

CHAPTER 5.

MARINE MAMMAL PROTECTION

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An Act to provide for the protection of dolphins and other marine mammals captured in the course of commercial fishing operations in the eastern tropical Pacific Ocean by flag vessels of the Republic of the Marshall Islands.

Commencement: February 19, 1990
Source: P.L. 1990-84

§1. Short title.

This Act may be cited as the “Marine Mammal Protection Act 1990. “[*P.L. 1990-84, § 1.*]

§2. Legislative findings.

The Government of the Republic of the Marshall Islands recognizes that marine mammals are resources of international significance and that they should be protected to the extent feasible with sound policies of resource management. The primary objective of their management should be to maintain their health and stability within the marine ecosystem. [*P.L. 1990-84, § 2.*]

§3. Scope and application

The Species of marine mammals which are the subject of this Act are the following:

- (a) the offshore spotted dolphin;
- (b) the coastal spotted dolphin;
- (c) the eastern spinner dolphin;
- (d) the whitebelly spinner dolphin;
- (e) the Coasta Rican spinner dolphin;
- (f) the common dolphin;
- (g) the striped dolphin; and
- (h) any other species of small toothed cetaceans, captured in the course of commercial fishing operations in the eastern tropical Pacific Ocean. [*P.L. 1990-84, § 3.*]

§4. Vessel operating permits required.

Vessels of the Republic of the Marshall Islands flagged pursuant to the Maritime Act 1990 (34 MIRC, Chapter 3A), fishing for tuna in the eastern tropical Pacific Ocean bounded by forty (40) degrees south latitude by forty (40) degrees north latitude by one hundred sixty (160) degrees west longitude and whose carrying capacity is four hundred (400) tons of greater, shall obtain a vessel operating permit to fish tuna associated with marine mammals [*P.L. 1990-84, § 4. Reference to the Maritime Act 1987 was substituted with the Maritime Act 1990, as the 1990 Act repealed the Maritime Act of 1987.*]

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§5. International program.

Persons who have obtained vessel operating permits pursuant to Section 4 of this Act (hereinafter, “the permittees”) shall participate in an international program designated by the Government of the Marshall Islands for protecting marine mammals, providing facilities so that observers and scientific researchers can carry out data collection, monitoring, and research responsibilities on board the tuna vessels. Such participation in the international program is necessary to monitor the effectiveness of marine mammal rescue gear and procedures and to record the incidental mortality of marine mammals associated with fishing. [P.L. 1990-84, § 5.]

§6. Records.

The permittees shall maintain and submit records of their fishing activities involving tuna and marine mammals according to the requirements of the international program designated by the Government for the Republic of the Marshall Islands. Records and information required by the international program shall be made available to the Government of the Republic of the Marshall Islands upon request, and may be released directly to the inter-national program with prior written authorization of the Government of the Republic of the Marshall Islands. [P.L. 1990-84, § 6]

§7. Safety panel.

The permittees shall install and maintain a safety panel in their tuna purse seine net to avoid the entanglement of marine mammals captured during tuna fishing operations. The safety panel must be constructed of one and one-half inch mesh in order to cover the perimeter of the back-down area. The safety panel must have a minimum length of three hundred twenty-nine (329) meters (180 fathoms). If the purse seine net has more than eighteen (18) strips, the safety panel must have a minimum length of ten (10) fathoms for each strip. The safety panel must be clearly marked so as to be visible during fishing operations, and three (3) towing points must be located in the net at one-quarter, one-half, and three-quarters of the net. [P.L. 1990-84, § 7]

§8. Permittee requirements.

The permittees shall be required to:

- (a) do a back-down maneuver when marine mammals are captured in a tuna set, which consists of moving the vessel in reverse in order to form a channel and cause the sinking of the cork line of the net to allow the release of trapped marine mammals;
- (b) undertake maneuvers necessary to avoid the collapse of the net in order to prevent marine mammals from being trapped or from coming in contact with the net. A minimum of two speedboats, equipped with towing bridles, should be immediately available to hold the net open in order to prevent the net from collapsing and to assist in the hand rescue of trapped marine mammals;
- (c) undertake maneuvers for the release and rescue of marine mammals that are not released during the backdown maneuver. This procedure requires the use of speedboats to force the marine mammals toward the backdown channel and the use of persons in a rubber raft to release marine mammals trapped in a net;
- (d) remove all live marine mammals from the net before sack up and brailing the tuna on board the vessel. Brailing and sacking up of live mammals in the net is prohibited;
- (e) use lights capable of producing a minimum of one hundred forty thousand (140,000) lumens of output for use in darkness to carry out marine mammal rescue procedures. Vessels must complete the backdown maneuver and begin rolling the net to sack-up no later than thirty (30) minutes after sundown, unless the operator qualifies for a waiver because of the operator’s proven ability to complete sets in darkness with a mortality rate less than or equal to the fleet’s average during daylight; and

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- (f) restrict the use of explosive devices to influence the movements of dolphin to those devices that contain less than forty (4) grains (2.292 grams) of explosive material and insure that the devices are discharged in a manner that precludes any harm to the dolphin. [P.L. 1990-84, § 8. Paragraphs were renumbered to conform to the format and style of the Code.]

§9. Prohibition.

The permittees are prohibited from making tuna sets associated with marine mammals involving pure schools of eastern spinner dolphin, coastal spotted dolphin, and on any other pure schools of marine mammals except offshore spotted dolphin, striped dolphin, and common dolphin. [P.L. 1990-4, § 9.]

§10. Peer review panel.

The permittees shall participate in or appear before a peer review panel of expert skippers designated by the Government of the Republic of the Marshall Islands for the purpose of reviewing and recommending improvements in the performance of the individual tuna permittee in releasing and rescuing marine mammals during tuna fishing operations. Vessel owners and operators shall provide data for each trip to the Government of the Republic of the Marshall Islands, or its designee, that shall become part of a skipper performance system that identifies the operators with consistently higher dolphin mortality rates than the majority of the nation's fleet, for the purpose of providing remedial training to the operator, and, if the performance of such operator does not improve, removing the operator from the fishery. [P.L. 1990-84, § 10.]

§11. Regulations.

The Minister of Resources and Development may, in accordance with the Act, adopt such regulations as are necessary to carry out this Act. [P.L. 1990-84, § 11.]

§12. Violations and penalties.

(1) Any person who is found to have contravened this Act or any regulation made under this Act shall be liable for a civil penalty.

(2) The amount of the civil penalty shall not exceed one million dollars (US \$1,000,000) for each violation. Each day of a continuing violation shall constitute a separate offense.

(3) In determining the amount of such penalty, the court shall take into account the nature, circumstance, extent and gravity of the prohibited act or acts committed and, with respect to the violators, the degree of culpability, any history of previous offenses, and such other matters which may be relevant.

(4) In addition to any other civil penalty which may be imposed, the failure by a permittee to comply with the provisions of this Act shall result in the forfeiture of the fishing permit to fish for tuna in the eastern tropical Pacific Ocean.

(5) It shall be the duty of the Attorney General to initiate all proceedings under this Section and to recover the amount imposed as a civil penalty. [P.L. 1990-84, § 12]

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§13. Jurisdiction of courts.

The High Court of the Republic of Marshall Islands shall have jurisdiction over any legal proceeding arising under this Act. The Court may at any time:

- (a) enter restraining orders or prohibitions;
- (b) issue warrants, process *in rem* or other process;
- (c) prescribe and accept satisfactory bonds or other security; and
- (d) take such other actions as are necessary in the interests of justice. [*P.L. 1990-84, § 13.*]

Note: