Congress of the United States
House of Representatives
Washington, DC 20515

October 25, 2012

The Honorable Ron Kirk
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Dear Ambassador Kirk:

This week marks the 40th anniversary of the enactment of the Marine Mammal Protection Act (MMPA), one of our most historic and effective natural resource conservation laws. The MMPA's acknowledgment of the potentially deadly association between dolphins and tuna in the Eastern Tropical Pacific Ocean (ETPO) set the stage for the eventual enactment of the dolphin-safe tuna labeling program. Along with the earlier adoption of dolphin-safe practices by U.S. fishermen, this program has achieved incredible results: dolphin deaths in the ETPO tuna fishery have declined from over 100,000 to approximately 3,000 annually over the past 25 years. Maybe most impressively, this program has utilized the free market – American consumers' desire to eat tuna that was not captured by fishing practices that kill dolphins – to address a challenging problem in marine conservation.

Unfortunately, a ruling by the World Trade Organization (WTO) last May in the tuna-dolphin dispute resolution case between the United States and Mexico has threatened to turn back the clock to the days when foreign fleets killed tens of thousands of dolphins each year in a tuna fishing free-for-all. Recall that in a May 31 letter, 43 House members urged President Obama to "make clear to our trading partners that the U.S. intends to maintain the strong dolphin-safe standards, and not to water them down." That letter explains in detail why we are unwilling to alter our highly effective dolphin protection policies attacked by Mexico at the WTO. Therefore, we are troubled by the September 17 announcement by U.S. trade officials that the United States intends to comply with WTO's misguided ruling against the U.S. dolphin-safe labeling program by July 13 of next year.

Repeated U.S. court decisions have backed the legitimacy of the dolphin-safe certification, which tuna fleets from the United States, Ecuador, and other countries have achieved easily for years. Foreign countries face no obligation to use the label, and U.S. producers may only use the label if they employ dolphin-safe fishing practices. Mexico may adopt the label for any tuna caught using dolphin-safe practices, but can continue selling dolphin-unsafe tuna in the United States without the label. The nondiscriminatory labeling scheme is completely in line with the

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principle of National Treatment, and serves as an alternative to more trade-restrictive dolphin protection policies by simply providing U.S. consumers with the information needed to choose to support sound tuna fishing practices. The WTO ruling against our policy dismissed these facts and presents the United States with two equally unacceptable options: spend limited regulatory resources to enforce dolphin-safe tuna fishing requirements in oceans where dolphins and tuna do not intermingle, or allow Mexico to sell dolphin-*unsafe* tuna to U.S. consumers under a dolphin-*safe* label. The former option would waste taxpayer money while inviting further WTO disputes. The latter option would mislead the U.S. public while undermining the label's resounding dolphin conservation successes.

Rather than choose between two defeatist alternatives, we urge you to incorporate resolution of this WTO dispute into upcoming negotiations that will commence this December when Mexico enters the Trans-Pacific Partnership (TPP), and ensure that we do not weaken or eliminate our successful dolphin-safe labeling regime. A bilateral discourse with Mexico in the TPP context is appropriate, as Mexico seeks to benefit from the TPP process by gaining new commercial rights and greater access to U.S. consumers for Mexican exports. We should not grant such benefits unless we can assure U.S. consumers that "dolphin-safe" tuna imported from Mexico (or elsewhere) remains truly dolphin-safe. We urge you to instruct your staff to resolve the dolphin-safe label dispute with Mexico in a manner that respects Congress's commitment to fully protect the highly successful dolphin-safe labeling regime.

Sincerely,

Edward J. Markey
Ranking Member
Committee on Natural Resources

Madeleine Z. Bordallo

Corrine Brown

Hansen Clarke

Susan Davis

Eni F.H. Faleomavaega

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