NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Diana Hynek 02/06/2003
Departmental Paperwork Clearance Officer
Office of the Chief Information Officer
14th and Constitution Ave. NW.
Room 6625
Washington, DC 20230

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for approval of the reinstatement of an information collection received on 12/12/2002.

TITLE: International Dolphin Conservation Program

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE
OMB NO.: 0648-0387
EXPIRATION DATE: 02/28/2006

BURDEN:	RESPONSES	HOURS	COSTS($,000)
Previous	0	0	0
New	271	144	1
Difference	271	144	1
Program Change		144	1
Adjustment		0	0

TERMS OF CLEARANCE: None

OMB Authorizing Official Title

Donald R. Arbuckle Deputy Administrator, Office of Information and Regulatory Affairs

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request
DOC/NOAA/NMFS/SWR

2. OMB control number
a. 0648 - 0387
b. [ ] None

3. Type of information collection (*check one*)
a. [ ] New Collection
b. [ ] Revision of a currently approved collection
c. [ ] Extension of a currently approved collection
d. [ ] Reinstatement, without change, of a previously approved collection for which approval has expired
e. [✔] Reinstatement, with change, of a previously approved collection for which approval has expired
f. [ ] Existing collection in use without an OMB control number
For b-f, note Item A2 of Supporting Statement instructions

4. Type of review requested (*check one*)
a. [✔] Regular submission
b. [ ] Emergency - Approval requested by ____/____/____
c. [ ] Delegated

5. Small entities
Will this information collection have a significant economic impact on a substantial number of small entities? [ ] Yes [✔] No

6. Requested expiration date
a. [✔] Three years from approval date b. [ ] Other Specify:____/____

7. Title
International Dolphin Conservation Progam

8. Agency form number(s) (*if applicable*)

9. Keywords
'fisheries, fishing vessels'

10. Abstract

The National Oceanic and Atmospheric Administration (NOAA) collects information to implement the International Dolphin Conservation Program Act. The Act allows entry of yellowfin tuna into the United States, under specific conditions, from nations in the Program that would otherwise be under embargo. The Act also allows U.S. fishing vessels to participate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean on terms equivalent with the vessels of other nations. NOAA collects information to allow tracking and verification of “dolphin safe” and “non-dolphin safe” tuna products from catch through the U.S. market.

11. Affected public (*Mark primary with "P" and all others that apply with "x"*)
a. x Individuals or households d. ___ Farms
b. P Business or other for-profit e. ___ Federal Government
c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government

12. Obligation to respond (*check one*)
a. [ ] Voluntary
b. [ ] Required to obtain or retain benefits
c. [✔] Mandatory

13. Annual recordkeeping and reporting burden
a. Number of respondents: 38
b. Total annual responses: 271
1. Percentage of these responses collected electronically: 0 %
c. Total annual hours requested: 144
d. Current OMB inventory: 0
e. Difference: 144
f. Explanation of difference
1. Program change: 144
2. Adjustment: ____

14. Annual reporting and recordkeeping cost burden (*in thousands of dollars*)
a. Total annualized capital/startup costs: 0
b. Total annual costs (O&M): 1
c. Total annualized cost requested: 1
d. Current OMB inventory: 0
e. Difference: 1
f. Explanation of difference
1. Program change: 1
2. Adjustment: ____

15. Purpose of information collection (*Mark primary with "P" and all others that apply with "X"*)
a. ___ Application for benefits e. ___ Program planning or management
b. ___ Program evaluation f. ___ Research
c. ___ General purpose statistics g. P Regulatory or compliance
d. ___ Audit

16. Frequency of recordkeeping or reporting (*check all that apply*)
a. [ ] Recordkeeping b. [ ] Third party disclosure
c. [✔] Reporting
1. [✔] On occasion 2. [ ] Weekly 3. [✔] Monthly
4. [ ] Quarterly 5. [ ] Semi-annually 6. [✔] Annually
7. [ ] Biennially 8. [ ] Other (describe) ____

17. Statistical methods
Does this information collection employ statistical methods
[ ] Yes [✔] No

18. Agency Contact (person who can best answer questions regarding the content of this submission)
Name: Cathy Campbell
Phone: 562-980-4060

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

(a) It is necessary for the proper performance of agency functions;

(b) It avoids unnecessary duplication;

(c) It reduces burden on small entities;

(d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;

(e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;

(f) It indicates the retention period for recordkeeping requirements;

(g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):

- (i) Why the information is being collected;
- (ii) Use of information;
- (iii) Burden estimate;
- (iv) Nature of response (voluntary, required for a benefit, mandatory);
- (v) Nature and extent of confidentiality; and
- (vi) Need to display currently valid OMB control number;

(h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);

(i) It uses effective and efficient statistical survey methodology; and

(j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee	Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)	
Signature signed by John Oliver	Date 11/27/2002
Signature of NOAA Clearance Officer	
Signature signed by Richard Roberts	Date 12/03/2002

SUPPORTING STATEMENT
INTERNATIONAL DOLPHIN CONSERVATION PROGRAM
OMB CONTROL NO. 0648-0387

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

Under the Marine Mammal Protection Act (MMPA), no marine mammals may be taken during the course of commercial fishing operations unless the taking constitutes an incidental catch and is authorized by the Secretary of Commerce. Section 101(a)(2) of the MMPA [16 U.S.C. 1371] authorizes the issuance of permits which allow fishermen to lawfully take marine mammals incidental to commercial fishing operations and authorizes the Secretary of Commerce to promulgate regulations to restrict the importation of tuna from nations not participating in the International Dolphin Conservation Program.

Historically, marine mammals taken by U.S. vessels during the course of commercial yellowfin tuna purse seine fishing operations in the eastern tropical Pacific Ocean (ETP) have been allowed under a general permit issued to the American Tunaboat Association (ATA) under Section 104(h) provisions of the MMPA. However, with the enactment into law of the International Dolphin Conservation Program Act (IDCPA), P.L. 105-42, the language in the MMPA pertaining to the U.S. tuna purse seine fishery was amended. Under the IDCPA, U.S. fishing vessels have the ability to participate in the ETP tuna purse seine fishery on equivalent terms with the international fleet. Incidental taking of marine mammals during other U.S. commercial fishing operations besides the ETP tuna purse seine fishery is governed by Section 118(a)(1) of the MMPA.

Primarily, the IDCPA amends provisions in the MMPA governing the U.S. tuna purse seine fishery in the ETP and the importation of yellowfin tuna and yellowfin tuna products from other nations with vessels engaged in that fishery. Under the IDCPA, the ATA general permit and certificate of inclusions will be replaced with a permit [16 U.S.C. 1374 §104(h)] issued to individual vessel owners and operators [16 U.S.C. 1416 § 306(a)(1)] that will authorize the incidental take of marine mammals according to the guidelines established under the International Dolphin Conservation Program signed in La Jolla, California, in June 1992.

This submission includes all mandated information requests that pertain to U.S. tuna purse seine vessel and operator permit holders fishing under the IDCPA and the tracking and verification program for yellowfin tuna imported into the United States. Some of the information collection requirements under the IDCPA are already collection requirements under the General Permit although there is not Paperwork Reduction Act (PRA) approval. Currently-collected information under the General Permit without PRA approval includes: waiver requests to transit ETP without a permit, vessel departure notification five days prior to departure, change in operator notification prior to departure, net modification notification five days prior to departure,

experimental fishing gear waiver applications, and Dolphin Mortality Limit requests. Vessel and operator permit holder requirements are in 50 CFR Part 216.24 and the tracking and verification requirements are in 50 CFR Part 216.93.

The requirement for exporters to provide information about the shipment of tuna and tuna products, except some fresh products, into the United States, using the Fisheries Certificate of Origin (NOAA Form 370) is already approved by the Office of Management and Budget under Control Number 0648-0335. The public reporting burden for this collection is estimated to average 20 minutes per submission which includes the time necessary to complete supporting documentation such as the Captain's and Observer's statements which certify that the tuna was captured in a manner considered to be "dolphin safe."

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with applicable information quality guidelines.

A valid permit protects the fisherman and vessel owner from prosecution under the MMPA for violation of the Moratorium on taking marine mammals. Information supplied by the applicant is used by the National Marine Fisheries Service (NMFS) and the general public to review the appropriateness of waiving the moratorium to authorize the incidental take of marine mammals by U.S. tuna purse seine vessels fishing in the ETP. Each year vessel owners and operators must apply for a permit under the MMPA and comply with the terms and conditions associated with its issuance. In addition, by signing the application for a vessel permit, the vessel owner agrees to release to the National Marine Fisheries Service all records made by Inter-American Tropical Tuna Commission observers during fishing trips aboard the vessel and furnish the international observer program with all release forms required to authorize the observer data to be provided to NMFS [50 CFR 216.24(b)(8)(v)].

(a) The information needed for a vessel permit under [50 CFR 216.24(b)(4)] is as follows:

(i) Name and official number of fishing vessel to appear on permit [self-explanatory and required by 16 U.S.C. 1416 § 306(a)(1)(A)]. The tonnage, hold capacity, maximum vessel speed, processing equipment, and type and quantity of gear, including an inventory of special equipment required. [This information assists the agency with tracking processed and unprocessed tuna, monitoring compliance with gear requirements under the MMPA, and evaluating the ability of a vessel to capture tuna. A vessel's characteristics are important when determining the performance of a vessel which can be used to determine the fishing power of the vessel. This information is required by 16 U.S.C. 1416 § 306(a)(1)(B)];

(ii) A statement whether the vessel intends to make sets involving the intentional taking of marine mammals [This information is used to determine the type of permit that needs to be issued];

(iii) The identity of Federal, State and local commercial fishing licenses, if applicable, under which vessel operations are conducted, and dates of expiration. [This information is collected to assess whether other permits may be combined in the future with the issuance of a vessel permit. In addition, this information may assist the agency with some of the tuna tracking requirements as well as determine whether a vessel is in compliance with other applicable federal regulations];

(iv) The name(s) of the operator anticipated to be used. [This information is collected to assess whether the operator has a valid operator permit to fish for tuna in the ETP];

(v) The applicant's signature or the signature of the applicant's representative, if any, including the address, telephone and fax numbers, and if applicable, the name, address, telephone, and fax numbers of the agent or organization acting on behalf of the vessel. [Signature certifies the information is true and correct and authorizes observer data collected to be provided to NMFS and the International Review Panel. The contact information is required by 16 U.S.C. 1416 § 306(a)(1)(A)].

(b) The information needed for an operator permit under [50 CFR 216.24(b)(5)] is as follows:

(i) The name, address, telephone and fax numbers of the applicant [Self-explanatory];

(ii) The type and identification number(s) of any Federal, State, and local fishing licenses held by the applicant. [This information is collected to assess whether other permits may be combined in the future with the issuance of an operator permit];

(iii) The name of the vessel(s) on which the applicant anticipates serving as an operator. [Since the historical performance of an operator is as critical as the historical characteristics and fishing power of a vessel. The operator information may then be linked to the vessel of record to establish an operator catch history for that fishery or gear].

(iv) The date, location, and provider of any training for the operator permit. Training includes a demonstration of proficiency in backing down the purse seine net to release entrapped dolphin. Upon completion of training, a certificate of completion is issued [50 CFR 216.24(c)(4)]. Operator permits are issued annually. Additional training is not required unless regulations are modified substantially, the operator no longer demonstrates proficiency, or the operator does not obtain a previous calendar year permit. [Operator training is required to insure fishing captains understand the principles of dolphin safe fishing techniques and are kept informed of new technology, changing regulations, and new international agreements.]; and

(v) The applicant's signature or the signature of the applicant's representative, if any. [Signature certifies the information is true and correct.]

(c) The rules and regulations allow tuna purse seine vessels without a permit and more than two speedboats to transit the ETP if the vessel owner requests a waiver [50 CFR 216.24(a)(3)]. This provision allows vessel owners the ability to off-load, complete repairs, or transit the permit area in an emergency without delay and without having to obtain a vessel and operator permit. As part of the waiver, the vessel owner must notify the Administrator, Southwest Region, by radio, with the name of the vessel and the date the vessel exits or subsequently enters the permit area.

To request a waiver, the following information must be provided to the Administrator, Southwest Region, in writing and in advance of entering the ETP:

(i) The name of the vessel and operator [Self-explanatory];

(ii) Reason for transiting the ETP; and

(iii) The number of expected days to complete the transit.

(d) Vessel permit holders are required to notify the Administrator, Southwest Region or the Inter-American Tropical Tuna Commission contact designated by the Administrator, Southwest Region, at least five days in advance of the vessel's departure on a fishing voyage to allow for observer placement on every voyage [50 CFR 216.24(b)(8)(iv)]. The information may be provided either verbally or in writing and must include the following information:

(i) The name of the vessel and operator [Self-explanatory];

(ii) Location of the vessel; and

(iii) Date and time of departure [Information needed to coordinate and facilitate observer travel with the vessel departure.].

(e) Vessel permit holders must notify the Administrator, Southwest Region at least 48 hours prior to departing on a trip if there is a change of the vessel operator or within 72 hours after a change of the vessel operator if the change was made because of an emergency [50 CFR 216.24(b)(8)(iv)(B)]. This information is used to facilitate observer placements and make arrangements to conduct an observer placement meeting with the captain, managing owner, and program personnel prior to departure. Also, at this time the agency may notify the vessel owner if the operator must attend a skipper workshop. If necessary, arrangements may be made to schedule a workshop. This information may be provided verbally or in writing and must include:

(i) Vessel name; and

(ii) New operator permit holder name.

(f) Vessel Permit holders intending to make intentional sets on marine mammals must notify the Administrator, Southwest Region of any net modification at least 5 days prior to departure of the vessel in order to determine whether a reinspection or trial set (net alignment) is required [50 CFR 216.24(c)(4)(ii)]. If no net modifications are made during a calendar year, inspections shall be conducted by the authorized NMFS inspector (observer). This information may be provided verbally or in writing, and must include the following information:

(i) Vessel name; and

(ii) Type of gear modification completed.

(g) The Administrator, Southwest Region, may authorize experimental fishing operations, consistent with the provisions of the International Dolphin Conservation Program for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce or eliminate dolphin mortality or serious injury, or do not require the encirclement of dolphins in the course of fishing operations [16 USC 1413 Section 303(A)(2)(B)(x)]. Vessel Permit holders may apply for an experimental fishing operation waiver by submitting the following information to the Administrator, Southwest Region, no less than 90 days before the intended date the proposed operation is intended to begin [50 CFR 216.24(c)(7)]. This information is necessary to assess the potential benefit of the experimental gear and the merits of the experimental design. If the experimental fishing permit is authorized, the applicant will need to submit a report at the conclusion of the experiment as part of the terms and conditions of the permit.

(i) The name(s) of the vessel(s) and the vessel permit holder(s) to participate [Self-explanatory];

(ii) A statement of the specific vessel gear and equipment or procedural requirement to be exempted and why such an exemption is necessary to conduct the experiment;

(iii) A description of how the proposed modification to the gear and equipment or procedures is expected to reduce incidental mortality or serious injury of marine mammals;

(iv) A description of the applicability of this modification to other purse seine vessels;

(v) The planned design, time, duration, and general area of the experimental operation;

(vi) The name(s) of the permitted operator(s) of the vessel(s) during the experiment; and

(vii) A statement of the qualifications of the individual or company doing the analysis of

the research.

(viii) The signature of the permitted operator or of the operator's representative.

(ix) Report summarizing the results of the experiment.

(h) A vessel permit holder desiring to encircle dolphin in an effort to capture tuna must obtain a dolphin mortality limit (DML) under the International Agreement prior to conducting fishing operations [16 USC 1413 Section 303(A)(2)(B)(ix)]. Under the IDCPA, vessel permit holders may apply for either a six month DML (July through December), an one year DML (January through December), or a per-trip DML depending on vessel eligibility. Vessel permit holders may request a DML either by April 1 or by September 1, depending on whether the vessel permit holder is requesting a six month or one year DML allocation. Vessel permit holders may apply for a per-trip DML at any time, allowing at least 60 days for processing. To assess the eligibility of the vessel, six month and one year DML requests must be made in writing to the Administrator, Southwest Region, allowing at least 60 days for processing, and must include the following information [50 CFR 216.24(c)(8)]:

(i) The name of the purse seine vessel(s) of carrying capacity greater than 400 short tons that the owner intends to use to intentionally deploy purse seine fishing nets in the ETP [Self-explanatory]; and

(ii) The name of the vessel permit holder.

In addition, a vessel possessing a valid vessel permit, but that does not normally fish for tuna in the ETP and desires to participate in the fishery on a limited basis, may apply for a per-trip DML from the Administrator, Southwest Region. To assess the eligibility of the vessel, per-trip DML requests must be in writing, allowing 60 days for processing, and state:

(iii) The number of anticipated trips involving sets on dolphin; and

(iv) The anticipated dates of the trip(s).

The DPCIA requires the Regional Administrator, Southwest Region to establish and conduct a domestic tracking and verification program to effectively track and document the movement of raw tuna and processed tuna products in U.S. market channels from its capture to final sale. The tracking program will accurately document the "dolphin safe" or "non-dolphin safe" condition of tuna through catch, processing, and marketing reports for use in verifying the dolphin-safe or unsafe condition of tuna products entering the U.S. market.

The U.S. canned tuna industry produces approximately $1 billion worth of canned tuna every year, and canned tuna is the single most popular fish product marketed and consumed in this

country. Because of this, the statistics which describe the tuna fishery, its products, and its markets have been of interest to the National Marine Fisheries Service for some time. The monthly cannery receipt reports have been collected from the canned tuna industry for some time with out Paperwork Reduction Act approval and these reports will now be used in the tracking and verification program.

The tracking program will include procedures and reports for use when importing tuna into the U.S. and during domestic purse seine fishing, processing, and marketing in the U.S. and abroad. Verification of tracking system operations is attained through the establishment of audit and document review requirements which require the following information collections.

(a) The Captain, managing owner, or vessel agent of a U.S. tuna purse seine vessel returning to port from a trip any part of which included fishing in the ETP shall provide at least 48 hours notice to the Administrator, Southwest Region to allow enough time for a NMFS representative to meet the vessel at the unloading location and monitor the handling of "dolphin safe" and "non-dolphin safe" tuna. Fish may be unloaded directly to a cannery facility or transshipped to a freezer ship. Vessels that transfer fish to a freezer ship can reduce the amount of time spent in port by not transiting the Panama Canal or the Gulf of Mexico, and by not waiting in line to unload at the cannery. The 48 hour notice shall include:

(i) Port of arrival where fish will be unloaded [Self-explanatory. Information needed in order to make travel arrangements for the NMFS representative.];

(ii) Arrival Time [Information needed to facilitate NMFS representative to meet the vessel before unloading begins]; and

(ii) Schedule of unloading including the date and time [Information facilitates NMFS representatives ability to meet vessel].

(b) The tuna tracking forms will follow the amounts and location of "dolphin safe" and "non-dolphin safe" tuna as it is loaded into fish wells aboard the vessel. The forms will be completed and observer and initialed by the captain or engineer after each set. During the duration of the vessel assignment, the observer will retain the tuna tracking forms until the vessel arrives to port. Upon arrival to port, the captain will sign and submit the completed tuna tracking forms to the NMFS representative in person, or by mail to the Administrator, Southwest Region, within 5 working days at the end of the trip. The tuna tracking forms will include the following information:

(i) Well numbers containing "dolphin safe" and "non-dolphin safe" tuna [Self-explanatory. Information needed to monitor and track "dolphin safe" and "non-dolphin safe" tuna from time of capture];

(ii) Weights by species composition and estimated tons loaded into each fish well [Self-explanatory. Information used to track weights of tuna at time of capture];

(iii) Set number and date of loading [Information used to track weights and location of tuna at time of capture. Set numbers are important since more than one set may be completed in a single day];

(iv) Trip number and Trip dates [Information used to correlate the fish to observer and vessel records to verify whether marine mammals were encircled, killed, or seriously injured during fishing operations];

(v) Observer name and signature [Information used to certify and verify the report is accurate and correct];

(vi) Captain name and vessel name [Information used to correlate the fish to observer and vessel records to verify whether marine mammals were encircled, killed, or seriously injured during fishing operations].

(vii) Signature of both captain and observer at end of fishing trip [Certifying the information is accurate and correct].

(d) Tuna canning companies must provide on a monthly basis a report of the amounts of ETP-caught tuna that is removed from cold storage. The report shall be in writing and may be sent by mail, fax, or email to the Administrator, Southwest Region. The information provided in the reports are existing documents already generated by the canneries to internally track tuna throughout the entire canning process. NMFS will receive a copy of their report. This information will be used to monitor and track "dolphin safe" and "non-dolphin safe" tuna. The following information must be provided in the report:

(i) Date of removal [Information used to track and monitor tuna];

(ii) Storage container numbers [Information needed by cannery to track tuna throughout the process];

(iii) "dolphin safe" or "non-dolphin safe" designation [Information needed to track the classification of tuna being processed]; and

(iv) Disposition of fish (canning, sale, rejection, etc) [Information needed to track the disposition of tuna. Records already kept by cannery to account for tuna disposition].

(e) Canned tuna processors must submit a report to the Administrator, Southwest Region of all tuna received at their processing facilities in each calendar month whether or not the tuna is actually canned or stored during that month. Monthly cannery receipt reports are

already compiled by the cannery to monitor and track tuna received at the facility. These reports may be submitted by fax, email or mail before the last day of the month following the month being reported. The information is used to monitor and track tuna caught in the ETP and prepare reports regarding canned tuna industry operations. Monthly reports must contain the following information for domestic and import tuna receipts. In addition, import tuna receipts must have a Fisheries Certificate of Origin (NOAA Form 370) approved by the Office of Management and Budget under Control Number 0638-0335.

(i) Species [Self-explanatory. Information used to determine the type of tuna species processed since yellowfin tuna may be subject to an embargo];

(ii) tuna condition (round, loin, dressed, gilled and gutted, other) [Self-explanatory. Information used to track tuna products throughout the processing];

(iii) dolphin-safe status of tuna

(iv) weight in short tons to the fourth decimal [Self-explanatory. Information used to track the quantity of tuna being processed];

(v) Ocean area of capture (eastern tropical Pacific, western Pacific, Indian, eastern and western Atlantic, other) [This information is used to determine whether the tuna may be subject to an embargo since yellowfin tuna caught using a purse seine in the ETP or tuna caught using a high seas drift net may be subject to an embargo];

(vi) Catcher vessel [Information used to track tuna back to the vessel of capture];

(vii) Trip dates [Information used to correlate tuna fish to observer and vessel records];

(viii) Carrier name [Information used to monitor and track origin of tuna];

(ix) Unloading dates [Correlates tuna to unloading records to facilitate monitoring and tracking of tuna];

(x) Location of unloading [Correlates tuna to unloading records to facilitate monitoring and tracking of tuna].

(xi) Fisheries Certificate of Origin for each imported receipt of tuna [Required to track and monitor imported tuna].

(f) Any exporter, transshipper, importer, processor, or wholesaler/distributer of any tuna or tuna products labeled as “dolphin safe” must produce documentary evidence concerning the origin of the tuna or products within 30 days of receiving a written request from the Administrator, Southwest Region.

The information collected will not be disseminated.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

The requested information for vessel and operator permits is not submitted electronically at this time since the application requires an original signature certifying the information is true and correct as well as a check or money order. Most of the departure and gear notification reporting requirements associated with the vessel and operator permits and tracking and verification program may be completed by telephone, E-mail, or fax.

4. Describe efforts to identify duplication.

Although similar information is collected about U.S. tuna purse seine vessels under the High Seas Compliance Act of 1995, and the South Pacific Tuna Treaty (SPTT), neither authorize vessel owners or operators to incidentally take marine mammals during commercial fishing operations, and in the case of the SPTT, its jurisdiction does not include the ETP.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

This collection does not have a significant impact on small entities.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

The Secretary of Commerce would not be able to meet the mandates under the MMPA and the IDCPA if these collections were not conducted and U.S. tuna purse seine vessels and operators would not be able to fish for tuna and tuna like species within the ETP, causing an economic hardship to the industry. Annual vessel and operator permits are necessary since NMFS must certify to the International Review Panel that vessels requesting a DML are eligible to receive a DML and have all of the required dolphin safety gear. In addition, annual permits provide an accurate estimate of the number of vessels and operators actively participating in the International Dolphin Conservation Program and harvesting tuna within the ETP.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

This information collection is consistent with OMB guidelines (5 CFR 1320.6).

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those

comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, th clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Public comment was solicited on this information collection request (67 FR 35962, May 22, 2002). In addition, as part of the passage of the IDCPA, NMFS held planning sessions with fishing industry representatives, Congressional staff, and representatives of environmental organizations.

The tuna tracking and verification program was developed in consultation with U.S. canneries. This included on site visits, telephone conversations, and review of existing cannery reports used to track tuna from its purchase all the way through to its distribution

One comment was received in response to the May 2002 Federal Register notice. The comment expressed concern that the changes to the collection of information indicated a weakening in NMFS tuna tracking program. Specifically, the commenter expressed concern that : 1) tuna tracking forms used to justify the "dolphin safe" status of canned tuna are not available to the public; 2) tuna tracking system fails to track illegal activities in tuna fishing practices; 3) elimination of the requirement for NOAA to receive notification of tuna shipments will further weaken the tuna tracking system; and 4) the tuna tracking system fails to provide "certificates of origin."

Response:

1) Tuna tracking forms are the property of the Inter-American Tropical Tuna Commission, not NMFS. Tuna tracking forms are used by international tuna dolphin observers employed by the IATTC to collect information regarding whether or not any dolphins are killed or seriously injured during each set of the net made during fishing trips in the eastern tropical Pacific Ocean. NMFS has access to the tuna tracking forms in order to carry out its tuna tracking and verification responsibilities. The information contained on Tuna Tracking Forms could reveal the private business information of individual vessels; thus, it would be a violation of the Trade Secrets Act for NMFS to share the information contained on the forms with the public.

2) The purposes of the tuna tracking and verification system are to assure that (1) tuna harvested by U.S. fishers with purse seine nets in the eastern tropical Pacific Ocean is harvested in accordance with the requirements of U.S. law and governing international agreements; (2) tuna processed in the United States or imported into the United States is properly labeled and enters the U.S. market legally. The U.S. tuna tracking system is not responsible for documenting, tracking, and recording activities aboard foreign fishing vessels.

3) All import shipments of frozen and canned tuna are accompanied by the NOAA Form 370, Fisheries Certificate of Origin. Using the Customs Entry No. on the FCO, NOAA Fisheries can track all import shipments into the country. Frozen shipments of raw materials to U.S. canners

are reported to NOAA Fisheries on a monthly basis by each of the canners. A simple cross-check between Customs data and canner's reports would reveal the existence of any shipments not reported by canners.

4) The required FCO (Fisheries Certificate of Origin) requires ample information; e.g., the flag of the harvesting vessel; the Harmonized Tariff Schedule number; species description; product form; ocean area of harvest; etc.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payments or gifts are provided.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statue, regulation, or agency policy.

Although the information collection is a matter of public record, certain information may be considered proprietary and therefore subject to data confidentiality restriction of National Oceanic and Atmospheric Administration Order 216-100.

11. Provide additional justification for any questions of sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

No questions of a sensitive nature are included in this information collection.

12. Provide an estimate in hours of the burden of the collection of information.

The total number of respondents is 38, the total number of annual responses is 271, and the recordkeeping and reporting burden to the general public for the vessel and operator permit requirements and the tuna tracking and verification program is estimated to be 144 hours per year.

This request represents a recalculation of earlier information requests under previous amendments of the MMPA. It does not include burden hours on the general public due to voluntary participation in public hearings, meetings or related activities. In future years the burden hours may further decrease due to reductions in marine mammal take quotas and limited activity in the fishery. The number of burden hours on the general public is directly proportional to the number of applicants for vessel and operator permits.

(a) Vessel permit application. Total annual hours: 5.00 Hours

$$\frac{(10 \text{ applications X } 30 \text{ minutes/application X } 1 \text{ year period of validity})}{(60 \text{ minutes/hour})}$$

(b) Operator permit application. Total annual hours: 4.16 Hours

(25 applications X 10 minutes/application X 1 year period of validity)
(60 minutes/hour)

(c) Waiver request to transit ETP without permit including radio reporting requirements.
Total burden hours: 5.00 Hours

(10 requests X 30 minutes/request X 1 request per year)
(60 minutes/hour)

(d) Vessel departure notification. Total annual hours: 6.67 Hours

(10 vessels X 10 minutes/notification X 4 notifications per vessel/year)
(60 minutes/hour)

(e) Change in permit operator notification. Total annual hours: 1.00 Hour

(6 notifications/year X 10 minutes/notification)
(60 minutes/hour)

(f) Modified net notification. Total annual hours: 0.50 Hours

(3 notifications X 10 minutes/notification X 1 year)
(60 minutes/hour)

(g) Experimental fishing permit application. Total annual hours: 20.00 Hours

(1 application X 10 hours/application)
(1 report X 10 hours/report)

(h) Dolphin Mortality Limit request. Total annual hours: 3.00 Hours
Six month and annual Dolphin Mortality Limit Requests

(10 vessels X 15 minutes/request X 1 request/year)
(60 minutes/hour)

Per-trip Dolphin Mortality Limit Requests

(2 vessels X 15 minutes/request X 1 request/year)
(60 minutes/hour)

The estimated annual cost to the general public to apply for vessel and operator permits as well as comply with reporting requirements under the permits is approximately $1,133.25.

(45.33 hours X $25/hour).

The burden hours for the tracking of verification of "non-dolphin safe" and "dolphin safe" tuna is related to the number of active tuna purse seine vessels in the ETP, U.S. processors, exporters, transshippers, importers, distributors and sellers.

(a) Arrival notification Total Annual Burden = 6.67 Hours

$$\frac{\text{10 vessels X 4 notifications/vessel/year X 10 minutes/notification}}{\text{60 minutes/hour}}$$

(b) Tuna tracking form submission Total Annual Burden = 40 Hours

$$\frac{\text{60 minutes/tuna tracking form X 10 vessels X 4 landings/year}}{\text{60 minutes/hour}}$$

(c) Monthly tuna storage removal reports Total Annual Burden = 6 Hours

$$\frac{\text{3 processors X 12 months/year X 10 minutes/removal notification}}{\text{60 minutes/hour}}$$

(d) Monthly tuna receiving reports Total Annual Burden = 36 Hours

$$\frac{\text{12 reports/year X 3 processors X 60 minutes/report}}{\text{60 minutes/hour}}$$

(e) Produce reports if requested by Administrator Total Annual Burden = 10 Hours

$$\frac{\text{20 requests/year X 30 minutes/request}}{\text{60 minutes/hour}}$$

The estimated annual cost to the general public to comply with the tracking and verification reporting requirements is approximately $2,466.75.

(98.67 hours X $25/hour).

13. <u>Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection.</u>

The total estimated annual cost to the general public, excluding burden hours, such as maintenance and submission costs associated with the vessel and operator permits as well as the tracking and verification program is equal to $847.21. There are no capital or start-up costs associated with this information collection.

The estimated annual cost to the general public, excluding burden hours, such as maintenance and submission costs associated with the vessel and operator permits is $119.48. There are no capital or start-up costs associated with this information collection.

(a) Vessel permit application.

(10 applications X $0.37 postage) = $ 3.70

(b) Operator permit application.

(25 applications X $0.37 postage) = $ 9.25

(c) Waiver request to transit ETP without permit including radio reporting requirements.

(5 requests X $0.37 postage) = $ 1.85

(d) Vessel departure notification.

(10 vessels X 10 minutes/notification X 4 notifications/year X $0.20/minute telephone charge) = $80.00

(e) Change in permit operator notification.

(6 notifications X 10 minutes/notification X $0.20/minute telephone charge) = $ 12.00

(f) Modified net notification.

(3 notifications X 10 minutes/notification X $0.20/minute telephone charge) = $ 6.00

(g) Experimental fishing permit application.

(1 application X $1.12 postage) = $ 1.12

(1 report submission X $1.12 postage) = $ 1.12

(h) Dolphin Mortality Limit request. (10 annual or six month DML requests X $0.37 postage) = $3.70

Per-trip Dolphin Mortality Limit Requests.

(2 per trip DML requests X $0.37 postage) = $ 0.74

The estimated annual cost to the general public, excluding burden hours, such as maintenance and submission costs associated with tracking of verification of "non-dolphin safe" and "dolphin safe" tuna $727.76. There are no capital or start-up costs associated with this information collection since these records are already maintained by the canneries and vessels.

(a) Arrival notification

(40 notifications X 10 minutes/notification X $1.25 /minute telephone charge) = $500.00

(b) Tuna tracking form

(40 tuna tracking forms X $0.30/copy) = $12.00

(40 tuna tracking forms X $1.18 postage/form) = $47.20

(f) Tuna storage removal reports

(36 removal reports X $0.30 /copy) = $10.80

(36 removal reports X $1.18 postage/report) = $42.48

(g) Monthly tuna processor reports

(36 processor reports X $1.20/copy) = $43.20
(36 reports X $1.18 postage/report) = $42.48

(h) Produce reports if requested by Administrator

(20 reports X 0.30/copy) = $6.00
(20 reports X 1.18 postage/report) = $23.60

14. <u>Provide estimates of annualized cost to the Federal government.</u>

The estimated annual costs for processing vessel and operator permit applications as well as responding to the notification and reporting requirements to the Federal government is determined by calculating the total time necessary for staff to complete the response and multiplying the amount by $25 per hour . The total annual estimated cost is $793.92.

(a) Vessel permit application. Total cost: $250.00

$$\frac{(10 \text{ applications X } 60 \text{ minutes/application X } \$25/\text{hour})}{(60 \text{ minutes/hour})}$$

(b) Operator permit application. Total cost: $156.25

$$\frac{(25 \text{ applications X } 15 \text{ minutes/application X } \$25/\text{hour})}{(60 \text{ minutes/hour})}$$

(c) Waiver request to transit ETP without permit. Total cost: $83.34

$$\frac{(10 \text{ requests X } 20 \text{ minutes/request X } \$25/\text{hour})}{(60 \text{ minutes/hour})}$$

(d) Vessel departure notification. Total cost: $166.75

$$\frac{(10 \text{ vessels X } 10 \text{ minutes/notification X } 4 \text{ notifications per vessel x } \$25/\text{hour})}{(60 \text{ minutes/hour})}$$

(e) Change in permit operator notification. Total cost: $25.00

$$\frac{(6 \text{ notifications X } 10 \text{ minutes/notification X } \$25/\text{hour})}{(60 \text{ minutes/hour})}$$

(f) Dolphin Safety Panel Marking Requirements Total cost: $0.00

No administrative costs associated with marking the safety panel.

(g) Modified net notification. Total cost: $12.50

$$\frac{(3 \text{ notifications X } 10 \text{ minutes/notification X } 25/\text{hour})}{(60 \text{ minutes/hour})}$$

(h) Experimental fishing permit application. Total cost: $100.00

(1 application X 4 hours/application X $25/hour)

(i) Dolphin Mortality Limit request. Total cost: $41.75

(10 vessels X 10 minutes/request X $25/hour)
(60 minutes)

The estimated annual costs for processing reports pertaining to the tuna tracking and verification program as well as responding to the notification and reporting requirements to the Federal government is determined by providing the costs of two staff salaries hired to complete all the duties and responsibilities related to the tuna tracking and verification program. In addition to the staff time allocated to track and verify the origin of landed tuna in the United States, there will be travel costs associated with monitoring the unloading operations and conducting audits and spot checks. Estimated cost is $126,700.

GS-11 employee = $63,000 (including benefits)
GS-9 employee = $52,000 (including benefits)
Travel Costs = $11,700
($500/roundtrip airfare+ $150 per diem rate) X 3 days X 6 trips/year

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83I.

All changes are program changes due to the reinstatement of an expired clearance and revised requirements.

16. For collections whose results will be published, outline the plans for tabulation and publication.

Not applicable. The requested information will not be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Not applicable. Not seeking approval to not display the expiration date for OMB approval.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

Not applicable. There are no exception to the certification statement identified in Item 19 of the OMB-83-I.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not Applicable. This information collection request does not employ statistical methods.

(ii) *Whaling captain or vessel operator* means the individual who is identified by Alaskan Natives as the leader of each hunting team (usually the other crew on the boat) and who is the whaling captain; or the individual operating the boat at the time the whale is harvested or transported to the place of processing.

(iii) *Cook Inlet* means all waters of Cook Inlet north of 59° North latitude, including, but not limited to, waters of Kachemak Bay, Kamishak Bay, Chinitna Bay, and Tuxedni Bay.

(2) *Marking*. Each whaling captain or vessel operator, upon killing and landing a beluga whale (*Delphinapterus leucas*) from Cook Inlet, Alaska, must remove the lower left jawbone, leaving the teeth intact and in place. When multiple whales are harvested during one hunting trip, the jawbones will be marked for identification in the field to ensure correct reporting of harvest information by placing a label marked with the date, time, and location of harvest within the container in which the jawbone is placed. The jawbone(s) must be retained by the whaling captain or vessel operator and delivered to NMFS at the Anchorage Field Office, 222 West 7th Avenue, Anchorage, Alaska 99513 within 72 hours of returning from the hunt.

(3) *Reporting*. Upon delivery to NMFS of a jawbone, the whaling captain or vessel operator must complete and mail a reporting form, available from NMFS, to the NMFS Anchorage Field Office within 30 days. A separate form is required for each whale harvested.

(i) To be complete, the form must contain the following information: the date and location of kill, the method of harvest, and the coloration of the whale. The respondent will also be invited to report on any other observations concerning the animal or circumstance of the harvest.

(ii) Data collected pursuant to paragraph (e) of this section will be reported on forms obtained from the Anchorage Field Office. These data will be maintained in the NMFS Alaska Regional Office in Juneau, Alaska, where such data will be available for public review.

(4) No person may falsify any information required to be set forth on the reporting form as required by paragraph (e) of this section.

(5) The Anchorage Field Office of NMFS is located in room 517 of the Federal Office Building, 222 West 7th Avenue; its mailing address is: NMFS, Box 43, Anchorage, AK. 99513.

[39 FR 1852, Jan. 15, 1974, as amended at 59 FR 50376, Oct. 3, 1994; 64 FR 27927, May 24, 1999]

§ 216.24 Taking and related acts incidental to commercial fishing operations by tuna purse seine vessels in the eastern tropical Pacific Ocean.

(a)(1) No marine mammal may be taken in the course of a commercial fishing operation by a United States purse seine fishing vessel in the ETP unless the taking constitutes an incidental catch as defined in § 216.3, and vessel and operator permits have been obtained in accordance with these regulations, and such taking is not in violation of such permits or regulations.

(2)(i) It is unlawful for any person using a United States purse seine fishing vessel of 400 short tons (st) (362.8 metric tons (mt)) carrying capacity or less to intentionally deploy a net on or to encircle dolphins, or to carry more than two speedboats, if any part of its fishing trip is in the ETP.

(ii) It is unlawful for any person using a United States purse seine fishing vessel of greater than 400 short tons (362.8 mt) carrying capacity that does not have a valid permit obtained under these regulations to catch, possess, or land tuna if any part of the vessel's fishing trip is in the ETP.

(iii) It is unlawful for any person subject to the jurisdiction of the United States to receive, purchase, or possess tuna caught, possessed, or landed in violation of paragraph (a)(2)(ii) of this section.

(iv) It is unlawful for a person subject to the jurisdiction of the United States to intentionally deploy a purse seine net on, or to encircle, dolphins from a vessel operating in the ETP when the DML assigned to that vessel has been reached, or when there is not a DML assigned to that vessel.

(3) Upon written request made in advance of entering the ETP, the limitations in paragraphs (a)(2)(i) and

(a)(2)(ii) of this section may be waived by the Administrator, Southwest Region, for the purpose of allowing transit through the ETP. The waiver will provide, in writing, the terms and conditions under which the vessel must operate, including a requirement to report by radio to the Administrator, Southwest Region, the vessel's date of exit from or subsequent entry into the permit area.

(b) *Permits*—(1) *Vessel permit*. The owner or managing owner of a United States purse seine fishing vessel of greater than 400 st (362.8 mt) carrying capacity that participates in commercial fishing operations in the ETP must possess a valid vessel permit issued under this paragraph (b) of this section. This permit is not transferable and must be renewed annually. If a vessel permit holder surrenders his/her permit to the Administrator, Southwest Region, the permit will not be returned and a new permit will not be issued before the end of the calendar year. Vessel permits are valid through December 31 of each year.

(2) *Operator permit*. The person in charge of and actually controlling fishing operations (hereinafter referred to as the operator) on a United States purse seine fishing vessel engaged in commercial fishing operations under a vessel permit must possess a valid operator permit issued under paragraph (b) of this section. Such permits are not transferable and must be renewed annually. To receive a permit, the operator must have satisfactorily completed all required training under paragraph (c)(4) of this section. The operator's permit is valid only when the permit holder is on a vessel with a valid vessel permit. Operator permits will be valid through December 31 of each year.

(3) *Possession and display*. A valid vessel permit issued pursuant to paragraph (b)(1) of this section must be on board the vessel while engaged in fishing operations, and a valid operator permit issued pursuant to paragraph (b)(2) of this section must be in the possession of the operator to whom it was issued. Permits must be shown upon request to NMFS enforcement agents, or to U.S. Coast Guard officers, or to designated agents of NMFS or the IATTC (including observers). A vessel owner or operator who is at sea on a fishing trip when his or her permit expires and to whom a permit for the next year has been issued may take marine mammals under the terms of the new permit without having to display it on board the vessel until the vessel returns to port.

(4) *Application for vessel permit*. The owner or managing owner of a purse seine vessel may apply for a vessel permit from the Administrator, Southwest Region, allowing at least 45 days for processing. The application must be signed by the applicant and contain:

(i) The name, official number, tonnage, carrying capacity in short or metric tons, maximum speed in knots, processing equipment, and type and quantity of gear, including an inventory of equipment required under paragraph (c)(2) of this section if the application is for purse seining involving the intentional taking of marine mammals, of the vessel that is to be covered under the permit;

(ii) A statement of whether the vessel will make sets involving the intentional taking of marine mammals;

(iii) The type and identification number(s) of Federal, State, and local commercial fishing licenses under which vessel operations are conducted, and the dates of expiration;

(iv) The name(s) of the operator(s) anticipated to be used; and

(v) The name of the applicant, whether he/she is the owner or the managing owner, his/her address, telephone and fax numbers, and, if applicable, the name, address, telephone and fax numbers of the agent or organization acting on behalf of the vessel.

(5) *Application for operator permit*. A person wishing to operate a purse seine vessel may apply for an operator permit from the Administrator, Southwest Region, allowing at least 45 days for processing. The application must be signed by the applicant or the applicant's representative, if applicable, and contain:

(i) The name, address, telephone and fax numbers of the applicant;

(ii) The type and identification number(s) of any Federal, state, and local fishing licenses held by the applicant;

(iii) The name of the vessel(s) on which the applicant anticipates serving as an operator; and

(iv) The date, location, and provider of any training for the operator permit.

(6) *Fees*. (i) *Vessel permit application fees*. An application for a permit under paragraph (b)(1) of this section must include a fee for each vessel as specified on the application form. The Assistant Administrator may change the amount of this fee at any time if a different fee is determined in accordance with the NOAA Finance Handbook and specified by the Administrator, Southwest Region, on the application form.

(ii) *Operator permit fee*. There is no fee for a operator permit under paragraph (b)(2) of this section. The Assistant Administrator may impose a fee or change the amount of this fee at any time if a different fee is determined in accordance with the NOAA Finance Handbook and specified by the Administrator, Southwest Region, on the application form.

(iii) *Observer placement fee*. The vessel permit holder must submit the fee for the placement of observers, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, by September 1 of the year prior to the year in which the vessel will be operated in the ETP. The Administrator, Southwest Region, will forward all observer placement fees to the IATTC or to the applicable international organization approved by the Administrator, Southwest Region.

(7) *Application approval*. The Administrator, Southwest Region, will determine the adequacy and completeness of an application and, upon determining that an application is adequate and complete, will approve that application and issue the appropriate permit, except for applicants having unpaid or overdue civil penalties, criminal fines, or other liabilities incurred in a legal proceeding.

(8) *Conditions applicable to all permits*— (i) *General Conditions*. Failure to comply with the provisions of a permit or with these regulations may lead to suspension, revocation, modification, or denial of a permit. The permit holder, vessel, vessel owner, operator, or master may be subject, jointly or severally, to the penalties provided for under the MMPA. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(ii) *Observer placement*. By obtaining a permit, the permit holder consents to the placement of an observer on the vessel during every trip involving operations in the ETP and agrees to payment of the fees for observer placement. No observer will be assigned to a vessel unless that vessel owner has submitted payment of observer fees to the Administrator, Southwest Region. The observers may be placed under an observer program of NMFS, IATTC, or another international observer program approved by the IDCP and the Administrator, Southwest Region.

(iii) *Explosives*. The use of explosive devices is prohibited during all tuna purse seine operations that involve marine mammals.

(iv) *Reporting requirements*. (A) The vessel permit holder of each permitted vessel must notify the Administrator, Southwest Region or the IATTC contact designated by the Administrator, Southwest Region, at least 5 days in advance of the vessel's departure on a fishing voyage to allow for observer placement on every voyage.

(B) The vessel permit holder must notify the Administrator, Southwest Region, or the IATTC contact designated by the Administrator, Southwest Region, of any change of vessel operator at least 48 hours prior to departing on a trip. In the case of a change in operator due to an emergency, notification must be made within 72 hours of the change.

(v) *Data release*. By using a permit, the permit holder authorizes the release to NMFS and the IATTC of all data collected by observers aboard purse seine vessels during fishing trips under the IATTC observer program or another international observer program approved by the Administrator, Southwest Region. The permit holder must furnish the international observer program with all release forms required to authorize the observer data to be provided to NMFS and the IATTC. Data obtained under such releases will be used for the same purposes as would data collected directly by observers placed by NMFS and will

be subject to the same standards of confidentiality.

(9) *Mortality and serious injury reports.* The Administrator, Southwest Region, will provide to the public periodic status reports summarizing the estimated incidental dolphin mortality and serious injury by U.S. vessels of individual species and stocks.

(c) *Purse seining by vessels with DMLs.* In addition to the terms and conditions set forth in paragraph (b) of this section, any permit for a vessel to which a DML has been assigned under paragraph (c)(8) of this section and any operator permit when used on such a vessel are subject to the following terms and conditions:

(1) A vessel may be used to chase and encircle schools of dolphins in the ETP only under the immediate direction of the holder of a valid operator's permit.

(2) *No retention of Marine Mammals.* Except as otherwise authorized by a specific permit, marine mammals incidentally taken must be immediately returned to the ocean without further injury. The operator of a purse seine vessel must take every precaution to refrain from causing or permitting incidental mortality or serious injury of marine mammals. Live marine mammals must not be brailed, sacked up, or hoisted onto the deck during ortza retrieval.

(3) *Gear and equipment required for valid permit.* A vessel possessing a vessel permit for purse seining involving the intentional taking of marine mammals may not engage in fishing operations involving the intentional deployment of the net on or encirclement of dolphins unless it is equipped with a dolphin safety panel in its purse seine, has the other required gear and equipment, and uses the required procedures.

(i) *Dolphin safety panel.* The dolphin safety panel must be a minimum of 180 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 18 strips must be determined in a ratio of 10 fathoms in length for each strip of net depth. It must be installed so as to protect the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline that begins at the outboard end of the last bowbunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The dolphin safety panel must consist of small mesh webbing not to exceed 1 1/4 inches (3.18 centimeter (cm)) stretch mesh extending downward from the corkline and, if present, the base of the dolphin apron to a minimum depth equivalent to two strips of 100 meshes of 4 1/4 inches (10.80 cm) stretch mesh webbing. In addition, at least a 20-fathom length of corkline must be free from bunchlines at the apex of the backdown channel.

(ii) *Dolphin safety panel markers.* Each end of the dolphin safety panel and dolphin apron must be identified with an easily distinguishable marker.

(iii) *Dolphin safety panel hand holds.* Throughout the length of the corkline under which the dolphin safety panel and dolphin apron are located, hand hold openings must be secured so that they will not allow the insertion of a 1 3/8 inch (3.50 cm) diameter cylindrical-shaped object.

(iv) *Dolphin safety panel corkline hangings.* Throughout the length of the corkline under which the dolphin safety panel and dolphin apron are located, corkline hangings must be inspected by the vessel operator following each trip. Hangings found to have loosened to the extent that a cylindrical object with a 1 3/8 inch (3.50 cm) diameter can be inserted between the cork and corkline hangings, must be tightened so as not to allow the insertion of a cylindrical object with a 1 3/8 inch (3.50 cm) diameter.

(v) *Speedboats.* A minimum of three speedboats in operating condition must be carried. All speedboats carried aboard purse seine vessels and in operating condition must be rigged with tow lines and towing bridles or towing posts. Speedboat hoisting bridles may not be substituted for towing bridles.

(vi) *Raft.* A raft suitable to be used as a dolphin observation-and-rescue platform must be carried.

(vii) *Face mask and snorkel, or view box.* At least two face masks and snorkels or view boxes must be carried.

(viii) *Lights.* The vessel must be equipped with lights capable of producing a minimum of 140,000 lumens of output for use in darkness to ensure

sufficient light to observe that procedures for dolphin release are carried out and to monitor incidental dolphin mortality.

(4) *Vessel inspection*—(i) *Annual.* At least once during each calendar year, purse seine nets and other gear and equipment required under § 216.24(c)(2) must be made available for inspection and for a trial set/net alignment by an authorized NMFS inspector or IATTC staff as specified by the Administrator, Southwest Region, in order to obtain a vessel permit.

(ii) *Reinspection.* Purse seine nets and other gear and equipment required by these regulations must be made available for reinspection by an authorized NMFS inspector or IATTC staff as specified by the Administrator, Southwest Region. The vessel permit holder must notify the Administrator, Southwest Region, of any net modification at least 5 days prior to departure of the vessel in order to determine whether a reinspection or trial set/net alignment is required.

(iii) Upon failure to pass an inspection or reinspection, a vessel may not engage in purse seining involving the intentional taking of marine mammals until the deficiencies in gear or equipment are corrected as required by NMFS.

(5) *Operator permit holder training requirements.* An operator must maintain proficiency sufficient to perform the procedures required herein, and must attend and satisfactorily complete a formal training session approved by the Administrator, Southwest Region, in order to obtain his or her permit. At the training session an attendee will be instructed on the relevant provisions and regulatory requirements of the MMPA and the IDCP, and the fishing gear and techniques that are required for, or will contribute to, reducing serious injury and mortality of dolphin incidental to purse seining for tuna. Operators who have received a written certificate of satisfactory completion of training and who possess a current or previous calendar year permit will not be required to attend additional formal training sessions unless there are substantial changes in the relevant provisions or implementing regulations of the MMPA or the IDCP, or in fishing gear and techniques. Additional training may be required for any operator who is found by the Administrator, Southwest Region, to lack proficiency in the required fishing procedures or familiarity with the relevant provisions or regulations of the MMPA or the IDCP.

(6) *Marine mammal release requirements.* All operators must use the following procedures during all sets involving the incidental taking of marine mammals in association with the capture and landing of tuna.

(i) *Backdown procedure.* Backdown must be performed following a purse seine set in which dolphins are captured in the course of catching tuna, and must be continued until it is no longer possible to remove live dolphins from the net by this procedure. At least one crewman must be deployed during backdown to aid in the release of dolphins. Thereafter, other release procedures required will be continued so that all live dolphins are released prior to the initiation of the sack-up procedure.

(ii) *Prohibited use of sharp or pointed instrument.* The use of a sharp or pointed instrument to remove any marine mammal from the net is prohibited.

(iii) *Sundown sets prohibited.* On every set encircling dolphin, the backdown procedure must be completed no later than one-half hour after sundown, except as provided here. For the purpose of this section, sundown is defined as the time at which the upper edge of the sun disappears below the horizon or, if the view of the sun is obscured, the local time of sunset calculated from tables developed by the U.S. Naval Observatory or other authoritative source approved by the Administrator, Southwest Region. A sundown set is a set in which the backdown procedure has not been completed and rolling the net to sack-up has not begun within one-half hour after sundown. Should a set extend beyond one-half hour after sundown, the operator must use the required marine mammal release procedures including the use of the high intensity lighting system. In the event a sundown set occurs where the seine skiff was let go 90 or more minutes before sundown, and an earnest effort to

rescue dolphins is made, the International Review Panel of the IDCP may recommend to the United States that in the view of the International Review Panel, prosecution by the United States is not recommended. Any such recommendation will be considered by the United States in evaluating the appropriateness of prosecution in a particular circumstance.

(iv) *Dolphin safety panel.* During backdown, the dolphin safety panel must be positioned so that it protects the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline that begins at the outboard end of the last bow bunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point.

(7) *Experimental fishing operations.* The Administrator, Southwest Region, may authorize experimental fishing operations, consistent with the provisions of the IDCP, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce or eliminate dolphin mortality or serious injury, or do not require the encirclement of dolphins in the course of fishing operations. The Administrator, Southwest Region, may waive, as appropriate, any requirements of this section except DMLs and the obligation to carry an observer.

(i) A vessel permit holder may apply to the Administrator, Southwest Region, for an experimental fishing operation waiver allowing for processing no less than 90 days before the date the proposed operation is intended to begin. An application must be signed by the permitted operator and contain:

(A) The name(s) of the vessel(s) and the vessel permit holder(s) to participate;

(B) A statement of the specific vessel gear and equipment or procedural requirement to be exempted and why such an exemption is necessary to conduct the experiment;

(C) A description of how the proposed modification to the gear and equipment or procedures is expected to reduce incidental mortality or serious injury of marine mammals;

(D) A description of the applicability of this modification to other purse seine vessels;

(E) The planned design, time, duration, and general area of the experimental operation;

(F) The name(s) of the permitted operator(s) of the vessel(s) during the experiment; and

(G) A statement of the qualifications of the individual or company doing the analysis of the research.

(ii) The Administrator, Southwest Region, will acknowledge receipt of the application and, upon determining that it is complete, will publish a notice in the FEDERAL REGISTER summarizing the application, making the full application available for inspection and inviting comments for a minimum period of 30 days from the date of publication.

