

requirements of §216.91, to produce, within a specified time period, all documentary evidence concerning the origin of any product that is offered for sale as “dolphin safe,” including the original invoice.

**§216.95 False statements or endorsements.**

Any person who knowingly and willfully makes a false statement or false endorsement required by §216.92 is liable for a civil penalty not to exceed \$100,000, that may be assessed in an action brought in any appropriate District Court of the United States on behalf of the Secretary.

**Subpart I—General Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities**

SOURCE: 61 FR 15887, Apr. 10, 1996, unless otherwise noted.

**§216.101 Purpose.**

The regulations in this subpart implement section 101(a)(5) (A) through (D) of the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1371(a)(5), which provides a mechanism for allowing, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographic region.

**§216.102 Scope.**

The taking of small numbers of marine mammals under section 101(a)(5) (A) through (D) of the Marine Mammal Protection Act may be allowed only if the National Marine Fisheries Service:

(a) Finds, based on the best scientific evidence available, that the total taking by the specified activity during the specified time period will have a negligible impact on species or stock of marine mammal(s) and will not have an unmitigable adverse impact on the availability of those species or stocks of marine mammals intended for subsistence uses;

(b) Prescribes either regulations under §216.106, or requirements and

conditions contained within an incidental harassment authorization issued under §216.107, setting forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species or stock of marine mammal and its habitat and on the availability of the species or stock of marine mammal for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance; and

(c) Prescribes either regulations or requirements and conditions contained within an incidental harassment authorization, as appropriate, pertaining to the monitoring and reporting of such taking. The specific regulations governing certain specified activities are contained in subsequent subparts of this part.

**§216.103 Definitions.**

In addition to definitions contained in the MMPA, and in §216.3, and unless the context otherwise requires, in subsequent subparts to this part:

*Arctic waters* means the marine and estuarine waters north of 60° N. lat.

*Citizens of the United States* and *U.S. citizens* mean individual U.S. citizens or any corporation or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13). U.S. Federal, state and local government agencies shall also constitute citizens of the United States for purposes of this part.

*Incidental harassment, incidental taking* and *incidental, but not intentional, taking* all mean an accidental taking. This does not mean that the taking is unexpected, but rather it includes those takings that are infrequent, unavoidable or accidental. (A complete definition of “take” is contained in §216.3).

*Negligible impact* is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

*Small numbers* means a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock.