (5) of subsection (d) of this section.

(3) Notice of the modification, suspension, or revocation of any permit by the Secretary shall be published in the Federal Register within ten days from the date of the Secretary's decision.

(f) Possession of permit by issuee or his agent

Any permit issued under this section must be in the possession of the person to whom it is issued (or an agent of such person) during -

- (1) the time of the authorized or taking importation;
- (2) the period of any transit of such person or agent which is incident to such taking or importation; and
- (3) any other time while any marine mammal taken or imported under a such permit is in the possession of such person or agent.

A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

(g) Fees

The Secretary shall establish and charge a reasonable fee for permits issued under this section.

(h) General permits

(1) Consistent with the regulations prescribed pursuant to section 1373 of this title and to the requirements of section 1371 of this title, the Secretary may issue an annual permit to a United States purse seine fishing vessel for the taking of such marine mammals, and shall issue regulations to cover the use of any such annual permits.

(2) Such annual permits for the incidental taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean shall be governed by section 1416 of this title, subject to the regulations issued pursuant to section 1413 of this title.

-SOURCE-

(Pub. L. 92-522, title I, Sec. 104, Oct. 21, 1972, 86 Stat. 1034; Pub. L. 98-364, title I, Sec. 102, July 17, 1984, 98 Stat. 440; Pub. L. 100-711, Secs. 4(d), 5(d), Nov. 23, 1988, 102 Stat. 4767, 4769; Pub. L. 103-238, Sec. 5(b), Apr. 30, 1994, 108 Stat. 537; Pub. L. 105-18, title V, Sec. 5004, June 12, 1997, 111 Stat. 187; Pub. L. 105-42, Sec. 4(d), Aug. 15, 1997, 111 Stat. 1125; Pub. L. 105-277, div. A, Sec. 101(e) [title I], Oct. 21, 1998, 112 Stat. 2681-231, 2681-238; Pub. L. 106-31, title V, Sec. 5004(1), May 21, 1999, 113 Stat. 110; Pub. L. 108-108, title I, Sec. 149, Nov. 10, 2003, 117 Stat. 1281.)

-REFTEXT-

REFERENCES IN TEXT

7 U.S.C. 2131 et seq., referred to in subsec. (c)(2)(A)(ii), is the classification for Pub. L. 89-544, Aug. 24, 1966, 80 Stat. 350, as amended, known as the Animal Welfare Act, which is classified generally to chapter 54 (Sec. 2131 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2131 of Title 7 and Tables.

-MISC1-

AMENDMENTS

2003 - Subsec. (c)(5)(D). Pub. L. 108-108, which directed the substitution of "February 18, 1997" for "April 30, 1994" in "Section 104 (16 U.S.C. 1374)" without indicating the act to be amended, was

executed by amending this section, which is section 104 of the Marine Mammal Protection Act of 1972, to reflect the probable intent of Congress.

1999 - Subsec. (c)(5)(B). Pub. L. 106-31 made technical correction to directory language of Pub. L. 105-277. See 1998 Amendment note below.

1998 - Subsec. (c)(5)(B). Pub. L. 105-277, as amended by Pub. L. 106-31, inserted "until expended" after "Secretary" in second sentence.

1997 - Subsec. (c)(5)(A). Pub. L. 105-18, Sec. 5004(1), struck out ", including polar bears taken but not imported prior to April 30, 1994," after "sport hunts in Canada".

Subsec. (c)(5)(D). Pub. L. 105-18, Sec. 5004(2), added subpar. (D) .

Subsec. (h). Pub. L. 105-42 amended subsec. (h) generally. Prior to amendment, subsec. (h) related to general permits, extension of general permit to American Tunaboat Association, and monitoring of incidental taking of marine mammals.

1994 - Subsec. (a). Pub. L. 103-238, Sec. 5(b)(1), inserted at end "Permits for the incidental taking of marine mammals in the course of commercial fishing operations may only be issued as specifically provided for in sections 1371(a)(5) or 1416 of this title, or subsection (h) of this section."

Subsec. (c) (1) . Pub. L. 103-238, Sec. 5(b) (2) (A) , struck out "and after" after "must be observed pursuant to".

Subsec. (c) (2) . Pub. L. 103-238, Sec. 5(b) (2) (B) , amended par. (2) generally. Prior to amendment, par. (2) read as follows: "A permit may be issued for public display purposes only to an applicant which offers a program for education or conservation purposes that, based on professionally recognized standards of the public display community, is acceptable to the Secretary and which submits with the permit application information indicating that the applicant's facilities are open to the public on a regularly scheduled basis and that access to the facilities is not limited or restricted other than by the charging of an admission fee."

Subsec. (c) (3) . Pub. L. 103-238, Sec. 5(b) (2) (C) , amended par. (3) generally. Prior to amendment, par. (3) read as follows: "A permit may be issued for scientific research purposes only to an applicant which submits with its permit application information indicating that the taking is required to further a bona fide scientific purpose and does not involve unnecessary duplication of research. No permit issued for purposes of scientific research shall authorize the killing of a marine mammal unless the applicant demonstrates that a nonlethal method for carrying out the research is not feasible. The Secretary shall not issue a permit for research which involves the lethal taking of a marine mammal from a species or stock designated as depleted, unless the Secretary determines that the results of such research will directly benefit that species or stock, or that such research fulfills a critically important research need."

Subsec. (c) (5) to (10) . Pub. L. 103-238, Sec. 5(b) (2) (D) , added pars. (5) to (10) .

Subsec. (e)(1)(C). Pub. L. 103-238, Sec. 5(b)(3), added subpar. (C) .

1988 - Subsec. (c). Pub. L. 100-711, Sec. 5(d), designated existing provisions as par. (1) and substituted "scientific research, public display, or enhancing the survival or recovery of a species or stock" for "display or scientific research" in two places, and added pars. (2) to (4).

Subsec. (h)(2)(B). Pub. L. 100-711, Sec. 4(d), added cls. (iv) to (ix) .

1984 - Subsec. (h). Pub. L. 98-364 designated existing provisions as par. (1), and added pars. (2) and (3).

#### 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.

-TRANS-

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

-MISC2-

MODIFICATION OF PERMITS EXISTING PRIOR TO APRIL 30, 1994

Section 5(c) of Pub. L. 103-238 provided that: "Any permit issued under section 104(c)(2) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1374(c)(2)) before the date of the enactment of this Act [Apr. 30, 1994] is hereby modified to be consistent with that section as amended by this Act."

- FOOTNOTE-

(!1) So in original. Probably should be "section".

-End-

- CITE-

16 USC Sec. 1375

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION  
CHAPTER 31 - MARINE MAMMAL PROTECTION  
SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

- HEAD-

Sec. 1375. Penalties

-STATUTE-

(a)(1) Any person who violates any provision of this subchapter or of any permit or regulation issued thereunder, except as provided in section 1387 of this title, may be assessed a civil penalty by the Secretary of not more than \$10,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Each unlawful taking or importation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary for good cause shown. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action.

(2) In any case involving an alleged unlawful importation of a marine mammal or marine mammal product, if such importation is made by an individual for his own personal or family use (which does not include importation as an accommodation to others or for sale or other

commercial use), the Secretary may, in lieu of instituting a proceeding under paragraph (1), allow the individual to abandon the mammal or product, under procedures to be prescribed by the Secretary, to the enforcement officer at the port of entry.

(b) Any person who knowingly violates any provision of this subchapter or of any permit or regulation issued thereunder (except as provided in section 1387 of this title) shall, upon conviction, be fined not more than \$20,000 for each such violation, or imprisoned for not more than one year, or both.

-SOURCE-

(Pub. L. 92-522, title I, Sec. 105, Oct. 21, 1972, 86 Stat. 1036; Pub. L. 97-58, Sec. 3(b), Oct. 9, 1981, 95 Stat. 982; Pub. L. 103-238, Sec. 13(a), (b), Apr. 30, 1994, 108 Stat. 558.)

-MISC1-

AMENDMENTS

1994 - Subsec. (a)(1). Pub. L. 103-238, Sec. 13(a), inserted ", except as provided in section 1387 of this title," after "thereunder".

Subsec. (b). Pub. L. 103-238, Sec. 13(b), inserted "(except as provided in section 1387 of this title)" after "thereunder".

1981 - Subsec. (a). Pub. L. 97-58 designated existing provisions as par. (1) and added par. (2).

-End-

- CITE-

16 USC Sec. 1375a

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 31 - MARINE MAMMAL PROTECTION

SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

- HEAD-

Sec. 1375a. Use of fines for protection and recovery of manatees, polar bears, sea otters, and walrus

-STATUTE-

On and after November 29, 1999, all fines collected by the United States Fish and Wildlife Service for violations of the Marine Mammal Protection Act (16 U.S.C. 1362-1407) and implementing regulations shall be available to the Secretary, without further appropriation, to be used for the expenses of the United States Fish and Wildlife Service in administering activities for the protection and recovery of manatees, polar bears, sea otters, and walrus, and shall remain available until expended.

- SOURCE-

(Pub. L. 106-113, div. B, Sec. 1000(a)(3) [title I], Nov. 29, 1999, 113 Stat. 1535, 1501A-139.)

-REFTEXT-

REFERENCES IN TEXT

The Marine Mammal Protection Act, referred to in text, probably means the Marine Mammal Protection Act of 1972, Pub. L. 92-522, Oct. 21, 1972, 86 Stat. 1027, as amended, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1361 of this title and Tables.

-CO D-

CODIFICATION

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 2000, and not as part of the Marine Mammal Protection Act of 1972 which comprises this chapter.

-End-

- CITE-

16 USC Sec. 1376

01/03/05

- EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 31 - MARINE MAMMAL PROTECTION

SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

- HEAD-

Sec. 1376. Seizure and forfeiture of cargo

-STATUTE-

(a) Application of consistent provisions

Any vessel or other conveyance subject to the jurisdiction of the United States that is employed in any manner in the unlawful taking of any marine mammal shall have its entire cargo or the monetary value thereof subject to seizure and forfeiture. All provisions of law relating to the seizure, judicial forfeiture, and condemnation of cargo for violation of the customs laws, the disposition of such cargo, and the proceeds from the sale thereof, and the remission or mitigation of any such forfeiture, shall apply with respect to the cargo of any vessel or other conveyance seized in connection with the unlawful taking of a marine mammal insofar as such provisions of law are applicable and not inconsistent with the provisions of this subchapter.

(b) Penalties

Any vessel subject to the jurisdiction of the United States that is employed in any manner in the unlawful taking of any marine mammal shall be liable for a civil penalty of not more than \$25,000. Such penalty shall be assessed by the district court of the United States having jurisdiction over the vessel. Clearance of a vessel against which a penalty has been assessed, from a port of the United States, may be withheld until such penalty is paid, or until a bond or otherwise satisfactory surety is posted. Such penalty shall constitute a maritime lien on such vessel which may be recovered by action in rem in the district court of the United States having jurisdiction over the vessel.

(c) Reward for information leading to conviction

Upon the recommendation of the Secretary, the Secretary of the Treasury is authorized to pay an amount equal to one-half of the fine incurred but not to exceed \$2,500 to any person who furnishes information which leads to a conviction for a violation of this subchapter. Any officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

- SOURCE-

(Pub. L. 92-522, title I, Sec. 106, Oct. 21, 1972, 86 Stat. 1036.)

-End-

- CITE-

16 USC Sec. 1377

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 31 - MARINE MAMMAL PROTECTION

SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

- HEAD-

Sec. 1377. Enforcement

-STATUTE-

(a) Utilization of personnel

Except as otherwise provided in this subchapter, the Secretary shall enforce the provisions of this subchapter. The Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal agency for purposes of enforcing this subchapter.

(b) State officers and employees

The Secretary may also designate officers and employees of any State or of any possession of the United States to enforce the provisions of this subchapter. When so designated, such officers and employees are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Director of the Office of Personnel Management.

(c) Warrants and other process for enforcement

The judges of the district courts of the United States and the United States magistrate judges may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process, including warrants or other process issued in admiralty proceedings in United States district courts, as may be required for enforcement of this subchapter and any regulations issued thereunder.

(d) Execution of process; arrest; search; seizure

Any person authorized by the Secretary to enforce this subchapter may execute any warrant or process issued by any officer or court of competent jurisdiction for the enforcement of this subchapter. Such a person so authorized may, in addition to any other authority conferred by law -

(1) with or without warrant or other process, arrest any person committing in his presence or view a violation of this subchapter or the regulations issued thereunder;

(2) with a warrant or other process, or without a warrant if he has reasonable cause to believe that a vessel or other conveyance subject to the jurisdiction of the United States or any person on board is in violation of any provision of this subchapter or the regulations issued thereunder, search such vessel or conveyance and arrest such person;

(3) seize the cargo of any vessel or other conveyance subject to the jurisdiction of the United States used or employed contrary to the provisions of this subchapter or the regulations issued hereunder or which reasonably appears to have been so used or employed; and

(4) seize, whenever and wherever found, all marine mammals and marine mammals products taken or retained in violation of this subchapter or the regulations issued thereunder and shall dispose of them, in accordance with regulations prescribed by the Secretary.

(e) Disposition of seized cargo

(1) Whenever any cargo or marine mammal or marine mammal product is seized pursuant to this section, the Secretary shall expedite any proceedings commenced under section 1375(a) or (b) of this title. All marine mammal or marine mammal products or other cargo so seized shall be held by any person authorized by the Secretary pending disposition of such proceedings. The owner or consignee of any such marine mammal or marine mammal product or other cargo so seized shall, as soon as practicable following such seizure,



be notified of that fact in accordance with regulations established by the Secretary.

(2) The Secretary may, with respect to any proceeding under section 1375(a) or (b) of this title, in lieu of holding any marine mammal or marine mammal product or other cargo, permit the person concerned to post bond or other surety satisfactory to the Secretary pending the disposition of such proceeding.

(3)(A) Upon the assessment of a penalty pursuant to section 1375(a) of this title, all marine mammals and marine mammal products or other cargo seized in connection therewith may be proceeded against in any court of competent jurisdiction and forfeited to the Secretary for disposition by him in such manner as he deems appropriate.

(B) Upon conviction for violation of section 1375(b) of this title, all marine mammals and marine mammal products seized in connection therewith shall be forfeited to the Secretary for disposition by him in such manner as he deems appropriate. Any other property or item so seized may, at the discretion of the

court, be forfeited to the United States or otherwise disposed of. (4)

If with respect to any marine mammal or marine mammal product or other cargo so seized -

(A) a civil penalty is assessed under section 1375(a) of this title and no judicial action is commenced to obtain the forfeiture of such mammal or product within thirty days after such assessment, such marine mammal or marine mammal product or other cargo shall be immediately returned to the owner or the consignee; or

(B) no conviction results from an alleged violation of section 1375(b) of this title, such marine mammal or marine mammal product or other cargo shall immediately be returned to the owner or consignee if the Secretary does not, with (!) thirty days after the final disposition of the case involving such alleged violation, commence proceedings for the assessment of a civil penalty under section 1375(a) of this title.

- SOURCE-

(Pub. L. 92-522, title I, Sec. 107, Oct. 21, 1972, 86 Stat. 1037; 1978 Reorg. Plan No. 2, Sec. 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Pub. L. 101-650, title III, Sec. 321, Dec. 1, 1990, 104 Stat. 5117.)

-CHANGE-

CHANGE OF NAME

"United States magistrate judges" substituted for "United States magistrates" in subsec. (c) pursuant to section 321 of Pub. L. 101-650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

-TRANS-

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" substituted for "Civil Service Commission" in subsec. (b) pursuant to Reorg. Plan No. 2 of 1978, Sec. 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

- FOOTNOTE-

(!1) So in original. Probably should be "within".

-End-

- CITE-

16 USC Sec. 1378

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 31 - MARINE MAMMAL PROTECTION

SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

- HEAD-

Sec. 1378. International program

-STATUTE-

(a) Duties of Secretary

The Secretary, through the Secretary of State, shall - (1) initiate negotiations as soon as possible for the development of bilateral or multilateral agreements with other nations for the protection and conservation of all marine mammals covered by this chapter;

(2) initiate -

(A) negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which are found by the Secretary to be unduly harmful to any species or population stock of marine mammal, for the purpose of entering into bilateral and multilateral treaties with such countries to protect marine mammals, with the Secretary of State to prepare a draft agenda relating to this matter for discussion at appropriate international meetings and forums;

(B) discussions with foreign governments whose vessels harvest yellowfin tuna with purse seines in the eastern tropical Pacific Ocean, for the purpose of concluding, through the Inter-American Tropical Tuna Commission or such other bilateral or multilateral institutions as may be appropriate, international arrangements for the conservation of marine mammals taken incidentally in the course of harvesting such tuna, which should include provisions for (i) cooperative research into alternative methods of locating and catching yellowfin tuna which do not involve the taking of marine mammals, (ii) cooperative research on the status of affected marine mammal population stocks, (iii) reliable monitoring of the number, rate, and species of marine mammals taken by vessels of harvesting nations, (iv) limitations on incidental take levels based upon the best scientific information available, and (v) the use of the best marine mammal safety techniques and equipment that are economically and technologically practicable to reduce the incidental kill and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate;

(C) negotiations to revise the Convention for the Establishment of an Inter-American Tropical Tuna Commission (1 U.S.T. 230; TIAS 2044) which will incorporate -

(i) the conservation and management provisions agreed to by the nations which have signed the Declaration of Panama and in the Straddling Fish Stocks and Highly Migratory Fish Stocks Agreement, as opened for signature on December 4, 1995; and

(ii) a revised schedule of annual contributions to the expenses of the Inter-American Tropical Tuna Commission that is equitable to participating nations; and

(D) discussions with those countries participating, or likely to participate, in the International Dolphin Conservation Program, for the

purpose of identifying sources of funds needed for research and other measures promoting effective protection of dolphins, other marine species, and the marine ecosystem;

(3) encourage such other agreements to promote the purposes of this chapter with other nations for the protection of specific ocean and land regions which are of special significance to the health and stability of marine mammals;

(4) initiate the amendment of any existing international treaty for the protection and conservation of any species of marine mammal to which the United States is a party in order to make such treaty consistent with the purposes and policies of this chapter;

(5) seek the convening of an international ministerial meeting on marine mammals before July 1, 1973, for the purposes of (A) the negotiation of a binding international convention for the protection and conservation of all marine mammals, and (B) the implementation of paragraph (3) of this section; and

(6) provide to the Congress by not later than one year after October 21, 1972, a full report on the results of his efforts under this section.

(b) Consultations and studies concerning North Pacific fur seals

(1) In addition to the foregoing, the Secretary shall -

(A) in consultation with the Marine Mammal Commission established by section 1401 of this title, undertake a study of the North Pacific fur seals to determine whether herds of such seals subject to the jurisdiction of the United States are presently at their optimum sustainable population and what population trends are evident; and

(B) in consultation with the Secretary of State, promptly undertake a comprehensive study of the provisions of this chapter, as they relate to North Pacific fur seals, and the provisions of the North Pacific Fur Seal Convention signed on February 9, 1957, as extended (hereafter referred to in this subsection as the "Convention"), to determine what modifications, if any, should be made to the provisions of the Convention, or of this chapter, or both, to make the Convention and this chapter consistent with each other.

The Secretary shall complete the studies required under this paragraph not later than one year after October 21, 1972, and shall immediately provide copies thereof to Congress.

(2) If the Secretary finds -

(A) as a result of the study required under paragraph (1)(A) of this subsection, that the North Pacific fur seal herds are below their optimum sustainable population and are not trending upward toward such level, or have reached their optimum sustainable population but are commencing a downward trend, and believes the herds to be in danger of depletion; or

(B) as a result of the study required under paragraph (1)(B) of this subsection, that modifications of the Convention are desirable to make it and this chapter consistent;

he shall, through the Secretary of State, immediately initiate negotiations to modify the Convention so as to (i) reduce or halt the taking of seals to the extent required to assure that such herds attain and remain at their optimum sustainable population, or (ii) make the Convention and this chapter consistent; or both, as the case may be. If negotiations to so modify the Convention are unsuccessful, the Secretary shall, through the Secretary of State, take such steps as may be necessary to continue the existing Convention beyond its present termination date so as to continue to protect and conserve the North Pacific fur seals and to prevent a return to pelagic sealing.

(c) Description of annual results of discussions; proposals for further action

The Secretary shall include a description of the annual results of discussions initiated and conducted pursuant to subsection (a)(2)(B) of this section, as well as any proposals for further action to achieve the purposes of that subsection, in the report required under section 1373(f) of this title.

-SOURCE-

(Pub. L. 92-522, title I, Sec. 108, Oct. 21, 1972, 86 Stat. 1038; Pub. L. 100-711, Sec. 4(b), (c), Nov. 23, 1988, 102 Stat. 4766, 4767; Pub. L. 105-42, Sec. 4(e), Aug. 15, 1997, 111 Stat. 1125.)

-MISC1-

AMENDMENTS

1997 - Subsecs. (a)(2)(C), (D). Pub. L. 105-42 added subpars. (C) and (D)

1988 - Subsec. (a)(2). Pub. L. 100-711, Sec. 4(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "initiate negotiations as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, commercial fishing operations which are found by the Secretary to be unduly harmful to any species of marine mammal, for the purpose of entering into bilateral and multilateral treaties with such countries to protect marine mammals. The Secretary of State shall prepare a draft agenda relating to this matter for discussion at appropriate international meetings and forums;"

Subsec. (c). Pub. L. 100-711, Sec. 4(c), added subsec. (c).

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.

-End-

- CITE-

16 USC Sec. 1379

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION  
CHAPTER 31 - MARINE MAMMAL PROTECTION  
SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

- HEAD-

Sec. 1379. Transfer of management authority

-STATUTE-

(a) State enforcement of State laws or regulations prohibited without transfer to State of management authority by Secretary  
No State may enforce, or attempt to enforce, any State law or regulation relating to the taking of any species (which term for purposes of this section includes any population stock) of marine mammal within the State unless the Secretary has transferred authority for the conservation and management of that species (hereinafter referred to in this section as "management authority") to the State under subsection (b)(1) of this section.

(b) Findings prerequisite to transfer of authority; State program; implementation

(1) Subject to paragraph (2) and subsection (f) of this section, the Secretary shall transfer management authority for a species of marine

mammal to a State if the Secretary finds, after notice and opportunity for public comment, that the State has developed and will implement a program for the conservation and management of the species that -

- (A) is consistent with the purposes, policies, and goals of this chapter and with international treaty obligations;
- (B) requires that all taking of the species be humane;
- (C) does not permit the taking of the species unless and until

(i) the State has determined, under a process consistent with the standards set forth in subsection (c) of this section -

- (I) that the species is at its optimum sustainable population (hereinafter in this section referred to as "OSP"), and
- (II) the maximum number of animals of that species that may be taken without reducing the species below its OSP, and

(ii) the determination required under clause (i) is final and implemented under State law, and, if a cooperative allocation agreement for the species is required under subsection (d)(1) of this section, such as agreement is implemented;

(D) does not permit the taking of a number of animals of the species that exceeds the maximum number determined pursuant to subparagraph (C)(i)(II), and, in the case of taking for subsistence uses (as defined in subsection (f)(2) of this section), does not permit the taking of a number of animals that would be inconsistent with the maintenance of the species at its OSP;

(E) does not permit the taking of the species for scientific research, public display, or enhancing the survival or recovery of a species or stock, except for taking for such purposes that is undertaken by, or on behalf of, the State;

(F) provides procedures for acquiring data, and evaluating such data and other new evidence, relating to the OSP of the species, and the maximum take that would maintain the species at the level, and, if required on the basis of such evaluation, for amending determinations under subparagraph (C)(i);

(G) provides procedures for the resolution of differences between the State and the Secretary that might arise during the development of a cooperative allocation agreement under subsection (d)(1) of this section; and

(H) provides for the submission of an annual report to the Secretary regarding the administration of the program during the reporting period.

(2) During the period between the transfer of management authority for a species to a State under paragraph (1) and the time at which the implementation requirements under paragraph (1)(C)(ii) are complied with -

(A) the State program shall not apply with respect to the taking of the species within the State for any purpose, or under any condition, provided for under section 1371 of this title; and

(B) the Secretary shall continue to regulate, under this subchapter, all takings of the species within the State.

(3) After the determination required under paragraph (1)(C)(i) regarding a species is final and implemented under State law and after a cooperative allocation agreement described in subsection (d)(1) of this section, if required, is implemented for such species -

(A) such determination shall be treated, for purposes of applying this subchapter beyond the territory of the State, as a determination made in accordance with section 1373 of this title and as an applicable waiver under section 1371(a)(3) of this title;

(B) the Secretary shall regulate, without regard to this section other than the allocations specified under such an agreement, the

taking of the species -

(i) incidentally in the course of commercial fishing operations (whether provided for under section 1371(a)(2) or (4) of this title), or in the course of other specified activities provided for under section 1371(a)(5) of this title, in the zone described in section 1362(14)(B) (!) of this title, and

(ii) for scientific research, public display, or enhancing the survival or recovery of a species or stock (other than by, or on behalf of, the State), except that any taking authorized under a permit issued pursuant to section 1371(a)(1) of this title after October 9, 1981, allowing the removal of live animals from habitat within the State shall not be effective if the State agency disapproves, on or before the date of issuance of the permit, such taking as being inconsistent with the State program; and

(C) section 1371(b) of this title shall not apply.

(c) Standards with which State process must comply

The State process required under subsection (b)(1)(C) of this section must comply with the following standards:

(1) The State agency with management authority for the species (hereinafter in this section referred to as the "State agency") must make an initial determination regarding the factors described in clause (i) of that subsection. The State agency must identify, and make available to the public under reasonable circumstances, the documentation supporting such initial determination. Unless request for a hearing under paragraph (2) regarding the initial determination is timely made, the initial determination shall be treated as final under State law.

(2) The State agency shall provide opportunity, at the request of any interested party, for a hearing with respect to the initial determination made by it under paragraph (1) at which interested parties may -

(A) present oral and written evidence in support of or against such determination; and

(B) cross-examine persons presenting evidence at the hearing.

The State agency must give public notice of the hearing and make available to the public within a reasonable time before commencing the hearing a list of the witnesses for the State and a general description of the documentation and other evidence that will be relied upon by such witnesses.

(3) The State agency, solely on the basis of the record developed at a hearing held pursuant to paragraph (2), must make a decision regarding its initial determination under paragraph

(1) and shall include with the record a statement of the findings and conclusions, and the reason or basis therefor, on all material issues.

(4) Opportunity for judicial review of the decision made by the State agency on the record under paragraph (3), under scope of review equivalent to that provided for in section 706(2)(A) through (E) of title 5, must be available under State law. The Secretary may not initiate judicial review of any such decision.

(d) Cooperative allocation agreements

(1) If the range of a species with respect to which a determination under paragraph (1)(C)(i) of subsection (b) of this section is made extends beyond the territorial waters of the State, the State agency and the Secretary (who shall first coordinate with the Marine Mammal Commission and the appropriate Regional Fishery Management Council established under section 1852 of this title) shall enter into a cooperative allocation agreement providing procedures for allocating, on a timely basis, such of the number of animals, as determined under paragraph (1)(C)(i)(II) of subsection (b) of this section, as may be appropriate with priority of allocation being given firstly to taking for subsistence uses in the case of the State of Alaska, and secondly to taking for purposes provided for under section 1371(a) of this title

within the zone described in section 1362(14)(B) (!2) of this title.

(2) If the State agency requests the Secretary to regulate the taking of a species to which paragraph (1) applies within the zone described in section 1362(14)(B) (!2) of this title for subsistence uses or for hunting, or both, in a manner consistent with the regulation by the State agency of such taking within the State, the Secretary shall adopt, and enforce within such zone, such of the State agency's regulatory provisions as the Secretary considers to be consistent with his administration of section 1371(a) of this title within such zone. The Secretary shall adopt such provisions through the issuance of regulations under section 553 of title 5, and with respect to such issuance the Regulatory Flexibility Act [5 U.S.C. 601 et seq.], the Paperwork Reduction Act, (!2) Executive Order Numbered 12291, dated February 17, 1981, and the thirty-day notice requirement in subsection (d) of such section 553 shall not apply. For purposes of sections 1375, 1376, and 1377 of this title, such regulations shall be treated as having been issued under this subchapter.

(e) Revocation of transfer of management authority

(1) Subject to paragraph (2), the Secretary shall revoke, after opportunity for a hearing, any transfer of management authority made to a State under subsection (b)(1) of this section if the Secretary finds that the State program for the conservation and management of the species concerned is not being implemented, or is being implemented in a manner inconsistent with the provisions of this section or the provisions of the program. The Secretary shall also establish a procedure for the voluntary return by a State to the Secretary of species management authority that was previously transferred to the State under subsection (b)(1) of this section.

(2)(A) The Secretary may not revoke a transfer of management authority under paragraph (1) unless -

(i) the Secretary provides to the State a written notice of intent to revoke together with a statement, in detail, of those actions, or failures to act, on which such intent is based; and

(ii) during the ninety-day period after the date of the notice of intent to revoke -

(I) the Secretary provides opportunity for consultation between him and the State concerning such State actions or failures to act and the remedial measures that should be taken by the State, and

(II) the State does not take such remedial measures as are necessary, in the judgment of the Secretary, to bring its conservation and management program, or the administration or enforcement of the program, into compliance with the provisions of this section.

(B) When a revocation by the Secretary of a transfer of management authority to a State becomes final, or the State voluntarily returns management authority to the Secretary, the Secretary shall regulate the taking, and provide for the conservation and management, of the species within the State in accordance with the provisions of this chapter (and in the case of Alaskan Natives, section 1371(b) of this title and subsection (i) of this section shall apply upon such revocation or return of management authority).

(f) Transfer of management authority to State of Alaska

(1) The Secretary may not transfer management authority to the State of Alaska under subsection (b)(1) of this section for any species of marine mammal unless -

(A) the State has adopted and will implement a statute and regulations that insure that the taking of the species for subsistence uses -

(i) is accomplished in a nonwasteful manner,

(ii) will be the priority consumptive use of the species, and

(iii) if required to be restricted, such restriction will be based upon -

(I) the customary and direct dependence upon the species as the

- mainstay of livelihood,
- (II) local residency, and
- (III) the availability of alternative resources; and

(B) the State has adopted a statute or regulation that requires that any consumptive use of marine mammal species, other than for subsistence uses, will be authorized during a regulatory year only if the appropriate agency first makes findings, based on an administrative record before it, that -

- (i) such use will have no significant adverse impact upon subsistence uses of the species, and
- (ii) the regulation of such use, including, but not limited to, licensing of marine mammal hunting guides and the assignment of guiding areas, will, to the maximum extent practicable, provide economic opportunities for the residents of the rural coastal villages of Alaska who engage in subsistence uses of that species.

(2) For purposes of paragraph (1), the term "subsistence uses" means the customary and traditional uses by rural Alaska residents of marine mammals for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of marine mammals taken for personal or family consumption; and for barter, or sharing for personal or family consumption. As used in this paragraph -

(A) The term "family" means all persons related by blood, marriage, or adoption, or any person living within a household on a permanent basis.

(B) The term "barter" means the exchange of marine mammals or their parts, taken for subsistence uses -

- (i) for other wildlife or fish or their parts, or
- (ii) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

(g) Environmental impact statement not required

Neither the transfer of management authority to a State under subsection (b)(1) of this section, nor the revocation or voluntary return of such authority under subsection (e) of this section, shall be deemed to be an action for which an environmental impact statement is required under section 4332 of title 42.

(h) Taking of marine mammals as part of official duties

(1) Nothing in this subchapter or subchapter V of this chapter shall prevent a Federal, State, or local government official or employee or a person designated under section 1382(c) of this title from taking, in the course of his or her duties as an official, employee, or designee, a marine mammal in a humane manner (including euthanasia) if such taking is for -

- (A) the protection or welfare of the mammal,
- (B) the protection of the public health and welfare, or
- (C) the nonlethal removal of nuisance animals.

(2) Nothing in this subchapter shall prevent the Secretary or a person designated under section 1382(c) of this title from importing a marine mammal into the United States if such importation is necessary to render medical treatment that is not otherwise available.

(3) In any case in which it is feasible to return to its natural habitat a marine mammal taken or imported under circumstances described in this subsection, steps to achieve that result shall be taken.

(i) Regulations covering taking of marine mammals by Alaskan natives

The Secretary may (after providing notice thereof in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the affected area and providing opportunity for a hearing thereon in such area) prescribe regulations requiring the marking, tagging, and reporting of animals taken pursuant to section 1371(b) of this title.

(j) Grants to develop or administer State conservation and management programs

The Secretary may make grants to States to assist them -



(1) in developing programs, to be submitted for approval under subsection (b) of this section, for the conservation and management of species of marine mammals; and

(2) in administering such programs if management authority for such species is transferred to the State under such subsection.

Grants made under this subsection may not exceed 50 per centum of the costs of developing a State program before Secretarial approval, or of administering the program thereafter.

(k) Delegation of administration and enforcement to States

The Secretary is authorized and directed to enter into cooperative arrangements with the appropriate officials of any State for the delegation to such State of the administration and enforcement of this subchapter: Provided, That any such arrangement shall contain such provisions as the Secretary deems appropriate to insure that the purposes and policies of this chapter will be carried out.

(1) Authorization of appropriations

(1) There are authorized to be appropriated to the Department of the Interior, for the purposes of carrying out this section, not to exceed \$400,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981.

(2) There are authorized to be appropriated to the Department of Commerce, for the purposes of carrying out this section, not to exceed \$225,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981.

-SOURCE-

(Pub. L. 92-522, title I, Sec. 109, Oct. 21, 1972, 86 Stat. 1040; Pub. L. 95-316, Sec. 1, July 10, 1978, 92 Stat. 380; Pub. L. 97-58, Sec. 4(a), Oct. 9, 1981, 95 Stat. 982; Pub. L. 100-711, Sec. 5(a), (e)(3), Nov. 23, 1988, 102 Stat. 4769, 4771; Pub. L. 102-587, title III, Sec. 3004(a)(2), Nov. 4, 1992, 106 Stat. 5067; Pub. L. 103-238, Sec. 24(c)(10), Apr. 30, 1994, 108 Stat. 566.)

-REFTEXT-

#### REFERENCES IN TEXT

Section 1362(14) of this title, referred to in subsecs. (b)(3)(B)(i) and (d), was redesignated section 1362(15) by Pub. L. 102-582, title IV, Sec. 401(a), Nov. 2, 1992, 106 Stat. 4909.

The Regulatory Flexibility Act, referred to in subsec. (d)(2), is Pub. L. 96-354, Sept. 19, 1980, 94 Stat. 1164, which is classified generally to chapter 6 (Sec. 601 et seq.) of Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 5 and Tables.

The Paperwork Reduction Act, referred to in subsec. (d)(2), probably means the Paperwork Reduction Act of 1980, Pub. L. 96-511, Dec. 11, 1980, 94 Stat. 2812, as amended, which was classified principally to chapter 35 (Sec. 3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by the Paperwork Reduction Act of 1995, Pub. L. 104-13, Sec. 2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

Executive Order Numbered 12291, dated February 17, 1981, referred to in subsec. (d)(2), was formerly set out as a note under section 601 of Title 5, Government Organization and Employees, and was revoked by Ex. Ord. No. 12866, Sec. 11, Sept. 30, 1993, 58 F.R. 51735.

-MISC1-

#### AMENDMENTS

1994 - Subsec. (h)(1). Pub. L. 103-238 made technical amendment to reference to subchapter V of this chapter to reflect renumbering of corresponding title of original act.

1992 - Subsec. (h)(1). Pub. L. 102-587 inserted "or subchapter V of this chapter" in introductory provisions.

1988 - Subsec. (b) (1) (E) . Pub. L. 100-711, Sec. 5 (e) (3) (A) , substituted "research, public display, or enhancing the survival or recovery of a species or stock" for "research and public display purposes".

Subsec. (b) (3) (B) (ii) . Pub. L. 100-711, Sec. 5 (e) (3) (B) , substituted "research, public display, or enhancing the survival or recovery of a species or stock" for "research or public display purposes".

Subsec. (h). Pub. L. 100-711, Sec. 5(a), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: "Nothing in this subchapter shall prevent a Federal, State, or local government official or employee or a person designated under section 1382(c) of this title from taking, in the course of his duties as an official, employee, or designee, a marine mammal in a humane manner (including euthanasia) if such taking is for -

"(1) the protection or welfare of the mammal,

"(2) the protection of the public health and welfare, or

"(3) the nonlethal removal of nuisance animals,

and, in any case in which the return of the mammal to its natural habitat is feasible, includes steps designed to achieve that result."

1981 - Subsec. (a). Pub. L. 97-58, Sec. 4(a)(2), added subsec. (a). Former subsec. (a), relating to State regulation of the taking of marine mammals, was struck out.

Subsec. (b). Pub. L. 97-58, Sec. 4(a)(2), added subsec. (b). Former subsec. (b), relating to the making of grants to States by the Secretary, was struck out. See subsec. (j) of this section.

Subsecs. (c), (d). Pub. L. 97-58, Sec. 4(a)(1), (2), added subsecs. (c) and (d). Former subsecs. (c) and (d) redesignated (k) and (l), respectively.

Subsecs. (e) to (j). Pub. L. 97-58, Sec. 4(a)(2), added subsecs. (e) to (j) .

Subsecs. (k), (l). Pub. L. 97-58, Sec. 4(a)(1), redesignated subsecs. (c) and (d) as (k) and (l), respectively.

1978 - Subsec. (d). Pub. L. 95-316 added subsec. (d).

ENFORCEMENT BY HAWAII OF LAWS RELATING TO CONSERVATION AND  
MANAGEMENT OF HUMPBACK WHALES WITH RESPECT TO RECREATIONAL AND  
COMMERCIAL VESSELS

Pub. L. 108-447, div. B, title II, Sec. 213, Dec. 8, 2004, 118 Stat. 2884, provided that: "Hereafter, notwithstanding any other Federal law related to the conservation and management of marine mammals, the State of Hawaii may enforce any State law or regulation with respect to the operation in State waters of recreational and commercial vessels, for the purpose of conservation and management of humpback whales, to the extent that such law or regulation is no less restrictive than Federal law."

COOPERATIVE AGREEMENTS UNDER ENDANGERED SPECIES ACT

Section 4(b) of Pub. L. 97-58 provided that: "Nothing in the amendments made by subsection (a) [amending this section] shall be construed as affecting in any manner, or to any extent, any cooperative agreement entered into by a State under section 6(c) of the Endangered Species Act of 1973 (16 U.S.C. 1535(c)) before, on, or after the date of the enactment of this Act [Oct. 9, 1981]."

(!1) See References in Text note below.

(!2) See References in Text note below.

-End-

- CITE-

16 USC Sec. 1380

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 31 - MARINE MAMMAL PROTECTION

SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

- HEAD-

Sec. 1380. Marine mammal research grants

-STATUTE-

(a) Authorization; research concerning yellowfin tuna; annual report

The Secretary is authorized to make grants, or to provide financial assistance in such other form as he deems appropriate, to any Federal or State agency, public or private institution, or other person for the purpose of assisting such agency, institution, or person to undertake research in subjects which are relevant to the protection and conservation of marine mammals. In carrying out this subsection, the Secretary shall undertake a program of, and shall provide financial assistance for, research into new methods of locating and catching yellowfin tuna without the incidental taking of marine mammals. The Secretary shall include a description of the annual results of research carried out under this section in the report required under section 1373(f) of this title.

(b) Terms and conditions

Any grant or other financial assistance provided by the Secretary pursuant to this section shall be subject to such terms and conditions as the Secretary deems necessary to protect the interests of the United States and shall be made after review by the Marine Mammal Commission.

(c) Gulf of Maine ecosystem protection

(1) No later than 1 year after April 30, 1994, the Secretary of Commerce shall convene a regional workshop for the Gulf of Maine to assess human-caused factors affecting the health and stability of that marine ecosystem, of which marine mammals are a part. The workshop shall be conducted in consultation with the Marine Mammal Commission, the adjacent coastal States, individuals with expertise in marine mammal biology and ecology, representatives from environmental organizations, the fishing industry, and other appropriate persons. The goal of the workshop shall be to identify such factors, and to recommend a program of research and management to restore or maintain that marine ecosystem and its key components that -

(A) protects and encourages marine mammals to develop to the greatest extent feasible commensurate with sound policies of resource management;

(B) has as the primary management objective the maintenance of the health and stability of the marine ecosystems;

(C) ensures the fullest possible range of management options for future generations; and

(D) permits nonwasteful, environmentally sound development of renewable and nonrenewable resources.

(2) On or before December 31, 1995, the Secretary of Commerce shall submit to the Committee on Merchant Marine and Fisheries of the House of

Representatives and the Committee on Commerce, Science and Transportation of the Senate a report containing the results of the workshop under this subsection, proposed regulatory or research actions, and recommended legislative action.

(d) Bering Sea ecosystem protection

(1) The Secretary of Commerce, in consultation with the Secretary of the Interior, the Marine Mammal Commission, the State of Alaska, and Alaska Native organizations, shall, not later than 180 days after April 30, 1994, undertake a scientific research program to monitor the health and stability of the Bering Sea marine ecosystem and to resolve uncertainties concerning the causes of population declines of marine mammals, sea birds, and other living resources of that marine ecosystem. The program shall address the research recommendations developed by previous workshops on Bering Sea living marine resources, and shall include research on subsistence uses of such resources and ways to provide for the continued opportunity for such uses.

(2) To the maximum extent practicable, the research program undertaken pursuant to paragraph (1) shall be conducted in Alaska. The Secretary of Commerce shall utilize, where appropriate, traditional local knowledge and may contract with a qualified Alaska Native organization to conduct such research.

(3) The Secretary of Commerce, the Secretary of the Interior, and the Commission shall address the status and findings of the research program in their annual reports to Congress required by sections 1373(f) and 1404 of this title.(!1)

-SOURCE-

(Pub. L. 92-522, title I, Sec. 110, Oct. 21, 1972, 86 Stat. 1041; Pub. L. 95-136, Sec. 1, Oct. 18, 1977, 91 Stat. 1167; Pub. L. 95-316, Sec. 2, July 10, 1978, 92 Stat. 380; Pub. L. 97-58, Sec. 5, Oct. 9, 1981, 95 Stat. 986; Pub. L. 100-711, Sec. 4(e), Nov. 23, 1988, 102 Stat. 4768; Pub. L. 103-238, Sec. 20, Apr. 30, 1994, 108 Stat. 560; Pub. L. 105-42, Sec. 4(f), Aug. 15, 1997, 111 Stat. 1125.)

-REFTEXT-

REFERENCES IN TEXT

Provisions of section 1373(f) of this title requiring annual reports to Congress, referred to in subsec. (d)(3), terminated, effective May 15, 2000. See Termination of Reporting Requirements note set out under section 1373 of this title.

Section 1404 of this title, referred to in subsec. (d)(3), was omitted from the Code.

-MISC1-

AMENDMENTS

1997 - Subsec. (a). Pub. L. 105-42 struck out "(1)" before "The Secretary is authorized" and struck out par. (2) which read as follows: "For purposes of identifying appropriate research into promising new methods of locating and catching yellowfin tuna without the incidental taking of marine mammals, the Secretary shall contract for an independent review of information pertaining to such potential alternative methods to be conducted by the National Academy of Sciences with individuals having scientific, technical, or other expertise that may be relevant to the identification of promising alternative fishing techniques. The Secretary shall request that the independent review be submitted to the Secretary on or before September 8, 1989, and the Secretary shall submit the report of the independent review, together with a proposed plan for research, development, and implementation of alternative fishing techniques, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on or before December 5, 1989."

1994 - Subsecs. (c), (d). Pub. L. 103-238 added subsecs. (c) and (d)

and struck out former subsec. (c) which authorized appropriations to be made available to the Secretary of Commerce and the Secretary of the Interior for purposes of carrying out this section for fiscal year ending June 30, 1973, to fiscal year ending Sept. 30, 1981.

1988 - Subsec. (a). Pub. L. 100-711 designated existing provisions as par. (1) and added par. (2).

1981 - Subsec. (a). Pub. L. 97-58 directed the Secretary to undertake a program of research into new methods of locating and catching yellowfin tuna without the incidental taking of marine mammals and directed that the Secretary include a description of the annual results of that research in the report required under section 1373(f) of this title.

1978 - Subsec. (c)(4) to (6). Pub. L. 95-316 added pars. (4) to (6) .

1977 - Subsec. (c). Pub. L. 95-136 incorporated existing provisions into text preceding par. (1) and, as so incorporated, struck out provisions authorizing to be appropriated such sums as may be necessary to carry out this section for the fiscal year in which this section takes effect and the next four years thereafter, limiting appropriations for any one year to \$2,500,000, and requiring that one-third of such sums be made available to the Secretary of the Interior and two-thirds of such sums be made available to the Secretary of the department in which the National Oceanic and Atmospheric Administration is operating, and added pars. (1) to (3) .

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.

-TRANS-

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. For treatment of references to Committee on Merchant Marine and Fisheries, see section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

-FOOTNOTE-

(!1) See References in Text note below.

-End-

- CITE-

16 USC Sec. 1381

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION  
CHAPTER 31 - MARINE MAMMAL PROTECTION  
SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

- HEAD-

Sec. 1381. Commercial fisheries gear development

-STATUTE-

(a) Research and development program; report to Congress;

authorization of appropriations

The Secretary of the department in which the National Oceanic and Atmospheric Administration is operating (hereafter referred to in this section as the "Secretary") is hereby authorized and directed to immediately undertake a program of research and development for the purpose of devising improved fishing methods and gear so as to reduce to the maximum extent practicable the incidental taking of marine mammals in connection with commercial fishing. At the end of the full twenty-four calendar month period following October 21, 1972, the Secretary shall deliver his report in writing to the Congress with respect to the results of such research and development. For the purposes of this section, there is hereby authorized to be appropriated the sum of \$1,000,000 for the fiscal year ending June 30, 1973, and the same amount for the next fiscal year. Funds appropriated for this section shall remain available until expended.

(b) Reduction of level of taking of marine mammals incidental to commercial fishing operations

The Secretary, after consultation with the Marine Mammal Commission, is authorized and directed to issue, as soon as practicable, such regulations, covering the twenty-four-month period referred to in section 1371(a)(2) of this title, as he deems necessary or advisable, to reduce to the lowest practicable level the taking of marine mammals incidental to commercial fishing operations. Such regulations shall be adopted pursuant to section 553 of title 5. In issuing such regulations, the Secretary shall take into account the results of any scientific research under

subsection (a) of this section and, in each case, shall provide a reasonable time not exceeding four months for the persons affected to implement such regulations.

(c) Reduction of level of taking of marine mammals in tuna fishery

Additionally, the Secretary and Secretary of State are directed to commence negotiations within the Inter-American Tropical Tuna Commission in order to effect essential compliance with the regulatory provisions of this chapter so as to reduce to the maximum extent feasible the incidental taking of marine mammals by vessels involved in the tuna fishery. The Secretary and Secretary of State are further directed to request the Director of Investigations of the Inter-American Tropical Tuna Commission to make recommendations to all member nations of the Commission as soon as is practicable as to the utilization of methods and gear devised under subsection (a) of this section.

(d) Research and observation

Furthermore, after timely notice and during the period of research provided in this section, duly authorized agents of the Secretary are hereby empowered to board and to accompany any commercial fishing vessel documented under the laws of the United States, there being space available, on a regular fishing trip for the purpose of conducting research or observing operations in regard to the development of improved fishing methods and gear as authorized by this section. Such research and observation shall be carried out in such manner as to minimize interference with fishing operations. The Secretary shall provide for the cost of quartering and maintaining such agents. No master, operator, or owner of such a vessel shall impair or in any way interfere with the research or observation being carried out by agents of the Secretary pursuant to this section.

- SOURCE-

(Pub. L. 92-522, title I, Sec. 111, Oct. 21, 1972, 86 Stat. 1041.)

-End-

- CITE-

16 USC Sec. 1382

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 31 - MARINE MAMMAL PROTECTION

SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

- HEAD-

Sec. 1382. Regulations and administration

-STATUTE-

(a) Consultation with Federal agencies

The Secretary, in consultation with any other Federal agency to the extent that such agency may be affected, shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subchapter.

(b) Cooperation by Federal agencies

Each Federal agency is authorized and directed to cooperate with the Secretary, in such manner as may be mutually agreeable, in carrying out the purposes of this subchapter.

(c) Contracts, leases, and cooperative agreements

The Secretary may enter into such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the purposes of this subchapter or subchapter V of this chapter and on such terms as he deems appropriate with any Federal or State agency, public or private institution, or other person.

(d) Annual review; suspension of program

The Secretary shall review annually the operation of each program in which the United States participates involving the taking of marine mammals on lands. If at any time the Secretary finds that any such program cannot be administered on lands owned by the United States or in which the United States has an interest in a manner consistent with the purposes of policies of this chapter, he shall suspend the operation of that program and shall include in the annual report to the public and the Congress required under section 1373(f) of this title his reasons for such suspension, together with recommendations for such legislation as he deems necessary and appropriate to resolve the problem.

(e) Measures to alleviate impacts on strategic stocks

If the Secretary determines, based on a stock assessment under section 1386 of this title or other significant new information obtained under this chapter, that impacts on rookeries, mating grounds, or other areas of similar ecological significance to marine mammals may be causing the decline or impeding the recovery of a strategic stock, the Secretary may develop and implement conservation or management measures to alleviate those impacts. Such measures shall be developed and implemented after consultation with the Marine Mammal Commission and the appropriate Federal agencies and after notice and opportunity for public comment.

-SOURCE-

(Pub. L. 92-522, title I, Sec. 112, Oct. 21, 1972, 86 Stat. 1042; Pub. L. 96-470, title II, Sec. 201(e), Oct. 19, 1980, 94 Stat. 2241; Pub. L. 102-587, title III, Sec. 3004(a)(3), Nov. 4, 1992, 106 Stat. 5067; Pub. L. 103-238, Secs. 7(a), 24(c)(11), Apr. 30, 1994, 108 Stat. 542, 566.)

-MISC1-

AMENDMENTS

1994 - Subsec. (c). Pub. L. 103-238, Sec. 24(c)(11), made technical amendment to reference to subchapter V of this chapter to reflect

renumbering of corresponding title of original act.

Subsec. (e). Pub. L. 103-238, Sec. 7(a), added subsec. (e).

1992 - Subsec. (c). Pub. L. 102-587 inserted "or subchapter V of this chapter" after "of this subchapter".

1980 - Subsec. (d). Pub. L. 96-470 substituted "include in the annual report to the public and the Congress required under section 1373(f) of this title" for "forthwith submit to Congress".

-End-

- CITE-

16 USC Sec. 1383

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 31 - MARINE MAMMAL PROTECTION

SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

- HEAD-

Sec. 1383. Application to other treaties and conventions

-STATUTE-

(a) Generally; findings; waiver of penalties

The provisions of this subchapter shall be deemed to be in addition to and not in contravention of the provisions of any existing international treaty, convention, or agreement, or any statute implementing the same, which may otherwise apply to the taking of marine mammals. Upon a finding by the Secretary that the provisions of any international treaty, convention, or agreement, or any statute implementing the same has been made applicable to persons subject to the provisions of this subchapter in order to effect essential compliance with the regulatory provisions of this chapter so as to reduce to the lowest practicable level the taking of marine mammals incidental to commercial fishing operations, section 1375 of this title may not apply to such persons.

(b) Review of effectiveness of Agreement on the Conservation of Polar Bears

Not later than 1 year after April 30, 1994, the Secretary of the Interior shall, in consultation with the contracting parties, initiate a review of the effectiveness of the Agreement on the Conservation of Polar Bears, as provided for in Article IX of the Agreement, and establish a process by which future reviews shall be conducted.

(c) Review of implementation of Agreement on the Conservation of Polar Bears; report

The Secretary of the Interior, in consultation with the Secretary of State and the Marine Mammal Commission, shall review the effectiveness of United States implementation of the Agreement on the Conservation of Polar Bears, particularly with respect to the habitat protection mandates contained in Article II. The Secretary shall report the results of this review to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate not later than April 1, 1995.

(d) Consultation regarding conservation of polar bears in Russia and Alaska; report

Not later than 6 months after April 30, 1994, the Secretary of the Interior, acting through the Secretary of State and in consultation with the Marine Mammal Commission and the State of Alaska, shall consult with the appropriate officials of the Russian Federation on the development and implementation of enhanced cooperative research and management programs



for the conservation of polar bears in Alaska and Russia. The Secretary shall report the results of this consultation and provide periodic progress reports on the research and management programs to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate.

- SOURCE-

(Pub. L. 92-522, title I, Sec. 113, Oct. 21, 1972, 86 Stat. 1042; Pub. L. 103-238, Sec. 7(b), Apr. 30, 1994, 108 Stat. 542.)

-CO D-

CODIFICATION

A prior subsec. (b) of section 113 of Pub. L. 92-522 amended section 659 of this title.

-MISC1-

AMENDMENTS

1994 - Subsec. (a). Pub. L. 103-238, Sec. 7(b)(1), directed the amendment of this section by "designating the existing paragraph" as subsec. (a), notwithstanding the existing first par. of this section was already designated (a).

Subsecs. (b) to (d). Pub. L. 103-238, Sec. 7(b)(2), added subsecs. (b) to (d). See Codification note above.

-TRANS-

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

-End-

- CITE-

16 USC Sec. 1383a

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 31 - MARINE MAMMAL PROTECTION

SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

- HEAD-

Sec. 1383a. Interim exemption for commercial fisheries

-STATUTE-

(a) Effective and termination dates of preemptive provisions; law governing incidental taking of marine mammals in course of commercial yellowfin tuna fishing

(1) During the period beginning on November 23, 1988, and until superseded by regulations prescribed under section 1387 of this title, or until September 1, 1995, whichever is earlier, except as provided in

paragraph (2), the provisions of this section, rather than sections 1371, 1373, and 1374 of this title, shall govern the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States and vessels which have valid fishing permits issued by the Secretary in accordance with section 1824(b) of this title. In any event it shall be the immediate goal that the incidental kill or 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.

(2) The provisions of this section other than subsection (e)(6)(A) of this section shall not govern the incidental taking of marine mammals in the course of commercial yellowfin tuna fishing subject to section 1374(h)(2) of this title.

(b) Proposed and final list of fisheries taking marine mammals; publication in Federal Register; grant of exemption; conditions; suspension of grant of exemption; administration of exemption provisions; fees

(1) The Secretary shall, after consultation with the Marine Mammal Commission -

(A) publish in the Federal Register, for public comment, not later than sixty days after November 23, 1988, a proposed list of those fisheries, along with a statement of the marine mammals and the approximate number of vessels or persons involved in each such fishery, that have -

- (i) frequent incidental taking of marine mammals;
- (ii) occasional incidental taking of marine mammals; or
- (iii) a remote likelihood of or no known incidental taking of marine mammals;

(B) publish in the Federal Register not later than one hundred and twenty days after November 23, 1988, a final list of the fisheries and other information required by paragraph (A), together with a summary of the provisions of this section and information sufficient to advise vessel owners on how to obtain an exemption and otherwise comply with the requirements of this section; and

(C) at least once each year thereafter, and at such other times as the Secretary considers appropriate, reexamine, based on information gathered from the program established under subsections (c), (d), (e), and (f) of this section, and other relevant sources and after notice and opportunity for public comment, the classification of fisheries and other determinations required under subparagraph (A) and publish in the Federal Register any necessary changes.

(2)(A) An exemption shall be granted by the Secretary in accordance with this section for a vessel engaged in a fishery identified under paragraph (1)(A)(i) or (ii), upon receipt by the Secretary of a completed registration form providing the name of the vessel owner, the name and description of the vessel, the fisheries in which it will be engaged, and such other information as the Secretary considers necessary. A decal or other physical evidence that the exemption is current and valid shall be issued by the Secretary at the time an exemption is granted, and so long as the exemption remains current and valid, shall be reissued annually thereafter.

(B) No exemption may be granted under this section to the owner of a vessel unless such vessel -

- (i) is a vessel of the United States; or
- (ii) has a valid fishing permit issued by the Secretary in accordance with section 1824(b) of this title.

(C) Notwithstanding any other provision of this subchapter, exemptions granted under this section shall authorize the incidental taking of marine mammals, other than California sea otters, from any species or stock, including a population stock designated as depleted, but shall not authorize

the intentional lethal taking of any Steller sea lion, any cetacean, or any marine mammals from a population stock designated as depleted.

(3)(A) Beginning two hundred and forty days after November 23, 1988, each owner of a vessel engaged in any fishery identified under paragraph (1)(A)(i) or (ii) shall, in order to engage lawfully in that fishery -

(i) have registered with the Secretary in order to obtain for each such vessel owned an exemption for the purpose of incidentally taking marine mammals in accordance with this section;

(ii) ensure that a decal or such other physical evidence of a current and valid exemption as the Secretary may require is displayed on or is in the possession of the master of each such vessel; and

(iii) report as required by subsection (c) of this section.

(B) Any owner of a vessel receiving an exemption under this section for any fishery identified under paragraph (1)(A)(i) shall, as a condition of that exemption, take on board a natural resource observer if requested to do so by the Secretary.

(C) An owner of a vessel engaged in a fishery identified under paragraph (1)(A)(i) or (ii) who -

(i) fails to obtain from the Secretary an exemption under this section;

(ii) fails to maintain a current and valid exemption; or

(iii) fails to ensure that a decal or other physical evidence of such exemption issued by the Secretary is displayed on or is in possession of the master of the vessel,

and the master of any such vessel engaged in such fishery, shall be deemed to have violated this subchapter, and shall be subject to the penalties of this subchapter except in the case of unknowing violations before January 1, 1990.

(D) If the owner of a vessel has obtained and maintains a current and valid exemption from the Secretary under this section and meets the requirements set forth in this section, the owner of such vessel, and the master and crew members of the vessel, shall not be subject to the penalties set forth in this subchapter for the incidental taking of marine mammals while such vessel is engaged in

a fishery to which the exemption applies.

(E) Each owner of a vessel engaged in any fishery not identified in paragraph (1)(A)(i) or (ii), and the master and crew members of such a vessel, shall not be subject to the penalties set forth in this subchapter for the incidental taking of marine mammals if such owner reports to the Secretary, in such form and manner as the Secretary may require, instances of lethal incidental taking in the course of that fishery.

(4) The Secretary shall suspend or revoke an exemption granted under this section and shall not issue a decal or other physical evidence of the exemption for any vessel until the owner of such vessel complies with the reporting requirements under subsection (c) of this section and such requirements to take on board a natural resource observer under paragraph (3)(B) as are applicable to such vessel.

(5)(A) The Secretary shall develop, in consultation with the appropriate States, Regional Fishery Management Councils, and other interested parties, the means by which the granting and administration of exemptions under this section shall be integrated and coordinated, to the maximum extent practicable, with existing fishery licenses, registrations, and related programs.

(B) The Secretary shall utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising commercial fishermen of the provisions of this section and the means by which they can comply with its requirements.

(C) The Secretary is authorized to charge a fee for the granting of an exemption under this subsection. The level of fees charged under this subparagraph shall not exceed the administrative costs incurred in granting an exemption. Fees collected under this subparagraph shall be available to

the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in the granting and administration of exemptions under this section.  
(c) Compilation of information by vessel owners; contents

The owner of each vessel holding an exemption granted under subsection (b) of this section shall regularly compile information which shall be used in a report to be submitted to the Secretary at the close of the fishing season or annually, as the Secretary may prescribe. Such report shall be submitted in such form as the Secretary may require and shall include the following:

- (1) the type of fishery engaged in by the owner's vessel;
- (2) the date and approximate time of any incidental taking of a marine mammal, together with the area in which the incidental taking occurred, the fishing gear used at the time of the incidental taking, and the species of fish involved; and
- (3) for each incidental taking, the number and species of marine mammals involved, whether the marine mammals were deterred from gear or catch, incidentally injured, incidentally killed, or lethally removed to protect gear, catch, or human life.

If there was no incidental taking of marine mammals during the reporting period, a report stating that fact shall be filed with the Secretary.

(d) Program for enhancement and verification of information received from vessel owners; confidentiality of information

(1) The Secretary shall establish a program to enhance the quality of and verify information received from reports submitted by owners of vessels who have been granted an exemption under subsection (b) of this section. The program shall include, but not be limited to -

- (A) education efforts regarding the information that must be submitted;
- (B) interviews with fishermen; and
- (C) other such information gathering and verification activities that will enable the Secretary to determine reliably the nature, type, and extent of the incidental taking of marine mammals that occurs in a fishery.

Except to the extent authorized by the provisions of subsection (e) of this section, the program shall not include placement of observers aboard exempted vessels.

(2) Information obtained under this subsection shall be subject to the confidentiality provisions of subsection (j) of this section.

(e) Observers on board exempted vessels; confidentiality of information; authorization of appropriations

(1) For each fishery identified under subsection (b)(1)(A)(i) of this section, the Secretary shall, after consultation with the appropriate Regional Fishery Management Councils, other Federal and State agencies, and other interested parties, and subject to paragraph (6), place observers on board exempted vessels so as to monitor not less than 20 percent nor more than 35 percent of the fishing operations by vessels in the fishery to obtain statistically reliable information on the species and number of marine mammals incidentally taken in the fishery. If the Secretary determines that fewer than 20 percent of the fishing operations by vessels in the fishery will be monitored during the course of the fishing season, the Secretary shall implement the alternative observation program described in subsection (f) of this section to the extent necessary to supplement the observer program described in this subsection.

(2) When determining the distribution of observers among fisheries and between vessels in a particular fishery, the Secretary shall be guided by the following standards:

- (A) the requirement to obtain the best scientific information available;
- (B) the requirement that assignment of observers is fair and equitable among fisheries and among vessels in a fishery;
- (C) consistent with paragraph (1), the requirement that no individual person or vessel, or group of persons or vessels, be subject to excessive

or overly burdensome observer coverage; and

(D) where practicable, the need to minimize costs and avoid duplication.

(3) If the Secretary finds that, for reasons beyond his or her control, the Secretary cannot assign observers to all the fisheries identified under subsection (b)(1)(A)(i) of this section at the level of observer coverage set forth in paragraph (1), the Secretary shall allocate available observers among such fisheries, consistent with paragraph (2), according to the following priority:

(A) those fisheries that incidentally take marine mammals from any population stock designated as depleted;

(B) those fisheries that incidentally take marine mammals from population stocks that the Secretary believes are declining;

(C) those fisheries other than those described in subparagraphs (A) and (B) in which the greatest incidental take of marine mammals occur; and

(D) any other fishery identified under subsection (b)(1)(A)(i) of this section.

The Secretary may, with the consent of the vessel owner, station an observer on board a vessel engaged in a fishery not identified under subsection (b)(1)(A)(i) of this section.

(4) Information gathered by observers shall be subject to the provisions of subsection (j) of this section. Consistent with the requirements of paragraph (1), the Secretary shall, if requested by the Appropriate (!) Regional Fishery Management Council, or in the case of a State fishery, the State, require observers to collect additional information, including but not limited to the quantities, species, and physical condition of target and non-target fishery resources and, if requested by the Secretary of the Interior, seabirds.

(5) Notwithstanding the provisions of paragraph (4), the Secretary may decline to require observers to collect information described in such paragraph, if the Secretary finds in writing, following public notice and opportunity for comment, that such information will not contribute to the protection of marine mammals or the understanding of the marine ecosystem, including fishery resources and seabirds.

(6) The Secretary shall not be required to place an observer on a vessel in a fishery if the Secretary finds that -

(A) in a situation where harvesting vessels are delivering fish to a processing vessel and the catch is not taken on board the harvesting vessel, statistically reliable information can be obtained from an observer on board the processing vessel to which the fish are delivered;

(B) the facilities of a vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; or

(C) for reasons beyond the control of the Secretary, an observer is not available.

(7)(A) An observer on a vessel (or the observer's personal representative) under the requirements of this section or section 1374 of this title that is ill, disabled, injured, or killed from service as an observer on that vessel may not bring a civil action under any law of the United States for that illness, disability, injury, or death against the vessel or vessel owner, except that a civil action may be brought against the vessel owner for the owner's willful misconduct.

(B) This paragraph does not apply if the observer is engaged by the owner, master, or individual in charge of a vessel to perform any duties in service to the vessel.

(8) There are authorized to be appropriated to the Department of Commerce for the purposes of carrying out this subsection not to exceed \$2,700,000 for fiscal year 1989 and not to exceed \$8,000,000 for each of the fiscal years

1990, 1991, 1992, and 1993.

(f) Alternative observation program

(1) The Secretary shall establish an alternative observation program to provide statistically reliable information on the species and number of marine mammals incidentally taken in those fisheries identified pursuant to subsection (b)(1)(A)(i) of this section for which the required level of observer coverage has not been met or for any other fisheries about which such reliable information is not otherwise available. The alternative program shall include, but not be limited to, direct observation of fishing activities from vessels, airplanes, or points on shore.

(2) Individuals engaged in the alternative observation program shall collect scientific information on the fisheries subject to observation, consistent with the requirements of paragraph (1) and subsection (e)(4) and (5) of this section. All information collected shall be subject to the provisions of subsection (j) of this section.

(g) Review of information and evaluation of effects of incidental

taking on population stocks of marine mammals; promulgation of emergency regulations to mitigate immediate and significant adverse impacts; action to mitigate non-immediate impacts

(1) The Secretary shall review information regarding the incidental taking of marine mammals and evaluate the effects of such incidental taking on the affected population stocks of marine mammals.

(2) If the Secretary finds, based on the information received from the programs established under subsections (c), (d), (e), and (f) of this section, that the incidental taking of marine mammals in a fishery is having an immediate and significant adverse impact on a marine mammal population stock or, in the case of Steller sea lions and North Pacific fur seals, that more than 1,350 and 50, respectively, will be incidentally killed during a calendar year, the Secretary shall consult with appropriate Regional Fishery Management Councils and State fishery managers and prescribe emergency regulations to prevent to the maximum extent practicable any further taking. Any emergency regulations prescribed under this paragraph -

(A) shall, to the maximum extent practicable, avoid interfering with existing State or regional fishery management plans;

(B) shall be published in the Federal Register together with the reasons therefor;

(C) shall remain in effect for not more than one hundred and eighty days or until the end of the fishing season, whichever is earlier; and

(D) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination if the Secretary determines the reasons for the emergency regulations no longer exist.

In prescribing emergency regulations under this paragraph, the Secretary shall take into account the economics of the fishery concerned and the availability of existing technology to prevent or minimize incidental taking of marine mammals.

(3) If the Secretary finds, based on information received from the programs established under subsections (c), (d), (e), and (f) of this section, that incidental taking of marine mammals in a fishery is not having an immediate and significant adverse impact on a marine mammal population stock but that it will likely have a significant adverse impact over a period of time longer than one year, the Secretary shall request the appropriate Regional Fishery Management Council or State to initiate, recommend, or take such action within its authority as it considers necessary to mitigate the adverse impacts, including adjustments to requirements on fishing times or areas or the imposition of restrictions on the use of vessels or gear.

(4) The Secretary shall impose appropriate conditions and restrictions on an exemption granted under subsection (b) of this section if -

(A) a Regional Fishery Management Council or State does not act in a reasonable period of time on a request made by the Secretary under paragraph (3); or

(B) if the Secretary determines after notice and opportunity for

public comment that the purposes of this section would be better served by such action.

(h) Information and management system for processing and analyzing reports and information; accessibility to public

The Secretary shall design and implement an information management system capable of processing and analyzing reports received from the programs established under subsections (c), (d), (e), and (f) of this section, and other relevant sources, including Federal and State enforcement authorities, marine mammal stranding networks, and the marine mammal researchers. The information shall be made accessible to the public on a continuing basis, but in any case no later than six months after it is received, subject to the provisions of subsection (j) of this section.

(i) Utilization of services of State and Federal agencies and private entities

When carrying out the Secretary's responsibilities under subsections (b), (d), (e), (f), and (h) of this section, the Secretary shall, to the maximum extent practicable, utilize the services and programs of State agencies, Federal agencies (including programs established by Regional Fishery Management Councils), marine fisheries commissions, universities, and private entities, on a reimbursable basis or otherwise. The Secretary is authorized to enter into contracts and agreements to carry out his or her responsibilities and shall establish appropriate guidelines to ensure that other programs used or contracted for will meet the same standards as a program established by the Secretary. A person contracting with the Secretary to provide observer services under subsection (e) of this section must provide evidence of financial responsibility in an amount and form prescribed by the Secretary to compensate employees (or their survivors) adequately for any illness, disability, injury, or death from service on a vessel.

(j) Confidentiality of information; exceptions

(1) Any information collected under subsection (c), (d), (e), (f), or (h) of this section shall be confidential and shall not be disclosed except -

(A) to Federal employees whose duties require access to such information;

(B) to State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

(C) when required by court order; or

(D) in the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.

(2) The Secretary shall prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary shall release or make public any such information in aggregate, summary, or other form which does not directly or indirectly disclose the identity or business of any person.

(k) Regulations

The Secretary, in consultation with any other Federal agency to the extent that such agency may be affected, shall prescribe such regulations as necessary and appropriate to carry out the purposes of this section.

(l) Suggested regime governing incidental taking of marine mammals following termination of interim exemptions

(1) The Chairman of the Marine Mammal Commission shall, after consultation with interested parties and not later than February 1, 1990, transmit to the Secretary and make available to the public recommended guidelines to govern the incidental taking of marine mammals in the course of commercial fishing operations, other than those subject to section 1374(h)(2) of this title, after October 1, 1993. Such guidelines shall be developed by the Commission and its Committee of Scientific Advisers on Marine Mammals and shall -

(A) be designed to provide a scientific rationale and basis for determining how many marine mammals may be incidentally taken

under a regime to be adopted to govern such taking after October 1, 1993;

(B) be based on sound principles of wildlife management, and be consistent with and in furtherance of the purposes and policies set forth in this chapter; and

(C) to the maximum extent practicable, include as factors to be considered and utilized in determining permissible levels of such taking -

(i) the status and trends of the affected marine mammal population stocks;

(ii) the abundance and annual net recruitment of such stocks;

(iii) the level of confidence in the knowledge of the affected stocks; and

(iv) the extent to which incidental taking will likely cause or contribute to their decline or prevent their recovery to optimum sustainable population levels.

(2) The Secretary shall advise the Chairman of the Commission in writing if the Secretary determines that any additional information or explanation of the Chairman's recommendations is needed, and the Chairman shall respond in writing to any such request by the Secretary.

(3) On or before February 1, 1991, the Secretary, after consultation with the Marine Mammal Commission, Regional Fishery Management Councils, and other interested governmental and nongovernmental organizations, shall publish in the Federal Register, for public comment, the suggested regime that the

Secretary considers should, if authorized by enactment of any additional legislation, govern incidental taking of marine mammals, other than those subject to section 1374(h)(2) of this title, after October 1, 1993. The suggested regime shall include -

(A) the scientific guidelines to be used in determining permissible levels of incidental taking;

(B) a description of the arrangements for consultation and cooperation with other Federal agencies, the appropriate Regional Fishery Management Councils and States, the commercial fishing industry, and conservation organizations; and

(C) a summary of such regulations and legislation as would be necessary to implement the suggested regime.

(4) On or before January 1, 1992, the Secretary, after consultation with the Marine Mammal Commission, and consideration of public comment, shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives recommendations pertaining to the incidental taking of marine mammals, other than those subject to section 1374(h)(2) of this title, after October 1, 1993. The recommendations shall include -

(A) the suggested regime developed under paragraph (3) of this subsection as modified after comment and consultations;

(B) a proposed schedule for implementing the suggested regime; and

(C) such recommendations for additional legislation as the Secretary considers necessary or desirable to implement the suggested regime.

(m) Consultation with Secretary of the Interior

The Secretary shall consult with the Secretary of the Interior prior to taking actions or making determinations under this section that affect or relate to species or population stocks of marine mammals for which the Secretary of the Interior is responsible under this subchapter.

(n) Owner of fixed commercial fishing gear deemed owner of vessel engaged in fishery in which gear deployed

For the purposes of this section, the owner of fixed or other commercial fishing gear that is deployed with or without the use of a vessel shall be



deemed to be an owner of a vessel engaged in the fishery in which that gear is deployed.

(o) Definitions

As used in this section -

(1) the term "fishery" has the same meaning as it does in section 1802(8) (!2) of this title.

(2) the term "Secretary" means the Secretary of Commerce.

(3) the term "vessel engaged in a fishery" means a fishing vessel as defined in section 2101(11a) of title 46 or a fish processing vessel as defined in section 2101(11b) of that title, which is engaged in fishery.

(4) the term "vessel of the United States" has the same meaning as it does in section 1802(27) (!2) of this title.

-SOURCE-

(Pub. L. 92-522, title I, Sec. 114, as added Pub. L. 100-711, Sec. 2(a)(2), Nov. 23, 1988, 102 Stat. 4755; amended Pub. L. 103-86, Sept. 30, 1993, 107 Stat. 930; Pub. L. 103-228, Mar. 31, 1994, 108 Stat. 281; Pub. L. 103-238, Sec. 15(a), Apr. 30, 1994, 108 Stat. 559; Pub. L. 104-43, title IV, Sec. 404(a)(1), Nov. 3, 1995, 109 Stat. 390; Pub. L. 104-208, div. A, title I, Sec. 101(a) [title II, Sec. 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41.)

-REFTEXT-

REFERENCES IN TEXT

Section 1802 of this title, referred to in subsec. (o)(1), (4), was subsequently amended, and section 1802(8) and (27) no longer defines the terms "fishery" and "vessel of the United States". However, such terms are defined elsewhere in that section.

-MISC1-

AMENDMENTS

1996 - Subsecs. (a) (1) , (b) (2) (B) (ii) , (o) (1) , (4) . Pub. L. 104-208 made technical amendment to references in original act which appear in text as references to sections 1802(8), (27) and 1824(b) of this title.

1995 - Pub. L. 104-43 amended directory language of Pub. L. 103-238. See 1994 Amendment note below.

1994 - Subsec. (a)(1). Pub. L. 103-238, as amended by Pub. L. 104-43, substituted "until superseded by regulations prescribed under section 1387 of this title, or until September 1, 1995, whichever is earlier," for "ending May 1, 1994."

Pub. L. 103-228 substituted "May 1, 1994." for "April 1, 1994,". 1993 - Subsec. (a)(1). Pub. L. 103-86 substituted "April 1, 1994" for "October 1, 1993".

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, Sec. 211(b)] of div. A of Pub. L. 104-208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

EFFECTIVE DATE OF 1995 AMENDMENT

Section 404(a)(2) of Pub. L. 104-43 provided that: "The amendment made by paragraph (1) [amending this section] shall be effective on and after April 30, 1994."

-TRANS-

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

-FOOTNOTE-

(!1) So in original. Probably should not be capitalized.

(!2) See References in Text note below.

-End-

- CITE-

16 USC Sec. 1383b

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 31 - MARINE MAMMAL PROTECTION

SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

- HEAD-

Sec. 1383b. Status review; conservation plans

- STATUTE-

(a) Determinations by rule; notice and hearing; findings; final rule on status of species or stock involved

(1) In any action by the Secretary to determine if a species or stock should be designated as depleted, or should no longer be designated as depleted, regardless of whether such action is taken on the initiative of the Secretary or in response to a petition for a status review, the Secretary shall only make such a determination by issuance of a rule, after notice and opportunity for public comment and after a call for information in accordance with paragraph (2).

(2) The Secretary shall make any determination described in paragraph (1) solely on the basis of the best scientific information available. Prior to the issuance of a proposed rule concerning any such determination, the Secretary shall publish in the Federal Register a call to assist the Secretary in obtaining scientific information from individuals and organizations concerned with the conservation of marine mammals, from persons in any industry which might be affected by the determination, and from academic institutions. In addition, the Secretary shall utilize, to the extent the Secretary determines to be feasible, informal working groups of interested parties and other methods to gather the necessary information.

(3)(A) If the Secretary receives a petition for a status review as described in paragraph (1), the Secretary shall publish a notice in the Federal Register that such a petition has been received and is available for public review.

(B) Within sixty days after receipt of the petition, the Secretary shall publish a finding in the Federal Register as to whether the petition presents substantial information indicating that the petitioned action may be warranted.

(C) If the Secretary makes a positive finding under subparagraph (B), the

Secretary shall include in the Federal Register notice, a finding that -

(i) a review of the status of the species or stock will be commenced promptly; or

(ii) a prompt review of the petition is precluded by other pending status determination petitions and that expeditious progress is being made to process pending status determination petitions under this subchapter.

In no case after making a finding under this subparagraph shall the Secretary delay commencing a review of the status of a species or stock for more than one hundred and twenty days after receipt of the petition.

(D) No later than two hundred and ten days after the receipt of the petition, the Secretary shall publish in the Federal Register a proposed rule as to the status of the species or stock, along with the reasons underlying the proposed status determination. Persons shall have at least sixty days to submit comments on such a proposed rule.

(E) Not later than ninety days after the close of the comment period on a proposed rule issued under subparagraph (D), the Secretary shall issue a final rule on the status of the species or stock involved, along with the reasons for the status determination. If the Secretary finds with respect to such a proposed rule that there is substantial disagreement regarding the sufficiency or accuracy of the available information relevant to a status determination, the Secretary may delay the issuance of a final rule for a period of not more than six months for purposes of soliciting additional information.

(F) Notwithstanding subparagraphs (D) and (E) of this paragraph and section 553 of title 5, the Secretary may issue a final rule as to the status of a species or stock any time sixty or more days after a positive finding under subparagraph (B) if the Secretary determines there is substantial information available to warrant such final status determination and further delay would pose a significant risk to the well-being of any species or stock. Along with the final rule, the Secretary shall publish in the Federal

Register detailed reasons for the expedited determination. (b)

Conservation plans; preparation and implementation

(1) The Secretary shall prepare conservation plans -

(A) By (!) December 31, 1989, for North Pacific fur seals;

(B) by December 31, 1990, for Steller sea lions; and

(C) as soon as possible, for any species or stock designated as depleted under this subchapter, except that a conservation plan need not be prepared if the Secretary determines that it will not promote the conservation of the species or stock.

(2) Each plan shall have the purpose of conserving and restoring the species or stock to its optimum sustainable population. The Secretary shall model such plans on recovery plans required under section 1533(f) of this title.

(3) The Secretary shall act expeditiously to implement each conservation plan prepared under paragraph (1). Each year, the Secretary shall specify in the annual report prepared under section 1373(f) of this title what measures have been taken to prepare and implement such plans.

(4) If the Secretary determines that a take reduction plan is necessary to reduce the incidental taking of marine mammals in the course of commercial fishing operations from a strategic stock, or for species or stocks which interact with a commercial fishery for which the Secretary has made a determination under section 1387(f)(1) of this title, any conservation plan prepared under this subsection for such species or stock shall incorporate the take reduction plan required under section 1387 of this title for such species or stock.

-SOURCE-

(Pub. L. 92-522, title I, Sec. 115, as added Pub. L. 100-711, Sec. 3(a),

Nov. 23, 1988, 102 Stat. 4763; amended Pub. L. 103-238, Sec. 8, Apr. 30, 1994, 108 Stat. 543.)

- MISC1-

AMENDMENTS

1994 - Subsec. (b)(4). Pub. L. 103-238 added par. (4).

- FOOTNOTE-

(!1) So in original. Probably should not be capitalized.

-End-

- CITE-

16 USC Sec. 1384

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 31 - MARINE MAMMAL PROTECTION

SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

- HEAD-

Sec. 1384. Authorization of appropriations

-STATUTE-

(a) Department of Commerce

(1) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out its functions and responsibilities under this subchapter (other than sections 1386 and 1387 of this title) and subchapter V of this chapter, \$12,138,000 for fiscal year 1994, \$12,623,000 for fiscal year 1995, \$13,128,000 for fiscal year 1996, \$13,653,000 for fiscal year 1997, \$14,200,000 for fiscal year 1998, and \$14,768,000 for fiscal year 1999.

(2) There are authorized to be appropriated to the Department of Commerce, for purposes of carrying out sections 1386 and 1387 of this title, \$20,000,000 for each of the fiscal years 1994 through 1999.

(b) Department of the Interior

There are authorized to be appropriated to the Department of the Interior, for purposes of carrying out its functions and responsibilities under this subchapter, \$8,000,000 for fiscal year 1994, \$8,600,000 for fiscal year 1995, \$9,000,000 for fiscal year 1996, \$9,400,000 for fiscal year 1997, \$9,900,000 for fiscal year 1998, and \$10,296,000 for fiscal year 1999.

-SOURCE-

(Pub. L. 92-522, title I, Sec. 116, formerly Sec. 114, Oct. 21, 1972, 86 Stat. 1043; Pub. L. 95-136, Sec. 2, Oct. 18, 1977, 91 Stat. 1167; Pub. L. 95-316, Sec. 3, July 10, 1978, 92 Stat. 380; renumbered Sec. 116, Pub. L. 100-711, Sec. 2(a)(1), Nov. 23, 1988, 102 Stat. 4755; Pub. L. 103-238, Sec. 9(a), Apr. 30, 1994, 108 Stat. 543.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 97-58, Sec. 7(a), (b), Oct. 9, 1981, 95 Stat. 987; Pub. L. 98-364, title I, Sec. 104(1), (2), July 17, 1984, 98 Stat. 442; Pub. L. 100-711, Sec. 6(1), (2), Nov. 23, 1988, 102 Stat. 4771, prior to repeal by Pub. L. 103-238, Sec. 9(c), Apr. 30, 1994, 108 Stat. 543.

AMENDMENTS

1994 - Pub. L. 103-238 amended section generally. Prior to amendment, section read as follows:

"(a) There are authorized to be appropriated not to exceed \$2,000,000 for the fiscal year ending June 30, 1973, and the four next following fiscal years, not to exceed \$11,500,000 for the fiscal year ending September 30, 1978, not to exceed \$8,500,000 for the fiscal year ending September 30, 1979, not to exceed \$9,000,000 for the fiscal year ending September 30, 1980, and not to exceed \$9,500,000 for the fiscal year ending September 30, 1981, to enable the department in which the National Oceanic and Atmospheric Administration is operating to carry out such functions and responsibilities as it may have been given under this subchapter (other than sections 1379 and 1380 of this title).

"(b) There are authorized to be appropriated not to exceed \$700,000 for the fiscal year ending June 30, 1973, not to exceed \$525,000 for each of the next four fiscal years thereafter, not to exceed \$850,000 for the fiscal year ending September 30, 1978, not to exceed \$650,000 for the fiscal year ending September 30, 1979, not to exceed \$760,000 for the fiscal year ending September 30, 1980, and not to exceed \$876,000 for the fiscal year ending September 30, 1981 to enable the Department of the Interior to carry out such functions and responsibilities as it may have been given under this subchapter (other than sections 1379 and 1380 of this title)."

1978 - Subsec. (a). Pub. L. 95-316, Sec. 3(1), added reference to sections 1379 and 1380 of this title and provisions authorizing appropriations for the fiscal years ending Sept. 30, 1979, Sept. 30, 1980, and Sept. 30, 1981.

Subsec. (b). Pub. L. 95-316, Sec. 3(2), added reference to sections 1379 and 1380 of this title and provisions authorizing appropriations for the fiscal years Sept. 30, 1979, Sept. 30, 1980, and Sept. 30, 1981.

1977 - Subsec. (a). Pub. L. 95-136, Sec. 2(1), inserted ", and not to exceed \$11,500,000 for the fiscal year ending September 30, 1978," after "fiscal years".

Subsec. (b). Pub. L. 95-136, Sec. 2(2), inserted ", and not to exceed \$850,000 for the fiscal year ending September 30, 1978" after "thereafter".

-End-

- CITE-

16 USC Sec. 1385

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION  
CHAPTER 31 - MARINE MAMMAL PROTECTION  
SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

- HEAD-

Sec. 1385. Dolphin protection

-STATUTE-

(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) of this section;

(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) of this section; 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 Act.(!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) of this section; 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) Enforcement

Any person who knowingly and willfully makes a statement or endorsement described in subsection (d)(2)(B) of this section 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.

(f) Regulations

The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement this Act, (!1) including regulations to establish a domestic tracking and verification program that provides for the effective tracking of tuna labeled under subsection (d) of this section. 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) of this section.

(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) of this section.

(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) of this section and the certification provided by the observer as specified in subsection (d)(2)(B)(ii) of this section 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) of this section and the certification provided by the observer as specified under subsection (d)(2)(B)(ii) of this section 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) of this section;

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

- SOURCE-

(Pub. L. 101-627, title IX, Sec. 901, Nov. 28, 1990, 104 Stat. 4465; Pub. L. 105-42, Sec. 5, Aug. 15, 1997, 111 Stat. 1125.)



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

-MISC1-

AMENDMENTS

1997 - Subsec. (d). Pub. L. 105-42, Sec. 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, Sec. 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, Sec. 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, Sec. 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."

-CHANGE-

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.

-MISC2-

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.

-FOOTNOTE-

(!1) So in original. Probably should be "this section".

(!2) So in original. Probably should be "this subsection".

-End-

- CITE-

16 USC Sec. 1386

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 31 - MARINE MAMMAL PROTECTION

SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

- HEAD-

Sec. 1386. Stock assessments

-STATUTE-

(a) In general

Not later than August 1, 1994, the Secretary shall, in consultation with the appropriate regional scientific review group established under subsection (d) of this section, prepare a draft stock assessment for each marine mammal stock which occurs in waters under the jurisdiction of the United States. Each draft stock assessment, based on the best scientific information available, shall -

(1) describe the geographic range of the affected stock, including any seasonal or temporal variation in such range;

(2) provide for such stock the minimum population estimate, current and maximum net productivity rates, and current population trend, including a description of the information upon which these are based;

(3) estimate the annual human-caused mortality and serious injury of the stock by source and, for a strategic stock, other factors that may be causing a decline or impeding recovery of the stock, including effects on marine mammal habitat and prey;

(4) describe commercial fisheries that interact with the stock, including -

(A) the approximate number of vessels actively participating in each such fishery;

(B) the estimated level of incidental mortality and serious injury of the stock by each such fishery on an annual basis;

(C) seasonal or area differences in such incidental mortality or serious injury; and

(D) the rate, based on the appropriate standard unit of fishing effort, of such incidental mortality and serious injury, and an analysis stating whether such level is insignificant and is approaching a zero mortality and serious injury rate;

(5) categorize the status of the stock as one that either -

(A) has a level of human-caused mortality and serious injury that is not likely to cause the stock to be reduced below its optimum sustainable population; or

(B) is a strategic stock, with a description of the reasons therefor; and

(6) estimate the potential biological removal level for the stock, describing the information used to calculate it, including the recovery factor.

(b) Public comment

(1) The Secretary shall publish in the Federal Register a notice of the availability of a draft stock assessment or any revision thereof and provide an opportunity for public review and comment during a period of 90 days. Such notice shall include a summary of the assessment and a list of the sources of information or published reports upon which the assessment is based.

(2) Subsequent to the notice of availability required under paragraph (1), if requested by a person to which section 1371(b) of this title applies, the Secretary shall conduct a proceeding on the record prior to publishing a final stock assessment or any revision thereof for any stock subject to taking under section 1371(b) of this title.

(3) After consideration of the best scientific information available, the advice of the appropriate regional scientific review group established under subsection (d) of this section, and the comments of the general public, the Secretary shall publish in the Federal Register a notice of availability and a summary of the final stock assessment or any revision thereof, not later than 90 days after -

(A) the close of the public comment period on a draft stock assessment or revision thereof; or

(B) final action on an agency proceeding pursuant to paragraph (2) .

(c) Review and revision

(1) The Secretary shall review stock assessments in accordance with this subsection -

(A) at least annually for stocks which are specified as strategic stocks;

(B) at least annually for stocks for which significant new information is available; and

(C) at least once every 3 years for all other stocks.

(2) If the review under paragraph (1) indicates that the status of the stock has changed or can be more accurately determined, the Secretary shall revise the stock assessment in accordance with subsection (b) of this section.

(d) Regional scientific review groups

(1) Not later than 60 days after April 30, 1994, the Secretary of Commerce shall, in consultation with the Secretary of the Interior (with respect to marine mammals under that Secretary's jurisdiction), the Marine Mammal Commission, the Governors of affected adjacent coastal States, regional fishery and wildlife management authorities, Alaska Native organizations and Indian tribes, and environmental and fishery groups, establish three independent regional scientific review groups representing Alaska, the Pacific Coast (including Hawaii), and the Atlantic Coast (including the Gulf of Mexico), consisting of individuals with expertise in marine mammal biology and ecology, population dynamics and modeling, commercial fishing technology and practices, and stocks taken under section 1371(b) of this title. The

Secretary of Commerce shall, to the maximum extent practicable, attempt to achieve a balanced representation of viewpoints among the individuals on each regional scientific review group. The regional scientific review groups shall advise the Secretary on -

- (A) population estimates and the population status and trends of such stocks;
- (B) uncertainties and research needed regarding stock separation, abundance, or trends, and factors affecting the distribution, size, or productivity of the stock;
- (C) uncertainties and research needed regarding the species, number, ages, gender, and reproductive status of marine mammals;
- (D) research needed to identify modifications in fishing gear and practices likely to reduce the incidental mortality and serious injury of marine mammals in commercial fishing operations;
- (E) the actual, expected, or potential impacts of habitat destruction, including marine pollution and natural environmental change, on specific marine mammal species or stocks, and for strategic stocks, appropriate conservation or management measures to alleviate any such impacts; and
- (F) any other issue which the Secretary or the groups consider appropriate.

(2) The scientific review groups established under this subsection shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.).

(3) Members of the scientific review groups shall serve without compensation, but may be reimbursed by the Secretary, upon request, for reasonable travel costs and expenses incurred in performing their obligations.

(4) The Secretary may appoint or reappoint individuals to the regional scientific review groups under paragraph (1) as needed. (e) Effect on section 1371(b) of this title

This section shall not affect or otherwise modify the provisions of section 1371(b) of this title.

- SOURCE-

(Pub. L. 92-522, title I, Sec. 117, as added Pub. L. 103-238, Sec. 10, Apr. 30, 1994, 108 Stat. 543.)

-REFTEXT-

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (d)(2), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

-End-

- CITE-

16 USC Sec. 1387

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION  
CHAPTER 31 - MARINE MAMMAL PROTECTION  
SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

- HEAD-

Sec. 1387. Taking of marine mammals incidental to commercial fishing operations

- STATUTE -

(a) In general

(1) Effective on April 30, 1994, and except as provided in section 1383a of this title and in paragraphs (2), (3), and (4) of this subsection, the provisions of this section shall govern the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 1824(b) of this title. In any event it shall be the immediate goal that the incidental mortality or serious injury of marine mammals occurring in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate within 7 years after April 30, 1994.

(2) In the case of the incidental taking of marine mammals from species or stocks designated under this chapter as depleted on the basis of their listing as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), both this section and section 1371(a)(5)(E) of this title shall apply.

(3) Sections (1) 1374(h) of this title and subchapter IV of this chapter, and not this section, shall govern the taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean.

(4) This section shall not govern the incidental taking of California sea otters and shall not be deemed to amend or repeal the Act of November 7, 1986 (Public Law 99-625; 100 Stat. 3500).

(5) Except as provided in section 1371(c) of this title, the intentional lethal take of any marine mammal in the course of commercial fishing operations is prohibited.

(6) Sections 1373 and 1374 of this title shall not apply to the incidental taking of marine mammals under the authority of this section.

(b) Zero mortality rate goal

(1) Commercial fisheries shall reduce incidental mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury rate within 7 years after April 30, 1994.

(2) Fisheries which maintain insignificant serious injury and mortality levels approaching a zero rate shall not be required to further reduce their mortality and serious injury rates.

(3) Three years after April 30, 1994, the Secretary shall review the progress of all commercial fisheries, by fishery, toward reducing incidental mortality and serious injury to insignificant levels approaching a zero rate. The Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report setting forth the results of such review within 1 year after commencement of the review. The Secretary shall note any commercial fishery for which additional information is required to accurately assess the level of incidental mortality and serious injury of marine mammals in the fishery.

(4) If the Secretary determines after review under paragraph (3) that the rate of incidental mortality and serious injury of marine mammals in a commercial fishery is not consistent with paragraph (1), then the Secretary shall take appropriate action under subsection (f) of this section.

(c) Registration and authorization

(1) The Secretary shall, within 90 days after April 30, 1994 -

(A) publish in the Federal Register for public comment, for a period of not less than 90 days, any necessary changes to the Secretary's list of commercial fisheries published under section 1383a(b)(1) of this title and which is in existence on March 31, 1994 (along with an explanation of such changes and a statement describing the marine mammal stocks interacting with, and the approximate number of vessels or persons actively involved in, each such fishery), with respect to commercial fisheries that have -

- (i) frequent incidental mortality and serious injury of marine mammals;
- (ii) occasional incidental mortality and serious injury of marine mammals; or
- (iii) a remote likelihood of or no known incidental mortality or serious injury of marine mammals;

(B) after the close of the period for such public comment, publish in the Federal Register a revised list of commercial fisheries and an update of information required by subparagraph (A), together with a summary of the provisions of this section and information sufficient to advise vessel owners on how to obtain an authorization and otherwise comply with the requirements of this section; and

(C) at least once each year thereafter, and at such other times as the Secretary considers appropriate, reexamine, based on information gathered under this chapter and other relevant sources and after notice and opportunity for public comment, the classification of commercial fisheries and other determinations required under subparagraph (A) and publish in the Federal Register any necessary changes.

(2)(A) An authorization shall be granted by the Secretary in accordance with this section for a vessel engaged in a commercial fishery listed under paragraph (1)(A)(i) or (ii), upon receipt by the Secretary of a completed registration form providing the name of the vessel owner and operator, the name and description of the vessel, the fisheries in which it will be engaged, the approximate time, duration, and location of such fishery operations, and the general type and nature of use of the fishing gear and techniques used. Such information shall be in a readily usable format that can be efficiently entered into and utilized by an automated or computerized data processing system. A decal or other physical evidence that the authorization is current and valid shall be issued by the Secretary at the time an authorization is granted, and so long as the authorization remains current and valid, shall be reissued annually thereafter.

(B) No authorization may be granted under this section to the owner of a vessel unless such vessel -

- (i) is a vessel of the United States; or
- (ii) has a valid fishing permit issued by the Secretary in accordance with section 1824(b) of this title.

(C) Except as provided in subsection (a) of this section, an authorization granted under this section shall allow the incidental taking of all species and stocks of marine mammals to which this chapter applies.

(3)(A) An owner of a vessel engaged in any fishery listed under paragraph (1)(A)(i) or (ii) shall, in order to engage in the lawful incidental taking of marine mammals in a commercial fishery -

- (i) have registered as required under paragraph (2) with the Secretary in order to obtain for each such vessel owned and used in the fishery an authorization for the purpose of incidentally taking marine mammals in accordance with this section, except that owners of vessels holding valid certificates of exemption under section 1383a of this title are deemed to have registered for purposes of this subsection for the period during which such exemption is valid;
- (ii) ensure that a decal or such other physical evidence of a current and valid authorization as the Secretary may require is displayed on or is in the possession of the master of each such vessel;
- (iii) report as required by subsection (e) of this section; and
- (iv) comply with any applicable take reduction plan and emergency regulations issued under this section.

(B) Any owner of a vessel receiving an authorization under this section for any fishery listed under paragraph (1)(A)(i) or (ii) shall, as a condition of that authorization, take on board an observer if requested to



do so by the Secretary.

(C) An owner of a vessel engaged in a fishery listed under paragraph (1)(A)(i) or (ii) who -

(i) fails to obtain from the Secretary an authorization for such vessel under this section;

(ii) fails to maintain a current and valid authorization for such vessel; or

(iii) fails to ensure that a decal or other physical evidence of such authorization issued by the Secretary is displayed on or is in possession of the master of the vessel,

and the master of any such vessel engaged in such fishery, shall be deemed to have violated this subchapter, and for violations of clauses (i) and (ii) shall be subject to the penalties of this subchapter, and for violations of clause (iii) shall be subject to a fine of not more than \$100 for each offense.

(D) If the owner of a vessel has obtained and maintains a current and valid authorization from the Secretary under this section and meets the requirements set forth in this section, including compliance with any regulations to implement a take reduction plan under this section, the owner of such vessel, and the master and crew members of the vessel, shall not be subject to the penalties set forth in this subchapter for the incidental taking of marine mammals while such vessel is engaged in a fishery to which the authorization applies.

(E) Each owner of a vessel engaged in any fishery not listed under paragraph (1)(A)(i) or (ii), and the master and crew members of such a vessel, shall not be subject to the penalties set forth in this subchapter for the incidental taking of marine mammals if such owner reports to the Secretary, in the form and manner required under subsection (e) of this section, instances of incidental mortality or injury of marine mammals in the course of that fishery.

(4)(A) The Secretary shall suspend or revoke an authorization granted under this section and shall not issue a decal or other physical evidence of the authorization for any vessel until the owner of such vessel complies with the reporting requirements under subsection (e) of this section and such requirements to take on board an observer under paragraph (3)(B) as are applicable to such vessel. Previous failure to comply with the requirements of section 1383a of this title shall not bar authorization under this section for an owner who complies with the requirements of this section.

(B) The Secretary may suspend or revoke an authorization granted under this subsection, and may not issue a decal or other physical evidence of the authorization for any vessel which fails to comply with a take reduction plan or emergency regulations issued under this section.

(C) The owner and master of a vessel which fails to comply with a take reduction plan shall be subject to the penalties of sections 1375 and 1377 of this title, and may be subject to section 1376 of this title.

(5)(A) The Secretary shall develop, in consultation with the appropriate States, affected Regional Fishery Management Councils, and other interested persons, the means by which the granting and administration of authorizations under this section shall be integrated and coordinated, to the maximum extent practicable, with existing fishery licenses, registrations, and related programs.

(B) The Secretary shall utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising commercial fishermen of the provisions of this section and the means by which they can comply with its requirements.

(C) The Secretary is authorized to charge a fee for the granting of an authorization under this section. The level of fees charged under this subparagraph shall not exceed the administrative costs incurred in granting an authorization. Fees collected under this subparagraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in the granting and

administration of authorizations under this section.

(d) Monitoring of incidental takes

(1) The Secretary shall establish a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations. The purposes of the monitoring program shall be to -

(A) obtain statistically reliable estimates of incidental mortality and serious injury;

(B) determine the reliability of reports of incidental mortality and serious injury under subsection (e) of this section; and

(C) identify changes in fishing methods or technology that may increase or decrease incidental mortality and serious injury.

(2) Pursuant to paragraph (1), the Secretary may place observers on board vessels as necessary, subject to the provisions of this section. Observers may, among other tasks -

(A) record incidental mortality and injury, or by catch of other nontarget species;

(B) record numbers of marine mammals sighted; and

(C) perform other scientific investigations.

(3) In determining the distribution of observers among commercial fisheries and vessels within a fishery, the Secretary shall be guided by the following standards:

(A) The requirement to obtain statistically reliable information.

(B) The requirement that assignment of observers is fair and equitable among fisheries and among vessels in a fishery.

(C) The requirement that no individual person or vessel, or group of persons or vessels, be subject to excessive or overly burdensome observer coverage.

(D) To the extent practicable, the need to minimize costs and avoid duplication.

(4) To the extent practicable, the Secretary shall allocate observers among commercial fisheries in accordance with the following priority:

(A) The highest priority for allocation shall be for commercial fisheries that have incidental mortality or serious injury of marine mammals from stocks listed as endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(B) The second highest priority for allocation shall be for commercial fisheries that have incidental mortality and serious injury of marine mammals from strategic stocks.

(C) The third highest priority for allocation shall be for commercial fisheries that have incidental mortality or serious injury of marine mammals from stocks for which the level of incidental mortality and serious injury is uncertain.

(5) The Secretary may establish an alternative observer program to provide statistically reliable information on the species and number of marine mammals incidentally taken in the course of commercial fishing operations. The alternative observer program may include direct observation of fishing activities from vessels, airplanes, or points on shore.

(6) The Secretary is not required to place an observer on a vessel in a fishery if the Secretary finds that -

(A) in a situation in which harvesting vessels are delivering fish to a processing vessel and the catch is not taken on board the harvesting vessel, statistically reliable information can be obtained from an observer on board the processing vessel to which the fish are delivered;

(B) the facilities on a vessel for quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; or

(C) for reasons beyond the control of the Secretary, an observer is not available.

(7) The Secretary may, with the consent of the vessel owner, station an observer on board a vessel engaged in a fishery not listed under subsection (c)(1)(A)(i) or (ii) of this section.

(8) Any proprietary information collected under this subsection shall be confidential and shall not be disclosed except -

(A) to Federal employees whose duties require access to such information;

(B) to State or tribal employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;

(C) when required by court order; or

(D) in the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils who are responsible for fishery management plan development and monitoring.

(9) The Secretary shall prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary shall release or make public upon request any such information in aggregate, summary, or other form which does not directly or indirectly disclose the identity or business of any person.

(e) Reporting requirement

The owner or operator of a commercial fishing vessel subject to this chapter shall report all incidental mortality and injury of marine mammals in the course of commercial fishing operations to the Secretary by mail or other means acceptable to the Secretary within 48 hours after the end of each fishing trip on a standard postage-paid form to be developed by the Secretary under this section. Such form shall be capable of being readily entered into and usable by an automated or computerized data processing system and shall require the vessel owner or operator to provide the following:

(1) The vessel name, and Federal, State, or tribal registration numbers of the registered vessel.

(2) The name and address of the vessel owner or operator.

(3) The name and description of the fishery.

(4) The species of each marine mammal incidentally killed or injured, and the date, time, and approximate geographic location of such occurrence.

(f) Take reduction plans

(1) The Secretary shall develop and implement a take reduction plan designed to assist in the recovery or prevent the depletion of each strategic stock which interacts with a commercial fishery listed under subsection (c)(1)(A)(i) or (ii) of this section, and may develop and implement such a plan for any other marine mammal stocks which interact with a commercial fishery listed under subsection (c)(1)(A)(i) of this section which the Secretary determines, after notice and opportunity for public comment, has a high level of mortality and serious injury across a number of such marine mammal stocks.

(2) The immediate goal of a take reduction plan for a strategic stock shall be to reduce, within 6 months of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to levels less than the potential biological removal level established for that stock under section 1386 of this title. The long-term goal of the plan shall be to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans.

(3) If there is insufficient funding available to develop and implement a

take reduction plan for all such stocks that interact with commercial fisheries listed under subsection (c)(1)(A)(i) or (ii) of this section, the Secretary shall give highest priority to the development and implementation of take reduction plans for species or stocks whose level of incidental mortality and serious injury exceeds the potential biological removal level, those that have a small population size, and those which are declining most rapidly.

(4) Each take reduction plan shall include -

(A) a review of the information in the final stock assessment published under section 1386(b) of this title and any substantial new information;

(B) an estimate of the total number and, if possible, age and gender, of animals from the stock that are being incidentally lethally taken or seriously injured each year during the course of commercial fishing operations, by fishery;

(C) recommended regulatory or voluntary measures for the reduction of incidental mortality and serious injury;

(D) recommended dates for achieving the specific objectives of the plan.

(5)(A) For any stock in which incidental mortality and serious injury from commercial fisheries exceeds the potential biological removal level established under section 1386 of this title, the plan shall include measures the Secretary expects will reduce, within 6 months of the plan's implementation, such mortality and serious injury to a level below the potential biological removal level.

(B) For any stock in which human-caused mortality and serious injury exceeds the potential biological removal level, other than a stock to which subparagraph (A) applies, the plan shall include measures the Secretary expects will reduce, to the maximum extent practicable within 6 months of the plan's implementation, the incidental mortality and serious injury by such commercial fisheries from that stock. For purposes of this subparagraph, the term "maximum extent practicable" means to the lowest level that is feasible for such fisheries within the 6-month period.

(6)(A) At the earliest possible time (not later than 30 days) after the Secretary issues a final stock assessment under section 1386(b) of this title for a strategic stock, the Secretary shall, and for stocks that interact with a fishery listed under subsection (c)(1)(A)(i) of this section for which the Secretary has made a determination under paragraph (1), the Secretary may -

(i) establish a take reduction team for such stock and appoint the members of such team in accordance with subparagraph (C); and

(ii) publish in the Federal Register a notice of the team's establishment, the names of the team's appointed members, the full geographic range of such stock, and a list of all commercial fisheries that cause incidental mortality and serious injury of marine mammals from such stock.

(B) The Secretary may request a take reduction team to address a stock that extends over one or more regions or fisheries, or multiple stocks within a region or fishery, if the Secretary determines that doing so would facilitate the development and implementation of plans required under this subsection.

(C) Members of take reduction teams shall have expertise regarding the conservation or biology of the marine mammal species which the take reduction plan will address, or the fishing practices which result in the incidental mortality and serious injury of such species. Members shall include representatives of Federal agencies, each coastal State which has fisheries which interact with the species or stock, appropriate Regional Fishery Management Councils, interstate fisheries commissions, academic and scientific organizations, environmental groups, all commercial and recreational fisheries groups and gear types which incidentally take the species or stock, Alaska Native organizations or Indian tribal organizations, and others as the Secretary deems appropriate. Take reduction teams shall, to the maximum extent practicable, consist of an equitable balance among representatives of resource user interests and nonuser

interests.

(D) Take reduction teams shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.). Meetings of take reduction teams shall be open to the public, and prior notice of meetings shall be made public in a timely fashion.

(E) Members of take reduction teams shall serve without compensation, but may be reimbursed by the Secretary, upon request, for reasonable travel costs and expenses incurred in performing their duties as members of the team.

(7) Where the human-caused mortality and serious injury from a strategic stock is estimated to be equal to or greater than the potential biological removal level established under section 1386 of this title for such stock and such stock interacts with a fishery listed under subsection (c)(1)(A)(i) or (ii) of this section, the following procedures shall apply in the development of the take reduction plan for the stock:

(A)(i) Not later than 6 months after the date of establishment of a take reduction team for the stock, the team shall submit a draft take reduction plan for such stock to the Secretary, consistent with the other provisions of this section.

(ii) Such draft take reduction plan shall be developed by consensus. In the event consensus cannot be reached, the team shall advise the Secretary in writing on the range of possibilities considered by the team, and the views of both the majority and minority.

(B)(i) The Secretary shall take the draft take reduction plan into consideration and, not later than 60 days after the submission of the draft plan by the team, the Secretary shall publish in the Federal Register the plan proposed by the team, any changes proposed by the Secretary with an explanation of the reasons therefor, and proposed regulations to implement such plan, for public review and comment during a period of not to exceed 90 days.

(ii) In the event that the take reduction team does not submit a draft plan to the Secretary within 6 months, the Secretary shall, not later than 8 months after the establishment of the team, publish in the Federal Register a proposed take reduction plan and implementing regulations, for public review and comment during a period of not to exceed 90 days.

(C) Not later than 60 days after the close of the comment period required under subparagraph (B), the Secretary shall issue a final take reduction plan and implementing regulations, consistent with the other provisions of this section.

(D) The Secretary shall, during a period of 30 days after publication of a final take reduction plan, utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising commercial fishermen of the requirements of the plan and how to comply with them.

(E) The Secretary and the take reduction team shall meet every 6 months, or at such other intervals as the Secretary determines are necessary, to monitor the implementation of the final take reduction plan until such time that the Secretary determines that the objectives of such plan have been met.

(F) The Secretary shall amend the take reduction plan and implementing regulations as necessary to meet the requirements of this section, in accordance with the procedures in this section for the issuance of such plans and regulations.

(8) Where the human-caused mortality and serious injury from a strategic stock is estimated to be less than the potential biological removal level established under section 1386 of this title for such stock and such stock interacts with a fishery listed under subsection (c)(1)(A)(i) or (ii) of this section, or for any marine mammal stocks which interact with a commercial fishery listed under subsection (c)(1)(A)(i) of this section for which the Secretary has made a determination under paragraph (1), the following procedures shall apply in the development of the take reduction plan for such stock:

(A)(i) Not later than 11 months after the date of establishment of a take reduction team for the stock, the team shall submit a draft take reduction plan for the stock to the Secretary, consistent with the other provisions of this section.

(ii) Such draft take reduction plan shall be developed by consensus. In the event consensus cannot be reached, the team shall advise the Secretary in writing on the range of possibilities considered by the team, and the views of both the majority and minority.

(B)(i) The Secretary shall take the draft take reduction plan into consideration and, not later than 60 days after the submission of the draft plan by the team, the Secretary shall publish in the Federal Register the plan proposed by the team, any changes proposed by the Secretary with an explanation of the reasons therefor, and proposed regulations to implement such plan, for public review and comment during a period of not to exceed 90 days.

(ii) In the event that the take reduction team does not submit a draft plan to the Secretary within 11 months, the Secretary shall, not later than 13 months after the establishment of the team, publish in the Federal Register a proposed take reduction plan and implementing regulations, for public review and comment during a period of not to exceed 90 days.

(C) Not later than 60 days after the close of the comment period required under subparagraph (B), the Secretary shall issue a final take reduction plan and implementing regulations, consistent with the other provisions of this section.

(D) The Secretary shall, during a period of 30 days after publication of a final take reduction plan, utilize newspapers of general circulation, fishery trade associations, electronic media, and other means of advising commercial fishermen of the requirements of the plan and how to comply with them.

(E) The Secretary and the take reduction team shall meet on an annual basis, or at such other intervals as the Secretary determines are necessary, to monitor the implementation of the final take reduction plan until such time that the Secretary determines that the objectives of such plan have been met.

(F) The Secretary shall amend the take reduction plan and implementing regulations as necessary to meet the requirements of this section, in accordance with the procedures in this section for the issuance of such plans and regulations.

(9) In implementing a take reduction plan developed pursuant to this subsection, the Secretary may, where necessary to implement a take reduction plan to protect or restore a marine mammal stock or species covered by such plan, promulgate regulations which include, but are not limited to, measures to -

(A) establish fishery-specific limits on incidental mortality and serious injury of marine mammals in commercial fisheries or restrict commercial fisheries by time or area;

(B) require the use of alternative commercial fishing gear or techniques and new technologies, encourage the development of such gear or technology, or convene expert skippers' panels;

(C) educate commercial fishermen, through workshops and other means, on the importance of reducing the incidental mortality and serious injury of marine mammals in affected commercial fisheries; and

(D) monitor, in accordance with subsection (d) of this section, the effectiveness of measures taken to reduce the level of incidental mortality and serious injury of marine mammals in the course of commercial fishing operations.

(10)(A) Notwithstanding paragraph (6), in the case of any stock to which paragraph (1) applies for which a final stock assessment has not been published under section 1386(b)(3) of this title by April 1, 1995, due to a proceeding under section 1386(b)(2) of this title, or any Federal court review of such proceeding, the Secretary shall establish a take reduction team under

paragraph (6) for such stock as if a final stock assessment had been published.

(B) The draft stock assessment published for such stock under section 1386(b)(1) of this title shall be deemed the final stock assessment for purposes of preparing and implementing a take reduction plan for such stock under this section.

(C) Upon publication of a final stock assessment for such stock under section 1386(b)(3) of this title the Secretary shall immediately reconvene the take reduction team for such stock for the purpose of amending the take reduction plan, and any regulations issued to implement such plan, if necessary, to reflect the final stock assessment or court action. Such amendments shall be made in accordance with paragraph (7)(F) or (8)(F), as appropriate.

(D) A draft stock assessment may only be used as the basis for a take reduction plan under this paragraph for a period of not to exceed two years, or until a final stock assessment is published, whichever is earlier. If, at the end of the two-year period, a final stock assessment has not been published, the Secretary shall categorize such stock under section 1386(a)(5)(A) of this title and shall revoke any regulations to implement a take reduction plan for such stock.

(E) Subparagraph (D) shall not apply for any period beyond two years during which a final stock assessment for such stock has not been published due to review of a proceeding on such stock assessment by a Federal court. Immediately upon final action by such court, the Secretary shall proceed under subparagraph (C).

(11) Take reduction plans developed under this section for a species or stock listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) shall be consistent with any recovery plan developed for such species or stock under section 4 of such Act [16 U.S.C. 1533]. (g) Emergency regulations

(1) If the Secretary finds that the incidental mortality and serious injury of marine mammals from commercial fisheries is having, or is likely to have, an immediate and significant adverse impact on a stock or species, the Secretary shall take actions as follows:

(A) In the case of a stock or species for which a take reduction plan is in effect, the Secretary shall -

(i) prescribe emergency regulations that, consistent with such plan to the maximum extent practicable, reduce incidental mortality and serious injury in that fishery; and

(ii) approve and implement, on an expedited basis, any amendments to such plan that are recommended by the take reduction team to address such adverse impact.

(B) In the case of a stock or species for which a take reduction plan is being developed, the Secretary shall -

(i) prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery; and

(ii) approve and implement, on an expedited basis, such plan, which shall provide methods to address such adverse impact if still necessary.

(C) In the case of a stock or species for which a take reduction plan does not exist and is not being developed, or in the case of a commercial fishery listed under subsection (c)(1)(A)(iii) of this section which the Secretary believes may be contributing to such adverse impact, the Secretary shall -

(i) prescribe emergency regulations to reduce such incidental mortality and serious injury in that fishery, to the extent necessary to mitigate such adverse impact;

(ii) immediately review the stock assessment for such stock or species and the classification of such commercial fishery under this section to determine if a take reduction team should be established; and

(iii) may, where necessary to address such adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), place observers on vessels in a commercial fishery listed under subsection (c)(1)(A)(iii) of this section, if the Secretary has reason to believe such vessels may be causing the incidental mortality and serious injury to marine mammals from such stock.

(2) Prior to taking action under paragraph (1)(A), (B), or (C), the Secretary shall consult with the Marine Mammal Commission, all appropriate Regional Fishery Management Councils, State fishery managers, and the appropriate take reduction team (if established).