(iii) The Administrator, Southwest Region, after considering the information in the application and the comments received on it, will either issue a waiver to conduct the experiment which includes restrictions or conditions deemed appropriate, or deny the application, giving the reasons for denial.

(iv) A waiver for an experimental fishing operation will be valid only for the vessels and operators named in the permit, for the time period and areas specified, for trips carrying an observer designated by the Administrator, Southwest Region, when all the terms and conditions of the permit are met.

(v) The Administrator, Southwest Region, may suspend or revoke an experimental fishing waiver in accordance with 15 CFR part 904 if the terms and conditions of the waiver or the provisions of the regulations are not followed.

(8) *Operator permit holder performance requirements.* [Reserved]

(9) *Vessel permit holder dolphin mortality limits.* For purposes of this paragraph, the term ''vessel permit holder'' includes both the holder of a current vessel permit and also the holder of a vessel permit for the following year.

(i) By September 1 each year, a vessel permit holder desiring a DML for the following year must provide to the Administrator, Southwest Region, the name of the United States purse seine fishing vessel(s) of carrying capacity

greater than 400 st (362.8 mt) carrying capacity that the owner intends to use to intentionally deploy purse seine fishing nets in the ETP to encircle dolphins in an effort to capture tuna during the following year. NMFS will forward the list of purse seine vessels to the Director of the IATTC on or before October 1, or as otherwise required by the IDCP, for assignment of a DML for the following year under the provisions of Annex IV of the Agreement on the IDCP.

(ii) Each vessel permit holder that desires a DML only for the period between July 1 to December 31 must provide the Administrator, Southwest Region, by September 1 of the prior year, the name of the United States purse seine fishing vessel(s) of greater than 400 st (362.8 mt) carrying capacity that the owner intends to use to intentionally deploy purse seine fishing nets in the ETP to encircle dolphins in an effort to capture tuna during the period. NMFS will forward the list of purse seine vessels to the Director of the IATTC on or before October 1, or as otherwise required under the IDCP, for possible assignment of a DML for the 6-month period July 1 to December 31. Under the IDCP, the DML will be calculated by the IDCP from any unutilized pool of DMLs in accordance with the procedure described in Annex IV of the Agreement on the IDCP and will not exceed one-third of an unadjusted full-year DML as calculated by the IDCP.

(iii)(A) The Administrator, Southwest Region, will notify vessel owners of the DML assigned for each vessel for the following year, or the second half of the year, as applicable.

(B) The Administrator, Southwest Region, may adjust the DMLs in accordance with Annex IV of the Agreement on the IDCP. All adjustments of full-year DMLs will be made before January 1, and the Administrator, Southwest Region, will notify the Director of the IATTC of any adjustments prior to a vessel departing on a trip using its adjusted DML. The notification will be no later than February 1 in the case of adjustments to full-year DMLs, and no later than May 1 in the case of adjustments to DMLs for the second half of the year.

(C) Within the requirements of Annex IV of the Agreement on the IDCP, the Administrator, Southwest Region, may adjust a vessel's DML if it will further scientific or technological advancement in the protection of marine mammals in the fishery or if the past performance of the vessel indicates that the protection or use of the yellowfin tuna stocks or marine mammals is best served by the adjustment, within the mandates of the MMPA. Experimental fishing operation waivers or scientific research permits will be considered a basis for adjustments.

(iv)(A) A vessel assigned a full-year DML that does not make a set on dolphins by April 1 or that leaves the fishery will lose its DML for the remainder of the year, unless the failure to set on dolphins is due to *force majeure* or other extraordinary circumstances as determined by the International Review Panel.

(B) A vessel assigned a DML for the second half of the year will be considered to have lost its DML if the vessel has not made a set on dolphins before December 31, unless the failure to set on dolphins is due to *force majeure* or extraordinary circumstances as determined by the International Review Panel.

(C) Any vessel that loses its DML for 2 consecutive years will not be eligible to receive a DML for the following year.

(D) NMFS will determine, based on available information, whether a vessel has left the fishery.

(*1*) A vessel lost at sea, undergoing extensive repairs, operating in an ocean area other than the ETP, or for which other information indicates will no longer be conducting purse seine operations in the ETP for the remainder of the period covered by the DML will be determined to have left the fishery.

(*2*) NMFS will make all reasonable efforts to determine the intentions of the vessel owner, and the owner of any vessel that has been preliminarily determined to have left the fishery will be provided notice of such preliminary determination and given the opportunity to provide information on whether the vessel has left the fishery prior to NMFS making a final determination

under 15 CFR part 904 and notifying the IATTC.

(v) Any vessel that exceeds its assigned DML after any applicable adjustment under paragraph (c)(8)(iii) of this section will have its DML for the subsequent year reduced by 150 percent of the overage, unless another adjustment is determined by the International Review Panel.

(vi) A vessel that is covered by a valid vessel permit and that does not normally fish for tuna in the ETP but desires to participate in the fishery on a limited basis may apply for a per-trip DML from the Administrator, Southwest Region, at any time, allowing at least 60 days for processing. The request must state the expected number of trips involving sets on dolphins and the anticipated dates of the trip or trips. The request will be forwarded to the Director of the IATTC for processing in accordance with Annex IV of the Agreement on the IDCP. A per-trip DML will be assigned if one is made available in accordance with the terms of Annex IV of the IDCP. If a vessel assigned a per-trip DML does not set on dolphins during that trip, the vessel will be considered to have lost its DML unless this was a result of *force majeure* or other extraordinary circumstances as determined by the International Review Panel. After two consecutive losses of a DML, a vessel will not be eligible to receive a DML for the next fishing year.

(vii) Observers will make their records available to the vessel operator at any reasonable time, including after each set, in order for the operator to monitor the balance of the DML(s) remaining for use.

(viii) Vessel and operator permit holders must not deploy a purse seine net on or encircle any school of dolphins containing individuals of a particular stock of dolphins:

(A) When the applicable per-stock per-year dolphin mortality limit for that stock of dolphins (or for that vessel, if so assigned) has been reached or exceeded; or

(B) After the time and date provided in actual notification or notification in the FEDERAL REGISTER by the Administrator, Southwest Region, based upon the best available evidence, stating when any applicable per-stock per-year dolphin mortality limit has been reached or exceeded, or is expected to be reached in the near future.

(ix) If individual dolphins belonging to a stock that is prohibited from being taken are not reasonably observable at the time the net skiff attached to the net is released from the vessel at the start of a set, the fact that individuals of that stock are subsequently taken will not be cause for enforcement action provided that all procedures required by the applicable regulations have been followed.

(x) Vessel and operator permit holders must not intentionally deploy a purse seine net on or encircle dolphins intentionally:

(A) When the vessel's DML, as adjusted, is reached or exceeded; or

(B) After the date and time provided in actual notification by letter, facsimile, radio, or electronic mail, or notice in the FEDERAL REGISTER by the Administrator, Southwest Region, based upon the best available evidence, that intentional sets on dolphins must cease because the total of the DMLs assigned to the U.S. fleet has been reached or exceeded, or is expected to be exceeded in the near future.

(xi) Sanctions recommended by the International Review Panel for any violation of these rules will be considered by NMFS and NOAA in enforcement actions brought under these regulations.

(xii) Intentionally deploying a purse seine net on, or to encircle, dolphins after a vessel's DML, as adjusted, has been reached will disqualify the vessel from consideration for a DML for the following year. If already assigned, the DML for the following year will be withdrawn, and the Director of the IATTC will be notified by NMFS that the DML assigned to that vessel will be unutilized. Procedures found at 15 CFR part 904 apply to the withdrawal of the permit.

(d) *Purse seining by vessels without assigned DMLs.* In addition to the requirements of paragraph (b) of this section, a vessel permit used for a trip not involving an assigned DML and the operator's permit when used on such a vessel are subject to the following terms and conditions: a permit holder

may take marine mammals provided that such taking is an accidental occurrence in the course of normal commercial fishing operations and the vessel does not intentionally deploy its net on, or to encircle, dolphins; marine mammals taken incidental to such commercial fishing operations must be immediately returned to the environment where captured without further injury, using release procedures such as hand rescue, and aborting the set at the earliest effective opportunity; the use of one or more rafts and face masks or view boxes to aid in the rescue of dolphins is recommended.

(e) *Observers*: (1) The holder of a vessel permit must allow an observer duly authorized by the Administrator, Southwest Region, to accompany the vessel on all fishing trips in the ETP for the purpose of conducting research and observing operations, including collecting information that may be used in civil or criminal penalty proceedings, forfeiture actions, or permit sanctions. A vessel that fails to carry an observer in accordance with these requirements may not engage in fishing operations.

(2) Research and observation duties will be carried out in such a manner as to minimize interference with commercial fishing operations. Observers must be provided access to vessel personnel and to dolphin safety gear and equipment, electronic navigation equipment, radar displays, high powered binoculars, and electronic communication equipment. The navigator must provide true vessel locations by latitude and longitude, accurate to the nearest minute, upon request by the observer. Observers must be provided with adequate space on the bridge or pilothouse for clerical work, as well as space on deck adequate for carrying out observer duties. No vessel owner, master, operator, or crew member of a permitted vessel may impair, or in any way interfere with, the research or observations being carried out. Masters must allow observers to use vessel communication equipment to report information concerning the take of marine mammals and other observer collected data upon request of the observer.

(3) Any marine mammals killed during fishing operations that are accessible to crewmen and requested from the permit holder or master by the observer must be brought aboard the vessel and retained for biological processing, until released by the observer for return to the ocean. Whole marine mammals or marine mammal parts designated as biological specimens by the observer must be retained in cold storage aboard the vessel until retrieved by authorized personnel of NMFS or the IATTC when the vessel returns to port for unloading.

(4) It is unlawful for any person to forcibly assault, impede, intimidate, interfere with, or to influence or attempt to influence an observer, or to harass (including sexual harassment) an observer by conduct which has the purpose or effect of unreasonably interfering with the observer's work performance, or which creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(5)(i) All observers must be provided sleeping, toilet and eating accommodations at least equal to that provided to a full crew member. A mattress or futon on the floor or a cot is not acceptable in place of a regular bunk. Meal and other galley privileges must be the same for the observer as for other crew members.

(ii) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing common facilities must be established before the placement meeting and approved by NMFS or other approved observer program and must be followed during the entire trip.

(iii) In the event there are one or more female crew members, the female observer must be provided a bunk in a cabin shared solely with female crew members, and provided toilet and shower facilities shared solely with these female crew members.

(f) *Importation, purchase, shipment, sale and transport.* (1)(i) It is illegal to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if the fish have been caught with commercial fishing technology that results in the incidental kill or incidental serious injury of marine mammals in excess of that allowed under this part for U.S. fishermen, or as specified at paragraphs (f)(7) through (f)(9) of this section.

(ii) For purposes of this paragraph(f), and in applying the definition of an ''intermediary nation,'' an import occurs when the fish or fish product is released from a nation's Customs' custody and enters into the territory of the nation. For other purposes, ''import'' is defined in § 216.3.

