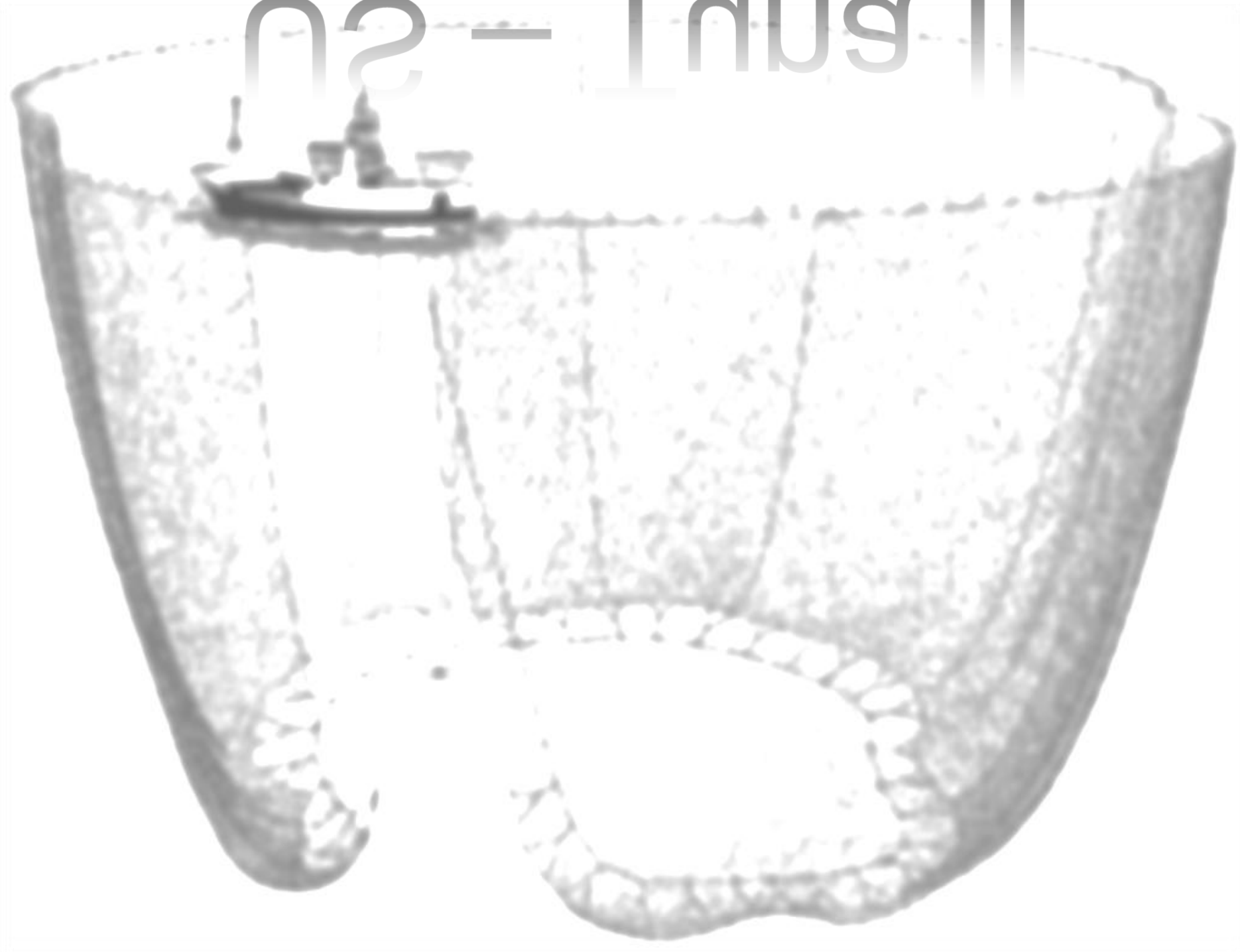


US - Tuna II



*United States – Measures Concerning
the Importation, Marketing and Sale of
Tuna and Tuna Products*

