

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 01/13/2009

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

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 01/13/2009

ACTION REQUESTED: Revision of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 200901-0648-002
AGENCY ICR TRACKING NUMBER:
TITLE: International Dolphin Conservation Program
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0387

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: 01/31/2012

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	263	146	1,000
New	418	328	950
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	3	1	5
Change due to Agency Adjustment	152	181	-55
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official:

Kevin F. Neyland
Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Waiver request to transit ETP without permit including reporting requirements			50 CFR 216
Vessel permit application	NA	Vessel permit application	
Vessel Operator Permit application	NA	Vessel operator permit	
Vessel departure notification			50 CFR 216
Change in permit operator notification			50 CFR 216
Modified net notification			50 CFR 216
Experimental fishing permit applications			50 CFR 216
Dolphin mortality limit request			50 CFR 216
Vessel register annual notification			50 CFR 300
Notification prior to transfer of vessel to foreign registry and flag			50 CFR 300
Arrival notification			50 CFR 216
Tuna tracking			50 CFR 216
Monthly tuna storage removal reports			50 CFR 216
Monthly tuna receiving reports			50 CFR 216
Documentary evidence requests by Administrator			50 CFR 216

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.

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

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 or head of MB staff for L.O.s, or of the Director of a Program or Staff Office)	
Signature	Date
Signature of NOAA Clearance Officer	
Signature	Date

SUPPORTING STATEMENT

INTERNATIONAL DOLPHIN CONSERVATION PROGRAM ACT

OMB Control No.: 0648-0387

Section A. Justification

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

Under the Marine Mammal Protection Act ([MMPA](#)), no marine mammals may be taken during the course of commercial fishing operations unless the taking constitutes an incidental catch and is authorized by the Secretary of Commerce. Section 101(a)(2) of the MMPA [16 U.S.C. 1371] authorizes the issuance of permits which allow fishermen to lawfully take marine mammals incidental to commercial fishing operations and authorizes the Secretary of Commerce to promulgate regulations to restrict the importation of tuna from nations not participating in the International Dolphin Conservation Program (IDCP).

Historically, marine mammals taken by U.S. vessels during the course of commercial yellowfin tuna purse seine fishing operations in the eastern tropical Pacific Ocean (ETP) have been allowed under a general permit issued to the American Tunaboat Association (ATA) under Section 104(h) provisions of the MMPA. However, with the enactment into law of the International Dolphin Conservation Program Act ([IDCPA](#)), P.L. 105-42, the language in the MMPA pertaining to the U.S. tuna purse seine fishery was amended. Under the IDCPA, U.S. fishing vessels have the ability to participate in the ETP tuna purse seine fishery on equivalent terms with the international fleet. Incidental taking of marine mammals during other U.S. commercial fishing operations besides the ETP tuna purse seine fishery is governed by Section 118(a)(1) of the MMPA.

Primarily, the IDCPA amends provisions in the MMPA governing the U.S. tuna purse seine fishery in the ETP and the importation of yellowfin tuna and yellowfin tuna products from other nations with vessels engaged in that fishery. Under the IDCPA, the ATA general permit and certificate of inclusions will be replaced with a permit [16 U.S.C. 1374 §104(h)] issued to individual vessel owners and operators [16 U.S.C. 1416 § 306(a)(1)] that will authorize the incidental take of marine mammals according to the guidelines established under the IDCP signed in La Jolla, California, in June 1992.

This submission includes all information requests that pertain to U.S. tuna purse seine vessel and operator permit holders fishing under the IDCP and the tracking and verification program for tuna that is: (1) harvested and processed by U.S. companies or (2) offered for sale in the United States. Information collection requirements under the IDCP were approved under the Paperwork Reduction Act (PRA) in 1999. PRA approval was renewed in 2002 and 2005. Currently collected information under the IDCP with PRA approval includes: vessel permit and operator permit applications, waiver requests to transit ETP without a permit, vessel departure notification five days prior to departure, change in operator notification prior to departure, net modification

notification five days prior to departure, experimental fishing gear waiver applications, and Dolphin Mortality Limit requests.

A proposed rule to revise regulations under the IDCP will add the following new information collection requirements subject to approval under the PRA: 1) collection of vessel photographs with vessel permit applications; 2) annual written notification to request a small tuna purse seine vessel be listed as active; 3) annual written notification to request a small tuna purse seine vessel be listed as inactive; and 4) written notification of the intent to transfer a tuna purse seine vessel to foreign registry and flag. These four new collection requirements are described in more detail in the following paragraphs. Vessel and operator permit holder requirements are in 50 CFR Part 216.24 and the tracking and verification requirements are in 50 CFR Part 216.93.

The requirement for importers to provide information about the shipment of tuna and tuna products, except some fresh products, into the United States, using the Fisheries Certificate of Origin (NOAA Form 370) is already approved by the Office of Management and Budget under Control Number 0648-0335. The public reporting burden for this collection is estimated to average 20 minutes per submission which includes the time necessary to complete supporting documentation such as the Captain's and Observer's statements which certify that the tuna was captured in a manner considered to be "dolphin safe."

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 applicable information quality guidelines.

A valid permit protects the fisherman and vessel owner from prosecution under the MMPA for violation of the Moratorium on taking marine mammals. Information supplied by the applicant is used by the National Marine Fisheries Service (NMFS) and the general public to review the appropriateness of waiving the moratorium to authorize the incidental take of marine mammals by U.S. tuna purse seine vessels fishing in the ETP. Each year vessel owners and operators must apply for a permit under the MMPA and comply with the terms and conditions associated with its issuance. In addition, by signing the application for a vessel permit, the vessel owner agrees to release to the National Marine Fisheries Service all records made by Inter-American Tropical Tuna Commission (IATTC) observers during fishing trips aboard the vessel and furnish the international observer program with all release forms required to authorize the observer data to be provided to NMFS [50 CFR 216.24(b)(8)(v)].

- (a) ETP vessel permit applications must be submitted to the Administrator, Southwest Region, by fax. The information needed for a vessel permit under [50 CFR 216.24(b)(4)] is as follows:
 - (i) Name and official number of fishing vessel to appear on permit [self-explanatory and required by 16 U.S.C. 1416 § 306(a)(1)(A)]. A photograph of the vessel with

the registration number showing and legible [This information assists the agency with identification of vessels and enforcement]. The tonnage, carrying capacity, maximum vessel speed, processing equipment, and type and quantity of gear, including an inventory of special equipment required. [This information assists the agency with tracking processed and unprocessed tuna, monitoring compliance with gear requirements under the MMPA, and evaluating the ability of a vessel to capture tuna. A vessel's characteristics are important when determining the performance of a vessel which can be used to determine the fishing power of the vessel. This information is required by 16 U.S.C. 1416 § 306(a)(1)(B)];

(ii) A statement whether the vessel intends to make sets involving the intentional taking of marine mammals. [This information is used to determine the type of permit that needs to be issued];

(iii) The identity of Federal, State and local commercial fishing licenses, if applicable, under which vessel operations are conducted, and dates of expiration. [This information is collected to assess whether other permits may be combined in the future with the issuance of a vessel permit. In addition, this information may assist the agency with some of the tuna tracking requirements as well as determine whether a vessel is in compliance with other applicable federal regulations];

(iv) The name(s) of the operator anticipated to be used. [This information is collected to assess whether the operator has a valid operator permit to fish for tuna in the ETP]; and

(v) The applicant's signature or the signature of the applicant's representative, if any, including the 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. [Signature certifies the information is true and correct and authorizes observer data collected to be provided to NMFS and the International Review Panel. The contact information is required by 16 U.S.C. 1416 § 306(a)(1)(A).]

(b) The information needed for an operator permit under [50 CFR 216.24(b)(5)] is as follows:

(i) The name, address, telephone and fax numbers of the applicant [Self-explanatory];

(ii) The type and identification number(s) of any Federal, State, and local fishing licenses held by the applicant. [This information is collected to assess whether other permits may be combined in the future with the issuance of an operator permit];

(iii) The name of the vessel(s) on which the applicant anticipates serving as an operator. [The historical performance of an operator is as critical as the historical characteristics and fishing power of a vessel. The operator information may then be

linked to the vessel of record to establish an operator catch history for that fishery or gear].

(iv) The date, location, and provider of any training for the operator permit. Training includes a demonstration of proficiency in backing down the purse seine net to release entrapped dolphin(s). Upon completion of training, a certificate of completion is issued [50 CFR 216.24(c)(5)]. Operator permits are issued annually. Additional training is not required unless regulations are modified substantially, the operator no longer demonstrates proficiency, or the operator does not obtain a previous calendar year permit. [Operator training is required to insure fishing captains understand the principles of dolphin safe fishing techniques and are kept informed of new technology, changing regulations, and new international agreements.]; and

(v) The applicant's signature or the signature of the applicant's representative, if any. [Signature certifies the information is true and correct.]

(c) The rules and regulations allow tuna purse seine vessels without a permit and more than two speedboats to transit the ETP if the vessel owner requests a waiver [50 CFR 216.24(a)(3)]. This provision allows vessel owners the ability to off-load, complete repairs, or transit the permit area in an emergency without delay and without having to obtain a vessel and operator permit and carry an authorized NMFS inspector (observer). As part of the waiver, the vessel owner must notify the Administrator, Southwest Region, with the name of the vessel and the date the vessel exits or subsequently enters the permit area.

To request a waiver, the following information must be provided to the Administrator, Southwest Region, in writing and in advance of entering the ETP:

(i) The name of the vessel and operator [Self-explanatory];

(ii) Reason for transiting the ETP; and

(iii) The number of expected days to complete the transit.

(d) Vessel permit holders are required to notify the Administrator, Southwest Region, or the Inter-American Tropical Tuna Commission contact designated by the Administrator, Southwest Region, at least five days in advance of the vessel's departure on a fishing voyage to allow for observer placement on every voyage [50 CFR 216.24(b)(8)(iv)]. The information may be provided either verbally or in writing and must include the following information:

(i) The name of the vessel and operator [Self-explanatory];

(ii) Location of the vessel; and

(iii) Date and time of departure. [Information needed to coordinate and facilitate observer travel with the vessel departure.]