(3) Emergency regulations prescribed under this subsection -

(A) shall be published in the Federal Register, together with an explanation thereof;

(B) shall remain in effect for not more than 180 days or until the end of the applicable commercial fishing season, whichever is earlier; and

(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination, if the Secretary determines that the reasons for emergency regulations no longer exist.

(4) If the Secretary finds that incidental mortality and serious injury of marine mammals in a commercial fishery is continuing to have an immediate and significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for an additional period of not more than 90 days or until reasons for the emergency no longer exist, whichever is earlier.

(h) Penalties

Except as provided in subsection (c) of this section, any person who violates this section shall be subject to the provisions of sections 1375 and 1377 of this title, and may be subject to section 1376 of this title as the Secretary shall establish by regulations.

(i) Assistance

The Secretary shall provide assistance to Regional Fishery Management Councils, States, interstate fishery commissions, and Indian tribal organizations in meeting the goal of reducing incidental mortality and serious injury to insignificant levels approaching a zero mortality and serious injury rate.

(j) Contributions

For purposes of carrying out this section, the Secretary may accept, solicit, receive, hold, administer, and use gifts, devises, and bequests.

(k) Consultation with Secretary of the Interior

The Secretary shall consult with the Secretary of the Interior prior to taking actions or making determinations under this section that affect or relate to species or population stocks of marine mammals for which the Secretary of the Interior is responsible under this subchapter.

(l) Definitions

As used in this section and section 1371(a)(5)(E) of this title, each of the terms "fishery" and "vessel of the United States" has the same meaning it does in section 1802 of this title.

-SOURCE-

(Pub. L. 92-522, title I, Sec. 118, as added Pub. L. 103-238, Sec. 11, Apr. 30, 1994, 108 Stat. 546; amended Pub. L. 104-208, div. A, title I, Sec. 101(a) [title II, Sec. 211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41.)



-REFTEXT-

REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in subsecs. (a) (2) , (d) (4) (A) , (f) (11) , and (g) (1) (C) (iii) , is Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified principally to chapter 35 (Sec. 1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

Act of November 7, 1986, referred to in subsec. (a)(4), is Pub. L. 99-625, Nov. 7, 1986, 100 Stat. 3500, which amended section 718b of this title and provisions set out as a table of National Wildlife Refuges under section 668dd of this title and enacted provisions set out as a note under section 1536 of this title. For complete classification of this Act to the Code, see Tables.

The Federal Advisory Committee Act, referred to in subsec. (f)(6)(D), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

-MISC1-

AMENDMENTS

1996 - Subsecs. (a)(1), (c)(2)(B)(ii), (1). Pub. L. 104-208 made technical amendment to references in original act which appear in text as references to sections 1802 and 1824(b) of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 101(a) [title II, Sec. 211(b)] of div. A of Pub. L. 104-208 provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

-TRANS-

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

- FOOTNOTE-

(!1) So in original. Probably should be "Section".

-End-

- CITE-

16 USC Sec. 1388

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION  
CHAPTER 31 - MARINE MAMMAL PROTECTION  
SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

-STATUTE-

- HEAD-

Sec. 1388. Marine mammal cooperative agreements in Alaska

(a) In general

The Secretary may enter into cooperative agreements with Alaska Native organizations to conserve marine mammals and provide co-management of subsistence use by Alaska Natives.

(b) Grants

Agreements entered into under this section may include grants to Alaska Native organizations for, among other purposes -

- (1) collecting and analyzing data on marine mammal populations;
- (2) monitoring the harvest of marine mammals for subsistence use;
- (3) participating in marine mammal research conducted by the Federal Government, States, academic institutions, and private organizations; and
- (4) developing marine mammal co-management structures with Federal and State agencies.

(c) Effect of jurisdiction

Nothing in this section is intended or shall be construed -

- (1) as authorizing any expansion or change in the respective jurisdiction of Federal, State, or tribal governments over fish and wildlife resources; or
- (2) as altering in any respect the existing political or legal status of Alaska Natives, or the governmental or jurisdictional status of Alaska Native communities or Alaska Native entities.

(d) Authorization of appropriations

There are authorized to be appropriated for the purposes of carrying out this section -

- (1) \$1,500,000 to the Secretary of Commerce for each of the fiscal years 1994, 1995, 1996, 1997, 1998, and 1999; and
- (2) \$1,000,000 to the Secretary of the Interior for each of the fiscal years 1994, 1995, 1996, 1997, 1998, and 1999.

The amounts authorized to be appropriated under this subsection are in addition to the amounts authorized to be appropriated under section 1384 of this title.

- SOURCE-

(Pub. L. 92-522, title I, Sec. 119, as added Pub. L. 103-238, Sec. 19, Apr. 30, 1994, 108 Stat. 559.)

-End-

- CITE-

16 USC Sec. 1389

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION  
CHAPTER 31 - MARINE MAMMAL PROTECTION  
SUBCHAPTER II - CONSERVATION AND PROTECTION OF MARINE MAMMALS

- HEAD-

Sec. 1389. Pacific Coast Task Force; Gulf of Maine

-STATUTE-

(a) Pinniped removal authority

Notwithstanding any other provision of this subchapter, the Secretary may permit the intentional lethal taking of pinnipeds in accordance with this section.

(b) Application

- (1) A State may apply to the Secretary to authorize the intentional

lethal taking of individually identifiable pinnipeds which are having a significant negative impact on the decline or recovery of salmonid fishery stocks which -

- (A) have been listed as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);
- (B) the Secretary finds are approaching threatened species or endangered species status (as those terms are defined in that Act); or
- (C) migrate through the Ballard Locks at Seattle, Washington.

(2) Any such application shall include a means of identifying the individual pinniped or pinnipeds, and shall include a detailed description of the problem interaction and expected benefits of the taking.

(c) Actions in response to application

(1) Within 15 days of receiving an application, the Secretary shall determine whether the application has produced sufficient evidence to warrant establishing a Pinniped-Fishery Interaction Task Force to address the situation described in the application. If the Secretary determines sufficient evidence has been provided, the Secretary shall establish a Pinniped-Fishery Interaction Task Force and publish a notice in the Federal Register requesting public comment on the application.

(2) A Pinniped-Fishery Interaction Task Force established under paragraph (1) shall consist of designated employees of the Department of Commerce, scientists who are knowledgeable about the pinniped interaction that the application addresses, representatives of affected conservation and fishing community organizations, Indian Treaty tribes, the States, and such other organizations as the Secretary deems appropriate.

(3) Within 60 days after establishment, and after reviewing public comments in response to the Federal Register notice under paragraph (1), the Pinniped-Fishery Interaction Task Force shall -

(A) recommend to the Secretary whether to approve or deny the proposed intentional lethal taking of the pinniped or pinnipeds, including along with the recommendation a description of the specific pinniped individual or individuals, the proposed location, time, and method of such taking, criteria for evaluating the success of the action, and the duration of the intentional lethal taking authority; and

(B) suggest nonlethal alternatives, if available and practicable, including a recommended course of action.

(4) Within 30 days after receipt of recommendations from the Pinniped-Fishery Interaction Task Force, the Secretary shall either approve or deny the application. If such application is approved, the Secretary shall immediately take steps to implement the intentional lethal taking, which shall be performed by Federal or State agencies, or qualified individuals under contract to such agencies.

(5) After implementation of an approved application, the Pinniped-Fishery Interaction Task Force shall evaluate the effectiveness of the permitted intentional lethal taking or alternative actions implemented. If implementation was ineffective in eliminating the problem interaction, the Task Force shall recommend additional actions. If the implementation was effective, the Task Force shall so advise the Secretary, and the Secretary shall disband the Task Force.

(d) Considerations

In considering whether an application should be approved or denied, the Pinniped-Fishery Interaction Task Force and the Secretary shall consider -

(1) population trends, feeding habits, the location of the pinniped interaction, how and when the interaction occurs, and how many individual pinnipeds are involved;

(2) past efforts to nonlethally deter such pinnipeds, and whether the applicant has demonstrated that no feasible and prudent alternatives exist and that the applicant has taken all reasonable nonlethal steps without

success;

(3) the extent to which such pinnipeds are causing undue injury or impact to, or imbalance with, other species in the ecosystem, including fish populations; and

(4) the extent to which such pinnipeds are exhibiting behavior that presents an ongoing threat to public safety.

(e) Limitation

The Secretary shall not approve the intentional lethal taking of any pinniped from a species or stock that is -

(1) listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(2) depleted under this chapter; or

(3) a strategic stock.

(f) California sea lions and Pacific harbor seals; investigation and report

(1) The Secretary shall engage in a scientific investigation to determine whether California sea lions and Pacific harbor seals -

(A) are having a significant negative impact on the recovery of salmonid fishery stocks which have been listed as endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or which the Secretary finds are approaching such endangered species or threatened species status; or

(B) are having broader impacts on the coastal ecosystems of Washington, Oregon, and California.

The Secretary shall conclude this investigation and prepare a report on its results no later than October 1, 1995.

(2) Upon completion of the scientific investigation required under paragraph (1), the Secretary shall enter into discussions with the Pacific States Marine Fisheries Commission, on behalf of the States of Washington, Oregon, and California, for the purpose of addressing any issues or problems identified as a result of the scientific investigation, and to develop recommendations to address such issues or problems. Any recommendations resulting from such discussions shall be submitted, along with the report, to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(3) The Secretary shall make the report and the recommendations submitted under paragraph (2) available to the public for review and comment for a period of 90 days.

(4) There are authorized to be appropriated to the Secretary such sums as are necessary to carry out the provisions of this subsection.

(5) The amounts appropriated under section 4107(c) of this title and allocated to the Pacific States Marine Fisheries Commission may be used by the Commission to participate in discussions with the Secretary under paragraph (2).

(g) Regionwide pinniped-fishery interaction study

(1) The Secretary may conduct a study, of not less than three high predation areas in anadromous fish migration corridors within the Northwest Region of the National Marine Fisheries Service, on the interaction between fish and pinnipeds. In conducting the study, the Secretary shall consult with other State and Federal agencies with expertise in pinniped-fishery interaction. The study shall evaluate -

(A) fish behavior in the presence of predators generally;

(B) holding times and passage rates of anadromous fish stocks in areas where such fish are vulnerable to predation;

(C) whether additional facilities exist, or could be reasonably developed, that could improve escapement for anadromous fish; and

(D) other issues the Secretary considers relevant.

(2) Subject to the availability of appropriations, the Secretary may, not later than 18 months after the commencement of the study under this subsection, transmit a report on the results of the study to the Committee on

Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives.

- (3) The study conducted under this subsection may not be used by the Secretary as a reason for delaying or deferring a determination or consideration under subsection (c) or (d) of this section.

(h) Gulf of Maine Task Force

The Secretary shall establish a Pinniped-Fishery Interaction Task Force to advise the Secretary on issues or problems regarding pinnipeds interacting in a dangerous or damaging manner with aquaculture resources in the Gulf of Maine. No later than 2 years from April 30, 1994, the Secretary shall after notice and opportunity for public comment submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing recommended available alternatives to mitigate such interactions.

(i) Requirements applicable to task forces

- (1) Any task force established under this section -

(A) shall to the maximum extent practicable, consist of an equitable balance among representatives of resource user interests and nonuser interests; and

(B) shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.).

(2) Meetings of any task force established under this section shall be open to the public, and prior notice of those meetings shall be given to the public by the task force in a timely fashion.

(j) Gulf of Maine harbor porpoise

(1) Nothing in section 1386 of this title shall prevent the Secretary from publishing a stock assessment for Gulf of Maine harbor porpoise in an expedited fashion.

(2) In developing and implementing a take reduction plan under section 1387 of this title for Gulf of Maine harbor porpoise, the Secretary shall consider all actions already taken to reduce incidental mortality and serious injury of such stock, and may, based on the recommendations of the take reduction team for such stock, modify the time period required for compliance with section 1387(f)(5)(A) of this title, but in no case may such modification extend the date of compliance beyond April 1, 1997.

- SOURCE-

(Pub. L. 92-522, title I, Sec. 120, as added Pub. L. 103-238, Sec. 23, Apr. 30, 1994, 108 Stat. 562.)

- REFTEXT-

REFERENCES IN TEXT

The Endangered Species Act of 1973, referred to in subsecs. (b) (1) (A) , (B) , (e) (1) , and (f) (1) (A) , is Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified principally to chapter 35 (Sec. 1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

The Federal Advisory Committee Act, referred to in subsec. (i)(B), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

- TRANS-

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and

Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

-End-

- CITE-

16 USC SUBCHAPTER III - MARINE MAMMAL COMMISSION 01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION  
CHAPTER 31 - MARINE MAMMAL PROTECTION  
SUBCHAPTER III - MARINE MAMMAL COMMISSION

- HEAD-

SUBCHAPTER III - MARINE MAMMAL COMMISSION

-End-

- CITE-

16 USC Sec. 1401 01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION  
CHAPTER 31 - MARINE MAMMAL PROTECTION  
SUBCHAPTER III - MARINE MAMMAL COMMISSION

- HEAD-

Sec. 1401. Establishment

-STATUTE-

(a) Designation

There is hereby established the Marine Mammal Commission (hereafter referred to in this subchapter as the "Commission").

(b) Membership and term of office

(1) Effective September 1, 1982, the Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate. The President shall make his selection from a list of individuals knowledgeable in the fields of marine ecology and resource management, and who are not in a position to profit from the taking of marine mammals. Such list shall be submitted to him by the Chairman of the Council on Environmental Quality and unanimously agreed to by that Chairman, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation and the Chairman of the National Academy of Sciences. No member of the Commission may, during his period of service on the Commission, hold any other position as an officer or employee of the United States except as a retired officer or retired civilian employee of the United States.

(2) The term of office for each member shall be three years; except that of the members initially appointed to the Commission, the term of one member shall be for one year, the term of one member shall be for two years, and the term of one member shall be for three years. No member is eligible for reappointment; except that any member appointed to fill a vacancy occurring before the expiration of the term for which

his predecessor was appointed (A) shall be appointed for the remainder of such term, and (B) is eligible for reappointment for one full term. A member may serve after the expiration of his term until his successor has taken office.

(c) Chairman

The President shall designate a Chairman of the Commission (hereafter referred to in this subchapter as the "Chairman") from among its members.

(d) Compensation; reimbursement for travel expenses

Members of the Commission shall each be compensated at a rate



equal to the daily equivalent of the rate for GS-18 of the General Schedule under section 5332 of title 5, for each day such member is engaged in the actual performance of duties vested in the Commission. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in Government service employed intermittently.

(e) Executive Director

The Commission shall have an Executive Director, who shall be appointed (without regard to the provisions of title 5 governing appointments in the competitive service) by the Chairman with the approval of the Commission and shall be paid at a rate not in excess of the rate for GS-18 of the General Schedule under section 5332 of title 5. The Executive Director shall have such duties as the Chairman may assign.

-SOURCE-

(Pub. L. 92-522, title II, Sec. 201, Oct. 21, 1972, 86 Stat. 1043; Pub. L. 97-389, title II, Sec. 202, Dec. 29, 1982, 96 Stat. 1951; Pub. L. 98-364, title I, Sec. 103(a), July 17, 1984, 98 Stat. 441.)

-REFTEXT-

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (e), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

-MISC1-

AMENDMENTS

1984 - Subsec. (b)(1). Pub. L. 98-364 substituted "The President shall make his selection from a list of individuals knowledgeable in the fields of marine ecology and resource management, and who are not in a position to profit from the taking of marine mammals. Such list shall be submitted to him by the Chairman of the Council on Environmental Quality and unanimously agreed to by that Chairman, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation and the Chairman of the National Academy of Sciences" for "The President shall make his selection from a list, submitted to him by the Chairman of the Council on Environmental Quality, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences, of individuals knowledgeable in the fields of marine ecology and resource management, and who are not in a position to profit from the taking of marine mammals".

1982 - Subsec. (b)(1). Pub. L. 97-389 inserted requirement that, effective Sept. 1, 1982, the three members of the Commission be appointed by and with the advice and consent of the Senate.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, Sec. 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

-End-

- CITE-

-EXPCITE-



TITLE 16 - CONSERVATION

CHAPTER 31 - MARINE MAMMAL PROTECTION

SUBCHAPTER III - MARINE MAMMAL COMMISSION

- HEAD-

Sec. 1402. Duties of Commission

- STATUTE-

(a) Reports and recommendations

The Commission shall -

(1) undertake a review and study of the activities of the United States pursuant to existing laws and international conventions relating to marine mammals, including, but not limited to, the International Convention for the Regulation of Whaling, the Whaling Convention Act of 1949 [16 U.S.C. 916 et seq.], the Interim Convention on the Conservation of North Pacific Fur Seals, and the Fur Seal Act of 1966 [16 U.S.C. 1151 et seq.] ;

(2) conduct a continuing review of the condition of the stocks of marine mammals, of methods for their protection and conservation, of humane means of taking marine mammals, of research programs conducted or proposed to be conducted under the authority of this chapter, and of all applications for permits for scientific research, public display, or enhancing the survival or recovery of a species or stock;

(3) undertake or cause to be undertaken such other studies as it deems necessary or desirable in connection with its assigned duties as to the protection and conservation of marine mammals;

(4) recommend to the Secretary and to other Federal officials such steps as it deems necessary or desirable for the protection and conservation of marine mammals;

(5) recommend to the Secretary of State appropriate policies regarding existing international arrangements for the protection and conservation of marine mammals, and suggest appropriate international arrangements for the protection and conservation of marine mammals;

(6) recommend to the Secretary such revisions of the endangered species list and threatened species list published pursuant to section 1533(c)(1) of this title, as may be appropriate with regard to marine mammals; and

(7) recommend to the Secretary, other appropriate Federal officials, and Congress such additional measures as it deems necessary or desirable to further the policies of this chapter, including provisions for the protection of the Indians, Eskimos, and Aleuts whose livelihood may be adversely affected by actions taken pursuant to this chapter.

(b) Consultation with Secretary; reports to Secretary before publication

The Commission shall consult with the Secretary at such intervals as it or he may deem desirable, and shall provide each annual report required under section 1404 (!1) of this title, before submission to Congress, to the Secretary for comment.

(c) Availability of reports for public inspection

The reports and recommendations which the Commission makes shall be matters of public record and shall be available to the public at all reasonable times. All other activities of the Commission shall be matters of public record and available to the public in accordance with the provisions of section 552 of title 5.

(d) Recommendations; explanation for nonadoption

Any recommendations made by the Commission to the Secretary and other Federal officials shall be responded to by those individuals within one hundred and twenty days after receipt thereof. Any recommendations which are not followed or adopted shall be referred to the Commission together with a detailed explanation of the reasons why those recommendations were

not followed or adopted.

-SOURCE-

(Pub. L. 92-522, title II, Sec. 202, Oct. 21, 1972, 86 Stat. 1044; Pub. L. 93-205, Sec. 13(e)(4), Dec. 28, 1973, 87 Stat. 903; Pub. L. 97-58, Sec. 6(1), Oct. 9, 1981, 95 Stat. 987; Pub. L. 100-711, Sec. 5(e)(4), Nov. 23, 1988, 102 Stat. 4771.)

-REFTEXT-

REFERENCES IN TEXT

The Whaling Convention Act of 1949, referred to in subsec. (a)(1), is act Aug. 9, 1950, ch. 653, 64 Stat. 421, as amended, which is classified generally to subchapter II (Sec. 916 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 916 of this title and Tables.

The Fur Seal Act of 1966, referred to in subsec. (a)(1), is Pub. L. 89-702, Nov. 2, 1966, 80 Stat. 1091, as amended, which is classified generally to chapter 24 (Sec. 1151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1151 of this title and Tables.

Section 1404 of this title, referred to in subsec. (b), was omitted from the Code.

-MISC1-

AMENDMENTS

1988 - Subsec. (a)(2). Pub. L. 100-711 inserted ", public display, or enhancing the survival or recovery of a species or stock" after "scientific research".

1981 - Subsec. (b). Pub. L. 97-58 substituted "provide each annual report required under section 1404 of this title, before submission to Congress, to the Secretary for comment" for "furnish its reports and recommendations to him, before publication, for his comment".

1973 - Subsec. (a)(6). Pub. L. 93-205 substituted "such revisions of the endangered species list and threatened species list published pursuant to section 1533(c)(1) of this title" for "of the Interior such revisions of the Endangered Species List, authorized by the Endangered Species Conservation Act of 1969,".

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93-205 effective Dec. 28, 1973, see section 16 of Pub. L. 93-205, set out as an Effective Date note under section 1531 of this title.

- FOOTNOTE-

(!1) See References in Text note below.

-End-

- CITE-

16 USC Sec. 1403

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION  
CHAPTER 31 - MARINE MAMMAL PROTECTION  
SUBCHAPTER III - MARINE MAMMAL COMMISSION

- HEAD-

Sec. 1403. Committee of Scientific Advisors on Marine Mammals

- STATUTE-
  - (a) Establishment; membership  
The Commission shall establish, within ninety days after its

establishment, a Committee of Scientific Advisors on Marine Mammals (hereafter referred to in this subchapter as the "Committee"). Such Committee shall consist of nine scientists knowledgeable in marine ecology and marine mammal affairs appointed by the Chairman after consultation with the Chairman of the Council on Environmental Quality, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, and the Chairman of the National Academy of Sciences.

(b) Compensation; reimbursement for travel expenses

Except for United States Government employees, members of the Committee shall each be compensated at a rate equal to the daily equivalent of the rate for GS-18 of the General Schedule under section 5332 of title 5, for each day such member is engaged in the actual performance of duties vested in the Committee. Each member shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in Government service employed intermittently.

(c) Consultation with Commission on studies and recommendations; explanation for nonadoption

The Commission shall consult with the Committee on all studies and recommendations which it may propose to make or has made, on research programs conducted or proposed to be conducted under the authority of this chapter, and on all applications for permits for scientific research. Any recommendations made by the Committee or any of its members which are not adopted by the Commission shall be transmitted by the Commission to the appropriate Federal agency and to the appropriate committees of Congress with a detailed explanation of the Commission's reasons for not accepting such recommendations.

- SOURCE-

(Pub. L. 92-522, title II, Sec. 203, Oct. 21, 1972, 86 Stat. 1044.)

-MISC1-

#### TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

#### REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, Sec. 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

-End-

- CITE-

16 USC Sec. 1404

01/03/05

-EXPCITE-

-HEAD-

16 USC CHAPTER 31 - MARINE MAMMAL PROTECTION

TITLE 16 - CONSERVATION

CHAPTER 31 - MARINE MAMMAL PROTECTION

SUBCHAPTER III - MARINE MAMMAL COMMISSION

Sec. 1404. Omitted

-CO D-

CODIFICATION

Section, Pub. L. 92-522, title II, Sec. 204, Oct. 21, 1972, 86 Stat. 1045, which required the Marine Mammal Commission to transmit to Congress, by January 31 of each year, a report including a description of the Commission's activities and accomplishments during the preceding year and all findings and recommendations made by and to the Commission pursuant to section 1402 of this title together with responses made to those recommendations, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, page 176 of House Document No. 103-7.

-End-

- CITE-

16 USC Sec. 1405

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION  
CHAPTER 31 - MARINE MAMMAL PROTECTION  
SUBCHAPTER III - MARINE MAMMAL COMMISSION

- HEAD-

Sec. 1405. Coordination with other Federal agencies

-STATUTE-

The Commission shall have access to all studies and data compiled by Federal agencies regarding marine mammals. With the consent of the appropriate Secretary or Agency head, the Commission may also utilize the facilities or services of any Federal agency and shall take every feasible step to avoid duplication of research and to carry out the purposes of this chapter.

- SOURCE-

(Pub. L. 92-522, title II, Sec. 205, Oct. 21, 1972, 86 Stat. 1045.)

-End-

- CITE-

16 USC Sec. 1406

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION  
CHAPTER 31 - MARINE MAMMAL PROTECTION  
SUBCHAPTER III - MARINE MAMMAL COMMISSION

- HEAD-

Sec. 1406. Administration

-STATUTE-

The Commission, in carrying out its responsibilities under this subchapter, may -

- (1) employ and fix the compensation of such personnel;
- (2) acquire, furnish, and equip such office space;



(3) enter into such contracts or agreements with, or provide such grants to, other organizations, both public and private;  
(4) procure the services of such experts or consultants or an organization thereof as is authorized under section 3109 of title 5 (but at rates for individuals not to exceed \$100 per diem); and  
(5) incur such necessary expenses and exercise such other powers, as are consistent with and reasonably required to perform its functions under this subchapter; except that no fewer than 11 employees must be employed under paragraph (1) at any time. Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel, and procurement) shall be provided the Commission by the General Services Administration, for which payment shall be made in advance, or by reimbursement from funds of the Commission in such amounts as may be agreed upon by the Chairman and the Administrator of General Services.

-SOURCE-

(Pub. L. 92-522, title II, Sec. 206, Oct. 21, 1972, 86 Stat. 1045; Pub. L. 97-58, Sec. 6(2), Oct. 9, 1981, 95 Stat. 987; Pub. L. 98-364, title I, Sec. 103(b), July 17, 1984, 98 Stat. 442.)

-MISC1-

AMENDMENTS

1984 - Par. (5). Pub. L. 98-364 inserted "; except that no fewer than 11 employees must be employed under paragraph (1) at any time" at end.  
1981 - Par. (3). Pub. L. 97-58 substituted "contracts or agreements with, or provide such grants to, other organizations" for "contracts or agreements with other organizations".

-End-

- CITE-

16 USC Sec. 1407

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION  
CHAPTER 31 - MARINE MAMMAL PROTECTION  
SUBCHAPTER III - MARINE MAMMAL COMMISSION

- HEAD-

Sec. 1407. Authorization of appropriations

- STATUTE-

There are authorized to be appropriated to the Marine Mammal Commission, for purposes of carrying out this subchapter,  
\$1,500,000 for fiscal year 1994, \$1,550,000 for fiscal year 1995,  
\$1,600,000 for fiscal year 1996, \$1,650,000 for fiscal year 1997,  
\$1,700,000 for fiscal year 1998, and \$1,750,000 for fiscal year 1999.

-SOURCE-

(Pub. L. 92-522, title II, Sec. 207, Oct. 21, 1972, 86 Stat. 1046; Pub. L. 95-136, Sec. 3, Oct. 18, 1977, 91 Stat. 1167; Pub. L. 95-316, Sec. 4, July 10, 1978, 92 Stat. 381; Pub. L. 103-238, Sec. 9(b), Apr. 30, 1994, 108 Stat. 543.)

-MISC1-

PRIOR PROVISIONS

Provisions similar to those in this section were contained in Pub. L. 97-58, Sec. 7(c), Oct. 9, 1981, 95 Stat. 987; Pub. L. 98-364, title I, Sec. 104(3), July 17, 1984, 98 Stat. 442; Pub. L. 100-711, Sec. 6(3), Nov. 23, 1988, 102 Stat. 4771, prior to repeal by Pub. L. 103-238, Sec. 9(c).

AMENDMENTS

1994 - Pub. L. 103-238 amended section generally. Prior to amendment, section read as follows: "There are authorized to be

appropriated for the fiscal year in which this subchapter is enacted and for the next five fiscal years thereafter such sums as may be necessary to carry out this subchapter, but the sums appropriated for any fiscal year other than the fiscal year ending September 30, 1978, shall not exceed \$1,000,000, the sum appropriated for the fiscal year ending September 30, 1978, shall not exceed \$2,000,000, the sum appropriated for the fiscal year ending September 30, 1979, shall not exceed \$1,000,000, the sum appropriated for the fiscal year ending September 30, 1980, shall not exceed \$1,000,000, and the sum appropriated for the fiscal year ending September 30, 1981, shall not exceed \$1,000,000."

1978 - Pub. L. 95-316 added provisions authorizing appropriations for the fiscal years ending Sept. 30, 1979, Sept. 30, 1980, and Sept. 30, 1981.

1977 - Pub. L. 95-136 substituted "five fiscal years" for "four fiscal years" and "the sums appropriated for any fiscal year other than the fiscal year ending September 30, 1978, shall not exceed \$1,000,000, and the sum appropriated for the fiscal year ending September 30, 1978, shall not exceed \$2,000,000" for "the sums appropriated for any such year shall not exceed \$1,000,000" and struck out requirement that not less than two-thirds of the sums appropriated pursuant to this section for any such year be expended on research and studies under authority of section 1402(a)(2) and (3) of this title.

-End-

- CITE-

16 USC SUBCHAPTER IV - INTERNATIONAL DOLPHIN CONSERVATION PROGRAM  
01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION  
CHAPTER 31 - MARINE MAMMAL PROTECTION  
SUBCHAPTER IV - INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

- HEAD-

SUBCHAPTER IV - INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

-End-

- CITE-

16 USC Sec. 1411 01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION  
CHAPTER 31 - MARINE MAMMAL PROTECTION  
SUBCHAPTER IV - INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

- HEAD-

Sec. 1411. Findings and policy

-STATUTE-

(a) Findings

The Congress finds the following:

(1) The yellowfin tuna fishery of the eastern tropical Pacific Ocean has resulted in the deaths of millions of dolphins.

(2) Significant awareness and increased concern for the health and safety of dolphin populations has encouraged a change in fishing methods worldwide.

(3) United States tuna fishing vessels have led the world in the development of fishing methods to reduce dolphin mortalities in the eastern tropical Pacific Ocean and United States tuna processing companies have voluntarily promoted the marketing of tuna that is dolphin safe.

(4) Nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean have demonstrated their willingness to participate in appropriate multilateral agreements to reduce dolphin mortality progressively to a level approaching zero through the setting of annual limits, with the goal of eliminating dolphin mortality in that fishery. Recognition of the International Dolphin Conservation Program will assure that the existing trend of reduced dolphin mortality continues; that individual stocks of dolphins are adequately protected; and that the goal of eliminating all dolphin mortality continues to be a priority.

(b) Policy

It is the policy of the United States to -

(1) eliminate the marine mammal mortality resulting from the intentional encirclement of dolphins and other marine mammals in tuna purse seine fisheries;

(2) support the International Dolphin Conservation Program and efforts within the Program to reduce, with the goal of eliminating, the mortality referred to in paragraph (1);

(3) ensure that the market of the United States does not act as an incentive to the harvest of tuna caught with driftnets or caught by purse seine vessels in the eastern tropical Pacific Ocean not operating in compliance with the International Dolphin Conservation Program;

(4) secure appropriate multilateral agreements to ensure that United States tuna fishing vessels shall have continued access to productive tuna fishing grounds in the South Pacific Ocean and elsewhere; and

(5) encourage observer coverage on purse seine vessels fishing for tuna outside of the eastern tropical Pacific Ocean in a fishery in which the Secretary has determined that a regular and significant association occurs between marine mammals and tuna, and in which tuna is harvested through the use of purse seine nets deployed on or to encircle marine mammals.

-SOURCE-

(Pub. L. 92-522, title III, Sec. 301, as added Pub. L. 102-523, Sec. 2(a), Oct. 26, 1992, 106 Stat. 3425; amended Pub. L. 105-42, Sec. 6(b), Aug. 15, 1997, 111 Stat. 1129.)

-CO D-

CODIFICATION

Another section 301 of Pub. L. 92-522 was renumbered section 401 and is classified to section 1421 of this title.

-MISC1-

AMENDMENTS

1997 - Subsec. (a)(4). Pub. L. 105-42, Sec. 6(b)(1), added par. (4) and struck out former par. (4) which read as follows: "Nations harvesting

yellowfin tuna in the eastern tropical Pacific Ocean have indicated their willingness to participate in appropriate multilateral agreements to reduce, and eventually eliminate, dolphin mortality in that fishery."

Subsec. (b) (2) , (3) . Pub. L. 105-42, Sec. 6(b) (2) , added pars. (2) and (3) and struck out former pars. (2) and (3) which read as follows:

"(2) secure appropriate multilateral agreements to reduce, and eventually eliminate, the mortality referred to in paragraph (1);

"(3) ensure that the market of the United States does not act as an incentive to the harvest of tuna caught in association with dolphins or with driftnets;".

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.

-End-

- CITE-

16 USC Sec. 1412

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 31 - MARINE MAMMAL PROTECTION

SUBCHAPTER IV - INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

- HEAD-

Sec. 1412. International Dolphin Conservation Program

-STATUTE-

The Secretary of State, in consultation with the Secretary, shall seek to secure a binding international agreement to establish an International Dolphin Conservation Program that requires -

(1) that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean shall not exceed 5,000 animals with a commitment and objective to progressively reduce dolphin mortality to a level approaching zero through the setting of annual limits;

(2) the establishment of a per-stock per-year dolphin mortality limit, to be in effect through calendar year 2000, at a level between 0.2 percent and 0.1 percent of the minimum population estimate, as calculated, revised, or approved by the Secretary;

(3) the establishment of a per-stock per-year dolphin mortality limit, beginning with the calendar year 2001, at a level less than or equal to 0.1 percent of the minimum population estimate as calculated, revised, or approved by the Secretary;

(4) that if a dolphin mortality limit is exceeded under -

(A) paragraph (1), all sets on dolphins shall cease for the applicable fishing year; and

(B) paragraph (2) or (3), all sets on the stocks covered under paragraph (2) or (3) and any mixed schools that contain any of those stocks shall cease for the applicable fishing year;

(5) a scientific review and assessment to be conducted in calendar year 1998 to -

(A) assess progress in meeting the objectives set for calendar year 2000 under paragraph (2); and

(B) as appropriate, consider recommendations for meeting these objectives;

(6) a scientific review and assessment to be conducted in

calendar year 2000 -

- (A) to review the stocks covered under paragraph (3); and
- (B) as appropriate to consider recommendations to further the objectives set under that paragraph;

(7) the establishment of a per vessel maximum annual dolphin mortality limit consistent with the established per-year mortality limits, as determined under paragraphs (1) through (3); and

(8) the provision of a system of incentives to vessel captains to continue to reduce dolphin mortality, with the goal of eliminating dolphin mortality.

- SOURCE-

(Pub. L. 92-522, title III, Sec. 302, as added Pub. L. 105-42, Sec. 6(c), Aug. 15, 1997, 111 Stat. 1130.)

-MISC1-

PRIOR PROVISIONS

A prior section 1412, Pub. L. 92-522, title III, Sec. 302, as added Pub. L. 102-523, Sec. 2(a), Oct. 26, 1992, 106 Stat. 3426, related to international agreements to establish global moratorium to prohibit certain tuna harvesting practices prior to repeal by Pub. L. 105-42, Sec. 6(c), Aug. 15, 1997, 111 Stat. 1130.

A prior section 302 of Pub. L. 92-522 was renumbered section 402 and is classified to section 1421a of this title.

EFFECTIVE DATE

For effective date of section, see section 8 of Pub. L. 105-42, set out as an Effective Date of 1997 Amendment note under section 1362 of this title.

-End-

- CITE-

16 USC Sec. 1413

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 31 - MARINE MAMMAL PROTECTION

SUBCHAPTER IV - INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

- HEAD-

Sec. 1413. Regulatory authority of Secretary

-STATUTE-

(a) Regulations

(1) The Secretary shall issue regulations, and revise those regulations as may be appropriate, to implement the International Dolphin Conservation Program.

(2)(A) The Secretary shall issue regulations to authorize and govern the taking of marine mammals in the eastern tropical Pacific Ocean, including any species of marine mammal designated as depleted under this chapter but not listed as endangered or threatened under the Endangered Species Act (16 U.S.C. 1531 et seq.), by vessels of the United States participating in the International Dolphin Conservation Program.

(B) Regulations issued under this section shall include provisions -

(i) requiring observers on each vessel;

(ii) requiring use of the backdown procedure or other procedures equally or more effective in avoiding mortality of, or serious injury

to, marine mammals in fishing operations;

(iii) prohibiting intentional sets on stocks and schools in accordance with the International Dolphin Conservation Program;

(iv) requiring the use of special equipment, including dolphin safety panels in nets, monitoring devices as identified by the International Dolphin Conservation Program to detect unsafe fishing conditions that may cause high incidental dolphin mortality before nets are deployed by a tuna vessel, operable rafts, speedboats with towing bridles, floodlights in operable condition, and diving masks and snorkels;

(v) ensuring that the backdown procedure during sets of purse seine net on marine mammals is completed and rolling of the net to sack up has begun no later than 30 minutes before sundown;

(vi) banning the use of explosive devices in all purse seine operations;

(vii) establishing per vessel maximum annual dolphin mortality limits, total dolphin mortality limits and per-stock per-year mortality limits in accordance with the International Dolphin Conservation Program;

(viii) preventing the making of intentional sets on dolphins after reaching either the vessel maximum annual dolphin mortality limits, total dolphin mortality limits, or per-stock per-year mortality limits;

(ix) preventing the fishing on dolphins by a vessel without an assigned vessel dolphin mortality limit;

(x) allowing for the authorization and conduct of experimental fishing operations, under such terms and conditions as the Secretary may prescribe, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce or eliminate dolphin mortality or serious injury do not require the encirclement of dolphins in the course of commercial yellowfin tuna fishing;

(xi) authorizing fishing within the area covered by the International Dolphin Conservation Program by vessels of the United States without the use of special equipment or nets if the vessel takes an observer and does not intentionally deploy nets on, or encircle, dolphins, under such terms and conditions as the Secretary may prescribe; and

(xii) containing such other restrictions and requirements as the Secretary determines are necessary to implement the International Dolphin Conservation Program with respect to vessels of the United States.

(C) Adjustments to requirements. - The Secretary may make such adjustments as may be appropriate to requirements of subparagraph (B) that pertain to fishing gear, vessel equipment, and fishing practices to the extent the adjustments are consistent with the International Dolphin Conservation Program.

(b) Consultation

In developing any regulation under this section, the Secretary shall consult with the Secretary of State, the Marine Mammal Commission, and the United States Commissioners to the Inter-American Tropical Tuna Commission appointed under section 952 of this title.

(c) Emergency regulations

(1) If the Secretary determines, on the basis of the best scientific information available (including research conducted under section 1414a of this title and information obtained under the International Dolphin Conservation Program) that the incidental mortality and serious injury of marine mammals authorized under this subchapter is having, or is likely to have, a significant adverse impact on a marine mammal stock or species, the Secretary shall -

(A) notify the Inter-American Tropical Tuna Commission of his or her determination, along with recommendations to the Commission as to actions necessary to reduce incidental mortality and serious injury and mitigate such adverse impact; and

(B) prescribe emergency regulations to reduce incidental mortality and

serious injury and mitigate such adverse impact.

(2) Before taking action under subparagraph (A) or (B) of paragraph (1), the Secretary shall consult with the Secretary of State, the Marine Mammal Commission, and the United States Commissioners to the Inter-American Tropical Tuna Commission.

(3) Emergency regulations prescribed under this subsection -

(A) shall be published in the Federal Register, together with an explanation thereof;

(B) shall remain in effect for the duration of the applicable fishing year; and

(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination if the Secretary determines that the reasons for the emergency action no longer exist.

(4) If the Secretary finds that the incidental mortality and serious injury of marine mammals in the yellowfin tuna fishery in the eastern tropical Pacific Ocean is continuing to have a significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for such additional periods as may be necessary.

(5) Within 120 days after the Secretary notifies the United States Commissioners to the Inter-American Tropical Tuna Commission of the Secretary's determination under paragraph (1)(A), the United States Commissioners shall call for a special meeting of the Commission to address the actions necessary to reduce incidental mortality and serious injury and mitigate the adverse impact which resulted in the determination. The Commissioners shall report the results of the special meeting in writing to the Secretary and to the Secretary of State. In their report, the Commissioners shall -

(A) include a description of the actions taken by the harvesting nations or under the International Dolphin Conservation Program to reduce the incidental mortality and serious injury and measures to mitigate the adverse impact on the marine mammal species or stock;

(B) indicate whether, in their judgment, the actions taken address the problem adequately; and

(C) if they indicate that the actions taken do not address the problem adequately, include recommendations of such additional action to be taken as may be necessary.

- SOURCE-

(Pub. L. 92-522, title III, Sec. 303, as added Pub. L. 105-42, Sec. 6(c), Aug. 15, 1997, 111 Stat. 1131.)

-REFTEXT-

#### REFERENCES IN TEXT

The Endangered Species Act, referred to in subsec. (a)(2)(A), probably means the Endangered Species Act of 1973, Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified generally to chapter 35 (Sec. 1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

-MISC1-

#### PRIOR PROVISIONS

A prior section 1413, Pub. L. 92-522, title III, Sec. 303, as added Pub. L. 102-523, Sec. 2(a), Oct. 26, 1992, 106 Stat. 3426, related to research programs prior to repeal by Pub. L. 105-42, Sec. 6(c), Aug. 15, 1997, 111 Stat. 1130.

A prior section 303 of Pub. L. 92-522 was renumbered section 403 and is classified to section 1421b of this title.

EFFECTIVE DATE

For effective date of section, see section 8 of Pub. L. 105-42, set out as an Effective Date of 1997 Amendment note under section 1362 of this title.

-End-

- CITE-

16 USC Sec. 1414

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 31 - MARINE MAMMAL PROTECTION

SUBCHAPTER IV - INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

- HEAD-

Sec. 1414. Repealed. Pub. L. 105-42, Sec. 6(c), Aug. 15, 1997, 111 Stat. 1130

-MISC1-

Section, Pub. L. 92-522, title III, Sec. 304, as added Pub. L. 102-523, Sec. 2(a), Oct. 26, 1992, 106 Stat. 3428, related to reviews, reports, and recommendations by Secretary of Commerce.

A prior section 304 of Pub. L. 92-522 was renumbered section 404 and is classified to section 1421c of this title.

EFFECTIVE DATE OF REPEAL

For effective date of repeal, see section 8 of Pub. L. 105-42, set out as an Effective Date of 1997 Amendment note under section 1362 of this title.

-End-

- CITE-

16 USC Sec. 1414a

01/03/05

-EXPCITE-

TITLE 16 - CONSERVATION

CHAPTER 31 - MARINE MAMMAL PROTECTION

SUBCHAPTER IV - INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

- HEAD-

Sec. 1414a. Research

-STATUTE-

(a) Required research

(1) In general

The Secretary shall, in consultation with the Marine Mammal Commission and the Inter-American Tropical Tuna Commission, conduct a study of the effect of intentional encirclement (including chase) on dolphins and dolphin stocks incidentally taken in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean. The study, which shall commence on October 1, 1997, shall consist of abundance surveys as described in paragraph (2) and stress studies as described in paragraph (3), and shall address the question



of whether such encirclement is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean.

(2) Population abundance surveys

The abundance surveys under this subsection shall survey the abundance of such depleted stocks and shall be conducted during each of the calendar years 1998, 1999, and 2000.

(3) Stress studies

The stress studies under this subsection shall include -

(A) a review of relevant stress-related research and a 3-year series of necropsy samples from dolphins obtained by commercial vessels;

(B) a 1-year review of relevant historical demographic and biological data related to dolphins and dolphin stocks referred to in paragraph (1); and

(C) an experiment involving the repeated chasing and capturing of dolphins by means of intentional encirclement.

(4) Report

No later than 90 days after publishing the finding under subsection (g)(2) of section 1385 of this title, the Secretary shall complete and submit a report containing the results of the research described in this subsection to the United States Senate Committee on Commerce, Science, and Transportation and the United States House of Representatives Committees on Resources and on Commerce, and to the Inter-American Tropical Tuna Commission.

(b) Other research

(1) In general

In addition to conducting the research described in subsection (a) of this section, the Secretary shall, in consultation with

the Marine Mammal Commission and in cooperation with the nations participating in the International Dolphin Conservation Program and the Inter-American Tropical Tuna Commission, undertake or support appropriate scientific research to further the goals of the International Dolphin Conservation Program.

(2) Specific areas of research

Research carried out under paragraph (1) may include -

(A) projects to devise cost-effective fishing methods and gear so as to reduce, with the goal of eliminating, the incidental mortality and serious injury of marine mammals in connection with commercial purse seine fishing in the eastern tropical Pacific Ocean;

(B) projects to develop cost-effective methods of fishing for mature yellowfin tuna without setting nets on dolphins or other marine mammals;

(C) projects to carry out stock assessments for those marine mammal species and marine mammal stocks taken in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean, including species or stocks not within waters under the jurisdiction of the United States; and

(D) projects to determine the extent to which the incidental take of nontarget species, including juvenile tuna, occurs in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, the geographic location of the incidental take, and the impact of that incidental take on tuna stocks and nontarget species.

(c) Authorization of appropriations

(1) There are authorized to be appropriated to the Secretary the following amounts, to be used by the Secretary to carry out the research described in subsection (a) of this section:

- (A) \$4,000,000 for fiscal year 1998.
- (B) \$3,000,000 for fiscal year 1999.
- (C) \$4,000,000 for fiscal year 2000.
- (D) \$1,000,000 for fiscal year 2001.

(2) In addition to the amount authorized to be appropriated under paragraph (1), there are authorized to be appropriated to the Secretary for carrying out this section \$3,000,000 for each of the fiscal years 1998, 1999, 2000, and 2001.

- SOURCE-

(Pub. L. 92-522, title III, Sec. 304, as added Pub. L. 105-42, Sec. 6(c), Aug. 15, 1997, 111 Stat. 1133.)

-MISC1-

PRIOR PROVISIONS

A prior section 304 of Pub. L. 92-522 was classified to section 1414 of this title prior to repeal by Pub. L. 105-42.

-CHANGE-

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.

-End-

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 216**

[Docket No. 040806232-4232-01, I.D. 041404C]

RIN 0648-AS45

**Taking of Marine Mammals Incidental to Commercial Fishing Operations; Tuna Purse Seine Vessels in the Eastern Tropical Pacific Ocean (ETP)**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement provisions of the International Dolphin Conservation Program Act (IDCPA). This rule replaces the interim rule published in the **Federal Register** on January 3, 2000. This final rule makes technical changes and clarifications to the interim final rule which is already in effect. The interim final rule allows the entry of yellowfin tuna into the United States under certain conditions from nations fully complying with the International Dolphin Conservation Program (IDCP) and the Agreement on the IDCP. The interim final rule establishes a standard for the use of "dolphin-safe" labels for tuna products and also establishes a tuna-tracking and verification program to ensure that the dolphin-safe status of tuna domestically produced and imported into the United States is documented. This final rule does not contain substantive changes to the actions implemented in the interim final rule unless suggested by commenters.

**DATES:** Effective October 13, 2004.

**ADDRESSES:** Written comments on the collection-of-information requirements should be sent to Jeremy Rusin, NMFS, Southwest Region, Protected Resources Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. Comments also may be sent via facsimile (fax) to (562) 980-4027.

**FOR FURTHER INFORMATION CONTACT:** Jeremy Rusin, NMFS, Southwest Region, Protected Resources Division, (562) 980-3248.

**SUPPLEMENTARY INFORMATION:****Background**

In 1992, ten nations fishing for tuna in the ETP, including the United States, reached a non-binding international agreement (referred to as the La Jolla Agreement) that included, among other

measures, a schedule for significantly reducing dolphin mortality. (These nations included Colombia, Costa Rica, Ecuador, Mexico, Nicaragua, Spain, Panama, Vanuatu, Venezuela and the United States.) By 1993, nations fishing in the ETP under the La Jolla Agreement had reduced dolphin mortality to less than 5,000 dolphins annually, 6 years ahead of the schedule established in that Agreement. In October 1995, the success of the La Jolla Agreement led the United States, Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, Vanuatu, and Venezuela to sign the Panama Declaration, another voluntary measure, to strengthen and enhance the IDCP.

The program outlined in the Panama Declaration provided greater protection for dolphins and enhanced the conservation of yellowfin tuna and other living marine resources in the ETP ecosystem. The signers of the Panama Declaration anticipated that the United States would amend the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) to allow import of yellowfin tuna into the United States from nations that are participating in, and are in compliance with, the IDCP. Implementation of the Panama Declaration by the United States was also anticipated to allow U.S. vessels to participate in the ETP fishery on an equal basis with the vessels of other nations. Under the Panama Declaration, signatory nations agreed to develop a legally binding, international agreement.

The IDCPA was signed into law August 15, 1997, and became effective March 3, 1999. The IDCPA was the United States' domestic endorsement of the Panama Declaration. The IDCPA amends the MMPA, the Dolphin Protection Consumer Information Act (DPCIA) (16 U.S.C. 1385), and the Tuna Conventions Act, 16 U.S.C. 951 *et seq.* It provides a framework for governing marine mammal mortality incidental to the U.S. ETP tuna purse seine fishery and the importation of yellowfin tuna and yellowfin tuna products from other nations with vessels engaged in the ETP tuna purse seine fishery.

**Agreement on the IDCP**

The IDCPA, together with the Panama Declaration, became the blueprint for the Agreement on the IDCP. In May 1998, eight nations, including the United States, signed a binding, international agreement to implement the IDCP. The Agreement on the IDCP became effective on February 15, 1999, after Mexico became the fourth nation to ratify the Agreement.

The nations who are Parties to the Agreement on the IDCP agreed that 1999

would be a transition year and that 2000 would be the first year the Agreement would be fully implemented and nations would operate under the Agreement. This final rule is intended to implement the IDCPA and the Agreement for dolphin conservation in the ETP.

**Proposed Rule and Interim Final Rule**

On June 14, 1999, NMFS published proposed regulations to implement the IDCPA (64 FR 31806). These regulations proposed to: (1) allow the entry of yellowfin tuna into the United States under certain conditions from nations fully complying with the IDCP; (2) allow U.S. vessels to set their purse seines on dolphins in the ETP; (3) change the standard for the use of dolphin-safe labels for tuna products and; (4) establish a system of tracking and verification for tuna harvested by U.S. and foreign vessels in the ETP that enter the commerce of the United States.

Public comments on the proposed rule were accepted through July 14, 1999. Several commenters on the proposed rule stated that the 30-day comment period for this proposed rule was too short and requested an extension of the public comment period. To accommodate this, NMFS published an interim final rule (65 FR 31, January 3, 2000) with a 90-day comment period, instead of a final rule. Public comments on the interim final rule were accepted through April 3, 2000. NMFS held two public hearings on the proposed rule: one in Long Beach, CA on July 8, 1999, and one in Silver Spring, MD on July 14, 1999. In addition to publication of the interim final rule in the **Federal Register**, NMFS sent the proposed rule and the interim final rule to industry representatives, environmental organizations, vessel and operator permit holders, importers, IDCP member nations, Department of State (DoS), Inter-American Tropical Tuna Commission (IATTC), U.S. Commissioners to the IATTC, Department of the Treasury, U.S. Customs Service, Marine Mammal Commission, Department of Justice, and the Federal Trade Commission. NMFS also issued press releases announcing the availability of the proposed rule and the interim final rule. Information in the press release was published in several national newspapers and on NMFS websites and was broadcast on several radio stations.

**Litigation: Labeling Standard**

On August 17, 1999, in response to NMFS' issuance of the initial finding mandated under paragraph (g)(1) of the DPCIA, twelve environmental

organizations and individuals filed a complaint against the Department of Commerce and NMFS alleging that NMFS violated the MMPA, the DPCIA, the IDCPA and the National Environmental Policy Act (NEPA). The plaintiffs in *Brower v. Daley* sought to prevent the change of the dolphin-safe labeling standard that had resulted from NMFS' initial finding. The plaintiffs alleged that NMFS failed to follow the requirements of these Acts in its April 29, 1999, initial finding that there was insufficient evidence to conclude that the encirclement of dolphins with purse seine nets by fishing vessels in the ETP was having a significant adverse impact on depleted ETP dolphin stocks. Under NMFS' initial finding, the dolphin-safe labeling standard changed to the definition under paragraph (h)(1) of the DPCIA. This definition states that tuna harvested by "large purse seine vessels," i.e. vessels with carrying capacity greater than 400 short tons (st), in the ETP may be labeled dolphin-safe only if no dolphins were killed or seriously injured during the sets in which the tuna were caught.

On April 11, 2000, the U.S. District Court for the Northern District of California reversed NMFS' initial finding and reinstated the dolphin-safe labeling standard under paragraph (h)(2) of the DPCIA (*Brower v. Daley*, 93 F.Supp.2d 1071). Under this ruling, tuna harvested in the ETP could be labeled dolphin-safe only if no dolphins were intentionally encircled during the fishing trip and if no dolphins were killed or seriously injured during the sets in which the tuna were caught. On May 18, 2000, the Federal defendants appealed the order of the District Court. On July 23, 2001, the U.S. Court of Appeals for the Ninth Circuit upheld the District Court decision (*Brower v. Evans*, 257 F.3d 1058). The appellate court ruled that (1) NMFS had not made sufficient progress in the required scientific research and (2) NMFS' decision was inconsistent with the DPCIA, which requires the Secretary of Commerce (Secretary) to determine whether or not there was an adverse impact on depleted dolphin stocks from chase and encirclement.

On December 31, 2002, NMFS, on behalf of the Secretary, made a final finding, based on the results of required research, information obtained under the IDCP, and other relevant information, that the intentional deployment on or encirclement of dolphins with purse seine nets is not having a "significant adverse impact" on any depleted dolphin stock in the ETP (68 FR 2010, January 15, 2003). This finding meant that tuna harvested

by large purse seine vessels in the ETP could be labeled dolphin-safe even if dolphins were encircled or chased, provided that no dolphins were killed or seriously injured in the set in which the tuna was harvested. The finding, and the change in the labeling standard, became effective immediately on December 31, 2002. This determination was based largely on the results of research projects mandated by Section 304 of the MMPA. NMFS conducted the research to determine if, despite the relatively low levels of observed mortality, the intentional chase and encirclement of dolphins by the tuna industry is having a significant adverse impact on any of the depleted dolphin stocks. The research results, including those of a chase-recapture experiment on dolphins in the ETP and other relevant information, were considered by the Secretary for the final dolphin-safe determination.

Also on December 31, 2002, Earth Island Institute, eight other environmental groups, and one individual filed a lawsuit against the Secretary in an effort to overturn the final finding. On January 22, 2003, the United States District Court for the Northern District of California issued an order that stayed the implementation of the final finding (*Earth Island Institute et al. v. Evans et al.*, C 03-0007 TEH, N.D.Cal.). Under the terms of the order, the dolphin-safe labeling standard for tuna harvested by large purse seine vessels in the ETP reverted to the standard in effect immediately prior to the December 31, 2002, final finding. The terms of the order, outlined in the **Federal Register** (68 FR 4449, January 29, 2003), further provide that this labeling standard shall remain in effect for 90 days from the date of the order or until a ruling is issued on a motion for a preliminary injunction, which will also be published in the **Federal Register**. The stay was agreed to by all parties involved in the Earth Island Institute lawsuit. On April 10, 2003, the District Court issued a preliminary injunction that orders NMFS not to implement the final finding or the new dolphin-safe labeling standard (*Earth Island Institute et al. v. Evans et al.*, C 03-0007 THE, N.D.Cal.). In an August 9, 2004, decision, the District Court set aside the final finding and declared that "dolphin-safe" may be used only on tuna products harvested by large purse seine vessels in the ETP if the tuna were caught on a trip in which (1) the purse seine was never intentionally deployed on or to encircle dolphins, and (2) no dolphins were killed or seriously

injured during the sets in which the tuna were caught.

#### *Litigation: Implementing Regulations*

On February 8, 2000, Defenders of Wildlife and other environmental organizations filed suit against the Assistant Administrator for Fisheries, NMFS, in the U.S. Court of International Trade. The plaintiffs alleged that NMFS did not lawfully follow the IDCPA, NEPA, and the Administrative Procedure Act in the implementation of the IDCPA. The plaintiffs motioned the Court for a preliminary injunction to prevent NMFS from making "affirmative findings" that would lift embargoes against Mexico or other ETP tuna fishing nations. This motion was denied on April 14, 2000.

On December 7, 2001, the Court of International Trade denied plaintiffs' motion for summary judgement and dismissed the lawsuit against NMFS (*Defenders of Wildlife v. Hogarth*, 177 F.Supp.2d 1336). The Court agreed with NMFS' interpretation of the IDCPA and upheld the legality of the January 2000 interim final rule in regard to several very specific allegations. The Court also affirmed that the Federal government complied with NEPA in promulgating the interim final rule and in negotiating the 1999 Agreement on the IDCP. Finally, the Court held that NMFS' affirmative finding for Mexico was not arbitrary and capricious. The affirmative finding allows Mexico to export to the United States yellowfin tuna and yellowfin tuna products harvested in the ETP using purse seine vessels. The U.S. Court of Appeals for the Federal Circuit upheld the Court of International Trade's decision. Plaintiffs appealed to the U.S. Supreme Court and the Court declined to entertain the appeal on May 3, 2004.

#### **Responses to Comments**

NMFS received over 800 comments during the comment period for the interim final rule. Comments were received from tuna industry organizations, environmental organizations, members of the public, DoS, U.S. Customs Service, and foreign nations. Key issues and concerns are summarized below and responded to as follows:

#### *Import Procedures*

*Comment 1:* For clarification purposes, revise the last sentence of § 216.24(f)(9)(vi) to read as follows: "Since shipments destined for the United States on a through bill of lading at the time of the original shipment are neither imported for consumption in the 'intermediary nation' nor exported

therefrom under 50 CFR 216.24(f)(9)(viii), the nation would not be considered an 'intermediary nation' under the MMPA.≥

*Response:* NMFS has revised the sentence to clarify its meaning. This sentence appears in § 216.24(f)(9)(ii) of this final rule.

*Comment 2:* NMFS has never requested that the U.S. Customs Service monitor compliance with the dolphin-safe labeling requirements. This would involve a significant increase in Customs Inspection workload. Before any Customs enforcement actions could be taken both agencies would have to concur in the development of a practical implementation plan.

*Response:* U.S. Customs' monitoring of imports of certain frozen and canned tuna shipments enables NMFS to monitor compliance with the dolphin-safe labeling requirements. NMFS is working with U.S. Customs to develop a practicable implementation plan for enforcement of NMFS tuna import requirements.

*Comment 3:* Over 95 percent of all U.S. Customs entries are electronic. Therefore, requiring submission of a paper Fisheries Certificate of Origin ((FCO), NOAA Form 370) at the time of importation inhibits the automation initiative of the U.S. Custom Service.

*Response:* NMFS and U.S. Customs have agreed that, for the foreseeable future, import shipments of tuna and tuna products that require an accompanying FCO may not be entered electronically.

*Comment 4:* If fish is denied entry, that action per se constitutes a U.S. Customs refusal of admission and no formal notice of such refusal is issued by Customs. Please remove the phrase "and shall issue a notice of such refusal to the importer or consignee" at the end of § 216.24(f)(10). The issue of 'notice of refusal' and 'redelivery' should be discussed by Customs and NMFS further.

*Response:* NMFS consulted with U.S. Customs and made the requested changes.

*Comment 5:* The regulations describe the old FCO that references non-encirclement of dolphins instead of the new FCO that references the Tuna Tracking Form and non-mortality or serious injury.

*Response:* The regulations are fully up to date. Section 216.24(f)(3) and (4) describe, in general terms, the requirements for processing and maintaining the FCOs.

*Comment 6:* The regulations should include a provision for seizure of a product that is neither exported nor

destroyed after the 90-day period has elapsed.

*Response:* NMFS revised § 216.24(f)(11) accordingly.

*Comment 7:* U.S. Customs has informed NMFS that Harmonized Tariff Schedule (HTS) number 1605.90.6055 (which appears in § 216.24(f)(2)(iii)(B)) has changed from "Squid, loligo, prepared/preserved" to "Squid, other, prepared/preserved." U.S. Customs also informed NMFS that the current HTS number for "Squid, loligo, prepared/preserved" is 1605.90.6050. The commenter indicated that these changes should be reflected in the regulations.

*Response:* NMFS has reviewed and updated all HTS numbers applicable to this final rule and has made the appropriate changes in § 216.24(f)(2)(iii)(B).

#### *Definitions*

*Comment 8:* The definition of "Serious injury" under § 216.3 is not descriptive enough to be used by official observers to determine whether or not a dolphin is seriously injured.

*Response:* The definition will enable officials to determine whether or not a dolphin is seriously injured. Further, an overly descriptive definition has the potential to restrict one's ability to categorize an injury as serious. Observers are responsible for noting information regarding any interactions with marine mammals; however, observers are not expected to determine whether or not a dolphin is seriously injured. The IATTC reviews and evaluates the Observer Forms, and the IATTC and NMFS evaluate individual reported injuries using criteria developed by the international program.

#### *Application for Vessel Permit*

*Comment 9:* Section 216.24(b)(4) should specifically require the name and address of the owner of the vessel if it is different from the applicant.

*Response:* MMPA section 306(a)(1)(A), 16 U.S.C. 1416(a)(1)(A), directs the Secretary to require the submission of the name and address of the owner of each vessel for which a vessel permit is sought. NMFS has addressed this issue in these regulations and the vessel permit application process. The vessel permit application specifically requires the name and address of the owner of the vessel if it is different from the applicant.

#### *Observer Placement*

*Comment 10:* In order to ensure the competitiveness of U.S. purse seine vessels fishing pursuant to the South Pacific Tuna Treaty in the western Pacific Ocean, the Forum Fisheries

Agency (FFA) observers should be approved for use in the ETP by the IDCP and the Administrator.

*Response:* A vessel that does not normally fish for tuna in the ETP (for example, a vessel that typically fishes in the western Pacific Ocean) but desires to participate in the ETP fishery on a limited basis may do so after complying with § 216.24. FFA observers have been approved for use in the Agreement Area of the Agreement on the IDCP. The IATTC is currently training FFA observers to record data on IATTC forms for compatibility and consistency.

Mortality and Serious Injury Reports  
*Comment 11:* Section 216.24(b)(9) requires that the Secretary provide to the public "periodic status reports summarizing the estimated incidental dolphin mortality and serious injury by U.S. vessels." These reports should be completed on either a quarterly or bi-annual basis.

*Response:* NMFS provides this information on an annual basis. This information can be found in the Marine Mammal Protection Act Annual Reports. Historically, NMFS issued weekly reports of dolphin mortality in the ETP tuna purse seine fishery to assist the public in observing compliance with dolphin mortality quotas; however, U.S. vessels have not made intentional sets on dolphins since February 1994. While U.S. vessels continue to abstain from intentionally setting on dolphins, NMFS believes annual reports are adequate. In the event that U.S. vessels begin setting on dolphins, the regulations provide the flexibility for NMFS to issue more frequent reports.

#### *Purse Seining by Vessels With Dolphin Mortality Limits (DMLs)*

*Comment 12:* There is no requirement or mechanism for any reduction in dolphin mortality in the regulations. We recommend that the regulations provide incentives to the vessels to reduce DMLs. Two possible incentives are (1) monetary reimbursement for unused DMLs or (2) ability to sell unused DMLs to other vessels. In addition, there should be civil and criminal penalties against persons who exceed their DML.

*Response:* The Parties to the Agreement on the IDCP, of which the United States is a member, established a working group to develop incentives and rewards to encourage vessel operators to reduce dolphin mortality. Recently, this working group selected vessel operators who had met or exceeded the criteria for high performing captains in reducing dolphin mortality in this fishery and awarded them with plaques recognizing

their performance. This working group will continue to develop incentives for vessel captains and methods to reduce dolphin mortality. Additionally, while penalties are not part of these regulations, § 216.24(c)(9)(v) provides that a DML assigned to a U.S. vessel that exceeded its DML in a given year will be reduced by 150 percent of the overage in the following year.

*Comment 13:* These regulations create incentives for tuna fishermen to set on and potentially kill the maximum number of dolphins allowed under the international system.

*Response:* These regulations do not create an incentive for tuna fishermen to set on dolphins. Since the implementation of these regulations, no U.S. purse seine vessels have made intentional sets on dolphins. Under the Agreement on the IDCP (Annex IV, section II, paragraph 1), any vessel that is assigned a full-year DML must make at least one set on dolphins prior to April 1 to keep from losing its DML allocation; however, an intentional set on dolphins does not necessarily lead to dolphin mortality. This requirement is part of the process established by the international program to deter frivolous requests for DMLs.

#### *Backdown Procedure*

*Comment 14:* Although the regulations provide for the use of a backdown procedure, they do not address how the procedure will be carried out and do not provide vessels with the opportunity to implement a more effective procedure to avoid mortality or serious injury to dolphins.

*Response:* Vessel operators receive formal training through either NMFS or the IATTC Captains training program on the requirements and execution of this procedure. In addition, new vessel operators participate in a lengthy apprentice program in which they master all operations of a vessel (including the backdown procedure) before becoming a Captain or vessel operator. The backdown process is a dynamic procedure that requires an in-depth knowledge and understanding of the net construction and design to effectively deploy this maneuver. Because of the complexities of the procedure and the training programs in place to ensure vessel operators learn the procedure, it is unnecessary to describe this procedure in these regulations. Further, NMFS has not determined that tuna purse seine fishers fail to adhere to the training they receive. In fact, they have an incentive to successfully perform the procedure and to avoid dolphin mortalities.

The regulations allow for experimental fishing operations, consistent with the IDCP, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce or eliminate dolphin mortality or serious injury, or do not require the encirclement of dolphins in the course of fishing operations.

NMFS has funded research to test various methods of finding and fishing for yellowfin tuna not in association with dolphins. For example, funding priorities for the Saltonstall-Kennedy Grant Program include proposals that address marine mammal and fishery interactions.

#### *Sundown Sets Prohibition*

*Comment 15:* The rule ignores the IDCPA requirement that backdown procedures be completed by 30 minutes before sundown.

*Response:* NMFS research, previous NMFS regulations and previous amendments to the MMPA, the La Jolla Agreement and the IDCP specify that the backdown procedure must be completed no later than one-half hour after sundown. Furthermore, under the Agreement on the IDCP, signatory nations agreed that the backdown procedure must be completed no later than one-half hour after sundown, thus prohibiting sundown sets. Because early drafts of the IDCPA used the word "after" and no congressional reports or colloquy indicated that the change to "before" was adopted purposefully, NMFS concludes the language in the IDCPA stating that backdown procedures must be completed no later than one-half hour before sundown must have been a drafting error. Furthermore, the IDCPA gives NMFS discretion to promulgate, and adjust through regulations, this requirement to carry out U.S. obligations under the Agreement on the IDCP. This interpretation was upheld by the Court of International Trade in the *Defenders of Wildlife* litigation (discussed above). Therefore, NMFS is retaining the "30 minutes after" language that appeared in the interim final rule.

#### *Experimental Fishing Operations*

*Comment 16:* Section 216.24(c)(7) should specify which requirements may be waived for experimental fishing activities.

*Response:* Section 216.24(c)(7) specifies that NOAA's Assistant Administrator for Fisheries, NMFS, may not waive the DML requirements and the obligation to carry an observer. The regulations allow the Administrator flexibility to waive other requirements

of § 216.24 as appropriate. This flexibility is critical to encourage a variety of alternative experimental designs and techniques that might be effective.

#### *Per-stock, Per-year Limits*

*Comment 17:* The regulations state that if the per-stock, per-year limits are exceeded for a depleted stock, then fishing on dolphin shall cease for all vessels for the year. The regulations should be changed to state that fishing on that particular dolphin stock should cease.

*Response:* The commenter misunderstood this part of the regulations, which already focuses on fishing for tuna in association with particular dolphin stocks. Section 216.24(c)(9)(viii) of the regulations states that if a per-stock, per-year quota is exceeded, then fishing for tuna in association with the stock(s) whose limits had been exceeded would cease for the remainder of the calendar year.

#### *Dolphin Sets After Reaching DML*

*Comment 18:* The IDCPA states that regulations must be adopted to prevent the occurrence of intentional sets after reaching the DML. However, disqualifying the vessel from obtaining a DML for the following year is clearly not a preventive measure that will prohibit additional takes. A more immediate penalty is needed.

*Response:* A vessel that reaches its DML must immediately cease fishing on dolphins in accordance with these regulations and the international program. If, after due process, it is determined that a vessel exceeded its DML, these regulations and the international program provide for the disqualification of the vessel from receiving a DML for the following year under certain circumstances. Also, any vessel that exceeds its assigned DML, if not disqualified, will have its DML for the subsequent year reduced by 150 percent of the overage. These measures conform to the Agreement on the IDCP and serve as a deterrent or preventative measure for vessels to not exceed their DMLs.

#### *Purse Seining by Vessels Without Assigned DMLs*

*Comment 19:* Section 216.24(d) is invalid because the IDCPA requires every vessel to have a DML assigned. Section 216.24(d) is unclear regarding whether it applies only to vessels that are not engaging in tuna fishing operations or to tuna fishing vessels that do not have a DML or to both.

*Response:* The heading of § 216.24 makes clear that the section deals with

commercial fishing operations by tuna purse seine vessels in the ETP. Section 216.24(d) applies only to vessels without assigned DMLs, i.e. only vessels that do not intentionally deploy nets on or encircle dolphins. Under § 216.24(a)(2), vessels that do not have DMLs may not make intentional sets on dolphins. The IDCPA does not require every vessel to have a DML assigned. MMPA section 303(a)(2)(B)(ix) prohibits a vessel without an assigned DML from intentionally setting on dolphins.

#### Observers

*Comment 20:* While § 216.24(e) of the proposed regulation addresses the role of the observer of the vessel, it fails to address the inherent problems associated with observer programs or to describe what criteria must be met in order to qualify as an observer. If these criteria are mentioned elsewhere in the Code of Federal Regulations, the section should either be referenced or restated in § 216.24.

*Response:* For the tuna purse seine fishery in the ETP, the IATTC trains observers so that they are qualified to perform observer duties. The IATTC observer program and its training requirements remain in effect.

#### Affirmative Finding Procedures

*Comment 21:* In order for a country to receive an affirmative finding, nations should be required to supply documentary evidence of their fishing fleets' actions on an annual basis, not every 5 years as described in the interim final rule.

*Response:* The MMPA does not specifically require a yearly submission of documentary evidence specifically from harvesting nations. NMFS' interpretation of the MMPA is reasonable because it enables NMFS to verify compliance while minimizing the burden on other nations. It places the burden on NMFS to make or renew an affirmative finding annually, if the harvesting nation has provided all of the information and authorizations required by § 216.24 (f)(8)(i) and (ii). An annual review allows NMFS to verify compliance with the IDCP. Through these regulations NMFS is authorized in the annual renewal process to seek out documentation from the harvesting nation, DoS and IATTC.

*Comment 22:* Allowing countries to exceed DMLs for "extraordinary circumstances beyond the control of the nation and the vessel captain..." undermines the IDCPA by allowing fishing nations to exceed DMLs without fear of enforcement actions by the U.S. Government.

*Response:* NMFS does not have the authority to take enforcement actions against foreign nations. However, if a nation's fleet's annual dolphin mortality or per-stock dolphin mortality exceeds its aggregate DMLs because of extraordinary circumstances beyond the control of the nation or of the vessel's captain, but otherwise is in conformance to the Agreement on the IDCP, that nation should not be embargoed. Section 216.24(f)(8)(i)(C) further explains that the nation must have immediately required all its vessels to cease fishing for tuna in association with dolphins for the remainder of the calendar year. This encourages harvesting nations to comply with the Agreement on the IDCP, yet threatens economic sanctions against nations that do not control or manage their fleets.

#### Dolphin-safe Labeling Standards

*Comment 23:* These regulations burden U.S. purse seine vessel operators who do not intentionally set on dolphin. Under previous regulations, tuna could be labeled dolphin-safe, even if an accidental dolphin mortality occurred. Under the new regulations, U.S. vessels will not be able to sell their tuna to canneries as dolphin-safe if a single accidental fatality occurs during the trip.

*Response:* Before the IDCPA was enacted, tuna could be labeled dolphin-safe even if dolphins were observed killed in a set in which they were accidentally captured. The IDCPA, however, changed the labeling standard such that no tuna product harvested in the ETP by a large purse seine vessel may be labeled dolphin-safe if an observed dolphin mortality, or serious injury, occurs during a set, whether or not the vessel intentionally deployed its nets on dolphin. (This part of the dolphin-safe labeling standard remains constant regardless of the "significant adverse impact" finding under paragraph (g) of the DPCIA.) Therefore, if an accidental dolphin mortality occurs in a set, that set is by definition non-dolphin-safe. The determination of whether tuna is dolphin-safe is made on a set-by-set basis; only tuna caught in a set in which a net was intentionally deployed on a marine mammal or in which dolphin mortality or serious injury occurs would be considered non-dolphin-safe. The U.S. canned tuna industry is not required by the final rule to refuse tuna caught in association with dolphins so long as all the requirements of the rule are met. That the U.S. canned tuna industry chooses to do so, is a private, corporate decision and not a requirement of this final rule.

*Comment 24:* Section 216.92(a) seems to preclude a U.S. processor from labeling fish as dolphin-safe if the U.S. processor processes the fish at some location other than those listed in the paragraph. This would preclude a U.S. processor from ever processing such fish at a plant in a country that has entered into a Compact of Free Association with the United States. Because these states now have limited "duty free" access to the United States, it is possible that U.S. processors may establish plants there in the future. The paragraph should allow the fish to enter the United States as dolphin-safe from Compact of Free Association locations if it otherwise meets the dolphin-safe requirements of the IDCPA and has been processed in a plant that is in compliance with the tuna tracking and verification requirements of § 216.94 (now found at § 216.93 of this final rule).

*Response:* Nothing in the rule precludes tuna processed in a Compact of Free Association nation (i.e., the Republic of Palau, Federated States of Micronesia or the Republic of the Marshall Islands) from being labeled dolphin-safe or from being imported into the United States. The requirements for tuna caught in the ETP and imported into the United States to carry a dolphin-safe label are described in § 216.92(b). All Compact of Free Association nations are located outside the U.S. Custom's territory and, therefore, tuna processed in those nations are subject to the procedures for imported tuna regardless of the nation's duty-free status.

#### Tuna Tracking and Verification Program

*Comment 25:* These regulations fail to implement adequate monitoring systems for ensuring the separation and tracking of imported dolphin-safe and non-dolphin-safe tuna.

*Response:* The regulations implement adequate monitoring systems for ensuring the separation and tracking of imported dolphin-safe and non-dolphin-safe tuna. All imports of tuna harvested in the ETP by large purse seine vessels must be accompanied by a certificate signed by an IDCP-member government official attesting to the dolphin-safe status of the tuna in that shipment. Shipments of tuna that are not declared to be dolphin-safe and that are imported into the United States from a nation that has an affirmative finding are spot-checked to ensure that no dolphin-safe logo appears on the product. In addition, NMFS tuna tracking and verification specialists perform spot-checks of canned tuna on grocery shelves. In this final rule, NMFS

requires processors to provide documentary proof of the origin of that tuna. Finally, U.S. canned tuna processors report all purchases of imported frozen tuna to NMFS on a regular basis.

*Comment 26:* The handling of the Tuna Tracking Forms is confusing and cumbersome. NMFS, the cannery, and the country where the tuna is offloaded all require the original tuna tracking forms. Furthermore, the regulations require that it be submitted in an unreasonably short time frame. In Mexico, the dolphin-safe certificate is duplicated and notarized, and the certified copies are distributed to various entities.

*Response:* The final regulations require changes in the handling of Tuna Tracking Forms that streamline the process and are consistent with changes made to the International Tuna Tracking and Verification Program. Between February 3, 2000, and the effective date of this final rule, several improvements were made in the U.S. tuna tracking system. Changes also improve the process by which canned tuna processors report their activities. For example, early in the operation of the tuna tracking program it was recognized that requiring a separate report every time a canner received tuna for processing was unwieldy and did not provide useful information. Report forms and schedules were then revised so that systems could be automated and reports would include the information needed to assure the dolphin-safe status of canned tuna production in the United States. The links between NMFS and U.S. Customs were improved to provide faster and more easily usable tuna import information. Verification of the dolphin-safe status of tuna being sold in the United States was improved by development of a program to sample products on grocery store shelves around the country. Other changes were made in order to remain consistent with the requirements of the international tuna tracking system.

The AIDCP Permanent Working Group on Tuna Tracking was formed to oversee the operation of the international tuna tracking system. As time passed, improvements were made in that system, which were subsequently incorporated in the U.S. program. Some of the changes included improved tuna tracking form handling procedures, the elimination of any "mixed wells" on tuna purse seine vessels, and requirements for safeguarding dolphin-safe status of tuna harvested by vessels that fish inside and outside the convention area during one trip.

*Comment 27:* Observers may not see some seriously injured and killed dolphins and falsely report the catch as dolphin-safe.

*Response:* The possibility for observers to miscount dolphin mortality and serious injury exists in all fishery observer programs worldwide. However, IATTC trained observers are well trained, and any miscounts that may occur would be negligible.

*Comment 28:* Section 216.94(b)(2)(i) (now found at § 216.93 of this final rule) should be rewritten to clarify that dolphin-safe and non-dolphin-safe tuna are segregated during the unloading of mixed-wells.

*Response:* A study of the need for and frequency of the use of fish wells in which dolphin-safe and non-dolphin-safe tuna are both stored aboard tuna purse seine vessels revealed that there is virtually no need for such "mixed-wells." Therefore, the provisions for the use of mixed-wells have been removed from the final rule.

*Comment 29:* Tuna caught by methods that kill and seriously injure dolphins should not be mixed with dolphin-safe tuna aboard tuna boats.

*Response:* See response to Comment 28.

#### *Tracking Cannery Operations*

*Comment 30:* In order to reduce paperwork and simplify the reporting process, receiving reports should be submitted on a monthly basis, along with the submissions contained in (3) and (5) of paragraph 216.94(c)(3) and (5) (now found at § 216.93 of this final rule). This would not have any negative impact on NMFS' monitoring role and will ensure that all reports are received together on a timely, monthly basis.

*Response:* Instead of requiring a report within 5 days of delivery and a separate report every month, receiving reports are now required only on a monthly basis. The NMFS tuna tracking and verification staff, in cooperation with the U.S. canned tuna industry, tested various reporting methods for completeness and accuracy. Section 216.93 of this final rule contains changes and refinements to the reporting procedures that provide complete information to NMFS without over-burdening the industry contributors of those reports.

*Comment 31:* The receiving report requires identifying containers (scows) by serial number for tracking; however, some systems of sizing tuna come after the unloading, thus possibly causing a perceived loss of identity of the original unloaded fish. This would require the issuance of two reports, one with the initial scow serial numbers and weights,

and a second report (same total weight) with sized scow serial numbers and weights.

*Response:* The requirement that receiving reports be submitted monthly, rather than within 5 working days of delivery, should alleviate this problem.

#### *Miscellaneous Comments*

*Comment 32:* By the passage of the IDCPA and the entry into force of the Agreement on the IDCP in February 1999, can the United States ensure that all U.S. flag vessels act in accordance with the provisions of the Agreement on the IDCP at all times and enforce the provisions of the MMPA with respect to U.S. vessels operating in the territorial sea of another country?

*Response:* The U.S. Government has the statutory authority to apply the provisions of the Agreement on the IDCP to the operation of U.S. vessels wherever they operate within the Agreement Area. The Agreement Area is defined as the waters of the Pacific Ocean bounded by the following: to the east, the coastline of North, Central and South America; to the north, the 40° N parallel; to the west, the 150° W meridian and to the south, the 40° S parallel. This includes the waters under the jurisdiction of the coastal states, including their exclusive economic zones and territorial seas.

The United States has jurisdiction over U.S. flag vessels wherever they operate, even in the territorial seas of other countries. Specifically, § 303(a), 306, and 307 of the MMPA clearly require the Secretary to implement and enforce the provisions of the IDCPA for all U.S. vessels anywhere in the Agreement Area.

*Comment 33:* The DML cap of 5,000 animals per year is inconsistent with the MMPA and its goal of reducing incidental dolphin mortality to insignificant levels approaching zero mortality rate.

*Response:* Section 302(1) of the MMPA provides that "the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean shall not exceed 5,000 animals with a commitment and objective to progressively reduce dolphin mortality to a level approaching zero through the setting of annual limits." Further, section 302(1) of the MMPA only establishes an annual mortality limit of 5,000 animals; this is a cap rather than a goal.

NMFS is striving to further reduce dolphin mortalities associated with the tuna purse seine fishery in the ETP. It is also important to note that no U.S. purse seine vessels are currently intentionally chasing or deploying purse



seine nets on dolphins. In addition, annual dolphin mortality in the ETP tuna purse seine fishery, including both the domestic and foreign fleets, has averaged less than 2,000 dolphins since 2000. An annual dolphin mortality limit is one of a suite of tools being used by NMFS and Parties to the Agreement on the IDCP to conserve dolphin stocks, as well as other components of the ETP ecosystem.

*Comment 34:* Replace the current IDCPA and regulations with a different system that would end purse seining as a fishing method in the ETP and establish other mechanisms to protect dolphins and pursue fishing in the ETP.

*Response:* These regulations implement the IDCPA as passed by Congress in 1997, which allows purse seining in the ETP as a method to harvest tuna and provides protection to dolphin stocks.

#### *Changes From the Interim Final Rule*

In this final rule, NMFS is publishing 50 CFR 216.24, 216.46, 216.90, 216.91, 216.92, and 216.93 in their entirety (including provisions that were not changed from the interim final rule) for the convenience of readers, to correct cross-referencing errors, and to improve clarity.

The interim final rule contained a generic provision for NMFS to consider for potential enforcement action of alleged violations of the Agreement on the IDCP and/or these regulations that are identified by the International Review Panel (codified in the interim final rule in § 216.24(c)(9)(xi)). The provision is maintained in this final rule except that it now appears in § 216.24(a)(2)(vi). NMFS changed the position of the provision because it was concerned that in its previous position at the end of § 216.24(c)(9) the provision might be overlooked. The current position of the provision is intuitive; the provision appears in a list of other, general prohibitions at the beginning of § 216.24. NMFS also amended § 216.24(a)(2)(vi) (formerly § 216.24(c)(9)(xi)) to clarify that the International Review Panel may identify and recommend cases to NOAA for possible enforcement action as is provided in the Agreement on the IDCP. The International Review Panel is a panel created under Article XII of the Agreement on the IDCP to identify, review and make recommendations on potential violations of the Agreement on the IDCP. The former language of this section could have been read to imply that the International Review Panel would also recommend sanctions or penalties for those potential violations, which is not the case.

#### *Changes to the Tracking and Verification Program*

Section 216.93 of the interim final rule has been revised as the result of comments received and in order to remain consistent with changes made to the Agreement on the IDCP System of Tracking and Verification of Tuna. NMFS believes that the changes described enhance the effectiveness of the NMFS Tuna Tracking and Verification Program.

The international tuna tracking and verification system adopted by the Parties to the Agreement on the IDCP in June 1999 contained conditional provisions under which dolphin-safe and non-dolphin-safe tuna could be mixed in the same well aboard large purse seine vessels fishing in the ETP. Representatives of some environmental organizations expressed concern that any mixing of dolphin-safe and non-dolphin-safe tuna would compromise the effectiveness of the Agreement. Nonetheless, the Parties instituted the use of two mixed-well exceptions for a trial period, during which time the Secretariat of the IATTC would track their use. During the trial period, from January until June 2000, only five occurrences of a mixed-well exception were noted on over 200 IATTC-observed trips. Citing a desire to maintain a fully credible system and acknowledging the low usage of mixed-well exceptions, the Permanent Working Group on Tuna Tracking and Verification recommended that all mixed-well exceptions be eliminated from the international system for tracking and verification of tuna. The Meeting of the Parties to the Agreement on the IDCP approved the recommendation at the June 2000 meeting. Therefore, the mixed-well language at § 216.94(b)(2) was removed from the regulations.

At the meeting of the Parties to the Agreement on the IDCP held in June 2001, in San Salvador, El Salvador, the Parties adopted a voluntary IDCP Dolphin-Safe Tuna Certification Program. This program establishes a framework for member nations to issue a dolphin-safe certificate and to apply the IDCP dolphin-safe logo to tuna harvested by their flag vessels and offered for sale in international markets. The new program also provides that, upon request by a member nation, the Secretariat for the Agreement on the IDCP will evaluate such shipments of tuna that are labeled with the IDCP dolphin-safe logo and affirm, as appropriate, that they are dolphin-safe as defined by the Agreement.

Under current U.S. law, the definition of "dolphin-safe" tuna is different from

the definition adopted by the Parties to the Agreement on the IDCP. Thus, the United States is unable, at present, to adopt the voluntary IDCP Dolphin-Safe Tuna Certification Program. However, a NMFS dolphin-safe certificate is available.

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 tuna tracking forms (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. These new procedures are included in the final rule at § 216.93(b).

The Parties to the Agreement on the IDCP have also adopted several technical and procedural modifications that have improved the international tuna tracking and verification program. These modifications include a change in § 216.93(a) where the word "observer" was changed to "additional". This change was made because observers are not the only ones that can make notes on TTFs; engineers or captains may also do so.

Additional changes were made in § 216.93(c)(5) (formerly 216.94(b)(6)) to the procedures for handling and disposition of TTFs. In § 216.93(c)(5)(ii), (iii) and (iv) of the final rule, NMFS specified that the captain of the vessel or the vessel's managing office is responsible for assuring delivery of the TTFs to the Administrator, Southwest Region, unless the TTF is retrieved by a NMFS representative meeting the vessel in port at the time of arrival. Sections 216.94(b)(6)(ii) and (iii) of the interim final rule now appear in § 216.93(c)(5)(iii) and (ii) in the final rule; the order of the two paragraphs has been reversed. Section 216.93(c)(5)(ii) of the final rule includes an added provision allowing the captain to entrust the observer to deliver the signed TTFs to a local IATTC office, provided the captain notifies the Southwest Regional Administrator of this decision.

In § 216.93(c)(5), paragraphs (iii) and (iv) clarify the entity responsible for delivering completed TTFs to the Southwest Regional Administrator. Paragraph (iii) describes a situation in which a vessel lands in a country that is a Party to the Agreement on the IDCP; this case, a representative of the country has first responsibility for the TTFs. Paragraph (iv) describes a situation in which the vessel lands in a country that is not a Party to the Agreement. In this

case, NMFS does not expect that a representative of the country will meet the vessel. Therefore, when landing in such a country, the vessel captain has responsibility for delivering the TTFs to the Southwest Regional Administrator.

Paragraph (v) was added to § 216.93(c)(5) pursuant to the IDCP Rules of Confidentiality to emphasize the confidential status of the TTFs as international documents that are the property of the Secretariat to the Agreement on the IDCP. Other modifications incorporated into the NMFS tuna tracking system in § 216.93 (formerly § 216.94) include clarification of partial unloading procedures.

NMFS has made certain changes to the tuna tracking procedures that will enable NMFS to track and verify the dolphin-safe status of canned tuna processed in U.S. canneries while not being overly burdensome to the U.S. canning industry. NMFS found that requiring canners to report the receipt of every shipment of raw tuna 48 hours in advance was not necessary because spot-checks and unscheduled visits by representatives of the Administrator, Southwest Region, coupled with monthly reports of all cannery activities, were already provided for in regulations.

NMFS removed the requirement for U.S. purse seine vessels greater than 400 st (362.8 mt) harvesting tuna in the ETP to submit an FCO under 216.92(a) because this information is already available to NMFS through tuna processors.

NMFS removed the requirement for an invoice to accompany the FCO at the time of import (§ 216.24(f)(3)(i)). Importers are required to keep all documents, including the invoice, that accompany import shipments, and to make the documents available to the Secretary or the Administrator, Southwest Region, on request. The requirement that an invoice accompany FCOs was found to be burdensome to U.S. Customs and did not provide any additional information needed for tracking and verifying import shipments.

#### *Changes to Vessel Permit Holder, Dolphin Mortality Limits*

NMFS modified the heading of § 216.24(c)(2) to clarify that live marine mammals may not be retained. In the interim final rule, “live” was not included in the heading, but was used in the regulatory text of § 216.24(c)(2), and continues to be in this final rule. Therefore, this modification does not change the meaning of paragraph (c)(2); it just provides clarification.

NMFS added a requirement in § 216.24(c)(7)(i) of this final rule that the signature of the permitted operator or the operator’s representative applying for an experimental fishing operation waiver be included in the application. This requirement was added to indicate ownership of the experimental fishing operation waiver application, as well as ensure the validity of such applications and maintain consistency with other applications, such as those for vessel and operator permits described in § 216.24(b)(4) and (b)(5), respectively.

NMFS amended § 216.24(c)(9) to identify the policy of NOAA’s Office of the General Counsel that, in any enforcement action, the appropriate sanction to be assessed should be determined by referring to a NOAA civil administrative penalty schedule and the discretion of the prosecutor, except where a specific penalty is mandated by an international agreement. Specific sanctions and fines cannot be established by regulation. Accordingly, NMFS deleted § 216.24(c)(9)(xii) because it created a specific penalty by regulation, contrary to NOAA’s policy, and added language to § 216.24(c)(9)(v) to identify that the sanction of reducing a vessel’s DML, which is identified in that section, was mandated by an international agreement.

In addition, NMFS modified § 216.24(c)(9)(x)(A) to clarify the point at which vessel and operator permit holders on vessels with assigned DMLs must refrain from intentionally setting purse seine nets on or encircling dolphins because the DML was reached or exceeded. The interim final rule was ambiguous in that it used the term “when”, which could have been interpreted to mean that vessel and operator permit holders would be in violation of this rule at the moment their DMLs were reached or exceeded. The intent of § 216.24(c)(9)(x)(A) was to prohibit vessel and operator permit holders from intentionally setting on or encircling dolphins in sets subsequent to that in which their DMLs were reached or exceeded. To achieve this clarity, “when” was changed to “after a set in which.”

#### *Changes to Market Prohibitions*

Section 216.24(f)(120)(iii) of the interim final rule described the dolphin-safe standard. This paragraph was removed from the final rule because the provision was redundant. The dolphin-safe standard appears in § 216.91 and is already cross referenced in § 216.24(f)(12)(i).

#### *De-certification Under Pelly*

NMFS added a provision that the Secretary will initiate a Pelly certification under section 8(a) of the Fisherman’s Protective Act (22 U.S.C. 1978(a)) against any nation embargoed for 6 months under § 216.24(f)(6) of this final rule (formerly § 216.24(f)(7)). A new provision in § 216.24(f)(6)(iii) provides that after the embargo is lifted, the Secretary will terminate the Pelly certification.

#### *Changes to Penalties*

NMFS expanded § 216.24(g) to identify the various options for enforcement action available to NOAA to respond to violations of these regulations. For example, options for enforcement action may include civil monetary fines, permit suspension or revocation, and reductions in current or future DMLs. In addition, NMFS added language to inform the reader that recommended sanction levels for the various violations are listed in NOAA’s Civil Administrative Penalty Schedule and that the regulations detailing the procedures for the various enforcement actions can be found at 15 CFR part 904. This language was added to clarify the enforcement process and to allow readers to conduct their own research on the processes and penalties.

#### *Changes to Observer Placement Fee*

Small Class 1–5, as well as large Class 6 (in excess of 400 st (362.8 mt) carrying capacity), purse seine vessels classified as either active or inactive on the register of vessels authorized to purse seine for tunas in the ETP are now required to pay observer fees, or vessel assessments, as a result of the Resolution on Vessel Assessments and Financing, adopted at the Meeting of the Parties to the Agreement on the IDCP in June 2003. Therefore, NMFS modified § 216.24(b)(6)(iii) of the interim final rule to be consistent with the June 2003 Resolution. As a result, the due date for payment of the observer placement fee, previously September 1, was changed to December 1 in the final rule. The final rule also provides for a late payment surcharge of 10 percent, consistent with that specified in the June 2003 Resolution. NMFS added language to § 216.24(b)(6)(iii) to clarify that observer fees may be used to maintain the IATTC observer program, generally, rather than solely for placement of observers on individual vessels.

#### *Corrections, Updates, and Technical Changes*

Section 216.24(c)(9)(ii) of the interim final rule incorrectly described the second semester DML calculation by the

IDCP as not to exceed “one-third” of an unadjusted full-year DML. Annex IV of the Agreement on the IDCP clearly states that “one-half” of an unadjusted full-year DML shall constitute the amount of a second semester DML. Therefore, NMFS has corrected § 216.24(c)(9)(ii) to state “one-half” instead of “one-third” in this final rule.

The Harmonized Tariff Schedule (HTS) of the United States is revised and updated periodically. NMFS revised the HTS codes listed in § 216.24(f)(2) to reflect those updates and changes.

The HTS codes for fresh/chilled products were included in the interim final rule in error. Fresh/chilled products under these HTS codes do not require a Fisheries Certificate of Origin. Fresh and chilled tuna and tuna products are always dolphin-safe because they are harvested only by methods that do not involve the presence of dolphins. Therefore, the HTS codes for fresh/chilled products have been removed in this final rule.

In addition, NMFS revised § 216.24(f)(2)(i) to remedy a drafting error that appeared to require nations that are mere conduits of tuna harvested in the ETP by purse seine vessels of other nations to receive an affirmative finding to export that yellowfin tuna to the U.S. Language that appeared in the interim final rule indicated that both the harvesting nation and exporting nation were required to have an affirmative finding to export yellowfin tuna or yellowfin tuna products harvested by purse seine vessels in the ETP to the United States. A harvesting nation, as defined in 50 CFR 216.3, is subject to a primary nation embargo unless it obtains an affirmative finding. Under 50 CFR 216.24(f)(7) (now § 216.24(f)(6)), it is clear that an exporting nation, if it is not also a harvesting nation, is not required to obtain an affirmative finding to export yellowfin tuna to the United States. However, exporting nations are subject to intermediary nation embargoes if they currently, or in the previous 6 months, imported, as defined in 50 CFR 216.3, any yellowfin tuna or yellowfin tuna products subject to a direct ban under section 101(a)(2)(B) of the MMPA. The scope of yellowfin tuna embargoes and procedures for obtaining an affirmative finding are described in § 216.24(f)(6) and (f)(8), respectively, of this final rule.

In § 216.24(f)(8)(i) of the final rule, NMFS clarified that affirmative findings are based on documentary evidence provided by the governments of harvesting nations, or by the IDCP and IATTC. Language that appeared in the interim final rule indicated that

documentary evidence would be provided by harvesting nations or exporting nations. However, nations that serve as mere conduits for tuna harvested by purse seine vessels of other nations in the ETP are not required to obtain affirmative findings. This change is consistent with § 216.24(f)(2)(i) and (f)(6) of this final rule.

In § 216.24(f)(4) (formerly § 216.24(f)(5)), the words “described by checking the appropriate statement on the form and attaching additional certifications if required” were added to further describe the contents of an FCO. The language added to paragraph (f)(4)(xi) of this section, a technical change, requires that the dolphin-safe condition of the shipment must be indicated on the Certificate by checking a box, and that additional certifications may be required depending on which box is checked. Although descriptive language has been added to the final rule, the FCO and boxes to be checked remain unchanged.

In the first sentence of § 216.24(f)(9) (formerly codified at § 216.24(f)(9)(vi)), NMFS added the words “yellowfin”, “ETP”, and “purse seine” to clarify the scope of the intermediary nation embargo within the explanation of procedures for embargoing certain tuna from “intermediary nations.” This clarification is consistent with the MMPA. In the interim final rule the words “yellowfin”, “ETP”, and “purse seine” were unintentionally left out of this explanation, which appeared to prevent an intermediary nation from exporting to the United States any tuna or tuna products classified under an HTS number listed in § 216.24(f)(2)(i). That error was corrected in this final rule. § 216.24(f)(9) now correctly describes the scope of the embargo, i.e., intermediary nations may not export to the United States only yellowfin tuna and yellowfin tuna products harvested by purse seine in the ETP classified under an HTS number listed in § 216.24(f)(2)(i). This conforms with § 216.24(f)(6)(i)(B) (formerly § 216.24(f)(7)(i)(B)), which correctly describes the scope of an intermediary nation embargo. The description of intermediary nation embargoes in § 216.24(f)(6)(i)(B) included the words “yellowfin”, “ETP”, and “purse seine” in the proposed and interim final rules; it was always correct.

NMFS modified § 216.93(d)(2)(i) (formerly § 216.94(c)(5)(i)) to require processors to include the dolphin-safe status of the tuna in their monthly cannery receipt reports (the monthly reports were required in the interim final rule). This requirement was

inadvertently deleted from the interim final rule.

NMFS reduced the length of time that records must be maintained by exporters, trans-shippers, importers, or processors under § 216.93(f)(1) (formerly § 216.94(e)) in this rule from 3 to 2 years to be consistent with the length of time required to maintain records throughout this final rule.

NMFS has removed § 216.93 “Submission of documentation,” as the requirements for the submission of documentation were repeated elsewhere in the final rule. The requirements for the submission of documents concerning the activities of U.S. flag purse seine vessels greater than 400 st (362.8 mt) carrying capacity fishing in the ETP are contained in newly designated § 216.93 “Tracking and verification program.” Requirements for the submission of import documents referred to in § 216.91 and 216.92 are contained in § 216.24(f)(3).

#### Classification

##### *Executive Order 12866*

Pursuant to the procedures established to implement section 6 of Executive Order 12866, the Office of Management and Budget (OMB) has determined that this rule is significant.

##### *Regulatory Flexibility Act*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. Specifically, the expected impacts to 15 to 17 small (less than 362.8 metric tons carrying capacity) purse seine vessels that participate on a seasonal basis in the fishery, domestic and foreign tuna processors, and tuna wholesalers and brokers were discussed in the proposed rule. Possible compliance costs, paperwork burdens, and other restrictions on these small business entities were expected to be minimal or nonexistent at the time the proposed rule was published. Experience since that time indicate that our expectations were correct, as there has not been a significant economic impact on a substantial number of small entities. In fact, any impacts to small purse seine vessels are expected to have decreased, as the number of small purse seine vessels participating in the ETP fishery has decreased from approximately 16 in 1999, the year in which this rule was proposed, to approximately 6 in 2004.

The per vessel impact is expected to be equal to the impact anticipated when this rule was proposed. Further, no comments have been received regarding the certification. As a result, no regulatory flexibility analysis was prepared.

#### *Paperwork Reduction Act*

Notwithstanding any other provision of the law, no person is required to respond to, nor will any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This final rule contains collection of information requirements subject to the PRA. Exporters from all countries importing tuna and tuna products, except some fresh products, into the United States must provide information about the shipment to U.S. Customs using the Fisheries Certificate of Origin (NOAA Form 370). Approved by OMB under control number 0648-0335, the public reporting burden for this collection is estimated to average 20 minutes per submission.

This final rule also contains a collection-of-information requirement that was discussed at the proposed and interim final rule stages for this rule and is being repeated here for the convenience of readers and to improve clarity. This revised collection-of-information requirement has been approved by OMB under control number 0648-0387. The public reporting burden for this collection is estimated to average as follows: 30 minutes for an application for a vessel permit; 10 minutes for an application for an operator permit; 30 minutes for a request for a waiver to transit the ETP without a permit; 10 minutes for a notification by a vessel permit holder 5 days prior to departure on a fishing trip; 10 minutes for the requirement that vessel permit holders who intend to make intentional sets on marine mammals must notify NMFS at least 48 hours in advance if there is a vessel operator change or within 72 hours if the change was made due to an emergency; 10 minutes for a notification by a vessel permit holder of any net modification at least 5 days prior to departure of the vessel; 15 minutes for a request for a DML; 10 hours for an experimental fishing operation waiver; 10 minutes for a notification by a captain, managing owner, or vessel agent 48 hours prior to arrival to unload; 1 hour for a captain to review and sign the tuna tracking form; 10 minutes for a cannery to provide the monthly

processor's storage removal report; 1 hour for a cannery to provide the monthly cannery receipt report; 30 minutes for an exporter, trans-shipper, importer, or processor to produce records if requested by the Administrator, Southwest Region.

The preceding public reporting burden estimates for collections of information include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden to NMFS (see **ADDRESSES**) and OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

#### *National Environmental Policy Act*

NMFS prepared an environmental assessment (EA) for the interim final rule, and the Administrator for Fisheries concluded that there will be no significant impact on the human environment as a result of this final rule. A copy of the EA is available at: [http://www.nmfs.noaa.gov/prot\\_res/PR2/Tuna\\_Dolphin/IDCPA.html](http://www.nmfs.noaa.gov/prot_res/PR2/Tuna_Dolphin/IDCPA.html)

#### *Endangered Species Act*

NMFS prepared a Biological Opinion for the interim final rule, concluding that fishing activities conducted under the interim final rule are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. NMFS is unaware of any new information that would indicate the effects of the action may affect listed species in a manner or to an extent not previously considered, nor does the final rule modify the fishery in a manner that causes an effect to listed species not previously considered in the Opinion. Therefore, NMFS has determined that the conclusions and incidental take statement of the Biological Opinion remain valid and reinitiation of consultation is not required.

#### **List of Subjects in 50 CFR Part 216**

Exports, Fish, Imports, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: August 31, 2004.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 216 is amended as follows:

#### **PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS**

■ 1. The authority citation for part 216 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

■ 2. Section 216.24 is revised to read as follows:

#### **§ 216.24 Taking and related acts incidental to commercial fishing operations by tuna purse seine vessels in the eastern tropical Pacific Ocean.**

(a)(1) No marine mammal may be taken in the course of a commercial fishing operation by a U.S. purse seine fishing vessel in the ETP unless the taking constitutes an incidental catch as defined in § 216.3, and vessel and operator permits have been obtained in accordance with these regulations, and such taking is not in violation of such permits or regulations.

(2)(i) It is unlawful for any person using a U.S. purse seine fishing vessel of 400 short tons (st) (362.8 metric tons (mt)) carrying capacity or less to intentionally deploy a net on or to encircle dolphins, or to carry more than two speedboats, if any part of its fishing trip is in the ETP.

(ii) It is unlawful for any person using a U.S. purse seine fishing vessel of greater than 400 st (362.8 mt) carrying capacity that does not have a valid permit obtained under these regulations to catch, possess, or land tuna if any part of the vessel's fishing trip is in the ETP.

(iii) It is unlawful for any person subject to the jurisdiction of the United States to receive, purchase, or possess tuna caught, possessed, or landed in violation of paragraph (a)(2)(ii) of this section.

(iv) It is unlawful for any person subject to the jurisdiction of the United States to intentionally deploy a purse seine net on, or to encircle, dolphins from a vessel operating in the ETP when there is not a DML assigned to that vessel.

(v) It is unlawful for any person subject to the jurisdiction of the United States to intentionally deploy a purse seine net on, or to encircle, dolphins from a vessel operating in the ETP with an assigned DML after a set in which the DML assigned to that vessel has been reached or exceeded.

(vi) Alleged violations of the Agreement on the IDCP and/or these regulations identified by the International Review Panel will be considered for potential enforcement action by NMFS.

(3) Upon written request made in advance of entering the ETP, the limitations in paragraphs (a)(2)(i) and (a)(2)(ii) of this section may be waived by the Administrator, Southwest Region, for the purpose of allowing transit through the ETP. The waiver will provide, in writing, the terms and conditions under which the vessel must operate, including a requirement to report to the Administrator, Southwest Region, the vessel's date of exit from or subsequent entry into the permit area.

(b) *Permits*—(1) *Vessel permit*. The owner or managing owner of a U.S. purse seine fishing vessel of greater than 400 st (362.8 mt) carrying capacity that participates in commercial fishing operations in the ETP must possess a valid vessel permit issued under paragraph (b) of this section. This permit is not transferable and must be renewed annually. If a vessel permit holder surrenders his/her permit to the Administrator, Southwest Region, the permit will not be returned and a new permit will not be issued before the end of the calendar year. Vessel permits will be valid through December 31 of each year.

(2) *Operator permit*. The person in charge of and actually controlling fishing operations (hereinafter referred to as the operator) on a U.S. purse seine fishing vessel engaged in commercial fishing operations under a vessel permit must possess a valid operator permit issued under paragraph (b) of this section. Such permits are not transferable and must be renewed annually. To receive a permit, the operator must have satisfactorily completed all required training under paragraph (c)(5) of this section. The operator's permit is valid only when the permit holder is on a vessel with a valid vessel permit. Operator permits will be valid through December 31 of each year.

(3) *Possession and display*. A valid vessel permit issued pursuant to paragraph (b)(1) of this section must be on board the vessel while engaged in fishing operations, and a valid operator permit issued pursuant to paragraph (b)(2) of this section must be in the possession of the operator to whom it was issued. Permits must be shown upon request to NMFS enforcement agents, U.S. Coast Guard officers, or designated agents of NMFS or the Inter-American Tropical Tuna Commission (IATTC) (including observers). A vessel owner or operator who is at sea on a

fishing trip when his or her permit expires and to whom a permit for the next year has been issued, may take marine mammals under the terms of the new permit without having to display it on board the vessel until the vessel returns to port.

(4) *Application for vessel permit*. The owner or managing owner of a purse seine vessel may apply for a permit from the Administrator, Southwest Region, allowing at least 45 days for processing. An application must contain:

(i) The name, official number, tonnage, carrying capacity in short or metric tons, maximum speed in knots, processing equipment, and type and quantity of gear, including an inventory of equipment required under paragraph (c)(3) of this section if the application is for purse seining involving the intentional taking of marine mammals, of the vessel that is to be covered under the permit;

(ii) A statement of whether the vessel will make sets involving the intentional taking of marine mammals;

(iii) The type and identification number(s) of Federal, state, and local commercial fishing licenses under which vessel operations are conducted, and the dates of expiration;

(iv) The name(s) of the operator(s) anticipated to be used; and

(v) The name and signature of the applicant, whether he/she is the owner or the managing owner, his/her address, telephone and fax numbers, and, if applicable, the name, address, telephone and fax numbers of the agent or organization acting on behalf of the vessel.

(5) *Application for operator permit*. An applicant for an operator permit must provide the following information to the Administrator, Southwest Region, allowing at least 45 days for processing:

(i) The name, address, telephone and fax numbers of the applicant;

(ii) The type and identification number(s) of any Federal, state, and local fishing licenses held by the applicant;

(iii) The name of the vessel(s) on which the applicant anticipates serving as an operator;

(iv) The date, location, and provider of training required under paragraph (c)(5) of this section for the operator permit; and

(v) The applicant's signature or the signature of the applicant's representative.

(6) *Fees*.—(i) *Vessel permit application fees*. An application for a permit under paragraph (b)(1) of this section will include a fee for each vessel. The Assistant Administrator may change the amount of this fee required

at any time if a different fee is determined in accordance with the NOAA Finance Handbook and specified by the Administrator, Southwest Region, on the application form.

(ii) *Operator permit fee*. There is no fee for the operator permit. The Assistant Administrator may require a fee at any time if a fee is determined in accordance with the NOAA Finance Handbook and specified by the Administrator, Southwest Region, on the application form.

(iii) *Observer placement fee*. The vessel owner or managing owner must submit the fee for the placement of observers, and maintenance of the observer program, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region by December 1 of the year prior to the year in which the vessel will be operated in the ETP. Payments received after December 1 will be subject to a 10-percent surcharge. The Administrator, Southwest Region, will forward all observer placement fees to the IATTC or to the applicable organization approved by the Administrator, Southwest Region.

(7) *Application approval*. The Administrator, Southwest Region, will determine the adequacy and completeness of an application and, upon determining that an application is adequate and complete, will approve that application and issue the appropriate permit, except for applicants having unpaid or overdue civil penalties, criminal fines, or other liabilities incurred in a legal proceeding.

(8) *Conditions applicable to all permits*—(i) *General conditions*. Failure to comply with the provisions of a permit or with these regulations may lead to suspension, revocation, modification, or denial of a permit. The permit holder, vessel, vessel owner, operator, or master may be subject, jointly or severally, to the penalties provided for under the MMPA. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(ii) *Observer placement*. By obtaining a permit, the permit holder consents to the placement of an observer on the vessel during every trip involving operations in the ETP and agrees to payment of the fees for observer placement. No observer will be assigned to a vessel unless that vessel owner has submitted payment of observer fees to the Administrator, Southwest Region. The observers may be placed under an observer program of NMFS, IATTC, or another observer program approved by the Administrator, Southwest Region.

(iii) *Explosives*. The use of explosive devices is prohibited during all tuna purse seine operations that involve marine mammals.

(iv) *Reporting requirements*. (A) The vessel permit holder of each permitted vessel must notify the Administrator, Southwest Region or the IATTC contact designated by the Administrator, Southwest Region, at least 5 days in advance of the vessel's departure on a fishing trip to allow for observer placement on every trip.

(B) The vessel permit holder must notify the Administrator, Southwest Region, or the IATTC contact designated by the Administrator, Southwest Region, of any change of vessel operator at least 48 hours prior to departing on a fishing trip. In the case of a change in operator due to an emergency, notification must be made within 72 hours of the change.

(v) *Data release*. By using a permit, the permit holder authorizes the release to NMFS and the IATTC of all data collected by observers aboard purse seine vessels during fishing trips under the IATTC observer program or another international observer program approved by the Administrator, Southwest Region. The permit holder must furnish the international observer program with all release forms required to authorize the observer data to be provided to NMFS and the IATTC. Data obtained under such releases will be used for the same purposes as would data collected directly by observers placed by NMFS and will be subject to the same standards of confidentiality.

(9) *Mortality and serious injury reports*. The Administrator, Southwest Region, will provide to the public periodic status reports summarizing the estimated incidental dolphin mortality and serious injury by U.S. vessels of individual species and stocks.

(c) *Purse seining by vessels with Dolphin Mortality Limits (DMLs)*. In addition to the terms and conditions set forth in paragraph (b) of this section, any permit for a vessel to which a DML has been assigned under paragraph (c)(9) of this section and any operator permit when used on such a vessel are subject to the following terms and conditions:

(1) A vessel may be used to chase and encircle schools of dolphins in the ETP only under the immediate direction of the holder of a valid operator's permit.

(2) *No retention of live marine mammals*. Except as otherwise authorized by a specific permit, live marine mammals incidentally taken must be immediately returned to the ocean without further injury. The operator of a purse seine vessel must

take every precaution to refrain from causing or permitting incidental mortality or serious injury of marine mammals. Live marine mammals may not be brailed, sacked up, or hoisted onto the deck during ortza retrieval.

(3) *Gear and equipment required for valid permit*. A vessel possessing a vessel permit for purse seining involving the intentional taking of marine mammals may not engage in fishing operations involving the intentional deployment of the net on or encirclement of dolphins unless it is equipped with a dolphin safety panel in its purse seine, has the other required gear and equipment, and uses the required procedures.

(i) *Dolphin safety panel*. The dolphin safety panel must be a minimum of 180 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 18 strips must be determined in a ratio of 10 fathoms in length for each strip of net depth. It must be installed so as to protect the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline that begins at the outboard end of the last bowbunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The dolphin safety panel must consist of small mesh webbing not to exceed 1 1/4 inches (3.18 centimeters (cm)) stretch mesh extending downward from the corkline and, if present, the base of the dolphin apron to a minimum depth equivalent to two strips of 100 meshes of 4 1/4 inches (10.80 cm) stretch mesh webbing. In addition, at least a 20-fathom length of corkline must be free from bunchlines at the apex of the backdown channel.

(ii) *Dolphin safety panel markers*. Each end of the dolphin safety panel and dolphin apron, if present, must be identified with an easily distinguishable marker.

(iii) *Dolphin safety panel hand holds*. Throughout the length of the corkline under which the dolphin safety panel and dolphin apron are located, hand hold openings must be secured so that they will not allow the insertion of a 1 3/8 inch (3.50 cm) diameter cylindrical-shaped object.

(iv) *Dolphin safety panel corkline hangings*. Throughout the length of the corkline under which the dolphin safety panel and dolphin apron if present, are located, corkline hangings must be inspected by the vessel operator following each trip. Hangings found to have loosened to the extent that a cylindrical-shaped object with a 1 3/8 inch (3.50 cm) diameter can be inserted between the cork and corkline hangings,

must be tightened so as not to allow the insertion of a cylindrical-shaped object with a 1 3/8 inch (3.50 cm) diameter.

(v) *Speedboats*. A minimum of three speedboats in operating condition must be carried. All speedboats carried aboard purse seine vessels and in operating condition must be rigged with tow lines and towing bridles or towing posts. Speedboat hoisting bridles may not be substituted for towing bridles.

(vi) *Raft*. A raft suitable to be used as a dolphin observation-and-rescue platform must be carried.

(vii) *Facemask and snorkel, or viewbox*. At least two facemasks and snorkels or viewboxes must be carried.

(viii) *Lights*. The vessel must be equipped with lights capable of producing a minimum of 140,000 lumens of output for use in darkness to ensure sufficient light to observe that procedures for dolphin release are carried out and to monitor incidental dolphin mortality.

(4) *Vessel inspection*—(i) *Annual*. At least once during each calendar year, purse seine nets and other gear and equipment required under § 216.24(c)(3) must be made available for inspection and for a trial set/net alignment by an authorized NMFS inspector or IATTC staff as specified by the Administrator, Southwest Region, in order to obtain a vessel permit.

(ii) *Reinspection*. Purse seine nets and other gear and equipment required by these regulations must be made available for reinspection by an authorized NMFS inspector or IATTC staff as specified by the Administrator, Southwest Region. The vessel permit holder must notify the Administrator, Southwest Region, of any net modification at least 5 days prior to departure of the vessel in order to determine whether a reinspection or trial set/net alignment is required.

(iii) *Failure to pass inspection*. Upon failure to pass an inspection or reinspection, a vessel may not engage in purse seining involving the intentional taking of marine mammals until the deficiencies in gear or equipment are corrected as required by NMFS.

(5) *Operator permit holder training requirements*. An operator must maintain proficiency sufficient to perform the procedures required herein, and must attend and satisfactorily complete a formal training session approved by the Administrator, Southwest Region, in order to obtain his or her permit. At the training session, an attendee will be instructed on the relevant provisions and regulatory requirements of the MMPA and the IDCP, and the fishing gear and techniques that are required for

reducing serious injury and mortality of dolphin incidental to purse seining for tuna. Operators who have received a written certificate of satisfactory completion of training and who possess a current or previous calendar year permit will not be required to attend additional formal training sessions unless there are substantial changes in the relevant provisions or implementing regulations of the MMPA or the IDCP, or in fishing gear and techniques. Additional training may be required for any operator who is found by the Administrator, Southwest Region, to lack proficiency in the required fishing procedures or familiarity with the relevant provisions or regulations of the MMPA or the IDCP.