WT/DS381/R

for training purposes

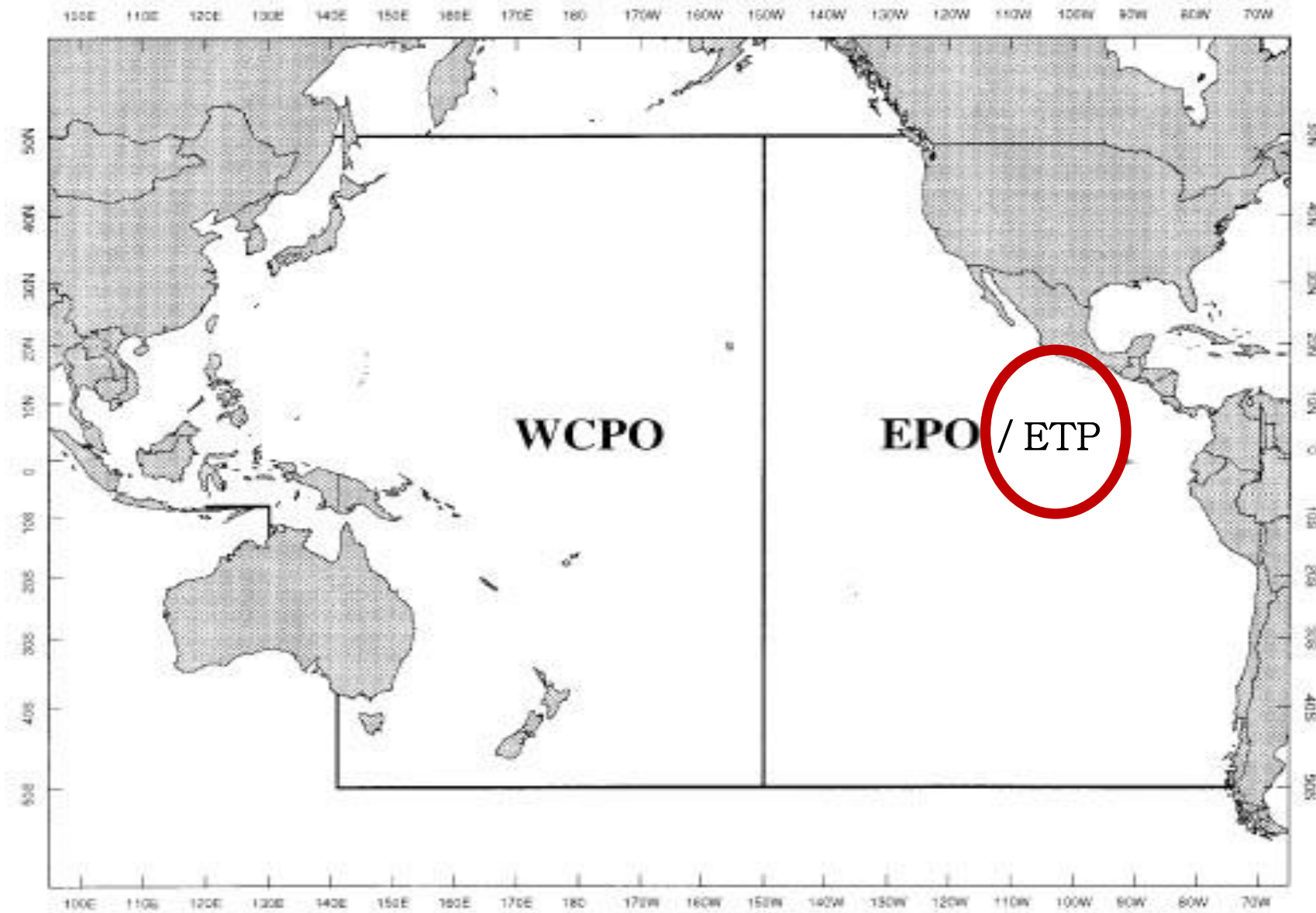
selected issues (there are more!)

facts first – discussion later



- Under certain circumstances schools of mature tuna swim *beneath* schools of dolphins



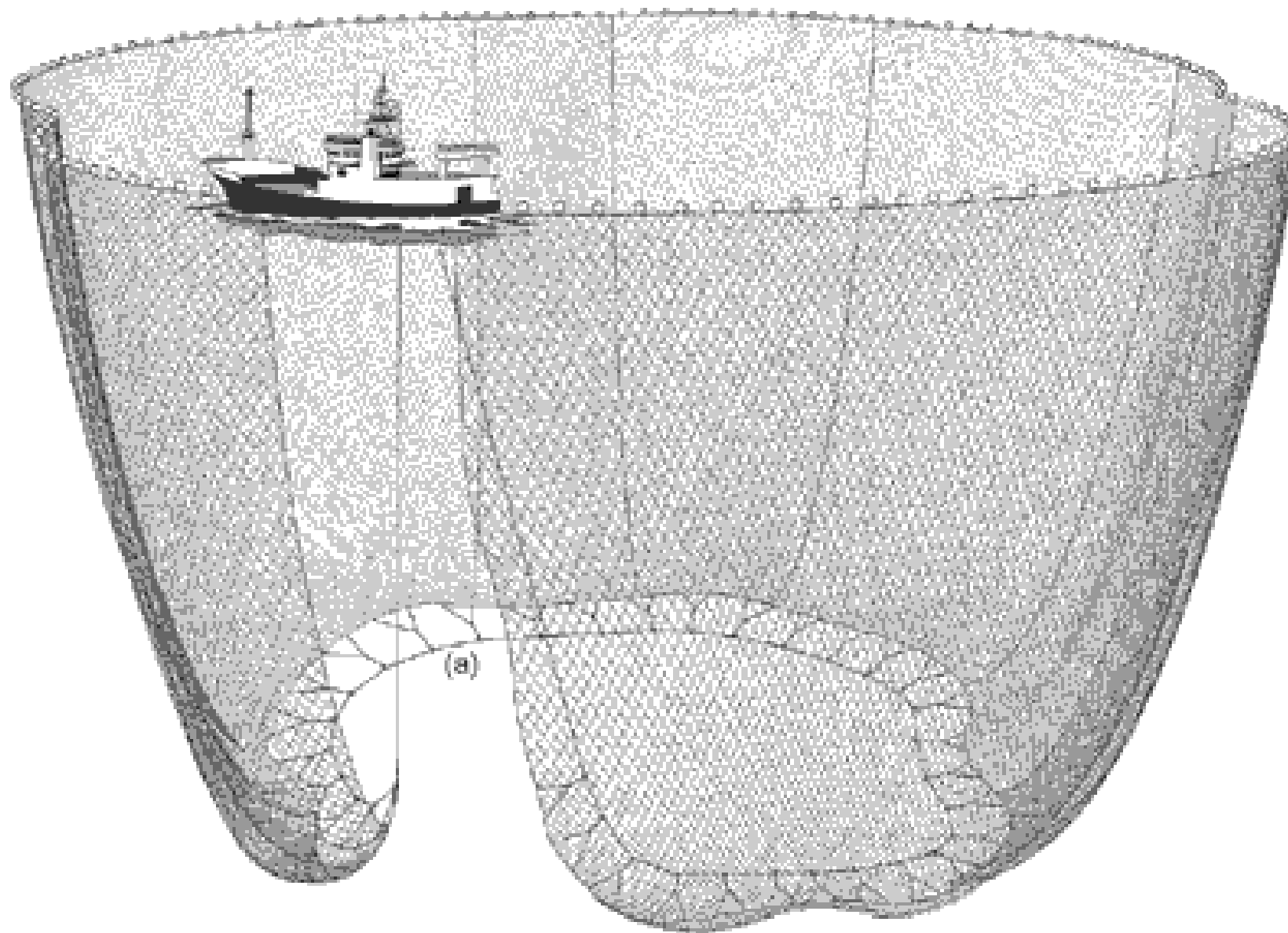


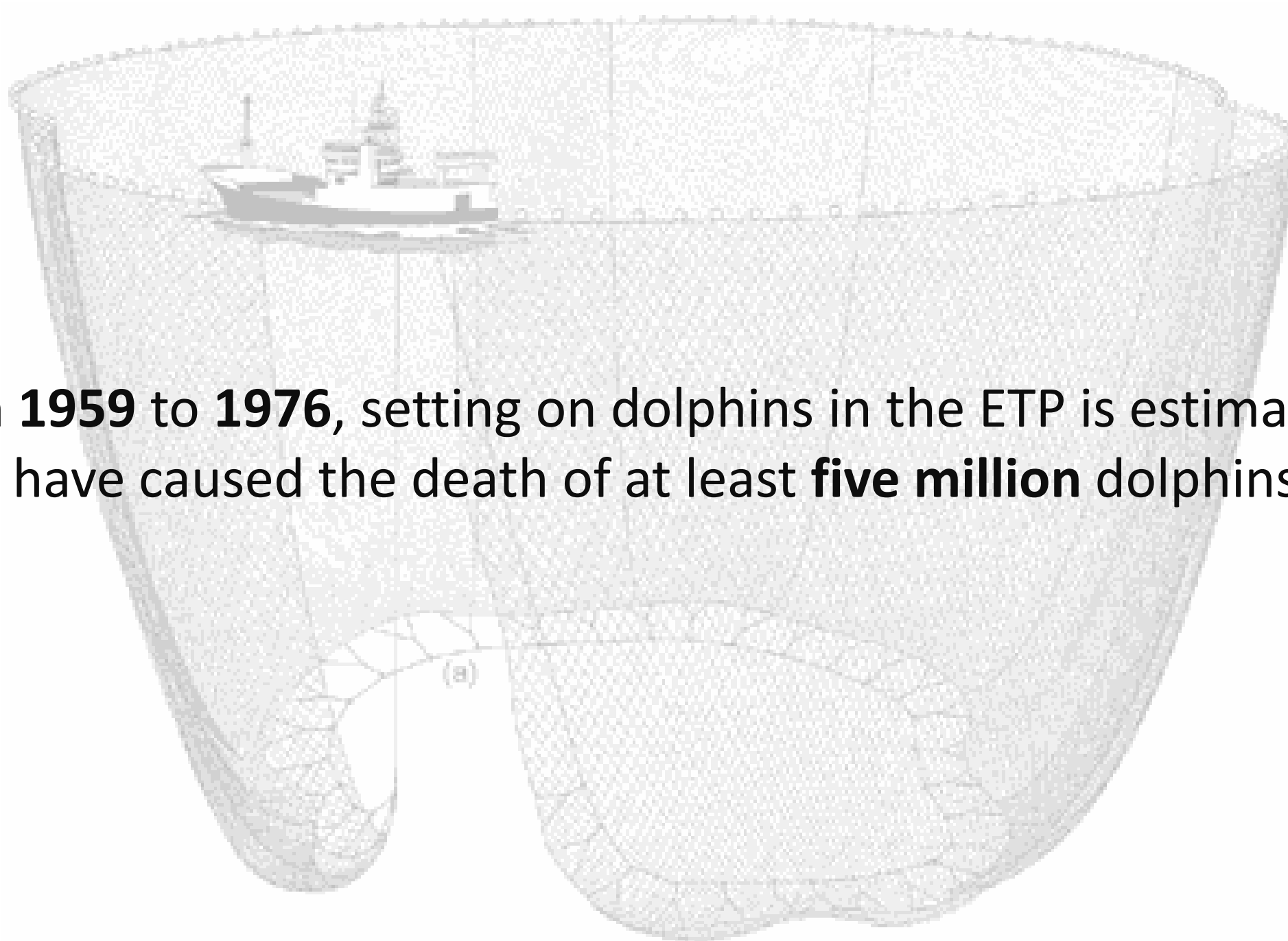
In portions of the Eastern Tropical Pacific Ocean ("ETP"), large yellowfin tuna swim together with several species of dolphins. This ecological association is not clearly understood.

The ETP: waters of the Pacific Ocean, bounded by the mainland of the Americas. The Mexican fleets operate in the ETP.



Setting on dolphins consist of the intentional deployment on or encirclement of dolphins with **purse seine nets** to catch the tuna swimming underneath. The Mexican fleets use purse seine nets.





From **1959** to **1976**, setting on dolphins in the ETP is estimated to have caused the death of at least **five million** dolphins



Observed: Individual mortality/injury



Unobserved: Separation mother/calf



Unobserved: Reduced reproduction

1998: The Agreement on the International Dolphin Conservation Program (AIDCP) was adopted under the auspices of the Inter-American Tropical Tuna Commission (IATTC).

Costa Rica
Ecuador
El Salvador
European Union
Guatemala
Honduras
Mexico
Nicaragua
Panama
Peru
United States
Vanuatu
Venezuela



AIDCP

Agreement on the International Dolphin Conservation Program

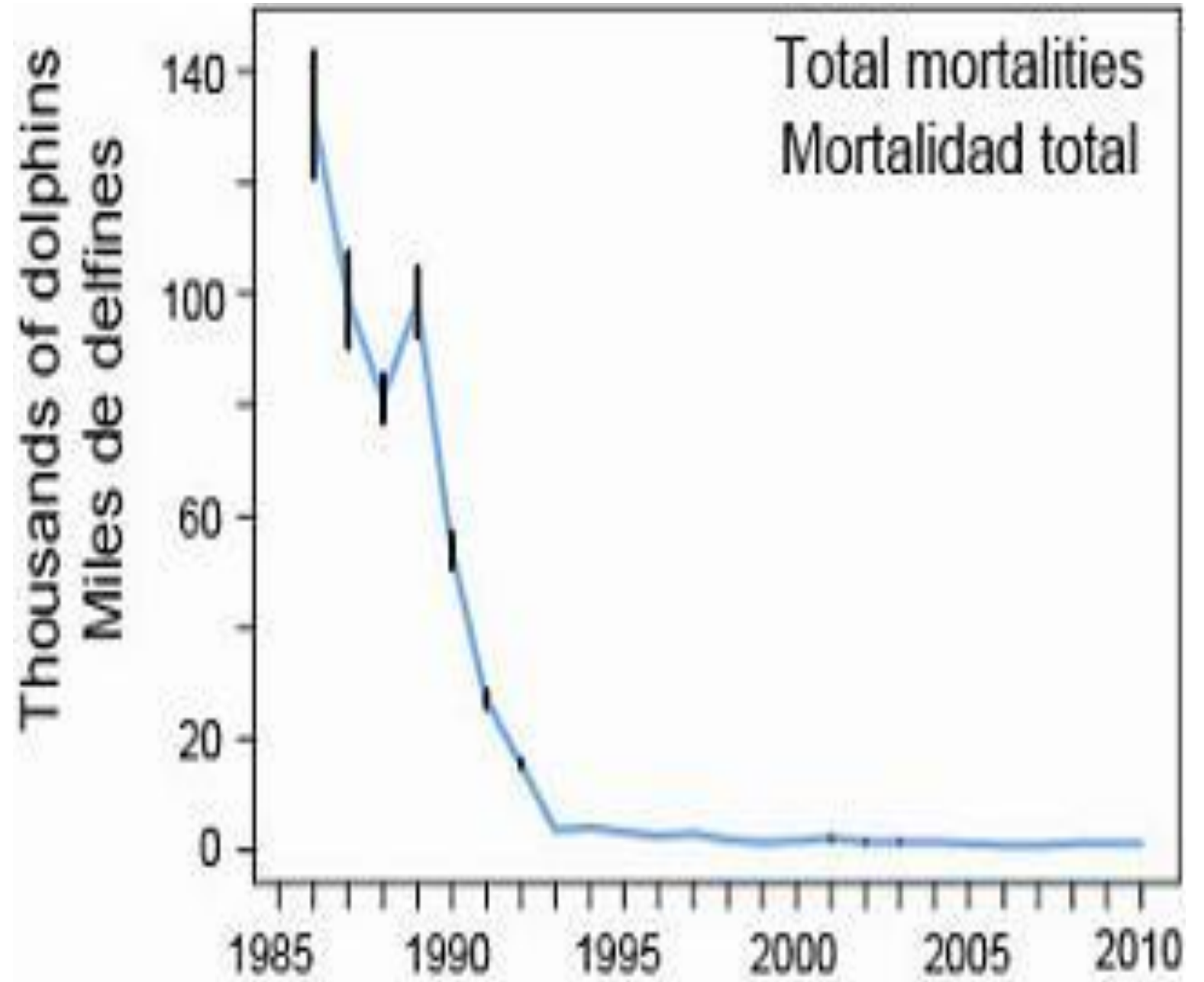
Require the use of dolphin-saving techniques and devices; certification system supported by observers on every vessel: no dolphin should be killed or seriously injured to bear the label; Enforcement mechanisms; Captain training programs, etc



AIDCP

Under the AIDCP regime, dolphin mortalities have been reduced to an average of 1000/y, i.e. below the agreed mortality limit (5000/y).

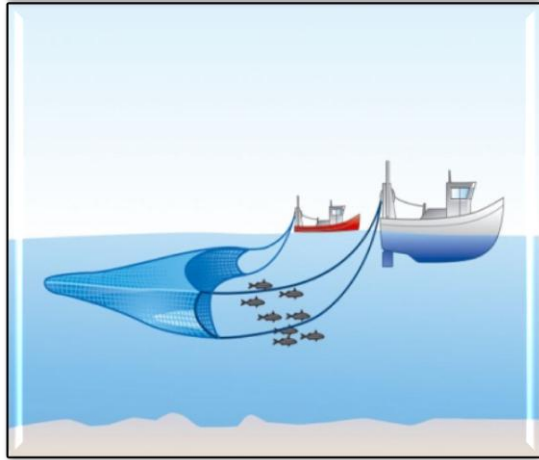
(Source: IATTC, www.iattc.org)



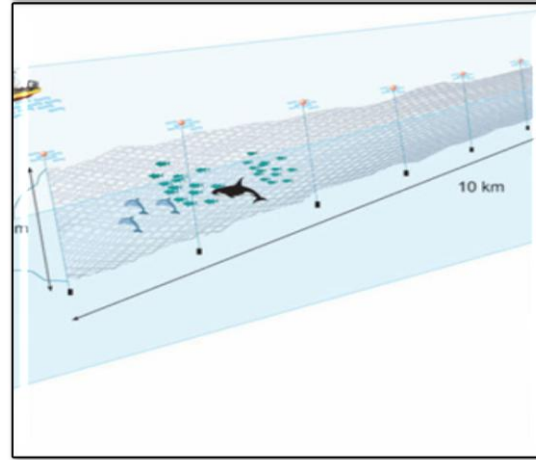
AIDCP

The AIDCP does not focus on whether setting on dolphins with purse seine nets was used, but rather on the mortality and serious injury to dolphins.

Trawlers



Driftnets



Long-line



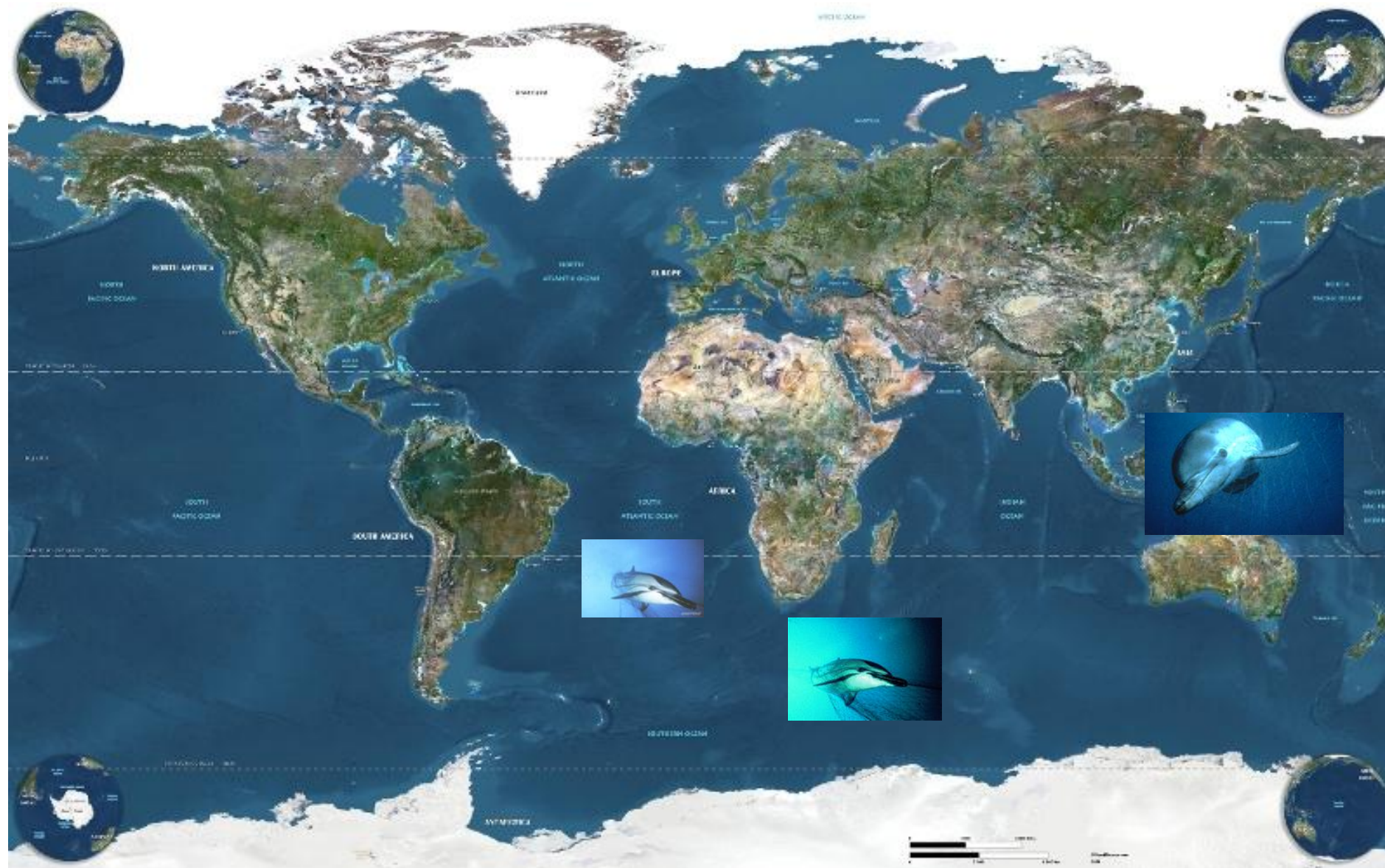
Fishing aggregating devices



Pole fishing



Other fishing techniques used to catch tuna include: Trawlers; Driftnets; Long-line fishing; Fish Aggregating Devices (FADs); and Pole fishing. The use of these other techniques in and outside the ETP may also result in significant dolphin mortalities and injuries.



there is dolphin bycatch in other tuna fisheries

1980s:

The US' consumers show a preference for dolphin-safe tuna



1990

Dolphin Protection Consumer Act (DPCIA) was enacted



Establish conditions or *requirements* for use of the “dolphin-safe” label. i.e., conditions for when tuna products sold in the United States may be labelled as “dolphin-safe”.