(e) Vessel permit holders must notify the Administrator, Southwest Region, at least 48 hours prior to departing on a trip if there is a change of the vessel operator or within 72 hours after a change of the vessel operator if the change was made because of an emergency [50 CFR 216.24(b)(8)(iv)(B)]. This information is used to facilitate observer placements and make arrangements to conduct an observer placement meeting with the captain, managing owner, and program personnel prior to departure. Also, at this time the agency may notify the vessel owner if the operator must attend a skipper workshop. If necessary, arrangements may be made to schedule a workshop. This information may be provided verbally or in writing and must include:

(i) Vessel name; and

(ii) New operator permit holder name.

(f) Vessel Permit holders intending to make intentional sets on marine mammals 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 [50 CFR 216.24(c)(4)(ii)]. If no net modifications are made during a calendar year, inspections shall be conducted by the authorized NMFS inspector (observer). This information may be provided verbally or in writing, and must include the following information:

(i) Vessel name; and

(ii) Type of gear modification completed.

(g) The Administrator, Southwest Region, may authorize experimental fishing operations, consistent with the provisions of the International Dolphin Conservation Program 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 [16 USC 1413 Section 303(A)(2)(B)(x)]. Vessel Permit holders 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 intended date the proposed operation is intended to begin [50 CFR 216.24(c)(7)]. This information is necessary to assess the potential benefit of the experimental gear and the merits of the experimental design. If the experimental fishing permit is authorized, the applicant will need to submit a report at the conclusion of the experiment as part of the terms and conditions of the permit.

- (i) The name(s) of the vessel(s) and the vessel permit holder(s) to participate [Self explanatory];
 - (ii) 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;
 - (iii) 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;
 - (iv) A description of the applicability of this modification to other purse seine vessels;
 - (v) The planned design, time, duration, and general area of the experimental operation;
 - (vi) The name(s) of the permitted operator(s) of the vessel(s) during the experiment;
 - (vii) A statement of the qualifications of the individual or company doing the analysis of the research; and
 - (viii) The signature of the permitted operator or of the operator's representative.
 - (ix) A report summarizing the results of the experiment.
- (h) A vessel permit holder desiring to encircle dolphins in an effort to capture tuna must obtain a dolphin mortality limit (DML) under the International Agreement prior to conducting fishing operations [16 USC 1413 Section 303(A)(2)(B)(ix)]. Under the IDCPA, vessel permit holders may apply for either a six month DML (July through December), a one year DML (January through December), or a per-trip DML depending on vessel eligibility. Vessel permit holders may request a DML either by April 1 or by September 1, depending on whether the vessel permit holder is requesting a six month or one year DML allocation. Vessel permit holders may apply for a per-trip DML at any time, allowing at least 60 days for processing. To assess the eligibility of the vessel, six month and one year DML requests must be made in writing to the Administrator, Southwest Region, allowing at least 60 days for processing, and must include the following information [50 CFR 216.24(c)(9)]:
- (i) The name of the purse seine vessel(s) of carrying capacity greater than 400 short tons that the owner intends to use to intentionally deploy purse seine fishing nets in the ETP [Self-explanatory]; and
 - (ii) The name of the vessel permit holder.

In addition, a vessel possessing a valid vessel permit, but that does not normally fish for tuna in the ETP and desires to participate in the fishery on a limited basis, may apply for

a per-trip DML from the Administrator, Southwest Region. To assess the eligibility of the vessel, per-trip DML requests must be in writing, allowing 60 days for processing, and state:

- (iii) The number of anticipated trips involving sets on dolphin; and
 - (iv) The anticipated dates of the trip(s).
- (i) Vessel owners or managing owners must submit written notification to the Administrator, Southwest Region, to request that a vessel of 400 short tons (st) carrying capacity or less be categorized as active or inactive on the IATTC Vessel Register (Vessel Register), the list of vessels authorized to fish for tuna and tuna-like species in the ETP. Active or inactive status on the IATTC Vessel Register expires on December 31 of each year. Vessel owners or managing owners of vessels greater than 400 st carrying capacity are required to submit permit applications and fees each year to be listed on the Vessel Register, whereas vessel owners or managing owners of vessels of 400 st carrying capacity or less are not. Annual written notification would ensure that: 1) the request for active or inactive status is processed; 2) the vessel's capacity is accounted for in the total fleet capacity; and 3) the required information for the Vessel Register is collected. The notification must be submitted by November 30 of the year prior to the year for which inclusion on the register is requested.

To request a tuna purse seine vessel of 400 st carrying capacity or less be listed as active on the Vessel Register, the vessel owner or managing owner must submit by fax the following information in writing:

- (i) Name and official number of fishing vessel [Self-explanatory]. A photograph of the vessel with the registration number showing and legible [This information assists the agency with identification of vessels and enforcement]. The port of registry; previous name(s) and flag; International Radio Call Sign; where and when built; length, beam, and moulded depth; tonnage, fish hold capacity, and carrying capacity; type of fishing method(s); engine horsepower; and the name and address of the vessel owner(s) and managing owner(s). [This information assists the agency with tracking processed and unprocessed tuna and evaluating the ability of a vessel to capture tuna. A vessel's characteristics are important when determining the performance of a vessel which can be used to determine the fishing power of the vessel. This information is required by the IATTC.];
- (ii) The vessel owner or managing owner's signature and business telephone and fax numbers. [Signature certifies the information is true and correct. The contact information is required by the IATTC.]

To request a tuna purse seine vessel of 400 st carrying capacity or less be listed as inactive on the Vessel Register, the vessel owner or managing owner must submit by mail the

following information in writing:

- (i) Name and official number of fishing vessel [Self-explanatory];
- (ii) The vessel owner or managing owner's name, signature, business address, and business telephone and fax numbers. [Self-explanatory. Signature certifies the information is true and correct.]
- (j) The vessel owner or managing owner of a tuna purse seine vessel listed on the Vessel Register must notify the Administrator, Southwest Region, of the intent to transfer the vessel to foreign registry and flag. Written notification must be received at least 10 business days prior to the submission of an application for transfer of the vessel to foreign registry and flag. The notification requirement would not apply to owners or managing owners of vessels that have received approval from the U.S. Maritime Administration (MARAD) for transfer of the vessel to foreign registry and flag, because MARAD already provides notification to NMFS prior to the transfer of these vessels.

The notification will be used to manage the tuna purse seine portion of the Vessel Register. Vessels that have their documentation removed and are transferred to foreign registry and flag would no longer be authorized by the U.S. to purse seine for tuna in the ETP. Vessel owners or managing owners must submit by mail the following information in writing:

- (i) Name and official number of fishing vessel [Self-explanatory and required by 16 U.S.C. 1416 § 306(a)(1)(A)];
- (ii) The expected date the application will be submitted for transfer of the vessel to foreign registry and flag; and
- (iii) The vessel owner or managing owner's name and signature. [Signature certifies the information is true and correct.]

The DPCIA requires the Administrator, Southwest Region, to establish and conduct a domestic tracking and verification program to effectively track and document the movement of all tuna products in U.S. market channels from its capture to final sale. The tracking program will accurately document the "dolphin safe" or "non-dolphin safe" condition of tuna through catch, processing, and marketing reports for use in verifying the dolphin-safe or unsafe condition of tuna products entering the U.S. market.

The U.S. canned tuna industry produces approximately \$1 billion worth of canned tuna every year, and canned tuna is the second most popular fish product marketed and consumed in this country. Because of this, the statistics which describe the tuna fishery, its products, and its markets have been of interest to the National Marine Fisheries Service for some time. Monthly cannery receipt reports are covered under the current Paperwork Reduction Act approval and are used in the tuna tracking and verification program.

The tracking program includes procedures and reports for use when importing tuna into the U.S. and during domestic purse seine fishing, processing, and marketing in the U.S. and abroad. Verification of tracking system operations is attained through the establishment of audit and document review requirements which require the following information collections.

- (a) The Captain, managing owner, or vessel agent of a U.S. tuna purse seine vessel returning to port from a trip, any part of which included fishing in the ETP, shall provide at least 48 hours notice to the Administrator, Southwest Region, to allow enough time for a NMFS representative to meet the vessel at the unloading location to monitor the handling of “dolphin safe” and “non-dolphin safe” tuna. Fish may be unloaded directly to a cannery facility or transhipped to another location by a freezer ship. Vessels that transfer fish to a freezer ship in port can reduce the amount of time spent in port by not transiting the Panama Canal or the Gulf of Mexico, and by not waiting in line to unload at the cannery. The 48 hour notice shall include:
 - (i) Port of arrival where fish will be unloaded [Self-explanatory. Information needed in order to make travel arrangements for the NMFS representative.];
 - (ii) Arrival Time [Information needed to facilitate NMFS representative to meet the vessel before unloading begins]; and
 - (iii) Schedule of unloading including the date and time [Information facilitates NMFS representative’s ability to meet vessel].

- (b) The tuna tracking forms record the amounts and location of “dolphin safe” and “non-dolphin safe” tuna as it is loaded into fish wells aboard the vessel. The forms are completed and initialed by the observer and the captain or engineer after each set. During the duration of the vessel assignment, the observer retains the tuna tracking forms until the vessel arrives in port. Upon arrival in port, the captain signs and submits the completed tuna tracking forms to the NMFS representative in person, or by mail to the Administrator, Southwest Region, within 5 working days at the end of the trip. The tuna tracking forms include the following information:
 - (i) Well numbers containing “dolphin safe” and “non-dolphin safe” tuna [Self-explanatory. Information needed to monitor and track “dolphin safe” and “non-dolphin safe” tuna from time of capture];
 - (ii) Weights by species composition and estimated tons loaded into each fish well [Self-explanatory. Information used to track weights of tuna at time of capture];
 - (iii) Set number and date of loading [Information used to track weights and location of tuna at time of capture. Set numbers are important since more than one set may be completed in a single day];

- (iv) Trip number and Trip dates [Information used to correlate the fish to observer and vessel records to verify whether marine mammals were encircled, killed, or seriously injured during fishing operations];
 - (v) Observer name and signature [Information used to certify and verify the report is accurate and correct]; and
 - (vi) Captain name and signature and vessel name. [Information used to correlate the fish to observer and vessel records to verify whether marine mammals were encircled, killed, or seriously injured during fishing operations.]
- (c) Canned tuna processors must provide on a monthly basis a report of the amounts of ETP-caught tuna that is removed from cold storage. The report shall be in writing and may be sent by mail, fax, or email to the Administrator, Southwest Region. The information provided in the reports are existing documents already generated by the canneries to internally track tuna throughout the entire canning process. NMFS will receive a copy of their report. This information will be used to monitor and track “dolphin safe” and “non-dolphin safe” tuna. The following information must be provided in the report:
- (i) Date of removal [Information used to track and monitor tuna];
 - (ii) Storage container numbers [Information needed by cannery to track tuna throughout the process];
 - (iii) “Dolphin safe” or “non-dolphin safe” designation [Information needed to track the classification of tuna being processed]; and
 - (iv) Disposition of fish (canning, sale, rejection, etc) [Information needed to track the disposition of tuna. Records already kept by cannery to account for tuna disposition].
- (d) Canned 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 are already compiled by the cannery to monitor and track tuna received at the facility. These reports may be submitted by fax, email or mail before the last day of the month following the month being reported. The information is used to monitor and track tuna caught in the ETP and prepare reports regarding canned tuna industry operations. Monthly reports must contain the following information for domestic and import tuna receipts. In addition, import tuna receipts must have a Fisheries Certificate of Origin (NOAA Form 370) approved by the Office of Management and Budget under Control Number 0638-0335.

- (i) Species [Self-explanatory. Information used to determine the type of tuna species processed since yellowfin tuna may be subject to an embargo];
 - (ii) Tuna condition (round, loin, dressed, gilled and gutted, other) [Self-explanatory. Information used to track tuna products throughout the processing];
 - (iii) Dolphin-safe status of tuna;
 - (iv) Weight in short tons to the fourth decimal [Self-explanatory. Information used to track the quantity of tuna being processed];
 - (v) Ocean area of capture (eastern tropical Pacific, western Pacific, Indian, eastern and western Atlantic, other) [This information is used to determine whether the tuna may be subject to an embargo since yellowfin tuna caught using a purse seine in the ETP or tuna caught using a high seas drift net may be subject to an embargo];
 - (vi) Catcher vessel [Information used to track tuna back to the vessel of capture];
 - (vii) Trip dates [Information used to correlate tuna fish to observer and vessel records];
 - (viii) Carrier name [Information used to monitor and track origin of tuna];
 - (ix) Unloading dates [Correlates tuna to unloading records to facilitate monitoring and tracking of tuna]; and
 - (x) Location of unloading. [Correlates tuna to unloading records to facilitate monitoring and tracking of tuna.]
 - (xi) Fisheries Certificate of Origin for each imported receipt of tuna. [Required to track and monitor imported tuna.]
- (e) Any exporter, transshipper, importer, processor, or wholesaler/distributor of any tuna or tuna products labeled as “dolphin safe” must produce documentary evidence concerning the origin of the tuna or products within 30 days of receiving a written request from the Administrator, Southwest Region. Documentary evidence may include, but is not limited to, such documents as invoices, packing lists, cannery production logs, and U.S. Customs and Border Protection forms filed at the time of importation.

As explained in the preceding paragraphs, the information gathered has utility. NOAA Fisheries will retain control over the information and safeguard it from improper access, 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. Although the information collected is not expected to be disseminated directly to the public, results may be used in scientific, management, technical or general informational publications. Should NOAA Fisheries Service decide to disseminate the information, it will be subject to the quality control measures and 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 requested information for vessel and operator permits is not submitted electronically at this time because the application requires an original signature certifying the information is true and correct as well as a check or money order. The SWR is exploring the possibility of making the permit applications and an explanation of the process available online at the SWR website at nmfs.swr.noaa.gov. Most of the departure and gear notification reporting requirements associated with the vessel and operator permits and tracking and verification program may be completed by telephone, email, or fax.

4. Describe efforts to identify duplication.

Although similar information is collected about U.S. tuna purse seine vessels under the High Seas Compliance Act of 1995 and the South Pacific Tuna Treaty (SPTT), neither authorize vessel owners or operators to incidentally take marine mammals during commercial fishing operations, and in the case of the SPTT, its jurisdiction does not include the ETP.

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 under the MMPA if these collections were not conducted and U.S. tuna purse seine vessels and operators would not be able to fish for tuna and tuna like species within the ETP, causing an economic hardship to the industry. Annual vessel and operator permits are necessary, because NMFS must certify to the International Review Panel that vessels requesting a DML are eligible to receive a DML and have all of the required dolphin safety gear. In addition, annual permits and notifications provide an accurate estimate of the number of vessels and operators actively participating in the IDCP and fishing for tuna within the ETP. This information is necessary for maintaining the U.S. tuna purse seine fleet within the capacity limits.

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 OMB guidelines (5 CFR 1320.6).

8. Provide information on 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 proposed rule, RIN 0648-AV37, revising applicable regulations so that this information may be collected, will be published for public comment.

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.

Although the information collection is a matter of public record, certain information may be considered proprietary and therefore subject to data confidentiality under the Magnuson-Stevens Act (16 U.S.C. 1801, *et seq.*), Section 402(b), the Dolphin Protection Consumer Information Act (16 U.S.C. 1385), and the National Oceanic and Atmospheric Administration Order 216-100, which sets forth procedures to protect confidentiality of fishery statistics.

11. Provide additional justification for any questions of 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.

The total number of respondents is 101, the total number of annual responses is 418, and the recordkeeping and reporting burden to the general public for the vessel and operator permit requirements, Vessel Register requirements, and the tuna tracking and verification program is estimated to be 327.92 (328) hours per year.

Respondents

Owners/managing owners of large purse seine vessels (applicants for ETP vessel permits):	3
Vessel operations (applicants for operator permits):	25
Owners/managing owners of purse seine vessels (that do not have an ETP vessel permit and are requesting a transit waivers):	10
Owners/managing owners of small purse seine vessels (requesting active status):	1
Owners/managing owners of small purse seine vessels (requesting inactive status):	1
Canned tuna processors (includes those that submit monthly tuna storage removal reports and monthly tuna receiving reports):	21
Exporters, transshippers, importers, processors, and wholesaler/distributors (who must submit documentary evidence at the request of the NMFS Assistant Administrator; may or may not include any of the 21 processors who submit monthly reports):	40
TOTAL	101

This request does not include burden hours on the general public due to voluntary participation in public hearings, meetings or related activities. In future years, the burden hours may further decrease due to reductions in marine mammal take quotas and limited activity in the fishery. The number of burden hours on the general public is directly proportional to the number of applicants for vessel and operator permits.

- (a) Vessel permit application. Total annual hours: 1 Hour, 45 Minutes
(3 applications X 35 minutes/application X 1 year period of validity)
(60 minutes/hour)
- (b) Operator permit application. Total annual hours: 4 Hours, 10 Minutes
(25 applications X 10 minutes/application X 1 year period of validity)
(60 minutes/hour)
- (c) Waiver request to transit ETP without permit including reporting requirements. Total burden hours: 5 Hours
(10 requests X 30 minutes/request X 1 request per year)
(60 minutes/hour)
- (d) Vessel departure notification. Total annual hours: 2 Hours
(3 vessels X 10 minutes/notification X 4 notifications per vessel/year)
(60 minutes/hour)

- (e) Change in permit operator notification. Total annual hours: 30 Minutes
(3 notifications/year X 10 minutes/notification)
(60 minutes/hour)
- (f) Modified net notification. Total annual hours: 30 Minutes
(3 notifications/year X 10 minutes/notification)
(60 minutes/hour)
- (g) Experimental fishing permit application. Total annual hours: 20 Hours
(1 application X 10 hours/application)
(1 report X 10 hours/report)
- (h) Dolphin Mortality Limit request. Total annual hours: 1 Hour, 15 Minutes
Six month and annual Dolphin Mortality Limit Requests
(3 vessels X 15 minutes/request X 1 request per vessel/year)
(60 minutes/hour)
- Per-trip Dolphin Mortality Limit Requests
(2 vessels X 15 minutes/request X 1 request per vessel/year)
(60 minutes/hour)
- (i) Vessel register annual notification. Total annual hours: 40 Minutes
Active Status Request
(1 vessel X 35 minutes/notification X 1 notification per year/ vessel)
(60 minutes/hour)
- Inactive Status Request
(1 vessel X 5 minutes/notification X 1 notification per year/ vessel)
(60 minutes/hour)
- (j) Notification prior to transfer of vessel to foreign registry and flag. Total annual hours: 5 Minutes
(1 notification/year X 5 minutes/notification)
(60 minutes/hour)

Total hours for this set of requirements = **35.92 (36)** (1 hour, 45 minutes + 4 hours, 10 minutes + 5 hours + 2 hours + 30 minutes + 30 minutes + 20 hours + 1 hour, 15 minutes + 40 minutes + 5 minutes).

The estimated annual labor cost to the general public to submit information for the Vessel Register and to apply for vessel and operator permits as well as comply with reporting requirements under the permits is approximately **\$898** (35.92 hours X \$25/hour).

The burden hours for the tracking of verification of “non-dolphin safe” and “dolphin safe” tuna are related to the number of active tuna purse seine vessels in the ETP, U.S. processors, exporters, transshippers, importers, distributors and sellers.

- (a) Arrival notification Total Annual Burden = 2 Hours
$$\frac{3 \text{ vessels} \times 4 \text{ notifications per vessel/year} \times 10 \text{ minutes/notification}}{60 \text{ minutes/hour}}$$
- (b) Tuna tracking form submission Total Annual Burden = 12 Hours
$$\frac{3 \text{ vessels} \times 4 \text{ tuna tracking forms per vessel/year} \times 60 \text{ minutes/tuna tracking form}}{60 \text{ minutes/hour}}$$
- (c) Monthly tuna storage removal reports Total Annual Burden = 6 Hours
$$\frac{3 \text{ processors} \times 12 \text{ reports per processor/year} \times 10 \text{ minutes/report}}{60 \text{ minutes/hour}}$$
- (d) Monthly tuna receiving reports Total Annual Burden = 252 Hours
$$\frac{21 \text{ processors} \times 12 \text{ reports per processor/year} \times 60 \text{ minutes/report}}{60 \text{ minutes/hour}}$$
- (e) Documentary evidence requests by Administrator Total Annual Burden = 20 Hours
$$\frac{40 \text{ requests/year} \times 30 \text{ minutes/request}}{60 \text{ minutes/hour}}$$

Total hours for this set of requirements = **292** (2 + 12 + 6 + 252 + 20).

