



Billing Code 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XE905

Taking and Importing of Marine Mammals and Dolphin-safe Tuna Products

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; determination of regular and significant mortality and serious injury of dolphins.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) has issued a determination, under the Dolphin Protection Consumer Information Act (DPCIA), of regular and significant mortality and serious injury of dolphins in gillnet fisheries harvesting tuna by vessels flagged under the Governments of India, Iran, Mozambique, Pakistan, Oman, Saudi Arabia, Sri Lanka, Tanzania, the United Arab Emirates, and Yemen. This determination triggers additional documentation requirements for tuna product from those fisheries that is exported from or offered for sale in the United States, including that such tuna must be accompanied by a written statement executed by an observer participating in a national or international program acceptable to the Assistant Administrator, in addition to such statement by the captain of the vessel, that certifies that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught and certain other required information regarding dolphin interactions and segregation of tuna. These determinations were based on review of scientific information and, when available, documentary evidence submitted by the relevant government.

DATES: Effective [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], except the new requirements for observer statements that will be effective upon announcement in the **Federal Register** of approval by the Office of Management and Budget under the Paperwork Reduction Act.

FOR FURTHER INFORMATION CONTACT: Nina M. Young, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Phone: 301-427-8383 Email: *Nina.Young@noaa.gov*. More information on this final action can be found on the NMFS Web site at [http:// www.nmfs.noaa.gov/ia/](http://www.nmfs.noaa.gov/ia/).

SUPPLEMENTARY INFORMATION: The DPCIA, 16 U.S.C. 1385 et seq., states that 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 does not meet the dolphin safe requirements set out in the statute and elaborated in the NMFS implementing regulations.

50 CFR 216.91 provides that tuna product prepared from tuna harvested by purse seine vessels of more than 400 short tons carrying capacity in the eastern tropical Pacific Ocean (ETP) and labeled “dolphin safe” is required to be accompanied by both a captain and an observer statement that the tuna meets the “dolphin safe” criteria under the DPCIA. Tuna product prepared from tuna harvested in other fisheries and labeled “dolphin safe” is required to be accompanied by a captain’s statement that the tuna meets the “dolphin safe” criteria and may require an observer statement if additional requirements are triggered.

In addition, under 50 CFR 216.91, tuna product labeled “dolphin safe” that was prepared from tuna caught in a fishery “in which the Assistant Administrator has determined that either a regular and significant association between dolphins and tuna (similar to the association between dolphins and tuna in the ETP) or a regular and significant mortality or serious injury of dolphins is occurring” must be 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, unless the Assistant Administrator determines an observer statement is unnecessary.” The captain and observer statements must certify that: no fishing gear was intentionally deployed on or used to encircle dolphins during the trip on which the tuna were caught; no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught; and if non-dolphin-safe tuna was retained on the same fishing trip; and (C) tuna caught in sets designated as dolphin-safe was stored physically separate from tuna caught in a non-dolphin-safe set by the use of netting, other material, or separate storage areas from the time of capture through unloading.

50 CFR 216.91 provides that, for tuna product prepared from tuna harvested in other than the ETP large purse seine fishery and labeled “dolphin safe,” U.S. processors and importers of record must collect and retain for 2 years information on each point in the chain of custody regarding the shipment of the tuna or tuna product to the point of entry into U.S. commerce. The retained information must be provided to NMFS upon request and must be sufficient for NMFS to conduct a trace back to verify that the tuna product certified as dolphin-safe to NMFS, in fact, meets the dolphin-safe requirements for such certification.

In addition, under 50 CFR 216.91, tuna product prepared from tuna harvested in fisheries in which the Assistant Administrator has determined that a “regular and significant” mortality or

serious injury of dolphins or a “regular and significant” tuna-dolphin association is occurring and labeled dolphin-safe must be accompanied by a government certificate validating: 1) the catch documentation is correct; 2) the tuna or tuna products meet the dolphin-safe standards under 50 CFR 216.91; and 3) the chain of custody information is correct.

The Assistant Administrator makes a determination of “regular and significant mortality or serious injury of dolphins” based upon the readily available information showing that the mortality or serious injury occurring in the fishery exceeds that of the large purse seine tuna fishery in the ETP.

A regular and significant determination will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the mortality and serious injury of dolphins for a particular fishery is less than that occurring in the large purse seine tuna fishery in the ETP.

Pursuant to 50 CFR 216.91(a)(3)(v), the Assistant Administrator considered readily available information and documentary evidence submitted, in response to letters requesting information, by the relevant governments and determined that gillnet fisheries harvesting tuna flagged under the jurisdiction of the Governments of India, Iran, Mozambique, Pakistan, Oman, Saudi Arabia, Sri Lanka, Tanzania, the United Arab Emirates, and Yemen have a regular and significant mortality or serious injury of dolphins in the course of those fishing operations.

After consultation with the Department of State, the Assistant Administrator issued a regular and significant determination for such gillnet fisheries to the Governments of India, Iran, Mozambique, Pakistan, Oman, Saudi Arabia, Sri Lanka, Tanzania, the United Arab Emirates, and Yemen. Tuna products from those fisheries harvested on fishing trips that begin on or after the effective date of this notice are therefore subject to the regulations set forth in 50 CFR

216.91(a)(3)(v) and (a)(5)(ii), including a requirement that tuna and tuna products from these fisheries exported from or offered for sale in the United States that are marketed as or include on the label of that product the term “dolphin safe” must be accompanied, as described in 50 CFR 216.91(a)(3)(v), by a written statement executed by both the captain of the vessel and also, as described above, a statement by an observer participating in a national or international program acceptable to the Assistant Administrator, that certifies that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught and certain other required information regarding dolphin interactions and segregation of tuna.

The Assistant Administrator has not yet determined that any national or international observer program operating in the fisheries identified in this notice are “acceptable” for purposes of 50 CFR 216.91(a)(3)(v). To make determinations that an observer program is “acceptable” for purposes of 50 CFR 216.91(a)(3)(v), the Assistant Administrator will use the applicable criteria set forth in the **Federal Register** notice published July 14, 2014, (79 FR 40718) entitled “Determination of Observer Programs as Qualified and Authorized by the Assistant Administrator for Fisheries.” Government authorities of the nations identified above are invited

to submit information to NMFS that would support a determination that an observer program is acceptable for the purposes of making the statements required under 50 CFR 216.91(a)(3)(v).

Dated: September 21, 2016.

John Henderschedt,

Director,

Office of International Affairs and Seafood Inspection,

National Marine Fisheries Service.

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