(2)(i) *HTS numbers requiring a Fisheries Certificate of Origin, subject to yellowfin tuna embargo.* The following U.S. Harmonized Tariff Schedule (HTS) numbers identify yellowfin tuna or yellowfin tuna products that are harvested in the ETP purse seine fishery and imported into the United States. All shipments containing tuna or tuna products imported into the United States under these HTS numbers must be accompanied by a Fisheries Certificate of Origin (FCO), NOAA Form 370. Yellowfin tuna identified by any of the following HTS numbers that was harvested using a purse seine in the ETP may not be imported into the United States unless both the nation with jurisdiction over the harvesting vessel and the exporting nation (if different) have an affirmative finding under paragraph (f)(9) of this section.

(A) *Frozen*:	
0303.42.0020	Yellowfin tuna, whole, frozen.
0303.42.0040	Yellowfin tuna, eviscerated, head on, frozen.
0303.42.0060	Yellowfin tuna, other, frozen.
(B) *Canned*:	
1604.14.1000	Tuna, non-specific, in airtight containers, in oil.
1604.14.2040	Tuna, other than albacore, not over 7kg, in airtight containers.
1604.14.3040	Tuna, other than albacore, in airtight containers, not in oil, over quota.
(C) *Loins*:	
1604.14.4000	Tuna, not in airtight containers, not in oil, over 6.8kg.
1604.14.5000	Tuna, other, not in airtight containers.
(D) *Other (only if the product contains tuna)*:	
0304.10.4099	Other fish, fillets and other fish meat, fresh or chilled.
0304.20.2066	Other fish, fillets, skinned, in blocks weighing over 4.5kg, frozen.
0304.20.6096	Other fish, fillets, frozen.
0304.90.1089	Other fish meat, in bulk or immediate containers, fresh or chilled.
0304.90.9091	Other fish meat, fresh or chilled.

(ii) *HTS numbers requiring a Fisheries Certificate of Origin, not subject to yellowfin tuna embargo.* The following HTS numbers identify tuna or tuna products, other than fresh tuna or tuna identified in paragraph (f)(2)(i) of this section, known to be imported into the United States. All shipments imported into the United States under these HTS numbers must be accompanied by a FCO. The shipment may not be imported into the United States if harvested by a large-scale driftnet nation, unless accompanied by the official statement described in paragraph (f)(5)(x) of this section.

(A) *Frozen*:	
0303.41.0000	Albacore or longfinned tunas, frozen.
0303.43.0000	Skipjack, frozen.
0303.49.0020	Bluefin, frozen.
0303.49.0040	Other tuna, frozen.
(B) *Canned*:	
1604.14.2020	Albacore tuna, in airtight containers, not in oil, not over 7kg, in quota.
1604.14.3020	Albacore tuna, in airtight containers, not in oil, not in quota.

(iii) *Exports from driftnet nations only: HTS numbers requiring a Fisheries Certificate of Origin and official certification.* The following HTS numbers identify categories of fish and shellfish, other than those identified in paragraphs (f)(2)(i) and (f)(2)(ii) of this section, known to have been harvested using a large-scale driftnet and imported into the United States. Shipments exported from a large-scale driftnet nation and imported into the United States under any of the HTS numbers listed in paragraph (f)(2) of this section must be accompanied by an FCO and the official

statement described in paragraph (f)(5)(x) of this section.

(A) *Frozen*:	
0303.10.0012	Salmon, chinook, frozen.
0303.10.0022	Salmon, chum, frozen.
0303.10.0032	Salmon, pink, frozen.
0303.10.0042	Salmon, sockeye, frozen.
0303.10.0052	Salmon, coho, frozen.
0303.10.0062	Salmon, Pacific, non-specific, frozen.
0303.21.0000	Trout, frozen.
0303.22.0000	Salmon, Atlantic and Danube, frozen.
0303.29.0000	Salmonidae, other, frozen.
0303.70.4097	Fish, other, frozen.
0303.75.0010	Dogfish, frozen.
0303.75.0090	Other sharks, frozen.
0303.79.2041	Swordfish steaks, frozen
0303.79.2049	Swordfish, other, frozen.
0304.20.2066	Fish, fillet, skinned, in blocks frozen over 4.5kg.
0304.20.6008	Salmonidae, salmon fillet, frozen.
0304.20.6096	Fish, fillet, frozen.
0307.49.0010	Squid, other, fillet, frozen.
(B) *Canned*:	
1604.11.2020	Salmon, pink, canned in oil, in airtight containers.
1604.11.2030	Salmon, sockeye, canned in oil, in airtight containers.
1604.11.2090	Salmon, other, canned in oil, in airtight containers.
1604.11.4010	Salmon, chum, canned, not in oil.
1604.11.4020	Salmon, pink, canned, not in oil.
1604.11.4030	Salmon, sockeye, canned, not in oil.
1604.11.4040	Salmon, other, canned, not in oil.
1604.11.4050	Salmon, other, canned, not in oil.
1604.19.2000	Fish, other, in airtight containers, not in oil.
1604.19.3000	Fish, other, in airtight containers, in oil.
1605.90.6055	Squid, loligo, prepared/preserved.
(C) *Other*:	
0304.10.4099	Other fish, fillets and other fish meat, fresh or chilled.
0304.20.2066	Other fish, fillets, skinned, in blocks weighing over 4.5kg, frozen.
0304.20.6098	Other fish, fillets, frozen.
0304.90.1089	Other fish, fillets and fish meat, in bulk or in immediate containers, fresh or chilled.
0304.90.9092	Other fish meat, fresh or chilled.
0305.30.6080	Fish, non-specific, fillet. dried/salted/brine.
0305.49.4040	Fish, non-specific, smoked.
0305.59.2000	Shark fins.
0305.59.4000	Fish, non-specific, dried.
0305.69.4000	Salmon, non-specific, salted.
0305.69.5000	Fish, non-specific, in immediate containers, salted, not over 6.8kg.
0305.69.6000	Fish, non-specific, salted, other.
0307.49.0050	Squid, non-specific, frozen/dried/salted/brine.
0307.49.0060	Squid, non-specific, & cuttle fish frozen/dried/salted/brine.

(3) *Imports requiring a Fisheries Certificate of Origin*. Shipments containing the following may not be imported into the United States unless a completed FCO is filed with the Customs Service at the time of importation:

(i) Tuna classified under an HTS number listed in paragraphs (f)(2)(i) or (f)(2)(ii) of this section, or

(ii) Fish classified under an HTS number listed in paragraph (f)(2) of this section that was harvested by a vessel of a large-scale driftnet nation, as identified under paragraph (f)(8) of this section.

(4) *Disposition of Fisheries Certificates of Origin*. The FCO form described in paragraph (f)(5) of this section may be obtained from the Administrator, Southwest Region, or downloaded from the Internet at http://swr.ucsd.edu/noaa370.htm. The FCO required under paragraph (f)(3) of this section must accompany the tuna or tuna products from entry into the United States, through final processing, and it must be endorsed at each change in ownership. FCOs that require multiple endorsements must be submitted to the Administrator, Southwest Region, by the last endorser when all required endorsements are completed. An invoice must accompany the shipment at the time of importation or, in the alternative, must be made available within 30 days of a request by the Secretary or the Administrator, Southwest Region, to produce the invoice.

(5) *Contents of Fisheries Certificate of Origin*. An FCO, certified to be accurate by the first exporter of the accompanying shipment, must include the following information:

(i) Customs entry identification;

(ii) Date of entry;

(iii) Exporter's full name and complete address;

(iv) Importer's or consignee's full name and complete address;

(v) Species description, product form, and HTS number;

(vi) Total net weight of the shipment in kilograms;

(vii) Ocean area where the fish were harvested (ETP, Western Pacific Ocean, South Pacific Ocean, Atlantic Ocean, Caribbean Sea, Indian Ocean, or other);

(viii) Type of fishing gear used to harvest the fish (purse seine, longline, baitboat, large-scale driftnet, gillnet, trawl, pole and line, or other);

(ix) Country under whose laws the harvesting vessel operated based upon the flag of the vessel or, if a certified charter vessel, the country that accepted responsibility for the vessel's fishing operations;

(x) Dates on which the fishing trip began and ended;

(xi) If the shipment includes tuna or products harvested with a purse seine net, the name of the harvesting vessel;

(xii) Dolphin safe condition of the shipment;

(xiv) For shipments harvested by vessels of a nation known to use large-scale driftnets, as determined by the Secretary pursuant to paragraph (f)(8) of this section, a statement must be included on the Fisheries Certificate of Origin that is dated and signed by a responsible government official of the harvesting nation, certifying that the fish or fish products were harvested by a method other than large-scale driftnet; and

(xii) If the shipment contains tuna harvested in the ETP by a purse seine vessel of more than 400 st (362.8 mt) carrying capacity, each importer or processor who takes custody of the shipment must sign and date the form to certify that the form and attached documentation accurately describe the shipment of fish that they accompany.

(6) *Dolphin-safe label*. Tuna or tuna products sold in or exported from the United States that include on the label the term ''dolphin-safe'' or any other term or symbol that claims or suggests the tuna were harvested in a manner not injurious to dolphins are subject to the requirements of subpart H of this part.

(7) *Scope of embargoes*—(i) *ETP yellowfin tuna embargo*. Yellowfin tuna or yellowfin tuna products harvested using a purse seine in the ETP identified by an HTS number listed in paragraph (f)(2)(i) of this section may not be imported into the United States if such tuna or tuna products were:

(A) Harvested on or after March 3, 1999, the effective date of section 4 of the IDCPA, and harvested by, or exported from, a nation that the Assistant Administrator has determined has purse seine vessels of greater than 400 st (362.8 mt) carrying capacity harvesting tuna in the ETP, unless the Assistant Administrator has made an affirmative finding required for importation for that nation under paragraph (f)(9) of this section;

(B) Exported from an intermediary nation, as defined in section 3 of the MMPA, and a ban is currently in force prohibiting the importation from that nation under paragraph (f)(9)(viii) of this section; or

(C) Harvested before March 3, 1999, the effective date of section 4 of the IDCPA, and would have been banned from importation under section 101(a)(2) of the MMPA at the time of harvest.

(ii) *Driftnet embargo*. A shipment containing an item listed in paragraph (f)(2) of this section may not be imported into the United States if it:

(A) Was exported from or harvested on the high seas by any nation determined by the Assistant Administrator to be engaged in large-scale driftnet fishing, unless the FCO is accompanied by an original statement by a responsible government official of the harvesting nation, signed and dated by that official, certifying that the fish or fish products were harvested by a method other than large-scale driftnet; or

(B) Is identified on the FCO as having been harvested by a large-scale driftnet.

(8) *Large-scale driftnet nation: determination*. Based upon the best information available, the Assistant Administrator will determine which nations have registered vessels that engage in fishing using large-scale driftnets. Such determinations will be published in the FEDERAL REGISTER. A responsible government official of any such nation may certify to the Assistant Administrator that none of the nation's vessels use large-scale driftnets. Upon receipt of the certification, the Assistant Administrator may find, and publish such finding in the *Federal Register*, that none of that nation's vessels engage in fishing with large-scale driftnets.