The estimated annual labor cost to the general public to comply with the tracking and verification reporting requirements is approximately **\$7,300** (292 hours X \$25/hour).

The total hours are **328** (36 + 292). The total labor costs are **\$8,198** (\$898 + \$7,300).

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).

The estimated annual cost to the general public, excluding burden hours, such as maintenance and submission costs associated with the vessel and operator permits is **\$69.48**. There are no capital or start-up costs associated with this information collection.

- (a) Vessel permit application: \$9.90
(3 applications X \$3.00 per application for faxing) = \$9.00
(3 photographs X \$0.30 per photograph) = \$0.90

- (b) Operator permit application:
 (25 applications X \$0.42 postage) = \$10.50
- (c) Waiver request to transit ETP without permit including reporting requirements:
 (10 requests X \$0.42 postage) = \$ 4.20
- (d) Vessel departure notification.
 (3 vessels X 10 minutes/notification X 4 notifications/year X \$0.20/minute telephone charge)
 = \$24.00
- (e) Change in permit operator notification.
 (3 notifications X 10 minutes/notification X \$0.20/minute telephone charge) = \$6.00
- (f) Modified net notification.
 (3 notifications X 10 minutes/notification X \$0.20/minute telephone charge) = \$ 6.00
- (g) Experimental fishing permit application: \$2.24
 (1 application X \$1.12 postage) = \$ 1.12
 (1 report submission X \$1.12 postage) = \$ 1.12
- (h) Dolphin Mortality Limit request: \$2.10
 Six month and annual Dolphin Mortality Limit Requests
 (3 annual or six month DML requests X \$0.42 postage) = \$1.26

 Per-trip Dolphin Mortality Limit Requests
 (2 per trip DML requests X \$0.42 postage) = \$ 0.84
- (i) Vessel register annual notification: \$3.92

 Active Status Request: \$3.30
 (1 notification X \$3.00 per application for faxing) = \$3.00
 (1 photograph X \$0.30 per photograph) = \$0.30

 Inactive Status Request: \$0.62
 (1 notification X \$0.42 postage) = \$0.42
 (1 notification X \$0.10 per envelope) = \$0.10
 (1 notification X \$0.10 per copy) = \$0.10
- (j) Notification prior to transfer of vessel to foreign registry and flag: \$0,62
 (1 notification X \$0.42 postage) = \$ 0.42
 (1 notification X \$0.10 per envelope) = \$0.10
 (1 notification X \$0.10 per copy) = \$0.10

The estimated annual cost to the general public, excluding burden hours, such as maintenance and submission costs associated with tracking of verification of “non-dolphin safe” and “dolphin safe” tuna is **\$880.00**. There are no capital or start-up costs associated with this information collection.

- (a) Arrival notification
 (12 notifications X 10 minutes/notification X \$1.25 /minute telephone charge) = \$150.00
- (b) Tuna tracking form: \$17.76
 (12 tuna tracking forms X \$0.30/copy) = \$3.60
 (12 tuna tracking forms X \$1.18 postage/form) = \$14.16
- (c) Tuna storage removal reports: \$53.28
 (36 removal reports X \$0.30 /copy) = \$10.80
 (36 removal reports X \$1.18 postage/report) = \$42.48
- (d) Monthly tuna processor reports: \$599.76
 (252 processor reports X \$1.20/copy) = \$302.40
 (252 reports X \$1.18 postage/report) = \$297.36
- (e) Documentary evidence requested by Administrator: \$59.20
 (40 reports X 0.30/copy) = \$12.00
 (40 reports X 1.18 postage/report) = \$47.20

The total estimated annual cost to the general public is **\$949.48 (\$69.48 + \$880.00)**.

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

The estimated annual costs for processing vessel and operator permit applications as well as responding to the notification and reporting requirements to the Federal government is determined by calculating the total time necessary for staff to complete the response and multiplying the amount by \$25 per hour. The total annual estimated cost is **\$551.25**.

- (a) Vessel permit application. Total cost: \$83.75

$$\frac{(3 \text{ applications} \times 67 \text{ minutes/application} \times \$25/\text{hour})}{(60 \text{ minutes/hour})}$$
- (b) Operator permit application. Total cost: \$156.25

$$\frac{(25 \text{ applications} \times 15 \text{ minutes/application} \times \$25/\text{hour})}{(60 \text{ minutes/hour})}$$

- (c) Waiver request to transit ETP without permit. Total cost: \$83.34
(10 requests X 20 minutes/request X \$25/hour)
(60 minutes/hour)
- (d) Vessel departure notification. Total cost: \$50.00
(3 vessels X 10 minutes/notification X 4 notifications per vessel X \$25/hour)
(60 minutes/hour)
- (e) Change in permit operator notification. Total cost: \$12.50
(3 notifications X 10 minutes/notification X \$25/hour)
(60 minutes/hour)
- (f) Dolphin Safety Panel Marking Requirements Total cost: \$0.00
No administrative costs associated with marking the safety panel.
- (g) Modified net notification. Total cost: \$12.50
(3 notifications X 10 minutes/notification X \$25/hour)
(60 minutes/hour)
- (h) Experimental fishing permit application. Total cost: \$100.00
(1 application X 4 hours/application and report X \$25/hour)
- (i) Dolphin Mortality Limit request. Total cost: \$20.83
Six month and annual Dolphin Mortality Limit Requests
(3 vessels X 10 minutes/request X 1 request/vessel X \$25/hour)
(60 minutes/hour)
- Per-trip Dolphin Mortality Limit Requests
(2 vessels X 10 minutes/request X 1 request/vessel X \$25/hour)
(60 minutes/hour)
- (j) Vessel Register annual notification. Total cost: \$30.00
Active Status Request
(1 notification X 67 minutes/notification X \$25/hour)
(60 minutes/hour)
- Inactive Status Request
(1 notification X 5 minutes/notification X \$25/hour)
(60 minutes/hour)
- (k) Notification prior to transfer of vessel to foreign registry and flag. Total cost: \$2.08

(1 notification X 5 minutes/notification X \$25/hour)
(60 minutes/hour)

The estimated annual costs for processing reports pertaining to the tuna tracking and verification program as well as responding to the notification and reporting requirements to the Federal government is determined by providing the costs of two staff salaries hired to complete all the duties and responsibilities related to the tuna tracking and verification program. In addition to the staff time allocated to track and verify the origin of landed tuna in the United States, there will be travel costs associated with monitoring the unloading operations and conducting audits and spot checks. Estimated cost is \$207,000.

GS-12 employee = \$104,000 (including benefits)

GS-11 employee = \$88,000 (including benefits)

Travel Costs = \$15,000

(\$500/roundtrip airfare+ (\$150 per diem rate X 5 days) X 6 trips/year X 2 employees)

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

This collection of information includes new collections and reporting requirements. Four new information collection requirements were added to provide information to NMFS for management of the register of vessels: 1) collection of vessel photographs with the vessel permit application; 2) annual written notification to request a vessel of 400 short tons (st) carrying capacity or less be listed on the Vessel Register and be categorized as active; 3) annual written notification to request a vessel of 400 st carrying capacity or less be listed on the Vessel Register and be categorized as inactive; and 4) written notification prior to transfer of a tuna purse seine vessel on the Vessel Register to foreign registry and flag. These four additional requirements will result in an increase of 3 total annual responses, 1 hour in total annual burden hours, and \$5.44 in total annual recordkeeping/reporting costs.

A decrease in the number of vessels expected to participate in this fishery resulted in a decrease in the total annual respondents, responses, burden hours, and recordkeeping/ reporting costs, whereas an increase in the number of tuna processors associated with this fishery resulted in an increase in these annual totals. An increase in postage rates and the inclusion of the costs for faxing, copies, and envelopes contributed to an increase in the total annual recordkeeping/ reporting costs. In addition, the number of respondents to requests for documentary evidence concerning the origin of tuna or tuna products was increased and was added to the total number of annual respondents (it was not included in the previous totals). These program adjustments will result in a net increase of 39 total annual respondents, 152 total annual responses, 181 hours in total annual burden hours, and \$287.13 in total annual recordkeeping/reporting costs (NOTE: in ROCIS, the cost appears to have decreased, due to the amount migrated into the system having been rounded up to \$1,000).

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

Not applicable. The requested information will not be published.

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. Not seeking approval to not display the expiration date for OMB approval.

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

Not applicable. There are no exceptions to the certification statement identified in Item 19 of the OMB-83-I.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not Applicable. This information collection request does not employ statistical methods.

VESSEL PERMIT APPLICATION - 2008

\$200.00 Fee

Species Sought: Yellowfin and Other Tuna and Tuna-like Species

The collection of information is mandated by the Marine Mammal Protection Act (16 U.S.C. 1371) and by implementing regulations contained at 50 CFR §216.24(b)(1). The information supplied on this form will be used by the National Marine Fisheries Service to authorize the incidental take and to alert vessel owners of applicable rules and regulations regarding the permit for the taking of marine mammals incidental to commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean. The name of the vessel and owner, official number, tonnage, carrying capacity and business address supplied on this form may be released under the Freedom of Information Act. All other information supplied on this form are considered proprietary and therefore subject to data confidentiality restriction of National Oceanic and Atmospheric Administration Administrative Order 216-100.

