

### Subpart H—Dolphin Safe Tuna Labeling

AUTHORITY: 16 U.S.C. 1385.

#### § 216.90 Purposes.

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

[69 FR 55307, Sept. 13, 2004]

#### § 216.91 Dolphin-safe labeling standards.

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

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

(i) the documentation requirements for dolphin-safe tuna under § 216.92 and 216.93 are met;

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

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

(2) *Non-ETP purse seine vessel*. Outside the ETP by a vessel using a purse seine net:

(i) In a fishery in which the Assistant Administrator has determined that a regular and significant association occurs between dolphins and tuna (similar to the association between dolphins and tuna in the ETP), unless such products are accompanied by a written statement, executed by the Captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna were caught and no dolphins were killed or seriously injured in the sets in which the tuna were caught; or

(ii) In any other fishery unless the products are accompanied by a written statement executed by the Captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna was harvested;

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

(4) *Other fisheries*. By a vessel in a fishery other than one described in paragraphs (a)(1) through (a)(3) of this section that is identified by the Assistant Administrator as having a regular and significant mortality or serious injury of dolphins, unless such product is accompanied by a written statement, executed by the Captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught, provided that the Assistant Administrator determines that such an observer statement is necessary.

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