



International Marine Mammal Project
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Memo to: Delegates of the Indian Ocean Tuna Commission

From: David Phillips, Sarah Elzea & Mark J. Palmer

RE: Update On World Trade Organization (WTO) Case Against Dolphin Safe Tuna

DS381: United States — Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products:

https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds381_e.htm

We are pleased to report that on January 11, 2019, the WTO panel report was officially adopted by the full WTO, finally closing the Mexican government's challenge of the Dolphin Safe label. This came after December 14, 2018, when the WTO Appellate Panel issued a final ruling declaring that the United States Dolphin Safe label does not "discriminate" against the Mexican tuna industry and is fully consistent with WTO rules. This litigation has been ongoing for ten years, and the final ruling is a tremendous victory for the dolphins, Earth Island's International Marine Mammal Project (IMMP) and our International Monitoring Program for Dolphin Safe tuna.

For a 25-minute Webinar on the WTO decision hosted by David Phillips, Executive Director of Earth Island Institute (EII), and Friend of the Sea Director Dr. Paolo Bray, please click here: <http://eii.org/immp/dolphin-safe>

Previously, in October 2017, the WTO Compliance Panel concluded that the United States was in compliance with WTO standards and that Mexico was no longer discriminated against by the strong non-encirclement standards of the US Dolphin

Safe label. The government of Mexico appealed this decision.

On October 24, 2008, the government of Mexico, having exhausted all chances of weakening the Dolphin Safe tuna label standards in the United States, filed an international legal challenge with the WTO. The previous attempts to weaken the US label standards were blocked by a series of successful lawsuits filed by IMMP of EII, maintaining the standards enshrined in federal law.

In order to comply with earlier WTO decisions, in 2013 and 2016, against the US, the United States issued new regulations to address the concerns of the WTO. The new regulations extended Dolphin Safe fishing requirements, some of which historically only applied to the Eastern Tropical Pacific Ocean, to all of the planet's oceans for tuna. These regulations took effect in 2013 and 2016, with the support of environmental groups including IMMP.

Through a collaborative effort, EII and its environmental and animal welfare coalition partners and allies, continued to work together on this challenge with the US Trade Representative's Office (USTR). The USTR was successful in vigorously opposing Mexico's WTO challenge, arguing that the US Dolphin Safe standards should, and will, continue to be set by US Congressional Statutes. These standards have been reaffirmed by previous US court rulings that strongly support the current legal definition of non-encirclement (with respect to tuna fishing) for the Dolphin Safe label. The foundation and value of the standards was confirmed through extensive scientific research conducted by the US National Marine Fisheries Service.

Our thanks to the USTR and its lawyers for their successful defense of the Dolphin Safe non-encirclement standards.

We also thank the many US tuna companies that supported the USTR and Dolphin Safe label during these years of litigation. This was one of the factors that, in the end, helped convince the WTO to support the US position.

It is unclear what the next steps will be for the Mexican government. EII continues to encourage Mexican tuna companies to work with us to adopt Dolphin Safe non-encirclement standards recognized by the vast majority of the world's tuna industry, extensive scientific research, the US Congress and court system, and now the WTO.

We also continue to oppose efforts by the Mexican government and tuna industry to use phony labels and fraudulent certifications, including the Marine Stewardship Council (MSC) label, to confuse consumers into thinking that their tuna caught by the chasing and netting of dolphins is Dolphin Safe.

Setting nets on dolphins to catch tuna is unacceptable.

If you have any further questions about this decision or what it means for Dolphin Safe tuna imports to the US, feel free to contact IMMP:

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