1. VESSEL INFORMATION

a. NAME OF VESSEL:	b. OFFICIAL NUMBER:	c. TONNAGE:
d. CARRYING CAPACITY: (short or metric tons)	e. MAXIMUM VESSEL SPEED: (knots)	
f. FEDERAL, STATE, AND COMMERCIAL FISHING LICENSES: (include type, identification numbers, and expiration dates)		
g. TYPES OF PROCESSING EQUIPMENT:		

2. OWNER INFORMATION

I hereby certify that the above-named vessel, bearing the official number indicated, is owned as follows (State the nature of ownership, e.g., corporation, partnership, joint venture, etc., after the owner's name.):

OWNER'S NAME:
BUSINESS ADDRESS:

TELEPHONE:
FAX:

3. VESSEL PERMIT HOLDER INFORMATION

THE VESSEL PERMIT WILL BE ISSUED TO THE OWNER IDENTIFIED IN BLOCK 2. PROVIDE THE FOLLOWING INFORMATION IF THE PERMIT IS TO BE ISSUED TO THE MANAGING OWNER INSTEAD OF THE OWNER:

MANAGING OWNER'S NAME:
BUSINESS ADDRESS:

TELEPHONE:
FAX:

4. OPERATOR INFORMATION

NAME OF PERMITTED OPERATOR:

5. MARINE MAMMAL SAFETY INFORMATION

Does the above-named vessel intend to make intentional purse seine sets on marine	YES	NO
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mammals to capture tuna?		
IF YES, IS THE VESSEL EQUIPPED WITH THE FOLLOWING DOLPHIN SAFETY GEAR?		
Dolphin Safety Panel	YES	NO
Dolphin Safety Panel Markers	YES	NO
Dolphin Safety Panel Hand Holds are securely fastened	YES	NO
Dolphin Safety Panel Corkline Hangings are securely fastened	YES	NO
Long-range, high-intensity floodlights with a sodium lamp of ≥ 1000 watts or a multivapour lamp of ≥ 1500 watts	YES	NO
Minimum of 3 speedboats equipped with towing bridles or towing posts	YES	NO
At least two Operational Facemasks, Snorkels, or Viewboxes	YES	NO
Operational Raft	YES	NO

6. VESSEL CONTACT PERSON

THE FOLLOWING PERSON HAS THE AUTHORITY TO DEAL WITH NMFS ON BEHALF OF THE VESSEL:	
a. NAME: BUSINESS ADDRESS: TELEPHONE: FAX:	b. RELATIONSHIP TO VESSEL OWNER OR MANAGING OWNER (specify):

7. PERSON COMPLETING THIS APPLICATION

a. NAME:	b. RELATIONSHIP TO VESSEL OWNER OR MANAGING OWNER:
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I agree to release to the National Marine Fisheries Service all records made by Inter-American Tropical Tuna Commission observers during fishing trips aboard the vessel under this permit and furnish the international observer program with all release forms required to authorize the observer data to be provided to NMFS. Under penalty of perjury, I declare that the information in this application is true and complete.

SIGNATURE OF THE PERSON COMPLETING THIS APPLICATION

DATE

Upon completion, submit with a vessel photograph (with vessel registration number showing and legible) and \$200.00 fee in check payable to: National Marine Fisheries Service; Sustainable Fisheries Division; 501 West Ocean Blvd., Suite 4200; Long Beach, CA 90802-4213

Public reporting burden for this collection of information is estimated to average 35 minutes per response, including the 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 collection of information, including suggestions for reducing this burden, to Regional Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, Suite 4200, Long Beach, California, 90802-4213, (562) 980-4001.

The National Marine Fisheries Service may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current and valid OMB Control number.

TITLE 16--CONSERVATION

CHAPTER 31--MARINE MAMMAL PROTECTION

SUBCHAPTER II--CONSERVATION AND PROTECTION OF MARINE MAMMALS

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

(a) Imposition; exceptions

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

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

(2) Marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued therefor under section 1374 of this title subject to regulations prescribed by the Secretary in accordance with section 1373 of this title, or in lieu of such permits, authorizations may be granted therefor under section 1387 of this title, subject to regulations prescribed under that section by the Secretary without regard to section 1373 of this title. Such authorizations may be granted under subchapter IV of this chapter with respect to purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, subject to regulations prescribed under that subchapter by the Secretary without regard to section 1373 of this title. In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate. The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying the preceding sentence, the Secretary--

(A) shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States;

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

(i)(I) the tuna or products therefrom were not banned

from importation under this paragraph before the effective date of section 4 of the International Dolphin Conservation Program Act; or

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

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

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

(C) shall not accept such documentary evidence if--

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

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

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

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

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

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

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

(ii) in the case of tuna or a product containing tuna harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the tuna or tuna product was not harvested with a large-scale driftnet anywhere on the high seas after July 1, 1991.

For purposes of subparagraph (F), the term ``driftnet'' has the meaning given such term in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note), except that, until January 1, 1994, the term ``driftnet'' does not include the use in the northeast Atlantic Ocean of gillnets with a total length not to exceed five kilometers if the use is in accordance with regulations adopted by the European Community pursuant to the October 28, 1991, decision by the Council of Fisheries Ministers of the Community.

(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--

(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.)

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.

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--

``(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''.

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.

TITLE 16--CONSERVATION

CHAPTER 31--MARINE MAMMAL PROTECTION

SUBCHAPTER II--CONSERVATION AND PROTECTION OF MARINE MAMMALS

Sec. 1374. Permits

(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.

\1\ So in original. Probably should be ``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.

(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,

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.

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.

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.

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.''

TITLE 16--CONSERVATION

CHAPTER 31--MARINE MAMMAL PROTECTION

SUBCHAPTER II--CONSERVATION AND PROTECTION OF MARINE MAMMALS

Sec. 1387. Taking of marine mammals incidental to commercial
fishing operations

(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.

\1\ So in original. Probably should be ``Section''.

(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.

(1) 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.

(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.)

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.

Amendments

1996--Subsecs. (a)(1), (c)(2)(B)(ii), (l). 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.

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.

TITLE 16--CONSERVATION

CHAPTER 31--MARINE MAMMAL PROTECTION

SUBCHAPTER II--CONSERVATION AND PROTECTION OF MARINE MAMMALS

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.

(Pub. L. 92-522, title I, Sec. 119, as added Pub. L. 103-238, Sec. 19, Apr. 30, 1994, 108 Stat. 559.)

TITLE 16--CONSERVATION

CHAPTER 31--MARINE MAMMAL PROTECTION

SUBCHAPTER IV--INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

Sec. 1412. International Dolphin Conservation Program

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.

(Pub. L. 92-522, title III, Sec. 302, as added Pub. L. 105-42, Sec. 6(c), Aug. 15, 1997, 111 Stat. 1130.)

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.

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.

TITLE 16--CONSERVATION

CHAPTER 31--MARINE MAMMAL PROTECTION

SUBCHAPTER IV--INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

Sec. 1413. Regulatory authority of Secretary

(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.

(Pub. L. 92-522, title III, Sec. 303, as added Pub. L. 105-42, Sec. 6(c), Aug. 15, 1997, 111 Stat. 1131.)

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.

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.

TITLE 16--CONSERVATION

CHAPTER 31--MARINE MAMMAL PROTECTION

SUBCHAPTER IV--INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

Sec. 1415. Reports by Secretary

Notwithstanding section 1373(f) of this title, the Secretary shall submit annual reports to the Congress which include--

- (1) results of research conducted pursuant to section 1414a of this title;
- (2) a description of the status and trends of stocks of tuna;
- (3) a description of the efforts to assess, avoid, reduce, and minimize the bycatch of juvenile yellowfin tuna and bycatch of nontarget species;
- (4) a description of the activities of the International Dolphin Conservation Program and of the efforts of the United States in support of the Program's goals and objectives, including the protection of dolphin stocks in the eastern tropical Pacific Ocean, and an assessment of the effectiveness of the Program;
- (5) actions taken by the Secretary under section 1371(a)(2)(B) of this title and section 1371(d) of this title;
- (6) copies of any relevant resolutions and decisions of the Inter-American Tropical Tuna Commission, and any regulations promulgated by the Secretary under this subchapter; and
- (7) any other information deemed relevant by the Secretary.

(Pub. L. 92-522, title III, Sec. 305, as added Pub. L. 105-42, Sec. 6(c), Aug. 15, 1997, 111 Stat. 1134.)

Prior Provisions

A prior section 1415, Pub. L. 92-522, title III, Sec. 305, as added Pub. L. 102-523, Sec. 2(a), Oct. 26, 1992, 106 Stat. 3428, related to international commitments, prior to repeal by Pub. L. 105-42, Sec. 6(c), Aug. 15, 1997, 111 Stat. 1130.

A prior section 305 of Pub. L. 92-522 was renumbered section 405 and is classified to section 1421d 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.

TITLE 16--CONSERVATION

CHAPTER 31--MARINE MAMMAL PROTECTION

SUBCHAPTER IV--INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

Sec. 1416. Permits

(a) In general

(1) Consistent with the regulations issued pursuant to section 1413 of this title, the Secretary shall issue a permit to a vessel of the United States authorizing participation in the International Dolphin Conservation Program and may require a permit for the person actually in charge of and controlling the fishing operation of the vessel. The Secretary shall prescribe such procedures as are necessary to carry out this subsection, including requiring the submission of--

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof; and

(B) the tonnage, hold capacity, speed, processing equipment, and type and quantity of gear, including an inventory of special equipment required under section 1413 of this title, with respect to each vessel.

(2) The Secretary is authorized to charge a fee for granting an authorization and issuing a permit under this section. The level of fees charged under this paragraph may not exceed the administrative cost incurred in granting an authorization and issuing a permit. Fees collected under this paragraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in granting authorizations and issuing permits under this section.

(3) After the effective date of the International Dolphin Conservation Program Act, no vessel of the United States shall operate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean without a valid permit issued under this section.

(b) Permit sanctions

(1) In any case in which--

(A) a vessel for which a permit has been issued under this section has been used in the commission of an act prohibited under section 1417 of this title;

(B) the owner or operator of any such vessel or any other person who has applied for or been issued a permit under this section has acted in violation of section 1417 of this title; or

(C) any civil penalty or criminal fine imposed on a vessel, owner or operator of a vessel, or other person who has applied for or been issued a permit under this section has not been paid or is overdue,

the Secretary may--

(i) revoke any permit with respect to such vessel, with or without prejudice to the issuance of subsequent permits;

(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

(iii) deny such permit; or

(iv) impose additional conditions or restrictions on any permit issued to, or applied for by, any such vessel or person under this section.

