



## Tuna Tracking and Verification Program

### Frequently Asked Questions on Applicability of Dolphin-safe Requirements to Tuna Caught in the American Samoa Longline Fishery (Revised June 2016)

#### 1. Do “Dolphin-safe” requirements<sup>1</sup> apply to American Samoa longline vessels?

Yes. Dolphin-safe tuna regulations were first revised in 2013 ([78 FR 40997](#)) and again in 2016 (see [81 FR 15444](#))<sup>2</sup> to include requirements applicable to all fisheries, including longline fisheries.

#### 2. What is considered a “dolphin” for the purpose of dolphin-safe requirements?

Species in the family *Delphinidae* are considered “dolphins”. This family includes species such as bottlenose dolphins and rough-toothed dolphins, as well as toothed whales such as false killer whales, pilot whales and killer whales. It does not include sperm whales, baleen whales or beaked whales. The American Samoa longline fishery has had observed incidental interactions with the false killer whale, short-finned pilot whale, rough-toothed dolphin, bottlenose dolphin, and Cuvier’s beaked whale since the observer program started in 2006.

#### 3. What requirements must be met in order for tuna from American Samoa longline vessels to be labeled dolphin-safe?

When delivering dolphin-safe tuna to U.S. canneries, American Samoa longline vessels are required to do the following<sup>3</sup>:

- For fishing trips that *begin before* May 21, 2016, provide a signed captain’s statement to the cannery certifying that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught.
- For fishing trips that *begin on or after* May 21, 2016, provide a signed captain’s statement to the cannery to certify:
  - That no purse seine net or other fishing gear was intentionally deployed on or used to encircle dolphins during the fishing trip and that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught.
  - Completion of the National Marine Fisheries Service Tuna Tracking and Verification Program’s Dolphin-safe Captain’s Training Course<sup>4</sup>.
- If a dolphin was killed or seriously injured as a result of becoming incidentally hooked or entangled in gear, tuna from the set(s) in which the interaction occurred (“non-dolphin-safe” tuna) must be stored physically separate from the rest of the tuna (“dolphin-safe” tuna) from the time of capture through unloading.

#### 4. Do the dolphin-safe provisions affect catch other than tuna?

No. Dolphin-safe provisions only apply to the true tuna species that belong to the genus *Thunnus* (includes albacore, yellowfin, and bigeye tunas) and to skipjack tuna (*Katsuwonus pelamis*).

<sup>1</sup> Dolphin-safe tuna regulations are found at [50 CFR part 216 Subpart H](#). Specific regulations that pertain to the separation of dolphin-safe tuna from non-dolphin-safe tuna for the American Samoa longline fishery can be found at 50 CFR 216.91(a) & (a)(4) and at 50 CFR 216.93(c)(3)(i) & (ii). See appendix.

<sup>2</sup> This Federal Register publication may be viewed online at <https://federalregister.gov/a/2016-06450>.

<sup>3</sup> These requirements also apply to U.S. longline vessels delivering tuna to foreign canneries or processors where the tuna will be labeled dolphin-safe for the U.S. market.

<sup>4</sup> This training course may be completed by reading the materials online at <http://www.nmfs.noaa.gov/pr/dolphinsafe/dsctc.htm>. No course registration or certificate of completion will be issued. By signing the captain’s statement, the captain is certifying completion of the training course. See [http://www.nmfs.noaa.gov/pr/dolphinsafe/docs/new\\_captain\\_statement\\_march\\_2016\\_ifr.pdf](http://www.nmfs.noaa.gov/pr/dolphinsafe/docs/new_captain_statement_march_2016_ifr.pdf) for the captain’s statement template for fishing trips that begin on or after May 21, 2016.

**5. What do I need to do with the tuna catch if a dolphin is killed or seriously injured during the set?**

The tuna from sets where a dolphin was killed or seriously injured (i.e. non-dolphin-safe tuna) must be kept physically separate from dolphin-safe tuna caught in other sets that will be labeled dolphin-safe. The captain is responsible for enacting procedures during each set to ensure dolphin-safe tuna is kept physically separate from non-dolphin-safe tuna, and for designating where non-dolphin-safe tuna is to be stored aboard the vessel.

**6. What are some methods of separating dolphin-safe catch from non-dolphin-safe catch?**

Tuna caught during a set where a dolphin was killed or seriously injured must be kept ***physically separated*** through unloading at the cannery. Regulations specify that the use of netting, other material or separate storage areas can be used. Other materials can include trash bags, tarp, netting, fabric or other material that is readily available that can create a physical separation within the storage area. It should be noted that markings on the tuna, such as tying line to the tail or cutting off the tail, are ***not*** sufficient to meet the requirement to keep non-dolphin-safe tuna physically separated from dolphin-safe tuna.

*Example:* If the vessel has only one storage area, a section of netting or a tarp can be laid over previously caught dolphin-safe tuna. All non-dolphin-safe tuna from a particular set can then be stored on top of the net or tarp. At the end of the set, an additional section of netting or a tarp is laid on top of the non-dolphin-safe tuna. By tagging both sections of netting or tarps, identification of the non-dolphin-safe tuna has been made so that future catches of dolphin-safe tuna can continue to be stored in the same vessel storage area.

**7. What does “serious injury” mean?**

“Serious injury” means ***any injury likely*** to cause mortality.

**8. Will the on-board observer make a determination that an injury to a dolphin was a “serious injury”?**

No. Serious injury determinations will be made by the NOAA Fisheries American Samoa Longline Observer Program representative in Pago Pago ***after*** the on-board observer returns to port. During the trip, the on-board observer will collect written or photographic documentation of any marine mammal interaction. After the on-board observer returns, the Observer Program will immediately review the observer’s data determining if there was a dolphin mortality or serious injury during the trip, and will deliver the Observer Statement to the vessel prior to offload. **However, it should be noted the captain is still responsible for following all applicable dolphin-safe requirements.**

**9. What happens if non-dolphin-safe tuna are not separated from dolphin-safe tuna?**

If the tuna from a set where a dolphin was killed or seriously injured is not kept physically separated from the rest of the dolphin-safe tuna catch from that trip, the ***entire tuna catch from that trip*** is considered non-dolphin-safe.

**10. Can I discard tuna at sea that came from sets where a dolphin was killed or seriously injured?**

Yes. No regulations prohibit discarding tuna caught west of 150° West longitude.



For dolphin-safe related questions, contact Bill Jacobson at (562) 980-4035 or at Bill.Jacobson@noaa.gov or contact Daniel Studt at (562) 980-4073 or at Daniel.Studt@noaa.gov. For additional information, visit the Tuna Tracking and Verification Program website at <http://www.nmfs.noaa.gov/pr/dolphinsafe>. This document was prepared jointly by the NOAA Fisheries Tuna Tracking and Verification Program, the NOAA Fisheries American Samoa Longline Observer Program, and by the Western Pacific Regional Fishery Management Council.

(June 7, 2016 version)

## APPENDIX

### §216.91 Dolphin-safe labeling standards.

#### 50 CFR 216.91(a)(3)(iii) & (a)(4):

(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:

\* \* \*

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

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

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

(B) The Captain of the vessel has completed the NMFS Tuna Tracking and Verification Program dolphin-safe captain’s training course. The NMFS Tuna Tracking and Verification Program dolphin-safe captain’s training course is available on the Web site of the NMFS Tuna Tracking and Verification Program at <http://www.nmfs.noaa.gov/pr/dolphinsafe>.

\* \* \*

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

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#### For non-purse seine fisheries

#### 50 CFR 216.93(c)(3)(i) & (ii):

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

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