

Secretary of Commerce, determined that the chase and intentional deployment on or encirclement of dolphins with purse seine nets is not having a significant adverse impact on depleted dolphin stocks in the Eastern Tropical Pacific Ocean (ETP). This finding determines the definition of dolphin-safe for tuna products containing tuna harvested in the ETP by purse seine vessels with carrying capacity greater than 400 short tons and sold in the United States.

DATES: This finding became effective December 31, 2002.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: The Marine Mammal Protection Act and the Dolphin Protection Consumer Information Act (DPCIA), as amended by the International Dolphin Conservation Program Act, require the Secretary of Commerce to conduct specified scientific research and make a finding, based on the results of that research, information obtained under the International Dolphin Conservation Program, and any other relevant information, as to 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 ETP.

On December 31, 2002, the Assistant Administrator for the National Marine Fisheries Service, on behalf of the Secretary of Commerce, determined that the chase and intentional deployment on or encirclement of dolphins with purse seine nets is not having a significant adverse impact on depleted dolphin stocks in the ETP. A copy of the finding and the rationale supporting the finding are set forth below. Copies of supporting documentation referenced in the rationale may be found on the Internet at http://www.nmfs.noaa.gov/prot_res/PR2/Tuna_Dolphin/tunadolphin.html.

This finding determines the definition of dolphin-safe for tuna products containing tuna harvested in the ETP by purse seine vessels with carrying capacity greater than 400 short tons and sold in the United States. As a result of this finding, the dolphin-safe labeling standard shall be that prescribed by section (h)(1) of the DPCIA. Therefore, dolphins can be encircled or chased, but no dolphins can be killed or seriously injured in the set in which the tuna was harvested.

DATES: This finding was effective December 31, 2002.

Dated: January 9, 2003.

William T. Hogarth,

Assistant Administrator, National Marine Fisheries Service.

Final Finding Required by the Dolphin Protection Consumer Information Act, 16 U.S.C. 1385(g)(2).

The Dolphin Protection Consumer Information Act (DPCIA) requires the Secretary of Commerce (Secretary) to make a final finding by December 31, 2002 on whether the intentional deployment on or the encirclement of dolphin with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the Eastern Tropical Pacific (ETP) region. 16 U.S.C. 1385(g)(2) The authority to make the finding has been delegated to the NOAA Assistant Administrator for Fisheries. Based on the information reviewed, I hereby find the intentional deployment on or encirclement of dolphin with purse seine nets in not having a significant adverse effect on any depleted dolphin stock in the ETP.

Summary

Since the late 1950's, the predominant tuna fishing method in the ETP has been to encircle schools of dolphins with a purse seine fishing net to capture the tuna concentrated below. Hundreds of thousands of dolphins died as a result of this practice in the early years of this fishery. Marine Mammal Protection Act (MMPA) provisions, improved fishing techniques, and international cooperation have resulted in greatly reduced dolphin mortality.

In 1997, the MMPA and the DPCIA were amended by the International Dolphin Conservation Program Act (IDCPA), to require the Secretary to conduct specified scientific research and make a finding, based on the results of that research, information obtained under the International Dolphin Conservation Program (IDCP), and any other relevant information, 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 ETP. This finding changes the dolphin-safe labeling standard as it applies to tuna harvested in the ETP by purse seine vessels with carrying capacity greater than 400 short tons and sold in the United States. The finding must be made by December 31, 2002, and the research findings must be submitted to Congress within 90 days.

To arrive at a finding, NOAA Fisheries, in consultation with the Marine Mammal Commission (MMC) and the Inter-American Tropical Tuna Commission (IATTC), conducted "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 ETP." Based on the research results and the other best available information, I have concluded that the intentional deployment on or encirclement of dolphins with purse seine nets is not having a significant adverse impact on depleted dolphin stocks in the ETP. This finding means that the dolphin-safe labeling standard shall be that prescribed by section (h)(1) of the DPCIA. Therefore, dolphin-safe means that dolphins can be encircled or chased, but no dolphins can be killed or seriously injured in the set in which the tuna was harvested. This finding will become effective immediately.

A **Federal Register** Notice will be published containing more information on this finding. The Final Science Report will be submitted to Congress within 90 days.

December 31, 2002.

William T. Hogarth, Ph.D.,

Assistant Administrator for Fisheries.

Organized Decision Process (ODP) Development and Analysis

Background

The Marine Mammal Protection Act (MMPA) and the Dolphin Protection Consumer Information Act (DPCIA), as amended by the International Dolphin Conservation Program Act (IDCPA), require the Secretary of Commerce to conduct specified scientific research and make a finding, based on the results of that research, information obtained under the International Dolphin Conservation Program (IDCP), and any other relevant information, as to whether or not 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 (ETP). The Secretary's finding serves as the basis for determining the definition of "dolphin-safe" as applicable to tuna harvested by purse seine vessels with carrying capacities of greater than 400 short tons operating in the ETP. Further, the DPCIA required the Secretary to make an initial finding in 1999, and a final finding no later than December 31, 2002.

On April 29, 1999, the National Marine Fisheries Service (NOAA Fisheries), on behalf of the Secretary, made an initial finding that there was insufficient evidence at that time to determine whether the deployment on and encirclement of dolphins by the