(2) In imposing a sanction under this subsection, the Secretary shall take into account--

(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

(B) with respect to the violator, the degree of culpability, any

history of prior offenses, and other such matters as justice requires.

(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of transfer.

(4) In the case of any permit that is suspended for the failure to pay a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

(5) No sanctions shall be imposed under this section unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this subchapter or otherwise.

(Pub. L. 92-522, title III, Sec. 306, as added Pub. L. 105-42, Sec. 6(c), Aug. 15, 1997, 111 Stat. 1135.)

References in Text

For effective date of the International Dolphin Conservation Program Act [Pub. L. 105-42], referred to in subsec. (a)(3), see section 8 of Pub. L. 105-42, set out as an Effective Date of 1997 Amendment note under section 1362 of this title.

Prior Provisions

A prior section 1416, Pub. L. 92-522, title III, Sec. 306, as added Pub. L. 102-523, Sec. 2(a), Oct. 26, 1992, 106 Stat. 3430, related to permits for taking dolphins, prior to repeal by Pub. L. 105-42, Sec. 6(c), Aug. 15, 1997, 111 Stat. 1130.

A prior section 306 of Pub. L. 92-522 was renumbered section 406 and is classified to section 1421e 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.

TITLE 16--CONSERVATION

CHAPTER 31--MARINE MAMMAL PROTECTION

SUBCHAPTER IV--INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

Sec. 1417. Prohibitions

(a) In general

It is unlawful--

(1) for any person to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product unless the tuna or tuna product is either dolphin safe or has been harvested in compliance with the International Dolphin Conservation Program by a country that is 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;

(2) except as provided for in subsection 1371(d) of this title, for any person or vessel subject to the jurisdiction of the United States intentionally to set a purse seine net on or to encircle any marine mammal in the course of tuna fishing operations in the eastern tropical Pacific Ocean except in accordance with this subchapter and regulations issued pursuant to this subchapter; and

(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 1371(a)(2) of this title;

(4) for any person to violate any regulation promulgated under this subchapter;

(5) for any person to refuse to permit any duly authorized officer to board a vessel subject to that person's control for purposes of conducting any search or inspection in connection with the enforcement of this subchapter; and

(6) for any person to assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in paragraph (5).

(b) Penalties

(1) Civil penalty

A person that knowingly and willfully violates subsection (a)(1), (2), (3), (4), or (5) of this section shall be subject to a civil penalty under section 1375(a) of this title.

(2) Criminal penalty

A person that knowingly and willfully violates subsection (a)(5) or (a)(6) of this section shall be subject to a criminal penalty under section 1375(b) of this title.

(c) Civil forfeitures

Any vessel (including its fishing gear, appurtenances, stores, and cargo) used, and any fish (or its fair market value) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by this section shall be subject to forfeiture to the United States in the manner provided in section 1860 of this title.

Codification

Another section 307 of Pub. L. 92-522 was renumbered section 407 and is classified to section 1421f of this title.

Amendments

1997--Subsec. (a)(1) to (3). Pub. L. 105-42, Sec. 6(d)(1), added pars. (1) to (3) and struck out former pars. (1) to (3) which read as follows:

``(1) for any person, after June 1, 1994, to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product that is not dolphin safe;

``(2) for any person or vessel that is subject to the jurisdiction of the United States, intentionally to set a purse seine net on or to encircle any marine mammal during any tuna fishing operation after February 28, 1994, except--

``(A) as necessary for scientific research approved by the Inter-American Tropical Tuna Commission;

``(B) in accordance with a recommendation that is approved under section 1412(c)(2) of this title; or

``(C) as authorized by the general permit issued to the American Tunaboat Association on December 1, 1980 (including any additional restrictions applicable under section 1416(a) of this title), notwithstanding any agreement under section 1412 of this title with a country that is not a major purse seine tuna fishing country (as that term is defined in section 1416(c) of this title);

``(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 1415(b)(1) or (2) of this title;''.

Subsec. (b)(2). Pub. L. 105-42, Sec. 6(d)(2), inserted ``(a)(5) or'' before ``(a)(6)''.

Subsec. (d). Pub. L. 105-42, Sec. 6(d)(3), struck out heading and text of subsec. (d). Text read as follows: ``For purposes of this section, tuna or a tuna product is dolphin safe if--

``(1) it does not contain tuna that was harvested on the high seas by a vessel engaged in driftnet fishing, as that term is defined in section 4003 of the Driftnet Impact, Monitoring, Assessment, and Control Act of 1987;

``(2) in the case of tuna or a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean, it is dolphin safe under subsection (d)(2) of section 1385 of this title;

``(3) in the case of tuna or a tuna product that contains tuna harvested outside the eastern tropical Pacific Ocean by a purse seine vessel, it is accompanied by a written statement executed by the captain of the vessel certifying that no purse seine net was intentionally deployed on or to encircle dolphins during the particular voyage on which the tuna was harvested; and

``(4) in the case of tuna or a product that contains tuna harvested outside the eastern tropical Pacific Ocean by a purse seine vessel 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, it is accompanied by a written statement executed by the captain of the vessel and by an observer, certifying that no purse seine net was intentionally deployed on or to encircle marine mammals during the particular voyage on which the tuna was harvested.''

1996--Subsec. (c). Pub. L. 104-208 made technical amendment to reference in original act which appears in text as reference to section 1860 of this title.

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.

PUBLIC LAW 105-42—AUG. 15, 1997

INTERNATIONAL DOLPHIN CONSERVATION
PROGRAM ACT

Public Law 105-42
105th Congress

An Act

Aug. 15, 1997
[H.R. 408]

To amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

International
Dolphin
Conservation
Program Act.
Tuna.
Exports and
imports.
16 USC 1361
note.

SECTION 1. SHORT TITLE; REFERENCES.

(a) **SHORT TITLE.**—This Act may be cited as the “International Dolphin Conservation Program Act”.

(b) **REFERENCES TO MARINE MAMMAL PROTECTION ACT.**—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.).

16 USC 1361
note.

SEC. 2. PURPOSES AND FINDINGS.

(a) **PURPOSES.**—The purposes of this Act 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 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.

SEC. 3. DEFINITIONS.

Section 3 (16 U.S.C. 1362) is amended by adding at the end the following new paragraphs:

“(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.”.

SEC. 4. AMENDMENTS TO TITLE I.

(a) EXCEPTIONS TO MORATORIUM.—Section 101(a)(2) (16 U.S.C. 1371(a)(2)) is amended—

(1) by inserting after the first sentence “Such authorizations may be granted under title III with respect to purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, subject to regulations prescribed under that title by the Secretary without regard to section 103.”; and

(2) by striking the semicolon in the second sentence and all that follows through “practicable”.

(b) DOCUMENTATION REQUIRED.—Section 101(a)(2) (16 U.S.C. 1371(a)(2)) is further amended—

(1) by striking subparagraph (B) and inserting the following:

“(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;”;
- (2) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F), respectively;
- (3) by inserting after subparagraph (B) the following:

“(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 subsection (f) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)); 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.”; and

- (4) by striking “subparagraph (E)” in the matter after subparagraph (F), as redesignated by paragraph (2) of this subsection, and inserting “subparagraph (F)”.

(c) CERTAIN INCIDENTAL TAKINGS.—Section 101 (16 U.S.C. 1371) is further amended by adding at the end the following new subsection:

“(e) ACT NOT TO APPLY TO INCIDENTAL TAKINGS BY UNITED STATES CITIZENS EMPLOYED ON FOREIGN VESSELS OUTSIDE THE UNITED STATES EEZ.—The provisions of this Act 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 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) when employed on a foreign fishing vessel of a harvesting nation which is in compliance with the International Dolphin Conservation Program.”.

(d) PERMITS.—Section 104(h) (16 U.S.C. 1374(h)) is amended to read as follows:

“(h) GENERAL PERMITS.—

Regulations.

“(1) Consistent with the regulations prescribed pursuant to section 103 of this title and to the requirements of section 101 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 306 of this Act, subject to the regulations issued pursuant to section 303 of this Act.”

(e) INTERNATIONAL NEGOTIATIONS.—Section 108(a)(2) (16 U.S.C. 1378(a)(2)) is amended—

(1) by striking “and” at the end of subparagraph (A);

(2) by inserting after subparagraph (B) the following:

“(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;”

(f) RESEARCH GRANTS.—Section 110(a) (16 U.S.C. 1380(a)) is amended—

(1) by striking “(1)” in paragraph (1); and

(2) by striking paragraph (2).

SEC. 5. AMENDMENTS TO DOLPHIN PROTECTION CONSUMER INFORMATION ACT.

(a) LABELING STANDARD.—Subsection (d) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(d)) is amended to read as follows:

“(d) LABELING STANDARD.—

“(1) 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 product that is exported from or offered for sale in the United States to include on the label of that product the term ‘dolphin safe’ or any other term or symbol that falsely claims or suggests that the tuna contained in the product were harvested using a method of fishing that is not harmful to dolphins if the product contains tuna harvested—

“(A) on the high seas by a vessel engaged in driftnet fishing;

“(B) outside the eastern tropical Pacific Ocean by a vessel using purse seine nets—

“(i) in a fishery in which the Secretary has determined that a regular and significant association occurs between dolphins and tuna (similar to the association between dolphins and tuna in the eastern tropical Pacific Ocean), unless such product is accompanied by a written statement, executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Secretary, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna were caught and no dolphins were killed or seriously injured in the sets in which the tuna were caught; or

“(ii) in any other fishery (other than a fishery described in subparagraph (D)) unless the product is accompanied by a written statement executed by the captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna was harvested;

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

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

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

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

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

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

“(I) the Secretary or the Secretary’s designee;

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

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

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

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

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

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

“(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 5 of the Federal Trade Commission Act (15 U.S.C. 45) to label a tuna product with any label or mark that refers to dolphins, porpoises, or marine mammals other than the mark developed under subparagraph (A) unless—

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

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

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

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

“(E) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) 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.”