(6) *Marine mammal release requirements.* All operators fishing pursuant to paragraph (c) of this section must use the following procedures during all sets involving the incidental taking of marine mammals in association with the capture and landing of tuna.

(i) *Backdown procedure.* Backdown must be performed following a purse seine set in which dolphins are captured in the course of catching tuna, and must be continued until it is no longer possible to remove live dolphins from the net by this procedure. At least one crewmember must be deployed during backdown to aid in the release of dolphins. Thereafter, other release procedures required will be continued so that all live dolphins are released prior to the initiation of the sack-up procedure.

(ii) *Prohibited use of sharp or pointed instrument.* The use of a sharp or pointed instrument to remove any marine mammal from the net is prohibited.

(iii) *Sundown sets prohibited.* On every set encircling dolphin, the backdown procedure must be completed no later than one-half hour after sundown, except as provided here. For the purpose of this section, sundown is defined as the time at which the upper edge of the sun disappears below the horizon or, if the view of the sun is obscured, the local time of sunset calculated from tables developed by the U.S. Naval Observatory or other authoritative source approved by the Administrator, Southwest Region. A sundown set is a set in which the backdown procedure has not been completed and rolling the net to sack-up has not begun within one-half hour after sundown. Should a set extend beyond one-half hour after sundown, the operator must use the required marine mammal release procedures including the use of the high intensity

lighting system. In the event a sundown set occurs where the seine skiff was let go 90 or more minutes before sundown, and an earnest effort to rescue dolphins is made, the International Review Panel of the IDCP may recommend to the United States that in the view of the International Review Panel, prosecution by the United States is not recommended. Any such recommendation will be considered by the United States in evaluating the appropriateness of prosecution in a particular circumstance.

(iv) *Dolphin safety panel.* During backdown, the dolphin safety panel must be positioned so that it protects the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline that begins at the outboard end of the last bow bunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point.

(7) *Experimental fishing operations.* The Administrator, Southwest Region, may authorize experimental fishing operations, consistent with the provisions of the IDCP, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce or eliminate dolphin mortality or serious injury, or do not require the encirclement of dolphins in the course of fishing operations. The Administrator, Southwest Region, may waive, as appropriate, any requirements of this section except DMLs and the obligation to carry an observer.

(i) A vessel permit holder may apply for an experimental fishing operation waiver by submitting the following information to the Administrator, Southwest Region, no less than 90 days before the date the proposed operation is intended to begin:

(A) The name(s) of the vessel(s) and the vessel permit holder(s) to participate;

(B) A statement of the specific vessel gear and equipment or procedural requirement to be exempted and why such an exemption is necessary to conduct the experiment;

(C) A description of how the proposed modification to the gear and equipment or procedures is expected to reduce incidental mortality or serious injury of marine mammals;

(D) A description of the applicability of this modification to other purse seine vessels;

(E) The planned design, time, duration, and general area of the experimental operation;

(F) The name(s) of the permitted operator(s) of the vessel(s) during the experiment;

(G) A statement of the qualifications of the individual or company doing the analysis of the research; and

(H) Signature of the permitted operator or of the operator's representative.

(ii) The Administrator, Southwest Region, will acknowledge receipt of the application and, upon determining that it is complete, will publish a notice in the **Federal Register** summarizing the application, making the full application available for inspection and inviting comments for a minimum period of 30 days from the date of publication.

(iii) The Administrator, Southwest Region, after considering the information submitted in the application identified in paragraph (c)(7)(i) of this section and the comments received, will either issue a waiver to conduct the experiment that includes restrictions or conditions deemed appropriate, or deny the application, giving the reasons for denial.

(iv) A waiver for an experimental fishing operation will be valid only for the vessels and operators named in the permit, for the time period and areas specified, for trips carrying an observer designated by the Administrator, Southwest Region, and when all the terms and conditions of the permit are met.

(v) The Administrator, Southwest Region, may suspend or revoke an experimental fishing waiver in accordance with 15 CFR part 904 if the terms and conditions of the waiver or the provisions of the regulations are not followed.

(8) *Operator permit holder performance requirements.* [Reserved]

(9) *Vessel permit holder dolphin mortality limits.* For purposes of this paragraph, the term "vessel permit holder" includes both the holder of a current vessel permit and also the holder of a vessel permit for the following year.

(i) By September 1 each year, a vessel permit holder desiring a DML for the following year must provide to the Administrator, Southwest Region, the name of the U.S. purse seine fishing vessel(s) of carrying capacity greater than 400 st (362.8 mt) that the owner intends to use to intentionally deploy purse seine fishing nets in the ETP to encircle dolphins in an effort to capture tuna during the following year. NMFS will forward the list of purse seine vessels to the Director of the IATTC on or before October 1, or as otherwise required by the IDCP, for assignment of a DML for the following year under the provisions of Annex IV of the Agreement on the IDCP.

(ii) Each vessel permit holder that desires a DML only for the period between July 1 to December 31 must provide the Administrator, Southwest Region, by September 1 of the prior year, the name of the U.S. purse seine fishing vessel(s) of greater than 400 st (362.8 mt) carrying capacity that the owner intends to use to intentionally deploy purse seine fishing nets in the ETP to encircle dolphins in an effort to capture tuna during the period. NMFS will forward the list of purse seine vessels to the Director of the IATTC on or before October 1, or as otherwise required under the IDCP, for possible assignment of a DML for the 6-month period July 1 to December 31. Under the IDCP, the DML will be calculated by the IDCP from any unutilized pool of DMLs in accordance with the procedure described in Annex IV of the Agreement on the IDCP and will not exceed one-half of an unadjusted full-year DML as calculated by the IDCP.

(iii)(A) The Administrator, Southwest Region, will notify vessel owners of the DML assigned for each vessel for the following year, or the second half of the year, as applicable.

(B) The Administrator, Southwest Region, may adjust the DMLs in accordance with Annex IV of the Agreement on the IDCP. All adjustments of full-year DMLs will be made before January 1, and the Administrator, Southwest Region, will notify the Director of the IATTC of any adjustments prior to a vessel departing on a trip using its adjusted DML. The notification will be no later than February 1 in the case of adjustments to full-year DMLs, and no later than May 1 in the case of adjustments to DMLs for the second half of the year.

(C) In accordance with the requirements of Annex IV of the Agreement on the IDCP, the Administrator, Southwest Region, may adjust a vessel's DML if it will further scientific or technological advancement in the protection of marine mammals in the fishery or if the past performance of the vessel indicates that the protection or use of the yellowfin tuna stocks or marine mammals is best served by the adjustment, within the mandates of the MMPA. Experimental fishing operation waivers or scientific research permits will be considered a basis for adjustments.

(iv)(A) A vessel assigned a full-year DML that does not make a set on dolphins by April 1 or that leaves the fishery will lose its DML for the remainder of the year, unless the failure to set on dolphins is due to force majeure or other extraordinary

circumstances as determined by the International Review Panel.

(B) A vessel assigned a DML for the second half of the year will be considered to have lost its DML if the vessel has not made a set on dolphins before December 31, unless the failure to set on dolphins is due to force majeure or extraordinary circumstances as determined by the International Review Panel.

(C) Any vessel that loses its DML for 2 consecutive years will not be eligible to receive a DML for the following year.

(D) NMFS will determine, based on available information, whether a vessel has left the fishery.

(1) A vessel lost at sea, undergoing extensive repairs, operating in an ocean area other than the ETP, or for which other information indicates that vessel will no longer be conducting purse seine operations in the ETP for the remainder of the period covered by the DML will be determined to have left the fishery.

(2) NMFS will make all reasonable efforts to determine the intentions of the vessel owner. The owner of any vessel that has been preliminarily determined to have left the fishery will be provided notice of such preliminary determination and given the opportunity to provide information on whether the vessel has left the fishery prior to NMFS making a final determination under 15 CFR part 904 and notifying the IATTC.

(v) Any vessel that exceeds its assigned DML after any applicable adjustment under paragraph (c)(9)(iii) of this section will have its DML for the subsequent year reduced by 150 percent of the overage, unless another adjustment is determined by the International Review Panel, as mandated by the Agreement on the IDCP.

(vi) A vessel that is covered by a valid vessel permit and that does not normally fish for tuna in the ETP but desires to participate in the fishery on a limited basis may apply for a per-trip DML from the Administrator, Southwest Region, at any time, allowing at least 60 days for processing. The request must state the expected number of trips involving sets on dolphins and the anticipated dates of the trip or trips. The request will be forwarded to the Secretariat of the IATTC for processing in accordance with Annex IV of the Agreement on the IDCP. A per-trip DML will be assigned if one is made available in accordance with the terms of Annex IV of the Agreement on the IDCP. If a vessel assigned a per-trip DML does not set on dolphins during that trip, the vessel will be considered to have lost its

DML unless this was a result of force majeure or other extraordinary circumstances as determined by the International Review Panel. After two consecutive losses of a DML, a vessel will not be eligible to receive a DML for the next fishing year.

(vii) Observers will make their records available to the vessel operator at any reasonable time, including after each set, in order for the operator to monitor the balance of the DML(s) remaining for use.

(viii) Vessel and operator permit holders must not deploy a purse seine net on or encircle any school of dolphins containing individuals of a particular stock of dolphins for the remainder of the calendar year:

(A) after the applicable per-stock per-year dolphin mortality limit for that stock of dolphins (or for that vessel, if so assigned) has been reached or exceeded; or

(B) after the time and date provided in actual notification or notification in the **Federal Register** by the Administrator, Southwest Region, based upon the best available evidence, stating when any applicable per-stock per-year dolphin mortality limit has been reached or exceeded, or is expected to be reached in the near future.

(ix) If individual dolphins belonging to a stock that is prohibited from being taken are not reasonably observable at the time the net skiff attached to the net is released from the vessel at the start of a set, the fact that individuals of that stock are subsequently taken will not be cause for enforcement action provided that all procedures required by the applicable regulations have been followed.

(x) Vessel and operator permit holders must not intentionally deploy a purse seine net on or encircle dolphins intentionally:

(A) after a set in which the vessel's DML, as adjusted, has been reached or exceeded; or

(B) after the date and time provided in actual notification by letter, facsimile, radio, or electronic mail, or notice in the **Federal Register** by the Administrator, Southwest Region, based upon the best available evidence, that intentional sets on dolphins must cease because the total of the DMLs assigned to the U.S. fleet has been reached or exceeded, or is expected to be exceeded in the near future.

(d) *Purse seining by vessels without assigned DMLs.* In addition to the requirements of paragraph (b) of this section, a vessel permit used for a trip not involving an assigned DML and the operator's permit when used on such a vessel are subject to the following terms



and conditions: a permit holder may take marine mammals provided that such taking is an accidental occurrence in the course of normal commercial fishing operations and the vessel does not intentionally deploy its net on, or to encircle, dolphins; marine mammals taken incidental to such commercial fishing operations must be immediately returned to the environment where captured without further injury, using release procedures such as hand rescue, or aborting the set at the earliest effective opportunity; and the use of one or more rafts and facemasks or viewboxes to aid in the rescue of dolphins is recommended.

(e) *Observers*—(1) The holder of a vessel permit must allow an observer duly authorized by the Administrator, Southwest Region, to accompany the vessel on all fishing trips in the ETP for the purpose of conducting research and observing operations, including collecting information that may be used in civil or criminal penalty proceedings, forfeiture actions, or permit sanctions. A vessel that fails to carry an observer in accordance with these requirements may not engage in fishing operations.

(2) Research and observation duties will be carried out in such a manner as to minimize interference with commercial fishing operations. Observers must be provided access to vessel personnel and to dolphin safety gear and equipment, electronic navigation equipment, radar displays, high powered binoculars, and electronic communication equipment. The navigator must provide true vessel locations by latitude and longitude, accurate to the nearest minute, upon request by the observer. Observers must be provided with adequate space on the bridge or pilothouse for clerical work, as well as space on deck adequate for carrying out observer duties. No vessel owner, master, operator, or crew member of a permitted vessel may impair, or in any way interfere with, the research or observations being carried out. Masters must allow observers to use vessel communication equipment necessary to report information concerning the take of marine mammals and other observer collected data upon request of the observer.

(3) Any marine mammals killed during fishing operations that are accessible to crewmen and requested from the permit holder or master by the observer must be brought aboard the vessel and retained for biological processing, until released by the observer for return to the ocean. Whole marine mammals or marine mammal parts designated as biological specimens by the observer must be retained in cold storage aboard the vessel until retrieved by authorized personnel of NMFS or the IATTC when the vessel returns to port for unloading.

(4) It is unlawful for any person to forcibly assault, impede, intimidate, interfere with, or to influence or attempt to influence an observer, or to harass (including sexual harassment) an observer by conduct that has the purpose or effect of unreasonably interfering with the observer's work performance, or that creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(5)(i) All observers must be provided sleeping, toilet and eating accommodations at least equal to that provided to a full crew member. A mattress or futon on the floor or a cot is not acceptable in place of a regular bunk. Meal and other galley privileges must be the same for the observer as for other crew members.

(ii) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing common facilities must be established before the placement meeting and approved by NMFS or

other approved observer program and must be followed during the entire trip.

(iii) In the event there are one or more female crew members, the female observer must be provided a bunk in a cabin shared solely with female crew members, and provided toilet and shower facilities shared solely with these female crew members.

(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.* Shipments of tuna, tuna products, and certain other fish products identified by the U.S. Harmonized Tariff Schedule (HTS) numbers listed in paragraphs (f)(2)(i), (f)(2)(ii) and (f)(2)(iii) of this section may not be imported into the United States unless a properly completed Fisheries Certificate of Origin (FCO), NOAA Form 370, is filed with the U.S. Customs Service at the time of importation.

(i) *HTS numbers requiring a Fisheries Certificate of Origin, subject to yellowfin tuna embargo.* The following HTS numbers identify yellowfin tuna or yellowfin tuna products (other than fresh tuna) known to be imported into the United States. All shipments imported into the United States under these HTS numbers must be accompanied by an FCO. 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) <i>Frozen:</i> .....	.
0303.42.0020 .....	Yellowfin tuna, whole, frozen.
0303.42.0040 .....	Yellowfin tuna, eviscerated, head on, frozen.
0303.42.0060 .....	Yellowfin tuna, other, frozen.
(B) <i>Airtight Containers: (products containing Yellowfin)</i> .....	.
1604.14.1010 .....	Tuna, non-specific, in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each.
1604.14.1090 .....	Tuna, non-specific, in oil, in airtight containers, other.

1604.14.2291 .....	Tuna, other than albacore, not in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each, under quota.
1604.14.2299 .....	Tuna, other than albacore, not in oil, in airtight containers, under quota.
1604.14.3091 .....	Tuna, other than albacore, not in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each, over quota.
1604.14.3099 .....	Tuna, other than albacore, not in oil, in airtight containers, over quota.
(C) <i>Loins: (Yellowfin)</i> .....	
1604.14.4000 .....	Tuna, not in airtight containers, not in oil, weighing with their contents over 6.8 kg.
1604.14.5000 .....	Tuna, not in airtight containers, other.
(D) <i>Other: (products containing Yellowfin)</i> .....	
0304.20.2066 .....	Other fish, fillets, skinned, in blocks weighing over 4.5 kg, frozen.
0304.20.6096 .....	Other fish, fillets, frozen.
1604.20.2500 .....	Balls and cakes, not in oil, in airtight containers, other.
1604.20.3000 .....	Balls and cakes, other.

(ii) *HTS numbers requiring a Fisheries Certificate of Origin, not subject to yellowfin tuna embargo.* The following HTS numbers identify tuna or tuna products, (other than fresh tuna or yellowfin tuna identified in paragraph (f)(2)(i) of this section, known to be imported into the United States. All shipments imported into the United States under these HTS numbers must be accompanied by an FCO.

(A) <i>Frozen:</i> .....	
0303.41.0000 .....	Albacore or longfinned tunas, frozen.
0303.43.0000 .....	Skipjack, frozen.
0303.44.0000 .....	Bigeye, frozen.
0303.45.0000 .....	Bluefin, frozen.
0303.46.0000 .....	Bluefin Southern, frozen.
0303.49.0100 .....	Other tuna, frozen.
(B) <i>Airtight Containers: (Other than Yellowfin)</i> .....	
1604.14.1010 .....	Tuna, non-specific, in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each.
1604.14.1090 .....	Tuna, non-specific, in oil, in airtight containers, other.
1604.14.2251 .....	Tuna, albacore, not in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each, under quota.
1604.14.2259 .....	Tuna, albacore, not in oil, in airtight containers, other, under quota.
1604.14.2291 .....	Tuna, other than albacore, not in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each, under quota.
1604.14.2299 .....	Tuna, other than albacore, not in oil, in airtight containers, other, under quota.
1604.14.3051 .....	Tuna, albacore, not in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each, over quota.
1604.14.3059 .....	Tuna, albacore, not in oil, in airtight containers, other, over quota.
1604.14.3091 .....	Tuna, other than albacore, not in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each, over quota.
1604.14.3099 .....	Tuna, other than albacore, not in oil, in airtight containers, other, over quota.
(C) <i>Loins: (Other than Yellowfin)</i> .....	
1604.14.4000 .....	Tuna, not in airtight containers, in bulk or in immediate containers weighing with their contents over 6.8 kg, in oil.
1604.14.5000 .....	Tuna, not in airtight containers, other.
(D) <i>Other: (only if the product contains tuna)</i> .....	
0304.20.2066 .....	Other fish, fillets, skinned, in blocks weighing over 4.5 kg, frozen.
0304.20.6096 .....	Other fish, fillets, frozen.
1604.20.2500 .....	Balls and cakes, not in oil, in airtight containers, other.
1604.20.3000 .....	Balls and cakes, other.

(iii) *Exports from driftnet nations only: HTS numbers 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 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) <i>Frozen:</i> .....	
0303.19.0012 .....	Salmon, chinook, frozen.
0303.19.0022 .....	Salmon, chum, frozen.
0303.19.0032 .....	Salmon, pink, frozen.
0303.19.0052 .....	Salmon, coho, frozen.
0303.19.0062 .....	Salmon, Pacific, non-specific, frozen.
0303.21.0000 .....	Trout, frozen.
0303.22.0000 .....	Salmon, Atlantic and Danube, frozen.
0303.29.0000 .....	Salmonidae, other, frozen.
0303.75.0010 .....	Dogfish, frozen.
0303.75.0090 .....	Other sharks, frozen.
0303.79.2041 .....	Swordfish steaks, frozen.
0303.79.2049 .....	Swordfish, other, frozen.
0303.79.4097 .....	Fish, other, frozen.
0304.20.2066 .....	Fish, fillet, skinned, in blocks, frozen over 4.5 kg.
0304.20.6008 .....	Salmonidae, salmon fillet, frozen.
0304.20.6092 .....	Swordfish fillets, frozen.
0304.20.6096 .....	Fish, fillet, other, frozen.
0307.49.0010 .....	Squid, other, fillet, frozen.
(B) <i>Canned:</i> .....	
1604.11.2020 .....	Salmon, pink, canned in oil, in airtight containers.
1604.11.2030 .....	Salmon, sockeye, canned in oil, in airtight containers.
1604.11.2090 .....	Salmon, other, canned in oil, in airtight containers.
1604.11.4010 .....	Salmon, chum, canned, not in oil.
1604.11.4020 .....	Salmon, pink, canned, not in oil.
1604.11.4030 .....	Salmon, sockeye, canned, not in oil.
1604.11.4040 .....	Salmon, other, canned, not in oil.
1604.11.4050 .....	Salmon, other, canned, not in oil.
1604.19.2000 .....	Fish, other, in airtight containers, not in oil.
1604.19.3000 .....	Fish, other, in airtight containers, in oil.
1605.90.6050 .....	Squid, loligo, prepared/preserved.
1605.90.6055 .....	Squid, other, prepared/preserved.
(C) <i>Other:</i> .....	
0305.30.6080 .....	Fish, other, fillet, dried/salted/brine.
0305.49.4040 .....	Fish, other, smoked.
0305.59.2000 .....	Shark fins, dried.
0305.59.4000 .....	Fish, other, dried.
0305.69.4000 .....	Salmon, other, salted (or in brine).
0305.69.5000 .....	Fish, other, salted (or in brine), in immediate containers, not over 6.8 kg.
0305.69.6000 .....	Fish, other, salted (or in brine).
0307.49.0050 .....	Squid, other, frozen/dried/salted/brine.
0307.49.0060 .....	Squid, other, & cuttle fish frozen/dried/salted/brine.

(3) *Disposition of Fisheries Certificates of Origin.* The FCO described in paragraph (f)(4) of this section may be obtained from the Administrator, Southwest Region, or downloaded from the Internet at <http://swr.nmfs.noaa.gov/noaa370.htm>.

(i) A properly completed FCO and its attached certificates, if applicable, must accompany the required U.S. Customs entry documents that are filed at the time of import.

(ii) 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, Southwest Region, by the last endorser when all required endorsements are completed.

(iii) 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, Southwest 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) Customs 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, 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, trawl, pole 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) If the shipment includes tuna or products harvested with a purse seine net, 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 if required;

(xiii) For shipments harvested 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 harvesting nation, certifying that the fish or fish products were harvested by a method other than large-scale driftnet; and

(xiv) If the shipment contains tuna harvested in the ETP by a purse seine vessel of more than 400 st (362.8 mt) carrying capacity, each importer or processor who takes custody of the shipment must sign and date the form to certify that the form and attached documentation accurately describe the shipment of fish 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.

(iii) *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.

(iv) 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.

(v) 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.

(vi) *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 Customs 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 Customs supervision within 90 days shall be disposed of under Customs 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.* 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:

(i) Dolphin-safe under subpart H of this part; or

(ii) 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 and the nation has an affirmative finding.

(g) *Penalties.* Any person or vessel subject to the jurisdiction of the United States will be subject to the penalties provided for under the MMPA for the conduct of fishing operations in violation of these regulations. Penalties for violating these regulations may include, but are not limited to, civil monetary fines, permit suspension or revocation, and reductions in current and future DMLs. Recommended sanctions are identified in the IDCPA/DPCIA Tuna/Dolphin Civil Administrative Penalty Schedule. Procedures for the imposition of penalties under the MMPA are found at 15 CFR part 904.

■ 3. Section 216.46 is republished to read as follows:

**§ 216.46 U.S. citizens on foreign flag vessels operating under the International Dolphin Conservation Program.**

The MMPA's provisions do not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations in the ETP that are outside the U.S. exclusive economic zone (as defined in Section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)), while employed on a fishing vessel of a harvesting nation other than the United States that is participating in, and is in compliance with, the IDCP.

■ 4. In subpart H, § 216.93 is removed, §§ 216.94 through 216.96 are redesignated as §§ 216.93 through 216.95, and §§ 216.90 through 216.92 and the newly redesignated § 216.93 are revised to read as follows:

**§ 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.

**§ 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, 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) *Non-ETP purse seine vessel.* Outside the ETP by a vessel using a purse seine net:

(i) In a fishery in which the Assistant Administrator has determined that a regular and significant association occurs between dolphins and tuna (similar to the association between dolphins and tuna in the ETP), unless such products are 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 Assistant Administrator, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular trip 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 unless the products are 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 trip on which the tuna was harvested;

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

(4) *Other fisheries.* By a vessel in a fishery other than one described in paragraphs (a)(1) through (a)(3) of this section that is identified by the Assistant Administrator 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 Assistant Administrator, that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught, provided that the Assistant Administrator determines that such an observer statement is necessary.

(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.

**§ 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 by a properly completed FCO; and

(iii) The tuna or tuna products are accompanied 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.

**§ 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. purse seine 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) During ETP fishing trips 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.

(2) 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.

(3) 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.

(4) 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.

(5)(i) When ETP caught tuna is offloaded from a U.S. purse seine vessel greater than 400 st (362.8 mt) directly to a U.S. canner within the 50 states, Puerto Rico, or American Samoa, or in any port and subsequently loaded aboard a carrier vessel for transport to a U.S. processing location, a NMFS

representative may meet the U.S. purse seine vessel to receive the TTFs from the vessel observer and to monitor the handling of dolphin-safe and non-dolphin-safe tuna.

(ii) If a NMFS representative does not meet the vessel in port at the time of arrival, the captain of the vessel or the vessel's managing office must assure delivery of the TTFs to the Administrator, Southwest Region, from that location within 5 working days of the end of the trip. Alternatively, if the captain approves and notifies the Administrator, Southwest Region, the captain may entrust the observer to deliver the signed TTFs to the local office of the IATTC.

(iii) When ETP caught tuna is offloaded from a U.S. purse seine vessel greater than 400 st (362.8 mt) carrying capacity directly to a processing facility located outside the jurisdiction of the United States in a country that is a Party to the Agreement on the IDCP, the national authority in whose area of jurisdiction the tuna is to be processed will assume the responsibility for tracking and verification of the tuna offloaded. If a representative of the national authority meets the vessel in port, that representative will receive the original TTFs and assume the responsibility for providing copies of the TTFs to the Administrator, Southwest Region. If a representative of the national authority does not meet the vessel, the fishing vessel captain or the vessel's managing office must assure delivery of the completed TTFs in accordance with paragraphs (ii) and (v) of this section.

(iv) When ETP caught tuna is offloaded from a U.S. purse seine vessel greater than 400 st (362.8 mt) carrying capacity in a country that is not a Party to the Agreement on the IDCP, the tuna becomes the tracking and verification responsibility of the national authority of the processing facility when it is unloaded from the fishing vessel. The captain or the vessel's managing office must assure delivery of the completed TTFs in accordance with paragraphs (ii) and (v) of this section.

(v) TTFs are confidential official documents of the IDCP. Vessel captains and managing offices shall not provide copies of TTFs to any representatives of private organizations or non-member states.

(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 ETP caught 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*: dolphin-safe status, 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, trip dates, carrier name, unloading dates, and location of unloading.

(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 imports*. All tuna products, except fresh tuna, that are imported into the United States must be accompanied by a properly certified FCO that is submitted to the Administrator, Southwest Region, as required by section 216.24(f).

(f) *Verification requirements*.—(1) *Record maintenance*. Any exporter, trans-shipper, importer, or processor of any tuna or tuna products containing tuna harvested in the ETP must

maintain records related to that tuna for at least 2 years. These records include, but are not limited to: FCO and required certifications, any report required in paragraphs (a), (b) and (d) of this section, invoices, other import documents, and trip reports.

(2) *Record submission*. Within 30 days of receiving a written request from the Administrator, Southwest Region, any exporter, trans-shipper, importer, or processor of tuna or tuna products containing tuna harvested in the ETP must submit to the Administrator, Southwest Region, any record required to be maintained under paragraph (f)(1) of this section.

(3) *Audits and spot-checks*. Upon request of the Administrator, Southwest Region, any such exporter, trans-shipper, importer, or processor 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.

(g) *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."

[FR Doc. 04-20468 Filed 9-10-04; 8:45 am]

BILLING CODE 3510-22-S



contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

#### List of Subjects in 48 CFR Part 237

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

#### Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR Part 237, which was published at 69 FR 55991 on September 17, 2004, is adopted as a final rule without change.

[FR Doc. 05-7089 Filed 4-11-05; 8:45 am]

BILLING CODE 5001-08-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 216 and 300

[Docket No. 040920271-5083-02, I.D. 102004A]

RIN 0648-AS05

#### Taking of Marine Mammals Incidental to Commercial Fishing Operations; Tuna Purse Seine Vessels in the Eastern Tropical Pacific Ocean (ETP)

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement resolutions adopted by the Inter-American Tropical Tuna Commission (IATTC) and by the Parties to the Agreement on the International Dolphin Conservation Program (IDCP). The final rule prohibits activities that undermine the effective implementation and enforcement of the Marine Mammal Protection Act (MMPA), Dolphin Protection Consumer Information Act (DPCIA), and International Dolphin Conservation Program Act (IDCPA).

**DATES:** Effective May 12, 2005.

**ADDRESSES:** Written comments on the collection-of-information requirements should be sent to Jeremy Rusin, NMFS, Southwest Region, Protected Resources Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. Comments may also be sent via facsimile (fax) to (562) 980-4027 or via E-mail. The mailbox address for providing E-mail comments is

0648\_AS05@noaa.gov. Include in the subject line of the E-mail the following document identifier: RIN 0648-AS05. The Environmental Assessment (EA) prepared for this rule is available on the Internet at the following address: <http://swr.nmfs.noaa.gov/>.

#### FOR FURTHER INFORMATION CONTACT:

Jeremy Rusin, NMFS, Southwest Region, Protected Resources Division, (562) 980-4020.

#### SUPPLEMENTARY INFORMATION:

##### Background

The United States is a member of the IATTC, which was established in 1949 under the Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention). The IATTC provides an international forum to ensure the effective international conservation and management of highly migratory species of fish in the Convention Area. The Convention Area is defined to include waters of the ETP bounded by the coast of the Americas, the 40° N. and 40° S. parallels, and the 150° W. meridian. The IATTC has maintained a scientific research and fishery monitoring program for many years and annually assesses the fisheries and the status of tuna stocks to determine appropriate harvest limits or other measures to prevent overexploitation of the stocks and promote viable fisheries. More recently, the IATTC has moved into other fishery management issues, such as managing the cumulative capacity of vessels fishing in the Convention Area, addressing bycatch of non-target and protected species, and imposing time-area closures to conserve tuna stocks.

In support of fleet capacity control, the United States agreed to an IATTC resolution that limited total ETP purse seine fleet capacity. Currently, the United States is committed to limiting the active aggregate capacity of its domestic tuna purse seine fleet in the ETP to 8,969 metric tons (mt) carrying capacity. The U.S. limit was originally based on the cumulative capacity of U.S. vessels actively fishing in the ETP in the years leading up to 1999. In addition, U.S. purse seine vessels based in the western Pacific Ocean (WPO) were allowed to make 32 trips into the ETP without counting against the 8,969 mt limit. Recent resolutions adopted by the IATTC member nations have addressed limits on fleet capacity. The United States and other IATTC member nations and Parties to the Agreement on the IDCP (Agreement) are responsible for domestic implementation of resolutions adopted each year. Under the U.S. Tuna Conventions Act (16

U.S.C. 951 *et seq.*), the Secretary of Commerce is authorized to promulgate regulations implementing the recommendations of the IATTC. This final rule implements the recent capacity resolutions adopted by the IATTC member nations.

The IDCPA was signed into law August 15, 1997, and became effective March 3, 1999. The IDCPA amends the MMPA, DPCIA (16 U.S.C. 1385), and Tuna Conventions Act. The IDCPA, together with previous declarations, became the blueprint for the Agreement on the IDCP. In May 1998, eight nations, including the United States, signed a binding, international agreement to implement the IDCP. The Agreement became effective on February 15, 1999, after four nations (United States, Panama, Ecuador, and Mexico) deposited their instruments of ratification, acceptance, or adherence with the depository for the Agreement. The IDCPA (16 U.S.C. 1413) mandates the Secretary of Commerce to issue and revise regulations, as appropriate, to implement the IDCP.

On October 29, 2004, NMFS published a proposed rule in the **Federal Register** (69 FR 63122), which would have: (1) established a register of U.S. vessels with a history of fishing in the ETP prior to June 28, 2002 (Vessel Register), and authorized only those vessels to purse seine for tuna in the ETP; (2) limited the aggregate active capacity of U.S. purse seine vessels in the ETP to 8,969 mt per year; (3) revised the requirements for maintaining and submitting tuna tracking and verification records; (4) ensured owners of U.S. vessels on the Vessel Register pay annual assessments; (5) prohibited commerce in tuna or tuna products bearing a label or mark referring to dolphins, porpoises, or marine mammals if the label or mark does not comply with the labeling and marking requirements of 16 U.S.C. 1385(d); and (6) prohibited interference with enforcement and inspection activities, submission of false information, and other activities that would undermine the effectiveness of the MMPA, IDCPA, and DPCIA.

This final rule is largely unchanged from the proposed rule. In this final rule, NMFS responds to public and government comments, and makes technical modifications.

#### Responses to Comments

NMFS solicited comments on the proposed rule. NMFS received seven comments letters during the 30-day comment period from U.S. Customs and Border Protection and the general public. Key issues and concerns are

summarized below and responded to as follows:

*Importation, Purchase, Shipment, Sale, and Transport*

*Comment 1:* The new paragraph proposed in 50 CFR 216.24(f)(3)(ii) will help NMFS monitor tuna shipments and may act as a deterrent to importers who may consider undermining current law.

*Response:* NMFS proposed this new paragraph to achieve the purposes described in the comment.

*Comment 2:* The proposed changes to require the name of the vessel on the Fisheries Certificate of Origin (FCO) regardless of the gear type used and to require importers, exporters, or processors who take custody of tuna shipments to sign and date FCOs in § 216.24(f)(4)(xi) and (f)(4)(xiv), respectively, should assist enforcement efforts.

*Response:* NMFS proposed these changes to achieve the purposes described in the comment.

*Comment 3:* The proposed rule will allow NMFS to enforce the dolphin-safe labeling standard at the wholesale, distribution and retail levels and not just against the party responsible for placing a dolphin related label on the product. This authority should increase pressure on businesses that distribute or sell labeled products to ensure that the product complies with the dolphin-safe labeling standard.

*Response:* The regulations at § 216.93(f) extend the recordkeeping and document submission requirements to wholesalers/distributors, but not to retailers. NMFS determined that extending these requirements to wholesalers/distributors is necessary to enforce the dolphin-safe labeling standard. However, extending this requirement to the retailers is overly burdensome due to the number of entities that would be affected by these recordkeeping and submission requirements. NMFS agrees with the commenter that the regulations should improve compliance with the dolphin-safe labeling standard through increased enforcement pressure at the wholesaler/distributor level of commerce.

*Comment 4:* Current regulations requiring importers to submit paper copies of import documents, specifically NOAA Form 370, to U.S. Customs and Border Protection (USCBP), Department of Homeland Security, are burdensome to that agency because the documentation then had to be transferred to NMFS. The proposed change to § 216.24(f)(3)(ii) requiring that documentation be submitted directly to NMFS, will reduce this burden and

allow for USCBP resources to be directed to other objectives.

*Response:* NMFS proposed this change to achieve the purposes described in the comment.

*Verification Requirements*

*Comment 5:* The proposed prohibition against distribution of Tuna Tracking Forms (TTFs) to private organizations in § 216.93(c)(5)(v) is not consistent with calls for transparency in the International Dolphin Conservation Program Act (IDCPA). This proposed prohibition undercuts the tracking and enforcement efforts NMFS is attempting to strengthen through this proposed rule. As an alternative, NMFS could eliminate the name of the vessel owner or captain on TTFs to protect the privacy of these individuals while providing the public with basic but important information.

*Response:* The Parties to the Agreement established, and are bound by, Rules of Confidentiality and a System for Tracking and Verifying Tuna. Section 3, paragraph 7 of the Agreement's System for Tracking and Verifying Tuna (available at <http://www.iattc.org/IDCPDocumentsENG.htm>) states: "TTFs shall be treated by the competent national authority as confidential official documents of the IDCP, consistent with Article XVIII of the [Agreement], and the [Agreement's] Rules of Confidentiality." Under paragraph (1)(b) of the Agreement's Rules of Confidentiality (available at <http://www.iattc.org/IDCPDocumentsENG.htm>), "information relating to unloadings or trade which is associated with individual vessels and/or companies, including Tuna Tracking Forms (TTFs) for those vessels" is treated as confidential.

Because TTFs are documents of the Secretariat to the Agreement and not NMFS, NMFS cannot distribute these documents even if certain sensitive information is eliminated. Further, TTFs are confidential documents with no provision for part, let alone all, of these documents to be released. Section 216.93(c)(5)(v) of the regulations, which is now finalized, is consistent with policies adopted by the Parties to the Agreement and remains unchanged in these final regulations.

*Comment 6:* The proposed changes to § 216.93(e) requiring the submittal and maintenance of records on all tuna imports (not just those from the ETP) should enhance NMFS' ability to track and verify shipments of tuna products.

*Response:* NMFS proposed these changes to achieve the purposes described in the comment.

*Comment 7:* The proposed changes to § 216.93(f) to include wholesalers and distributors of tuna products in the list of entities that must maintain records should complement enforcement efforts and in particular allow for more frequent audits and spot checks.

*Response:* NMFS proposed these changes to achieve the purposes described in the comment.

**Changes From the Proposed Rule**

*Changes to Vessel Permit Application Fees*

NMFS clarified in § 216.24(b)(6)(i) of this final rule that: (1) the amount of the vessel permit application fee may change and (2) the amount of the fee is determined by the Assistant Administrator, NMFS, in accordance with the NOAA Finance Handbook and printed on the vessel permit application form provided by the Administrator, Southwest Region. This was always NMFS' intent in § 216.24(b)(6)(i), but the intent may have not been clear in the way the proposed regulations were drafted.

*Changes to Observer Placement Fee*

NMFS clarified in § 216.24(b)(6)(iii) of this final rule that the observer placement fee supports both the placement of observers on individual vessels and the maintenance of the IATTC observer program or other approved observer program.

*Changes to Disposition of Fisheries Certificates of Origin*

NMFS added a mailing address for the Tuna Tracking and Verification Program, Southwest Region, in § 216.24(f)(3).

*Changes to Vessel Register*

NMFS clarified in § 300.22(b)(1)(ii) that purse seine vessels of 400 short tons (st) (362.8 mt) or less carrying capacity for which landings of tuna caught in the ETP comprise 50 percent or less of the vessel's total landings for a given calendar year are exempted from being listed on the Vessel Register. In the proposed rule, only purse seine vessels less than 400 st were included in this exception. This clarification is consistent with the description of vessels required to be listed on the Vessel Register provided in the preamble of the proposed rule.

NMFS clarified in § 300.22(b)(4) that each of the payments and permit applications listed in § 216.24(b) must be submitted in order for a vessel to be listed on the Vessel Register in the following calendar year. If the required payments and permit applications are not submitted to the Regional

Administrator, the vessel will not be listed on the Vessel Register in the following year. This was NMFS' original intention, but this was not clear in the proposed rule.

NMFS clarified in § 300.22(b)(4)(iii) that a vessel owner or managing owner may, at any time during the year, request that a vessel qualified to be listed on the Vessel Register be categorized as inactive for the remainder of the calendar year by submitting to the Administrator, Southwest Region, payment of the associated observer placement fee plus a 10 percent surcharge of the fee. In § 300.22(b)(6)(i), it was already clear that a vessel qualified to be listed on the Vessel Register may be added back to the Vessel Register as inactive at any time during the year.

In § 300.22(b)(5), NMFS removed paragraphs (iii) and (iv) because vessel owners are required to take specific actions (i.e., pay fees and submit permit applications) for vessels to be listed on the Vessel Register each year. The proposed rule incorrectly indicated that the default condition was for vessels to remain on the Vessel Register from year to year unless an owner did not meet these requirements in which case the vessel would be removed from the Vessel Register. In this final rule, NMFS also divided § 300.22(b)(5)(vi) of the proposed rule into two paragraphs. They appear in § 300.22(b)(5)(iii) and (iv) of this final rule.

NMFS changed § 300.22(b)(5)(v) to allow the Regional Administrator to remove a vessel from the Vessel Register if notified by either the United States Maritime Administration (MARAD) or the United States Coast Guard (USCG) that either the owner has submitted an application for transfer of the vessel to foreign registry and flag or that the documentation of the vessel will be or has been deleted for any reason. The failure to include MARAD in this provision in the proposed regulations was an oversight. NMFS made the change in the final rule because deletion of a vessel from U.S. documentation by the USCG can be immediate after MARAD provides its approval of the action.

NMFS' policy and intention is to remove each vessel from the Vessel Register upon notification by MARAD or USCG that either agency has determined that all requirements for flag transfer have been met and the only step remaining is for USCG to complete final paperwork to delete U.S. documentation for that vessel. NMFS maintains this policy in order to prevent U.S. capacity from transferring with the vessel on the Vessel Register and increasing the

capacity of the tuna purse seine fleet fishing in the ETP.

In this final rule, NMFS added a new § 300.22(b)(6) to clarify the process for removing vessels from the Vessel Register. According to the process, the Regional Administrator will promptly notify the vessel owner in writing of the removal of the vessel and the reasons for its removal. For vessel removals under § 300.22(b)(5)(iii), the Regional Administrator will not accept a request to reinstate the vessel to the Vessel Register for the term of the permit sanction. For vessel removals under § 300.22(b)(5)(iv), the Regional Administrator will not accept a request to reinstate the vessel to the Vessel Register until such time as payment is made on the penalty or penalty agreement, or other duration agreed upon between NOAA and the vessel owner. Section 300.22(b)(6) of the proposed rule is renumbered as § 300.22(b)(7) in this final rule.

NMFS clarified in § 300.22(b)(7)(v) (formerly 300.22(b)(6)(v)) that an owner or managing owner may request that a vessel replace a vessel of equal or greater carrying capacity previously removed from active status on the Vessel Register by submitting the observer placement fee, vessel permit application, and permit application processing fee in accordance with § 216.24(b). In addition, in order for the replacement vessel to be listed as active on the Vessel Register, the captain of the vessel must possess an operator permit issued under § 216.24(b).

#### Classification

##### *Executive Order 12866*

This final rule has been determined to be not "significant" under Executive Order 12866. NMFS prepared a Regulatory Impact Review (RIR)/Final Regulatory Flexibility Analysis (FRFA) for this action, included as Appendix A to the Environmental Assessment (EA) prepared on the proposed regulations. The EA, including the FRFA, is available on the Internet at the following address: <http://swr.nmfs.noaa.gov/>.

##### *Regulatory Flexibility Act*

Pursuant to procedures established to implement the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), NMFS prepared a RIR/FRFA for this action, included as Appendix A to the EA. The purposes of this action were described earlier in the preamble to the proposed rule, published on October 29, 2004 (69 FR 63122).

NMFS prepared an RIR/Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule, which was

described in the classification section of the preamble to the proposed rule. The public comment period ended on November 29, 2004. Comments received and NMFS responses thereto are contained in the preamble. No comments were received on the economic impacts of the rule.

NMFS considered but rejected two alternatives to the preferred alternative which, (1) establishes a register of U.S. vessels with a history of fishing in the ETP prior to June 28, 2002, and requires only those vessels be authorized to purse seine for tuna in the ETP; (2) enables the National Marine Fisheries Service (NMFS) to maintain the Vessel Register annually, including to establish procedures for removing vessels for serious violations and to prevent U.S. capacity from increasing the regional capacity of the tuna purse seine fleet in the ETP; (3) limits the aggregate active capacity of U.S. purse seine vessels in the ETP to 8,969 mt per year; (4) revises the requirements for maintaining and submitting tuna tracking and verification records; (5) ensures owners of U.S. vessels on the Vessel Register pay annual assessments; (6) prohibits commerce in tuna or tuna products bearing a label or mark referring to dolphins, porpoises, or marine mammals if the label or mark does not comply with the labeling and marking requirements of 16 U.S.C. 1385(d); and (7) prohibits interference with enforcement and inspection activities, submission of false information, and other activities that would undermine the effectiveness of the MMPA, IDCPA and DPCIA.

The first alternative NMFS analyzed and rejected was the "no action" alternative. This alternative would not have implemented recommendations of the IATTC member nations or resolutions adopted by the Parties to the Agreement on the IDCP. The second alternative NMFS considered and rejected was the "variations of the preferred alternative" alternative. This alternative would retain the clearly required elements of the preferred alternative, but it would also include other measures not specifically required by internationally adopted resolutions. Generally, the objectives of resolutions adopted by the IATTC member nations and the Parties to the Agreement on the IDCP are clear; however, some provisions allow for agency discretion, either in implementing or interpreting the intent of the resolution. These discretionary areas provided the basis for this third alternative. For example, under this alternative NMFS considered discretionary areas with respect to management of fleet capacity, such as:

(1) limiting the annual aggregate active capacity of the U.S. purse seine vessels participating in the ETP tuna fishery to an amount less than 8,969 mt, (2) allowing all vessels owners to have an equal opportunity to be categorized as active on the Vessel Register from year to year regardless of the vessel's status in the prior year (i.e., there would be no incentive for a vessel being active in a prior year); and (3) not deterring against frivolous requests for vessels to be categorized as active on the Vessel Register.

NMFS rejected the "no action" alternative because it would not restrict annual participation by U.S. flag purse seine vessels in the fishery and would not implement needed prohibitions or refine tuna tracking procedures. Under the "no action" alternative, the United States would not be fulfilling its obligations under the IATTC and Agreement. Adopting this alternative would provide a precedent for other nations to ignore future international recommendations. NMFS rejected the second alternative which would entail taking independent action to address tuna conservation (e.g., quota, area closures, or other variations of the preferred alternative) because these approaches fail to address the potential for fleet capacity growth. Further, the United States does not have independent sources of information that would provide a sufficiently sound approach to support a departure from recommendations of the IATTC member nations and the Parties to the Agreement.

NMFS selected the preferred alternative, which imposes some new burdens on small entities. Specifically, the preferred alternative regulates several (i.e., one or two) small purse seine vessels (i.e., vessels of 400 st carrying capacity or less and classified as small business entities). Under the rule, several small vessels that have historically targeted tuna on a full-time basis, as well as large tuna purse seine vessels (in excess of 400 st carrying capacity), would be required to be listed as active on the Vessel Register and pay associated annual vessel assessments in order to fish for tuna in future years.

Updates to the tuna tracking and verification program; prohibitions against commerce in tuna or tuna products bearing a label or mark that refers to dolphins, porpoises, or marine mammals if the label or mark does not comply with the labeling and marking requirements of 16 U.S.C. 1385(d); and prohibitions against activities that undermine the implementation and enforcement of the MMPA, IDCPA and DPCIA will not significantly impact

small business entities. However, the rule will impose some new or increased burdens to small businesses that will ensure NMFS' continued ability to verify the dolphin-safe status of tuna. These burdens are largely related to new tuna tracking and verification procedures and will affect importers, exporters, wholesalers/distributors and transshippers.

NMFS selected the preferred alternative because it achieves NMFS' primary objectives to establish domestic measures consistent with international resolutions adopted by the IATTC and the Parties to the Agreement, as well as other procedural modifications that NMFS determined to be necessary after several years experience managing the U.S. tuna purse seine fleet in the ETP and implementing a domestic tuna tracking and verification program. Specifically, the preferred alternative both minimizes the potential for significant economic impacts to a variety of entities and implements measures to (1) establish a register of U.S. vessels with a history of fishing in the ETP prior to June 28, 2002, and require only those vessels be authorized to purse seine for tuna in the ETP; (2) enable NMFS to maintain the Vessel Register annually, including to establish procedures for removing vessels for serious violations and to prevent U.S. capacity from increasing the regional capacity of the tuna purse seine fleet in the ETP; (3) limit the aggregate active capacity of U.S. purse seine vessels in the ETP to 8,969 mt per year; (4) revise the requirements for maintaining and submitting tuna tracking and verification records; (5) ensure owners of U.S. vessels on the Vessel Register pay annual assessments; (6) prohibit commerce in tuna or tuna products bearing a label or mark referring to dolphins, porpoises, or marine mammals if the label or mark does not comply with the labeling and marking requirements of 16 U.S.C. 1385(d); and (7) prohibit interference with enforcement and inspection activities, submission of false information, and other activities that would undermine the effectiveness of the MMPA, IDCPA and DPCIA.

As discussed in previous paragraphs, the "no action" and "independent action" alternatives were rejected because they would impose greater burdens than the preferred alternative and/or would not implement the seven measures stated above. Four specific examples of the burdens NMFS considered in selecting the preferred alternative follow. First, in selecting the preferred alternative NMFS provides reasons for removing vessels from the

Vessel Register (e.g., the owner of the vessel is applying to transfer the vessel to a foreign flag, the vessel has sunk, etc.) in order to free up opportunities for other vessels to participate in the fishery. Second, the preferred alternative contains a deterrent for a vessel owner who requests to have a vessel listed as active on the Vessel Register but does not utilize that active status. Vessels for which these frivolous requests for active status were made would receive the lowest priority consideration for active status the following year, allowing other vessel owners to attain higher priority. Third, NMFS considered but rejected taking independent action to increase the length of time that records must be maintained by exporters, transshippers, importers, processors and wholesalers/distributors from 2 years to 3 years because this action would be overly burdensome to these entities. Fourth, NMFS considered but rejected taking independent action to decrease the length of time within which these entities are required to submit tracking and verification documentation to the Regional Administrator to less than 30 days. This action was rejected because NMFS found it would create an additional burden to these entities without substantially strengthening NMFS' ability to track and verify the dolphin-safe status of tuna.

#### *Paperwork Reduction Act*

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) that were discussed in the proposed rule. In Section 216.93(f) of this final rule, wholesalers/distributors are included in the list of entities required to produce records relative to tracking and verification of tuna to the Administrator, Southwest Region. This collection-of-information requirement was approved by the Office of Management and Budget (OMB) on February 6, 2003, under control number 0648-0387. The public reporting burden for this collection is estimated to average 30 minutes for a wholesaler/distributor to produce records.

Notwithstanding any other provision of the law, no person is required to respond to, nor will any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

The preceding public reporting burden estimates for collections of information include time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information.

Send written comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden to NMFS (see ADDRESSES) and David Rostker, OMB, by e-mail at David\_Rostker@omb.eop.gov or by fax to 202-395-7285.

Endangered Species Act

NMFS prepared a Biological Opinion for the interim final rule to implement the IDCPA in December 1999, concluding that fishing activities conducted under the interim final rule are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. NMFS is unaware of any new information that would indicate this action may affect listed species in a manner or to an extent not previously considered, nor do the final regulations modify the fishery in a manner that causes an effect to listed species not previously considered in the Biological Opinion. Therefore, NMFS has determined that the conclusions and incidental take statement of the Biological Opinion remain valid and reinitiation of consultation is not required. NMFS continues to monitor annual sea turtle takes and mortalities in the U.S. tuna purse seine fishery operating in the ETP to ensure that levels are within those analyzed in the Biological Opinion and authorized in the amended Incidental Take Statement.

National Environmental Policy Act

NMFS prepared a draft Environmental Assessment (EA) for the proposed rule. NMFS did not receive any comments on the draft EA. As a result, NMFS prepared an EA for these final regulations and the Assistant Administrator for Fisheries concluded that there will be no significant impact on the human environment as a result of this final rule. A copy of the EA is available from NMFS (see ADDRESSES) or at: http://swr.nmfs.noaa.gov.

List of Subjects

50 CFR Part 216

Fish, Marine mammals, Reporting and recordkeeping requirements.

50 CFR Part 300

International fisheries regulations; Pacific tuna fisheries.

Dated: April 5, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 216 and 300 are amended as follows:

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

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 et seq., unless otherwise noted.

2. In § 216.3 the definition for “Fisheries Certificate of Origin” is revised and a definition for “South Pacific Tuna Treaty” is added to read as follows:

§ 216.3 Definitions.

\* \* \* \* \*

Fisheries Certificate of Origin, or FCO, means NOAA Form 370, as described in § 216.24(f)(4).

\* \* \* \* \*

South Pacific Tuna Treaty means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (50 CFR part 300, subpart D).

\* \* \* \* \*

3. A new § 216.17 is added to subpart B to read as follows:

§ 216.17 General prohibitions.

It is unlawful for any person to:

(a) Assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search, inspection, investigation or seizure in connection with enforcement of the MMPA, DPCIA, or IDCPA.

(b) Interfere with, delay, or prevent by any means the apprehension of another person, knowing that such person has committed any act prohibited by the MMPA.

(c) Resist a lawful arrest for any act prohibited under the MMPA.

(d) Make any false statement, oral or written, to an authorized officer concerning any act under the jurisdiction of the MMPA, DPCIA, IDCPA, or attempt to do any of the above.

(e) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the MMPA, DPCIA, or IDCPA.

4. In § 216.24 paragraphs (b)(4) introductory text, (b)(6)(i), (b)(6)(iii), the

introductory text to (f)(3), (f)(3)(ii) and (iii), (f)(4)(xi), (f)(4)(xiv) and (f)(12) are revised and a new (f)(3)(iv) is added to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations by tuna purse seine vessels in the eastern tropical Pacific Ocean.

\* \* \* \* \*

(b) \* \* \*

(4) Application for vessel permit. The owner or managing owner of a purse seine vessel may apply for a permit from the Administrator, Southwest Region, allowing at least 15 days for processing. All vessel permit applications must be faxed to (562) 980-4027. An owner or managing owner requesting to have a vessel in excess of 400 st (362.8 mt) carrying capacity for which a DML was requested categorized as active on the Vessel Register under § 300.22(b)(4)(i) of this title must submit to the Administrator, Southwest Region, the vessel permit application, payment of the observer placement fee under paragraph (b)(6)(iii) of this section and payment of the vessel permit application processing fee no later than September 15 of the year prior to the year for which the DML was requested. The owner or managing owner of a vessel in excess of 400 st (362.8 mt) carrying capacity not requesting a DML must submit the vessel permit application, payment of the observer placement fee, and payment of the vessel permit application processing fee no later than November 30 of the year prior to the year for which the vessel permit was requested. An application must contain:

\* \* \* \* \*

(6) \* \* \*

(i) Vessel permit application fees. Payment of the permit application fee is required before NMFS will issue a permit. The Assistant Administrator may change the amount of this fee at any time if a different fee is determined in accordance with the NOAA Finance Handbook. The amount of the fee will be printed on the vessel permit application form provided by the Administrator, Southwest Region.

\* \* \* \* \*

(iii) Observer placement fee. The observer placement fee supports the placement of observers on individual vessels, and maintenance of the observer program, as established by the IATTC or other approved observer program.

(A) The owner or managing owner of a vessel for which a DML has been requested must submit the observer placement fee, as established by the IATTC or other approved observer

program, to the Administrator, Southwest Region, no later than September 15 of the year prior to the calendar year for which the DML was requested. Payment of the observer placement fee must be consistent with the fee for active status on the Vessel Register under § 300.22(b)(4) of this title.

(B) The owner or managing owner of a vessel for which a DML has not been requested, but that is listed on the Vessel Register, as defined in § 300.21 of this title, must submit payment of the observer placement fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than November 30 of the year prior to the calendar year in which the vessel will be listed on the Vessel Register. Payment of the observer placement fee must be consistent with the vessel's status, either active or inactive, on the Vessel Register in § 300.22(b)(4) of this title.

(C) The owner or managing owner of a purse seine vessel that is licensed under the South Pacific Tuna Treaty must submit the observer placement fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, prior to obtaining an observer and entering the ETP to fish. Consistent with § 300.22(b)(1)(i) of this title, this class of purse seine vessels is not required to be listed on the Vessel Register under § 300.22(b)(4) of this title in order to purse seine for tuna in the ETP during a single fishing trip per calendar year of 90 days or less. Payment of the observer placement fee must be consistent with the fee for active status on the Vessel Register under § 300.22(b)(4) of this title.

(D) The owner or managing owner of a purse seine vessel listed as inactive on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under § 300.22(b)(4) of this title during the year, must pay the observer placement fee associated with active status less the observer placement fee associated with inactive status that was already paid before NMFS will request the IATTC Secretariat change the status of the vessel from inactive to active.

(E) The owner or managing owner of a purse seine vessel not listed on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under § 300.22(b)(4) of this title during the year, must pay the observer placement fee associated with active status before

NMFS will request the IATTC Secretariat change the status of the vessel to active.

(F) Payments received after the dates specified in paragraphs (b) (6) (iii)(A) or (B) of this section will be subject to a 10 percent surcharge. The Administrator, Southwest Region, will forward all observer placement fees described in this section to the IATTC or to the applicable organization approved by the Administrator, Southwest Region.

\* \* \* \* \*

(f) \* \* \*

(3) *Disposition of Fisheries Certificates of Origin.* The FCO described in paragraph (f)(4) of this section may be obtained from the Administrator, Southwest Region, or downloaded from the Internet at <http://swr.nmfs.noaa.gov/noaa370.htm>. \* \* \*

(ii) FCOs and associated certifications, if any, that accompany imported shipments of tuna must be submitted by the importer of record to the Tuna Tracking and Verification Program, Southwest Region, within 30 days of the shipment's entry into the commerce of the United States. FCOs submitted via mail should be sent to Tuna Tracking and Verification Program, Southwest Region, P.O. Box 32469, Long Beach, CA 90832-2469. Copies of the documents may be submitted electronically using a secure file transfer protocol (FTP) site. Importers of record interested in submitting FCOs and associated certifications via FTP may contact a representative of the Tuna Tracking and Verification Program at the following email address:

*SWRTuna.Track@noaa.gov*. The Tuna Tracking and Verification Program will facilitate secure transfer and protection of certifications by assigning a separate electronic folder for each importer. Access to the electronic folder will require a user identification and password. The Tuna Tracking and Verification Program will assign each importer a unique user identification and password. Safeguarding the confidentiality of the user identification and password is the responsibility of the importer to whom they are assigned. Copies of the documents may also be submitted via mail either on compact disc or as hard copies. All electronic submissions, whether via FTP or on compact disc, must be in either Adobe Portable Document Format (PDF) or as an image file embedded in a Microsoft Word, Microsoft PowerPoint, or Corel WordPerfect file.

(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, Southwest Region, by the last endorser when all required endorsements are completed.

(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, Southwest Region.

(4) \* \* \*

(xi) The name of the harvesting vessel;

\* \* \* \* \*

(xiv) Each additional 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.

\* \* \* \* \*

(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).

\* \* \* \* \*

■ 5. In § 216.93, paragraphs (c)(5)(v), (e) and (f) are revised to read as follows:

**§ 216.93 Tracking and verification program.**

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(v) TTFs are confidential documents of the IDCP. Vessel captains and managing offices may not provide copies of TTFs to any representatives of private organizations or non-member states.

\* \* \* \* \*

(e) *Tracking imports.* All tuna products, except fresh tuna, that are imported into the United States must be

accompanied by a properly certified FCO as required by § 216.24(f)(2). For tuna tracking purposes, copies of FCOs and associated certifications must be submitted by the importer of record to the Administrator, Southwest Region, within 30 days of the shipment's entry into the commerce of the United States as required by § 216.24(f)(3)(ii).

(f) *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) and (d) of this section, invoices, other import documents, and trip reports.

(2) *Record submission.* Within 30 days of receiving a shipment of tuna or tuna products, any exporter, transshipper, importer, processor, wholesaler/distributor of tuna or tuna products must submit to the Administrator, Southwest Region, all corresponding FCOs and required certifications for those tuna or tuna products.

(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.

\* \* \* \* \*

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 16 U.S.C. 951–961 and 971 *et seq.*, unless otherwise noted.

■ 2. In § 300.21 definitions for “South Pacific Tuna Treaty” and “Vessel Register” are added to read as follows:

**§ 300.21 Definitions.**

\* \* \* \* \*

*South Pacific Tuna Treaty* means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (50 CFR part 300, subpart D).

\* \* \* \* \*

*Vessel Register* means the regional register of vessels authorized to purse seine for tuna in the Convention Area, as established by the Inter-American

Tropical Tuna Commission on June 28, 2002.

■ 3. In § 300.22 the section heading and paragraph (b) is revised to read as follows:

**§ 300.22 Yellowfin tuna—recordkeeping and written reports.**

\* \* \* \* \*

(b) *Vessel register.* Except as provided under paragraph (b)(1) of this section, vessels must be listed on the Vessel Register and categorized as active under paragraph (b)(4)(i) of this section in order to purse seine for tuna in the Convention Area.

(1) *Exceptions.* The following classes of vessels are exempted from being listed on the Vessel Register to purse seine for tuna in the Convention Area:

(i) Vessels licensed under the South Pacific Tuna Treaty that exercise an option to fish in the Convention Area for a single trip each year, provided that the total number of optional trips does not exceed 32 in a given calendar year. Each optional trip in the Convention Area may not exceed 90 days in duration.

(ii) Vessels of 400 st (362.8 mt) or less carrying capacity for which landings of tuna caught in the Convention Area comprise 50 percent or less of the vessel's total landings, by weight, for a given calendar year.

(2) *Requirements for inclusion on the vessel register.* The Vessel Register shall include, consistent with resolutions of the IATTC, only vessels that fished in the Convention Area prior to the creation of the Vessel Register on June 28, 2002. New vessels may be added to the Vessel Register at any time to replace those previously removed by the Regional Administrator, provided that the total capacity of the replacement vessel or vessels does not exceed that of the vessel or vessels being replaced.

(3) *Vessel information.* The owner of any fishing vessel that uses purse seine, longline, drift gillnet, harpoon, or troll fishing gear to harvest tuna in the Convention Area for sale or a person authorized in writing to serve as agent for the owner must provide such information about the vessel and its characteristics as requested by the Regional Administrator, to conform to IATTC actions relative to the Vessel Register. This information initially includes, but is not limited to, vessel name and registration number; a photograph of the vessel with the registration number showing and legible; vessel length, beam and moulded depth; gross tonnage and hold capacity in cubic meters and tonnage; engine horsepower; date and place

where built; and type of fishing method or methods used.

(4) *Vessel register status.* For a vessel to be categorized as either “active” or “inactive” on the Vessel Register in the following calendar year, the vessel owner or managing owner must submit to the Regional Administrator under § 216.24(b) of this title, the observer placement fee, vessel permit application, and permit application processing fee for the vessel.

(i) *Active status.* As early as August 1 of each year, vessel owners or managing owners may submit to the Regional Administrator, a vessel permit application and payment of the permit application fee and observer placement fee for each vessel in excess of 400 st (362.8 mt) carrying capacity qualified to be listed on the Vessel Register under paragraph (b)(2) of this section to have a vessel categorized as active for the following calendar year. Vessel permit applications may not be submitted via regular mail; they must be faxed to (562) 980–4027. Owners or managing owners of vessels of 400 st (362.8 mt) carrying capacity or less must only submit payment of the observer placement fee associated with active status in order to request a small purse seine vessel be categorized as active for the following calendar year. The Regional Administrator must receive the faxed vessel permit application and payment of the observer placement fee and permit application processing fee no later than September 15 for vessels for which a DML was requested for the following year and no later than November 30 for vessels for which a DML was not requested for the following year. Submission of the vessel permit application and payment of the observer placement fee and permit application processing fee will be interpreted by the Regional Administrator as a request for a vessel to be categorized as active. The following restrictions apply to active status:

(A) The cumulative carrying capacity of all vessels categorized as active on the Vessel Register may not exceed 8,969 mt in a given year;

(B) A vessel may not be added to active status on the Vessel Register unless the captain of the vessel has obtained a valid operator permit under § 216.24(b)(2) of this title;

(C) For 2005 only, requests for vessels will be prioritized on a first-come, first-served basis according to the date and time the fax is received in the office of the Regional Administrator;

(D) Requests for active status for 2006 and subsequent years will be prioritized according to the following hierarchy:

(1) Requests received for vessels that were categorized as active in the previous year, beginning with the vessel's status in 2005, unless the request for active status was determined to be frivolous by the Regional Administrator under paragraph (b)(4)(ii) of this section;

(2) Requests received for vessels that were categorized as inactive under paragraph (b)(4)(iii) of this section in the previous year, beginning with the vessel's status in 2005;

(3) Requests for vessels not described in paragraphs (b)(4)(D)(1) or (2) of this section will be prioritized on a first-come, first-served basis according to the date and time stamp printed by the incoming fax machine upon receipt, provided that the associated observer placement fee is paid by the applicable deadline described in § 216.24(b)(6)(iii) of this title; and

(4) Requests received from owners or managing owners of vessels that were determined, by the Regional Administrator, to have made a frivolous request for active status under paragraph (b)(4)(ii) of this section.

(ii) *Frivolous requests for active status.* Beginning with requests made for 2005, a request for active status under paragraph (b)(4)(i) of this section will be considered frivolous, unless as a result of force majeure or other extraordinary circumstances as determined by the Regional Administrator if, for a vessel categorized as active in a given calendar year, less than 20 percent of the vessel's total landings, by weight, in that same year is comprised of tuna harvested by purse seine in the Convention Area.

(iii) *Inactive status.* From August 1 through November 30 of each year, vessel owners or managing owners may request that vessels qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as inactive for the following calendar year by submitting to the Regional Administrator payment of the associated observer placement fees. At any time during the year, a vessel owner or managing owner may request that a vessel qualified to be listed on the Vessel Register under paragraph (b)(2) of this section be categorized as inactive for the remainder of the calendar year by submitting to the Regional

Administrator payment of the associated observer placement fee plus a 10 percent surcharge of the fee. Payment of the observer placement fee consistent with inactive status will be interpreted by the Regional Administrator as a request for the vessel to be categorized as inactive.

(5) *Removal from the vessel register.* A vessel may be removed from the Vessel Register by the Regional Administrator:

(i) If the vessel has sunk;

(ii) Upon written request by the vessel's owner or managing owner;

(iii) Following a final agency action on a permit sanction for a violation;

(iv) For failure to pay a penalty or for default on a penalty payment agreement resulting from a final agency action for a violation; or

(v) If the U.S. Maritime Administration or the U.S. Coast Guard notifies NMFS that:

(A) The owner has submitted an application for transfer of the vessel to foreign registry and flag; or

(B) The documentation for the vessel will be or has been deleted for any reason.

(6) *Process for Removal from the Vessel Register.* When a vessel is removed from the Vessel Register under paragraph (b)(5) of this section, the Regional Administrator shall promptly notify the vessel owner in writing of the removal and the reasons therefor. For a removal from the Vessel Register under § 300.22(b)(5)(iii), the Regional Administrator will not accept a request to reinstate the vessel to the Vessel Register for the term of the permit sanction. For a removal from the Vessel Register under § 300.22(b)(5)(iv), the Regional Administrator will not accept a request to reinstate the vessel to the Vessel Register until such time as payment is made on the penalty or penalty agreement, or such other duration as NOAA and the vessel owner may agree upon.

(7) *Procedures for replacing vessels removed from the Vessel Register.* (i) A vessel previously listed on the Vessel Register, but not included for a given year or years, may be added back to the Vessel Register and categorized as inactive at any time during the year, provided the owner of the vessel pays the observer placement fee associated

with inactive status plus a 10 percent surcharge of the fee.

(ii) A vessel may be added to the Vessel Register and categorized as active in order to replace a vessel removed from active status under paragraph (b)(5) of this section, provided the total carrying capacity of active vessels does not exceed 8,969 mt and the owner submits a complete request under paragraph (b)(7)(iv) or (v) of this section.

(iii) After a vessel categorized as active is removed from the Vessel Register, the Regional Administrator will notify owners or managing owners of vessels categorized as inactive that replacement capacity is available on the active list of the Vessel Register. In the event that owners of inactive vessels do not request to replace a removed vessel, the Regional Administrator will notify owners of vessels eligible for, but not included on, the Vessel Register that replacement capacity is available on the active list of the Vessel Register.

(iv) The owner or managing owner of a purse seine vessel of 400 st (362.8 mt) carrying capacity or less may request a vessel be categorized as active to replace a vessel removed from the Vessel Register by submitting payment of the observer placement fee to the Regional Administrator.

(v) The owner or managing owner of a purse seine vessel in excess of 400 st (362.8 mt) carrying capacity may request a vessel be categorized as active to replace a vessel removed from the Vessel Register by submitting to the Regional Administrator under § 216.24(b) of this title, the observer placement fee, vessel permit application, and permit application processing fee for the replacement vessel. The replacement vessel will be eligible to be categorized as active on the Vessel Register if it has a carrying capacity equal to or less than the vessel being replaced, and the captain of the replacement vessel possesses an operator permit under § 216.24(b) of this title.

(vi) The Regional Administrator will forward requests to replace vessels removed from the Vessel Register within 15 days of receiving each request.

[FR Doc. 05-7312 Filed 4-11-05; 8:45 am]

BILLING CODE 3510-22-S



## § 1320.6

## 5 CFR Ch. III (1–1–03 Edition)

this section, and will consider whether the burden of the collection of information is justified by its practical utility. In addition:

(1) OMB will consider necessary any collection of information specifically mandated by statute or court order, but will independently assess any collection of information to the extent that the agency exercises discretion in its implementation; and

(2) OMB will consider necessary any collection of information specifically required by an agency rule approved or not acted upon by OMB under §1320.11 or §1320.12, but will independently assess any such collection of information to the extent that it deviates from the specifications of the rule.

(f) Except as provided in §1320.15, to the extent that OMB determines that all or any portion of a collection of information is unnecessary, for any reason, the agency shall not engage in such collection or portion thereof. OMB will reconsider its disapproval of a collection of information upon the request of the agency head or Senior Official only if the sponsoring agency is able to provide significant new or additional information relevant to the original decision.

(g) An agency may not make a substantive or material modification to a collection of information after such collection of information has been approved by OMB, unless the modification has been submitted to OMB for review and approval under this Part.

(h) An agency should consult with OMB before using currently approved forms or other collections of information after the expiration date printed thereon (in those cases where the actual form being used contains an expiration date that would expire before the end of the use of the form).

### § 1320.6 Public protection.

(a) Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to the requirements of this part if:

(1) The collection of information does not display, in accordance with §1320.3(f) and §1320.5(b)(1), a currently valid OMB control number assigned by

the Director in accordance with the Act; or

(2) The agency fails to inform the potential person who is to respond to the collection of information, in accordance with §1320.5(b)(2), that such person is not required to respond to the collection of information unless it displays a currently valid OMB control number.

(b) The protection provided by paragraph (a) of this section may be raised in the form of a complete defense, bar, or otherwise to the imposition of such penalty at any time during the agency administrative process in which such penalty may be imposed or in any judicial action applicable thereto.

(c) Whenever an agency has imposed a collection of information as a means for proving or satisfying a condition for the receipt of a benefit or the avoidance of a penalty, and the collection of information does not display a currently valid OMB control number or inform the potential persons who are to respond to the collection of information, as prescribed in §1320.5(b), the agency shall not treat a person's failure to comply, in and of itself, as grounds for withholding the benefit or imposing the penalty. The agency shall instead permit respondents to prove or satisfy the legal conditions in any other reasonable manner.

(1) If OMB disapproves the whole of such a collection of information (and the disapproval is not overridden under §1320.15), the agency shall grant the benefit to (or not impose the penalty on) otherwise qualified persons without requesting further proof concerning the condition.

(2) If OMB instructs an agency to make a substantive or material change to such a collection of information (and the instruction is not overridden under §1320.15), the agency shall permit respondents to prove or satisfy the condition by complying with the collection of information as so changed.

(d) Whenever a member of the public is protected from imposition of a penalty under this section for failure to comply with a collection of information, such penalty may not be imposed by an agency directly, by an agency through judicial process, or by any

other person through administrative or judicial process.

(e) The protection provided by paragraph (a) of this section does not preclude the imposition of a penalty on a person for failing to comply with a collection of information that is imposed on the person by statute—e.g., 26 U.S.C. §6011(a) (statutory requirement for person to file a tax return), 42 U.S.C. §6938(c) (statutory requirement for person to provide notification before exporting hazardous waste).

**§ 1320.7 Agency head and Senior Official responsibilities.**

(a) Except as provided in paragraph (b) of this section, each agency head shall designate a Senior Official to carry out the responsibilities of the agency under the Act and this part. The Senior Official shall report directly to the head of the agency and shall have the authority, subject to that of the agency head, to carry out the responsibilities of the agency under the Act and this part.

(b) An agency head may retain full undelegated review authority for any component of the agency which by statute is required to be independent of any agency official below the agency head. For each component for which responsibility under the Act is not delegated to the Senior Official, the agency head shall be responsible for the performance of those functions.

(c) The Senior Official shall head an office responsible for ensuring agency compliance with and prompt, efficient, and effective implementation of the information policies and information resources management responsibilities established under the Act, including the reduction of information collection burdens on the public.

(d) With respect to the collection of information and the control of paperwork, the Senior Official shall establish a process within such office that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved under this Part.

(e) Agency submissions of collections of information for OMB review, and the accompanying certifications under §1320.9, may be made only by the agen-

cy head or the Senior Official, or their designee.

**§ 1320.8 Agency collection of information responsibilities.**

The office established under §1320.7 shall review each collection of information before submission to OMB for review under this part.

(a) This review shall include:

(1) An evaluation of the need for the collection of information, which shall include, in the case of an existing collection of information, an evaluation of the continued need for such collection;

(2) A functional description of the information to be collected;

(3) A plan for the collection of information;

(4) A specific, objectively supported estimate of burden, which shall include, in the case of an existing collection of information, an evaluation of the burden that has been imposed by such collection;

(5) An evaluation of whether (and if so, to what extent) the burden on respondents can be reduced by use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses;

(6) A test of the collection of information through a pilot program, if appropriate; and

(7) A plan for the efficient and effective management and use of the information to be collected, including necessary resources.

(b) Such office shall ensure that each collection of information:

(1) Is inventoried, displays a currently valid OMB control number, and, if appropriate, an expiration date;

(2) Is reviewed by OMB in accordance with the clearance requirements of 44 U.S.C. §3507; and

(3) Informs and provides reasonable notice to the potential persons to whom the collection of information is addressed of—

(i) The reasons the information is planned to be and/or has been collected;

(ii) The way such information is planned to be and/or has been used to further the proper performance of the functions of the agency;

of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: November 29, 2006.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E6-20549 Filed 12-4-06; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

#### Jointly Owned Invention Available for Licensing

**AGENCY:** National Institute of Standards and Technology, Commerce

**ACTION:** Notice.

**SUMMARY:** The invention listed below is jointly owned by the U.S. Government, as represented by the Department of Commerce, and Cree Inc. The Department of Commerce's interest in the invention is available for licensing, in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

**FOR FURTHER INFORMATION CONTACT:**

Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 222, Room A155, Gaithersburg, MD 20899. Information is also available via telephone: 301-975-4188, fax 301-869-2751, or e-mail: [mary.clague@nist.gov](mailto:mary.clague@nist.gov). Any request for information should include the NIST Docket number or Patent number and title for the invention as indicated below.

The invention available for licensing is:

[DOCKET NUMBER 06-008US]

*Title:* Power Switching Semiconductor Devices Including Rectifying Junction-Shunts.

*Abstract:* A semiconductor device includes a drift layer having a first conductivity type and a body region adjacent the drift layer. The body region has a second conductivity type opposite the first conductivity type and forms a p-n junction with the drift layer. The device further includes a contactor region in the body region and having the first conductivity type, and a shunt channel region extending through the body region from the contactor region to

the drift layer. The shunt channel region has the first conductivity type. The device further includes a first terminal in electrical contact with the body region and the contactor region, and a second terminal in electrical contact with the drift layer. The shunt channel region has a length, thickness and doping concentration selected that: (1) The shunt channel region is fully depleted when zero voltage is applied across the first and second terminals, (2) the shunt channel becomes conductive at voltages less than the built-in potential of the drift layer to body region p-n junction, and/or (3) the shunt channel is not conductive for voltages that reverse bias the p-n junction between the drift region and the body region.

Dated: November 29, 2006.

**James E. Hill,**

*Acting Deputy Director.*

[FR Doc. E6-20582 Filed 12-4-06; 8:45 am]

**BILLING CODE 3510-13-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Fisheries Certificate of Origin

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before February 5, 2007.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to William G. Jacobson, 562-980-4035 or [Bill.Jacobson@noaa.gov](mailto:Bill.Jacobson@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The information required by the International Dolphin Conservation

Program Act, amendment to the Marine Mammal Protection Act, is needed: To document the dolphin-safe status of tuna import shipments; to verify that import shipments of fish were not harvested by large scale, high seas driftnets; and to verify that imported tuna was not harvested by an embargoed nation or one that is otherwise prohibited from exporting tuna to the United States. Forms are submitted by importers and processors.

**II. Method of Collection**

Forms may be submitted by mail or electronically.

**III. Data**

*OMB Number:* 0648-0335.

*Form Number:* NOAA Form 370.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profits organizations.

*Estimated Number of Respondents:* 350.

*Estimated Time Per Response:* 20 minutes.

*Estimated Total Annual Burden Hours:* 3,663.

*Estimated Total Annual Cost to Public:* \$3,397.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 30, 2006.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E6-20513 Filed 12-4-06; 8:45 am]

**BILLING CODE 3510-22-P**