Label *not* necessary to import or sell tuna products

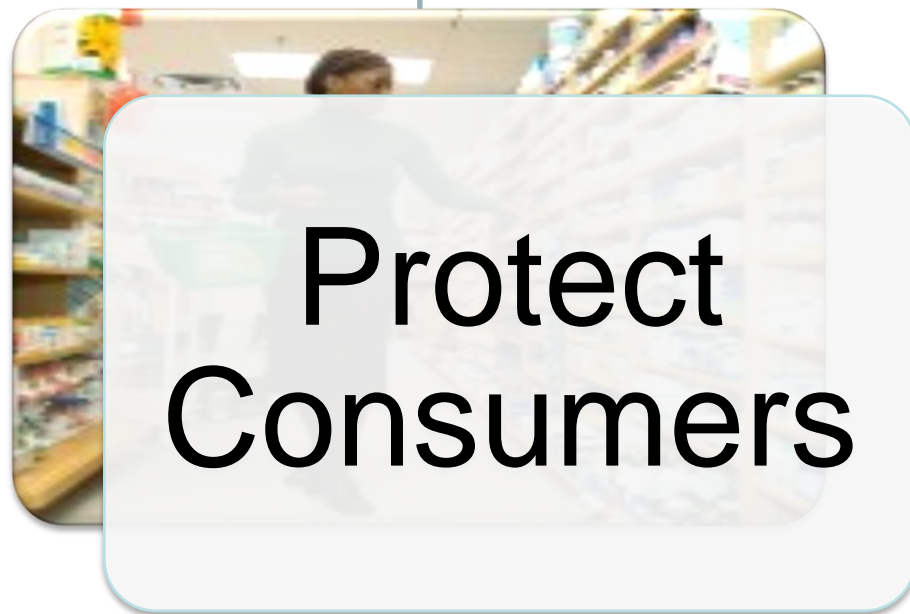
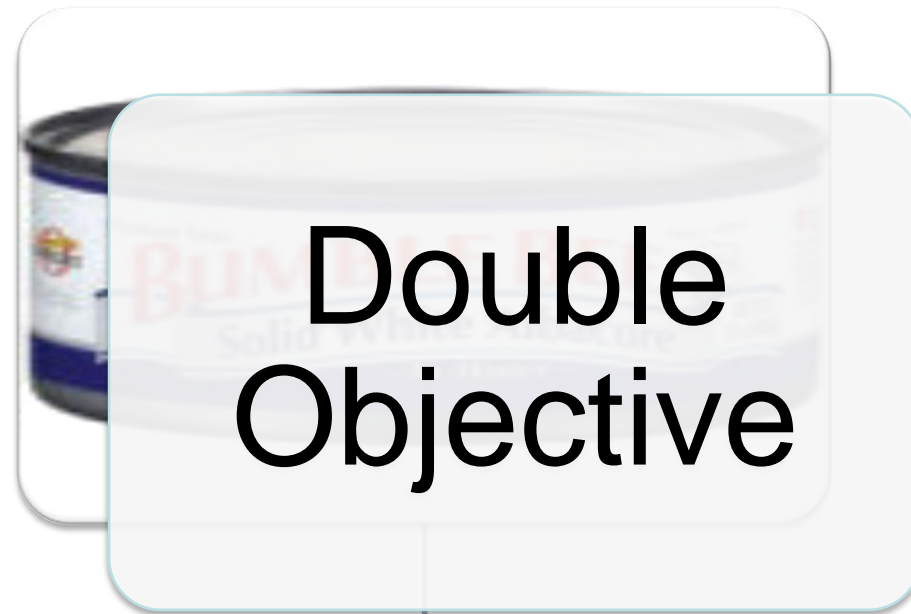


Tuna caught by using the fishing technique known as "setting on dolphins" may not, under any circumstances, be labelled "dolphin safe".



The measures prohibit any reference to dolphins or other marine mammals on a label for tuna products, if the tuna was caught in a manner that does not comply with the conditions established by the measures.

Objectives of the Measure



Why was Mexico concerned?



What issues arise?



Was the measure a technical regulation?



Was the measure discriminatory?

3

Was there an unnecessary barrier to trade?

4

Was there a “relevant international standard”?

Panel Established 20 April 2009



Panel Composed 14 December 2009



Panel Recomposed 12 August 2010



Panel Report Circulated 15 September 2011



Appealed 5 January 2012



AB Report Circulated 16 May 2012

Issues covered by the WTO's committees and agreements



DISPUTE SETTLEMENT: DISPUTE DS381

United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products

This summary has been prepared by the Secretariat under its own responsibility. The summary is for general information only and is not intended to affect the rights and obligations of Members.

Current status [back to top](#)

Report(s) adopted, with recommendation to bring measure(s) into conformity on 13 June 2012 [i](#)

Key facts [back to top](#)

See also:

- > [The basics: how disputes are settled in WTO](#)
- > [Computer based training on dispute settlement](#)
- > [Text of the Dispute Settlement Understanding](#)

- Other disputes involving:
 - > [Tuna](#)
 - > [Mexico](#)
 - > [United States](#)
- > [General Agreement on Tariffs and Trade 1994](#)
- > [Agreement on Technical Barriers to Trade](#)

Short title:	US – Tuna II (Mexico)
Complainant:	Mexico
Respondent:	United States
Third Parties:	Argentina; Australia; Brazil; Canada; China; Ecuador; European Communities; Guatemala; Japan; Korea, Republic of; New Zealand; Chinese Taipei; Thailand; Turkey; Venezuela, Bolivarian Republic of
Agreements cited:	GATT 1994: Art. I, III Technical Barriers to Trade (TBT): Art. 2 , 5 , (as cited in request for consultations) 6 , 8
Request for Consultations received:	24 October 2008
Panel Report circulated:	15 September 2011
Appellate Body Report circulated:	16 May 2012

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