(b) TRACKING REGULATIONS.—Subsection (f) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)) is amended to read as follows:

“(f) REGULATIONS.—The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement this Act, including regulations to establish a domestic tracking and

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Confidentiality. verification program that provides for the effective tracking of tuna labeled under subsection (d). In the development of these regulations, the Secretary shall establish appropriate procedures for ensuring the confidentiality of proprietary information the submission of which is voluntary or mandatory. The regulations shall address each of the following items:

“(1) The use of weight calculation for purposes of tracking tuna caught, landed, processed, and exported.

“(2) Additional measures to enhance current observer coverage, including the establishment of criteria for training, and for improving monitoring and reporting capabilities and procedures.

“(3) The designation of well location, procedures for sealing holds, procedures for monitoring and certifying both above and below deck, or through equally effective methods, the tracking and verification of tuna labeled under subsection (d).

“(4) The reporting, receipt, and database storage of radio and facsimile transmittals from fishing vessels containing information related to the tracking and verification of tuna, and the definition of set.

“(5) The shore-based verification and tracking throughout the fishing, transshipment, and canning process by means of Inter-American Tropical Tuna Commission trip records or otherwise.

“(6) The use of periodic audits and spot checks for caught, landed, and processed tuna products labeled in accordance with subsection (d).

“(7) The provision of timely access to data required under this subsection by the Secretary from harvesting nations to undertake the actions required in paragraph (6) of this paragraph.

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.”

(c) FINDINGS CONCERNING IMPACT ON DEPLETED STOCKS.—The Dolphin Protection Consumer Information Act (16 U.S.C. 1385) is amended by striking subsections (g), (h), and (i) and inserting the following:

“(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 304(a) of the Marine Mammal Protection Act of 1972, 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 304(a) of the Marine Mammal Protection Act of 1972, 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.

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Publication.

“(h) CERTIFICATION BY CAPTAIN AND OBSERVER.—

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

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

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

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

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

SEC. 6. AMENDMENTS TO TITLE III.

(a) CHANGE OF TITLE HEADING.—The heading of title III is amended to read as follows:

“TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM”.

(b) ADDITIONAL FINDINGS.—Section 301 (16 U.S.C. 1411) is amended—

(1) by striking paragraph (4) of subsection (a) and inserting the following:

“(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.”; and

(2) by striking paragraphs (2) and (3) of subsection (b) and inserting the following:

“(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;”.

(c) Title III (16 U.S.C. 1411 et seq.) is amended by striking sections 302 through 306 (16 U.S.C. 1412 through 1416) and inserting the following:

16 USC 1412.

“SEC. 302. INTERNATIONAL DOLPHIN CONSERVATION PROGRAM.

“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.

“SEC. 303. REGULATORY AUTHORITY OF THE SECRETARY.

16 USC 1413.

“(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 Act 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 3 of the Tuna Conventions Act of 1950 (16 U.S.C. 952).

“(c) EMERGENCY REGULATIONS.—

“(1) If the Secretary determines, on the basis of the best scientific information available (including research conducted under section 304 and information obtained under the International Dolphin Conservation Program) that the incidental mortality and serious injury of marine mammals authorized under this title 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—

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“(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.

“SEC. 304. RESEARCH.

16 USC 1414a.

“(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 the Dolphin Protection Consumer Information Act, 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), 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):

“(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.

16 USC 1415.

“SEC. 305. REPORTS BY THE SECRETARY.

“Notwithstanding section 103(f), the Secretary shall submit annual reports to the Congress which include—

“(1) results of research conducted pursuant to section 304;

“(2) a description of the status and trends of stocks of tuna;

“(3) a description of the efforts to assess, avoid, reduce, and minimize the bycatch of juvenile yellowfin tuna and bycatch of nontarget species;

“(4) a description of the activities of the International Dolphin Conservation Program and of the efforts of the United States in support of the Program’s goals and objectives, including the protection of dolphin stocks in the eastern tropical Pacific Ocean, and an assessment of the effectiveness of the Program;

“(5) actions taken by the Secretary under section 101(a)(2)(B) and section 101(d);

“(6) copies of any relevant resolutions and decisions of the Inter-American Tropical Tuna Commission, and any regulations promulgated by the Secretary under this title; and

“(7) any other information deemed relevant by the Secretary.

“SEC. 306. PERMITS.

16 USC 1416.

“(a) IN GENERAL.—

“(1) Consistent with the regulations issued pursuant to section 303, the Secretary shall issue a permit to a vessel of the United States authorizing participation in the International Dolphin Conservation Program and may require a permit for the person actually in charge of and controlling the fishing operation of the vessel. The Secretary shall prescribe such procedures as are necessary to carry out this subsection, including requiring the submission of—

“(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof; and

“(B) the tonnage, hold capacity, speed, processing equipment, and type and quantity of gear, including an inventory of special equipment required under section 303, with respect to each vessel.

“(2) The Secretary is authorized to charge a fee for granting an authorization and issuing a permit under this section. The level of fees charged under this paragraph may not exceed the administrative cost incurred in granting an authorization and issuing a permit. Fees collected under this paragraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in granting authorizations and issuing permits under this section.

“(3) After the effective date of the International Dolphin Conservation Program Act, no vessel of the United States shall operate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean without a valid permit issued under this section.

“(b) PERMIT SANCTIONS.—

“(1) In any case in which—

“(A) a vessel for which a permit has been issued under this section has been used in the commission of an act prohibited under section 307;

“(B) the owner or operator of any such vessel or any other person who has applied for or been issued a permit under this section has acted in violation of section 307; or

“(C) any civil penalty or criminal fine imposed on a vessel, owner or operator of a vessel, or other person who has applied for or been issued a permit under this section has not been paid or is overdue,

the Secretary may—

“(i) revoke any permit with respect to such vessel, with or without prejudice to the issuance of subsequent permits;

“(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

“(iii) deny such permit; or

“(iv) impose additional conditions or restrictions on any permit issued to, or applied for by, any such vessel or person under this section.

“(2) In imposing a sanction under this subsection, the Secretary shall take into account—

“(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

“(B) with respect to the violator, the degree of culpability, any history of prior offenses, and other such matters as justice requires.

“(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of transfer.

“(4) In the case of any permit that is suspended for the failure to pay a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

“(5) No sanctions shall be imposed under this section unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this title or otherwise.”

(d) Section 307 (16 U.S.C. 1417) is amended—

(1) by striking paragraphs (1), (2), and (3) of subsection (a) and inserting the following:

“(1) for any person to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product unless the tuna or tuna product is either dolphin safe or has been harvested in compliance with the International Dolphin Conservation Program by a country that is 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;

“(2) except as provided for in subsection 101(d), for any person or vessel subject to the jurisdiction of the United States intentionally to set a purse seine net on or to encircle any marine mammal in the course of tuna fishing operations in the eastern tropical Pacific Ocean except in accordance with this title and regulations issued pursuant to this title; and

“(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 101(a)(2);”

(2) by inserting “(a)(5) or” before “(a)(6)” in subsection (b)(2); and

(3) by striking subsection (d).

(e) Section 308 (16 U.S.C. 1418) is repealed.

(f) CLERICAL AMENDMENTS.—The table of contents in the first section of the Marine Mammal Protection Act of 1972 is amended by striking the items relating to title III and inserting in lieu thereof the following:

“TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

“Sec. 301. Findings and policy.

“Sec. 302. International Dolphin Conservation Program.

“Sec. 303. Regulatory authority of the Secretary.

“Sec. 304. Research.

“Sec. 305. Reports by the Secretary.

“Sec. 306. Permits.

“Sec. 307. Prohibitions.”.

SEC. 7. AMENDMENTS TO THE TUNA CONVENTIONS ACT.

(a) Section 3(c) of the Tuna Conventions Act (16 U.S.C. 952(c)) is amended to read as follows:

“(c) at least one shall be either the Administrator, or an appropriate officer, of the National Marine Fisheries Service; and”.

(b) Section 4 of the Tuna Conventions Act (16 U.S.C. 953) is amended to read as follows:

“SEC. 4. GENERAL ADVISORY COMMITTEE AND SCIENTIFIC ADVISORY SUBCOMMITTEE.

“(a) APPOINTMENTS; PUBLIC PARTICIPATION; COMPENSATION.—The Secretary, in consultation with the United States Commissioners, shall—

“(1) appoint a General Advisory Committee which shall be composed of not less than 5 nor more than 15 persons with balanced representation from the various groups participating in the fisheries included under the conventions, and from nongovernmental conservation organizations;

“(2) appoint a Scientific Advisory Subcommittee which shall be composed of not less than 5 nor more than 15 qualified scientists with balanced representation from the public and private sectors, including nongovernmental conservation organizations;

“(3) establish procedures to provide for appropriate public participation and public meetings and to provide for the confidentiality of confidential business data; and

“(4) fix the terms of office of the members of the General Advisory Committee and Scientific Advisory Subcommittee, who shall receive no compensation for their services as such members.

“(b) FUNCTIONS.—

“(1) GENERAL ADVISORY COMMITTEE.—The General Advisory Committee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations, and regulations of the Commission. The General Advisory Committee may attend all meetings of the international commissions to which they are invited by such commissions.

“(2) SCIENTIFIC ADVISORY SUBCOMMITTEE.—

“(A) ADVICE.—The Scientific Advisory Subcommittee shall advise the General Advisory Committee and the Commissioners on matters including—

“(i) the conservation of ecosystems;

“(ii) the sustainable uses of living marine resources related to the tuna fishery in the eastern Pacific Ocean; and

“(iii) the long-term conservation and management of stocks of living marine resources in the eastern tropical Pacific Ocean.

“(B) OTHER FUNCTIONS AND ASSISTANCE.—The Scientific Advisory Subcommittee shall, as requested by the General Advisory Committee, the United States Commissioners, or the Secretary, perform functions and provide assistance required by formal agreements entered into by the United States for this fishery, including the International Dolphin Conservation Program. These functions may include—

“(i) the review of data from the Program, including data received from the Inter-American Tropical Tuna Commission;

“(ii) recommendations on research needs, including ecosystems, fishing practices, and gear technology research, including the development and use of selective, environmentally safe and cost-effective fishing gear, and on the coordination and facilitation of such research;

“(iii) recommendations concerning scientific reviews and assessments required under the Program and engaging, as appropriate, in such reviews and assessments;

“(iv) consulting with other experts as needed; and

“(v) recommending measures to assure the regular and timely full exchange of data among the parties to the Program and each nation’s National Scientific Advisory Committee (or its equivalent).

“(3) ATTENDANCE AT MEETINGS.—The Scientific Advisory Subcommittee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and the General Advisory Subcommittee and shall be given full opportunity to examine and to be heard on all proposed programs of scientific investigation, scientific reports, and scientific recommendations of the commission. Representatives of the Scientific Advisory Subcommittee may attend meetings of the Inter-American Tropical Tuna Commission in accordance with the rules of such Commission.”.

(c) BYCATCH REDUCTION.—The Tuna Conventions Act (16 U.S.C. 951 et seq.) is amended by adding at the end thereof the following:

16 USC 962.

“SEC. 15. REDUCTION OF BYCATCH IN THE EASTERN TROPICAL PACIFIC OCEAN.

“The Secretary of State, in consultation with the Secretary of Commerce and acting through the United States Commissioners, shall seek, in cooperation with other nations whose vessel fish for tuna in the eastern tropical Pacific Ocean, to establish standards and measures for a bycatch reduction program for vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean. The bycatch reduction program shall include measures—

“(1) to require, to the maximum extent practicable, that sea turtles and other threatened species and endangered species are released alive;

“(2) to reduce, to the maximum extent practicable, the harvest of nontarget species;

“(3) to reduce, to the maximum extent practicable, the mortality of nontarget species; and

“(4) to reduce, to the maximum extent practicable, the mortality of juveniles of the target species.”.

SEC. 8. EFFECTIVE DATES.

16 USC 1362
note.

(a) **AMENDMENTS TO TAKE EFFECT WHEN IDCP IN FORCE.**—Sections 3 through 7 of this Act (except for section 304 of the Marine Mammal Protection Act of 1972 as added by section 6 of this Act) 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.

Approved August 15, 1997.

LEGISLATIVE HISTORY—H.R. 408 (S. 39):

HOUSE REPORTS: No. 105-74, Pt. 1 (Comm. on Resources) and Pt. 2 (Comm. on Ways and Means).

CONGRESSIONAL RECORD, Vol. 143 (1997):

May 21, considered and passed House.

July 30, considered and passed Senate, amended, in lieu of S. 39.

July 31, House concurred in Senate amendment.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 33 (1997):

Aug. 15, Presidential statement.

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(iv) *Taking during 2001–2004.* The harvest of Cook Inlet beluga whales is restricted during the four-year period of 2001–2004 as follows:

(A) *Strike limitations.* Subject to the suspension provision of subparagraph (C), a total of six (6) strikes, which could result in up to six landings, are to be allocated through co-management agreement(s).

(B) *Strike allocations.* Four strikes, not to exceed one per year, are allocated to the Native Village of Tyonek. The remaining two strikes will be allocated over the 4-year period through co-management agreement with other Cook Inlet community hunters, with no more than one such strike being allocated during every other year.

(C) *Emergency provisions.* Takings of beluga whales authorized under §216.23 will be suspended whenever unusual mortalities exceed six (6) whales in any year. “Unusual mortalities” include all documented human-caused mortality (including illegal takings and net entanglements but excluding all legally harvested whales) and all documented mortality resulting from unknown or natural causes that occur above normal levels, considered for the purposes of this provision to be twelve beluga whales per year. The level of unusual mortalities shall be calculated by documenting mortality for the calendar year and subtracting twelve. The sum of this result and the carry over of unusual mortality from any previous year from which the population has not recovered is the level of unusual mortalities for the current year. If in any year the number of unusual mortalities exceeds six whales, no strikes will be allowed in that year or in subsequent years until the population has recovered from those mortalities through foregone future harvests and natural recruitment.

(v) *Taking during 2005 and subsequent years.* [Reserved]

[39 FR 1852, Jan. 15, 1974, as amended at 59 FR 50376, Oct. 3, 1994; 64 FR 27927, May 24, 1999; 69 FR 17980, Apr. 6, 2004]

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§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 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:

(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.* 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.

(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 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.

(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

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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. NMF'S 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 na-

ture 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

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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) Frozen:	
0303.42.0020	Yellowfin tuna, whole, frozen
0303.42.0040	Yellowfin tuna, eviscerated, head on, frozen
0303.42.0060	Yellowfin tuna, other, frozen
(B) Airtight Containers: (products containing Yellowfin).	
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) Loins: (Yellowfin).	
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) Other: (products containing Yellowfin).	
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) Frozen:	
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) Airtight Containers: (Other than Yellowfin).	
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) Loins: (Other than Yellowfin).	
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) Other: (only if the product contains tuna).	
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 filets, 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 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

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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) *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) 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 respon-

sible 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) 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.

(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 sec-

tion, 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.* (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).

(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.

[69 FR 55297, Sept. 13, 2004, as amended at 70 FR 19008, Apr. 12, 2005]

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.

[69 FR 55307, Sept. 13, 2004]

§ 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;

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(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.

[69 FR 55307, Sept. 13, 2004]

§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

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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 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.

(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 cannery must allow the NMFS representative access to all areas and records.

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

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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 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

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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.

(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."

[69 FR 55307, Sept. 13, 2004, as amended at 70 FR 19009, Apr. 12, 2005]

§216.94 False statements or endorsements.

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

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

§216.95 Official mark for "Dolphin-safe" tuna products.

(a) This is the "official mark" (see figure 1) designated by the United States Department of Commerce that may be used to label tuna products that meet the "dolphin-safe" standards set forth in the Dolphin Protection Consumer Information Act, 16 U.S.C.

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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;

Magnuson-Stevens Fishery Conservation and Management Act

Public Law 94-265

As amended through October 11, 1996

AN ACT

**To provide for the conservation and management of the fisheries,
and for other purposes.**

J.Feder version (12/19/96)

SEC. 2. FINDINGS, PURPOSES, AND POLICY 16 U.S.C. 1801

(a) FINDINGS.--The Congress finds and declares the following:

(1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, and the anadromous species which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.

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(2) Certain stocks of fish have declined to the point where their survival is threatened, and other stocks of fish have been so substantially reduced in number that they could become similarly threatened as a consequence of (A) increased fishing pressure, (B) the inadequacy of fishery resource conservation and management practices and controls, or (C) direct and indirect habitat losses which have resulted in a diminished capacity to support existing fishing levels.

(3) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade. The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen.

(4) International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified, and implemented.

(5) Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.

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(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, to facilitate long-term protection of essential fish habitats, and to realize the full potential of the Nation's fishery resources.

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(7) A national program for the development of fisheries which are underutilized or not utilized by the United States fishing industry, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.

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(8) The collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States.

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(9) One of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. Habitat considerations should receive increased attention for the conservation and management of fishery resources of the United States.

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(10) Pacific Insular Areas contain unique historical, cultural, legal, political, and geographical circumstances which make fisheries resources important in sustaining their economic growth.

(b) PURPOSES.--It is therefore declared to be the purposes of the Congress in this Act--

99-659, 101-627, 102-251

(1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by exercising (A) sovereign rights for the purposes of exploring, exploiting, conserving, and managing all fish within the exclusive economic zone established by Presidential Proclamation 5030, dated March 10, 1983, and (B) exclusive fishery management authority beyond the exclusive economic zone over such anadromous species and Continental Shelf fishery resources[, and fishery resources in the special areas]*;

(2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;

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(3) to promote domestic commercial and recreational fishing under sound conservation and management principles, including the promotion of catch and release programs in recreational fishing;

(4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each

fishery;

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(5) to establish Regional Fishery Management Councils to exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States;

95-354, 96-561, 104-297

(6) to encourage the development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska, and to that end, to ensure that optimum yield determinations promote such development in a non-wasteful manner; and

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(7) to promote the protection of essential fish habitat in the review of projects conducted under Federal permits, licenses, or other authorities that affect or have the potential to affect such habitat.

(c) **POLICY.**--It is further declared to be the policy of the Congress in this Act—

(1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the conservation and management of fishery resources, as provided for in this Act;

(2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary for the conservation and management of fishery resources, as provided for in this Act;

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(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States and citizens; considers efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; considers the effects of fishing on immature fish and encourages development of practical measures that minimize bycatch and avoid unnecessary waste of fish; and is workable and effective;

(4) to permit foreign fishing consistent with the provisions of this Act;

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(5) to support and encourage active United States efforts to obtain internationally acceptable agreements which provide for effective conservation and management of fishery resources, and to secure agreements to regulate fishing by vessels or persons beyond the exclusive economic zones of any nation;

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(6) to foster and maintain the diversity of fisheries in the United States; and

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(7) to ensure that the fishery resources adjacent to a Pacific Insular Area, including resident or migratory stocks within the exclusive economic zone adjacent to such areas, be explored, developed, conserved, and managed for the benefit of the people of such area and of the United States.

SEC. 3. DEFINITIONS 16 U.S.C. 1802

As used in this Act, unless the context otherwise requires--

(1) The term "anadromous species" means species of fish, which spawn in fresh, or estuarine waters of the United States and which migrate to ocean waters.

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(2) The term "bycatch" means fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch and release fishery management program.

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(3) The term "charter fishing" means fishing from a vessel carrying a passenger for hire (as defined in section 2101(21a) of title 46, United States Code) who is engaged in recreational fishing.

(4) The term "commercial fishing" means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.

(5) The term "conservation and management" refers to all of the rules, regulations, conditions, methods, and other measures (A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and (B) which are designed to assure that—

(i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;

(ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and

(iii) there will be a multiplicity of options available with respect to future uses of these resources.

(6) The term "Continental Shelf" means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such areas.

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(7) The term "Continental Shelf fishery resources" means the following:

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Bamboo Coral--Acanella spp.;