

cluding 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, §305, as added Pub. L. 105-42, §6(c), Aug. 15, 1997, 111 Stat. 1134.)

#### PRIOR PROVISIONS

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

### § 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, §306, as added Pub. L. 105-42, §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, §306, as added Pub. L. 102-523, §2(a), Oct. 26, 1992, 106 Stat. 3430, related to permits for taking dolphins, prior to repeal by Pub. L. 105-42, §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.

**§ 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<sup>1</sup> 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<sup>2</sup>

(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) 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) 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.

(Pub. L. 92-522, title III, §307, as added Pub. L. 102-523, §2(a), Oct. 26, 1992, 106 Stat. 3431; amended Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41; Pub. L. 105-42, §6(d), Aug. 15, 1997, 111 Stat. 1136.)

## 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, §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, §6(d)(2), inserted “(a)(5) or” before “(a)(6)”.

Subsec. (d). Pub. L. 105-42, §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.”

<sup>1</sup> So in original. Probably should be “section”.

<sup>2</sup> So in original. The word “and” probably should not appear.