

(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;

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

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

“(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.”

1996—Subsec. (c). Pub. L. 104-208 made technical amendment to reference in original act which appears in text as reference to section 1860 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

For effective date of amendment by Pub. L. 105-42, see section 8 of Pub. L. 105-42, set out as a note under section 1362 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-208, div. A, title I, §101(a) [title II, §211(b)], Sept. 30, 1996, 110 Stat. 3009, 3009-41, provided that the amendment made by that section is effective 15 days after Oct. 11, 1996.

### § 1418. Repealed. Pub. L. 105-42, §6(e), Aug. 15, 1997, 111 Stat. 1137

Section, Pub. L. 92-522, title III, §308, as added Pub. L. 102-523, §2(a), Oct. 26, 1992, 106 Stat. 3432, related to authorization of appropriations.

Another section 308 of Pub. L. 92-522 was renumbered section 409, and is classified to section 1421g of this title.

#### EFFECTIVE DATE OF REPEAL

For effective date of repeal, see section 8 of Pub. L. 105-42, set out as an Effective Date of 1997 Amendment note under section 1362 of this title.

### SUBCHAPTER V—MARINE MAMMAL HEALTH AND STRANDING RESPONSE

#### § 1421. Establishment of Program

##### (a) Establishment

The Secretary shall, in consultation with the Secretary of the Interior, the Marine Mammal Commission, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, including stranding network participants, establish a program to be known as the “Marine Mammal Health and Stranding Response Program”.

##### (b) Purposes

The purposes of the Program shall be to—

(1) facilitate the collection and dissemination of reference data on the health of marine mammals and health trends of marine mammal populations in the wild;

(2) correlate the health of marine mammals and marine mammal populations, in the wild, with available data on physical, chemical, and biological environmental parameters; and

(3) coordinate effective responses to unusual mortality events by establishing a process in the Department of Commerce in accordance with section 1421c of this title.

(Pub. L. 92-522, title IV, §401, formerly title III, §301, as added Pub. L. 102-587, title III, §3003(a), Nov. 4, 1992, 106 Stat. 5060; renumbered title IV, §401, and amended Pub. L. 103-238, §24(b), (c)(1), Apr. 30, 1994, 108 Stat. 565, 566.)

#### AMENDMENTS

1994—Subsec. (b)(3). Pub. L. 103-238, §24(c)(1), made technical amendment to reference to section 1421c of this title to reflect renumbering of corresponding section of original act.

#### FINDINGS

Pub. L. 102-587, title III, §3002, Nov. 4, 1992, 106 Stat. 5060, provided that: “The Congress finds the following:

“(1) Current stranding network participants have performed an undeniably valuable and ceaseless job of responding to marine mammal strandings over the last 15 years.

“(2) Insufficient understanding of the connection between marine mammal health and the physical, chemical, and biological parameters of their environment prevents an adequate understanding of the causes of marine mammal unusual mortality events.

“(3) An accurate assessment of marine mammal health, health trends in marine mammal populations in the wild, and causes of marine mammal unusual mortality events cannot be made without adequate reference data on marine mammals and the environment in which they live.

“(4) A systematic assessment of the sources, presence, levels, and effects of potentially harmful contaminants on marine mammals would provide a better understanding of some of the causes of marine mammal unusual mortality events and may serve as an indicator of the general health of our coastal and marine environments.

“(5) Responses to marine mammal unusual mortality events are often uncoordinated, due to the lack of sufficient contingency planning.