(9) *Affirmative finding procedure for nations harvesting yellowfin tuna using a purse seine in the ETP*. (i) The Assistant Administrator will determine, on an

annual basis, whether to make an affirmative finding based upon documentary evidence provided by the government of the exporting nation, by the government of the harvesting nation, if different, or by the IDCP and the IATTC, and will publish the finding in the FEDERAL REGISTER. A finding will remain valid for 1 year or for such other period as the Assistant Administrator may determine. An affirmative finding will be terminated if the Assistant Administrator determines that the requirements of this paragraph are no longer being met. Every 5 years, the government of the harvesting nation, must submit such documentary evidence directly to the Assistant Administrator and request an affirmative finding. Documentary evidence needs to be submitted by the harvesting nation for the first affirmative finding subsequent to the effective date of this rule. The Assistant Administrator may require the submission of supporting documentation or other verification of statements made in connection with requests to allow importations. An affirmative finding applies to tuna and tuna products that were harvested by vessels of the nation after February 15, 1999. To make an affirmative finding, the Assistant Administrator must find that:

(A) The harvesting nation participates in the IDCP and is either a member of the IATTC or has initiated (and within 6 months thereafter completed) all steps required of applicant nations, in accordance with article V, paragraph 3, of the Convention establishing the IATTC, to become a member of that organization;

(B) The nation is meeting its obligations under the IDCP and its obligations of membership in the IATTC, including all financial obligations;

(C)(*1*) The annual total dolphin mortality of the nation's purse seine fleet (including certified charter vessels operating under its jurisdiction) did not exceed the aggregated total of the mortality limits assigned by the IDCP for that nation's purse seine vessels for the year preceding the year in which the finding would start; or

(*2*)(*i*) Because of extraordinary circumstances beyond the control of the nation and the vessel captains, the total dolphin mortality of the nation's purse seine fleet (including certified charter vessels operating under its jurisdiction) exceeded the aggregated total of the mortality limits assigned by the IDCP for that nation's purse seine vessels; and

(*ii*) Immediately after the national authorities discovered the aggregate mortality of its fleet had been exceeded, the nation required all its vessels to cease fishing for tuna in association with dolphins for the remainder of the calendar year; and

(D)(*1*) For calendar year 2000 and any subsequent years in which the parties agree to a global allocation system for per-stock per-year individual stock quotas, the nation responded to the notification from the IATTC that an individual stock quota had been reached by prohibiting any additional sets on the stock for which the quota had been reached;

(*2*) If a per-stock per-year quota is allocated to each nation, the annual per-stock per-year dolphin mortality of the nation's purse seine fleet (including certified charter vessels operating under its jurisdiction) did not exceed the aggregated total of the per-stock per-year limits assigned by the IDCP for that nation's purse seine vessels (if any) for the year preceding the year in which the finding would start; or

(*3*)(*i*) Because of extraordinary circumstances beyond the control of the nation and the vessel captains, the per-stock per-year dolphin mortality of the nation's purse seine fleet (including certified charter vessels operating under its jurisdiction) exceeded the aggregated total of the per-stock per-year limits assigned by the IDCP for that nation's purse seine vessels; and

(*ii*) Immediately after the national authorities discovered the aggregate per-stock mortality limits of its fleet had been exceeded, the nation required all its vessels to cease fishing for tuna in association with the stocks whose limits had been exceeded, for the remainder of the calendar year.

(ii) *Documentary Evidence and Compliance with the IDCP*.—(A) *Documentary Evidence*. The Assistant Administrator will make an affirmative finding under paragraph (f)(9)(i) of this section only

if the government of the harvesting nation provides directly to the Assistant Administrator, or authorizes the IATTC to release to the Assistant Administrator, complete, accurate, and timely information that enables the Assistant Administrator to determine whether the harvesting nation is meeting the obligations of the IDCP, and whether ETP-harvested tuna imported from such nation comports with the tracking and verification regulations of subpart H of this part.

(B) *Revocation*. After considering the information provided under paragraph (f)(9)(ii)(A) of this section, each party's financial obligations to the IATTC, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the IDCP, the Assistant Administrator, in consultation with the Secretary of State, will revoke an affirmative finding issued to a nation that is not meeting the obligations of the IDCP.

(iii) A harvesting nation may apply for an affirmative finding at any time by providing to the Assistant Administrator the information and authorizations required in paragraphs (f)(9)(i) and (f)(9)(ii) of this section, allowing at least 60 days from the submission of complete information to NMFS for processing.

(iv) The Assistant Administrator will make or renew an affirmative finding for the period from April 1 through March 31, or portion thereof, if the harvesting nation has provided all the information and authorizations required by paragraphs (f)(9)(i) and (f)(9)(ii) of this section, and has met the requirements of paragraphs (f)(9)(i) and (f)(9)(ii) of this section.

(v) *Reconsideration of finding*. The Assistant Administrator may reconsider a finding upon a request from, and the submission of additional information by, the harvesting nation, if the information indicates that the nation has met the requirements under paragraphs (f)(9)(i) and (f)(9)(ii) of this section.

(vi) *Intermediary nation*. Except as authorized under this paragraph, no tuna or tuna products classified under one of the HTS numbers listed in paragraph (f)(2)(i) of this section may be imported into the United States from any intermediary nation. An ''intermediary nation'' is a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation into the United States pursuant to section 101(a)(2)(B) of the MMPA, unless shown not to be yellowfin tuna or yellowfin tuna products harvested using purse seine in the ETP. The Assistant Administrator will publish in the FEDERAL REGISTER a notice announcing when NMFS has determined, based on the best information available, that a nation is an ''intermediary nation.'' After the effective date of that notice, these import restrictions shall apply. Shipments of yellowfin tuna or yellowfin tuna products shipped through a nation on a through bill of lading or in another manner that does not enter the shipments into that nation as an importation do not make that nation an intermediary nation.

(A) *Intermediary nation determination status*. Imports from an intermediary nation of tuna and tuna products classified under any of the HTS numbers in paragraph (f)(2)(i) of this section may be imported into the United States only if the Assistant Administrator determines and publishes in the FEDERAL REGISTER that the intermediary nation has provided certification and reasonable proof that it has not imported in the preceding 6 months yellowfin tuna or yellowfin tuna products that are subject to a ban on direct importation into the United States under section 101(a)(2)(B) of the MMPA. At that time, the nation shall no longer be considered an ''intermediary nation'' and these import restrictions shall no longer apply.

(B) *Changing the status of intermediary nation determinations*. The Assistant Administrator will review decisions under this paragraph upon the request of an intermediary nation. Such requests must be accompanied by specific and detailed supporting information or documentation indicating that a review or reconsideration is warranted. For purposes of this paragraph, the term ''certification and reasonable

proof'' means the submission to the Assistant Administrator by a responsible government official from the nation of a document reflecting the nation's customs records for the preceding 6 months, together with a certification attesting that the document is accurate.

(vii) *Pelly certification*. After 6 months of an embargo being in place against a nation under this section, that fact will be certified to the President for purposes of certification under section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)) for as long as the embargo remains in effect.

(viii) *Coordination*. The Assistant Administrator will promptly advise the Department of State and the Department of the Treasury of embargo decisions, actions and finding determinations.

(10) *Fish refused entry*. If fish is denied entry under paragraph (f)(3) of this section, the District Director of Customs shall refuse to release the fish for entry into the United States and shall issue a notice of such refusal to the importer or consignee.

(11) *Disposition of fish refused entry into the United States; redelivered fish*. Fish which is denied entry under paragraph (f)(3) of this section and which is not exported under Customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery shall be disposed of under Customs laws and regulations. Provided however, that any disposition shall not result in an introduction into the United States of fish caught in violation of the MMPA.

(12) *Market Prohibitions*. It is unlawful for any person to sell, purchase, offer for sale, transport, or ship in the United States, any tuna or tuna products unless the tuna products are either:

(i) Dolphin-safe under subpart H; or

(ii) harvested in compliance with the IDCP by vessels under the jurisdiction of a nation that is a member of the IATTC or has initiated, and within 6 months thereafter completes, all steps required by applicant nations to become members of the IATTC.

(iii) For purposes of this section, tuna or tuna products are ''dolphin-safe'' if they are dolphin-safe under subpart H.

(g) *Penalties*. Any person or vessel subject to the jurisdiction of the United States will be subject to the penalties provided for under the MMPA for the conduct of fishing operations in violation of these regulations.

[65 FR 48, Jan 3, 2000]

§ 216.25 Exempted marine mammals and marine mammal products.

(a) The provisions of the MMPA and these regulations shall not apply:

(1) To any marine mammal taken before December 21, 1972[1], or

(2) To any marine mammal product if the marine mammal portion of such product consists solely of a marine mammal taken before such date.

(b) The prohibitions contained in § 216.12(c) (3) and (4) shall not apply to marine mammals or marine mammal products imported into the United States before the date on which a notice is published in the FEDERAL REGISTER with respect to the designation of the species or stock concerned as depleted or endangered.

(c) Section 216.12(b) shall not apply to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

[39 FR 1852, Jan. 15, 1974, as amended at 56 FR 43888, Sept. 5, 1991; 59 FR 50376, Oct. 3, 1994]

§ 216.26 Collection of certain marine mammal parts without prior authorization.

Notwithstanding any other provision of this subpart:

(a) Any bones, teeth or ivory of any dead marine mammal may be collected from a beach or from land within ¼ of a mile of the ocean. The term *ocean* includes bays and estuaries.

(b) Notwithstanding the provisions of subpart D, soft parts that are sloughed, excreted, or discharged naturally by a

[1] In the context of captive maintenance of marine mammals, the only marine mammals exempted under this section are those that were actually captured or otherwise in captivity before December 21, 1972.

(4) The documentation provided in paragraph(b)(3) of this section includes a listing of vessel names and identifying numbers of the associated Tuna Tracking Forms for each trip of which tuna in the shipment originates; and

(5) The FCO is properly endorsed by each exporter, importer, and processor certifying that, to the best of his or her knowledge and belief, the FCO and attached documentation are complete and accurate.

[65 FR 57, Jan. 3, 2000]

§ 216.93 Submission of documentation.

(a) Requirements for the submission of documents concerning the activities of U.S. flag vessels with greater than 400 st carrying capacity fishing in the ETP are contained in § 216.94.

(b) The import documents required by §§ 216.91 and 216.92 must accompany the tuna product whenever it is offered for sale or export, except that these documents need not accompany the product when offered for sale if:

(1) The documents do not require further endorsement by any importer or processor and are submitted to officials of the U.S. Customs Service at the time of import; or

(2) The documents are endorsed as required by § 216.92(b)(4) and the final processor delivers the endorsed documents to the Administrator, Southwest Region, or to U.S. Customs as required.

[65 FR 57, Jan. 3, 2000]

§ 216.94 Tracking and verification program.

The Administrator, Southwest Region, has established a national tracking and verification program to accurately document the ''dolphin-safe'' condition of tuna, under the standards set forth in § 216.91(a). The tracking program includes procedures and reports for use when importing tuna into the U.S. and during U.S. purse seine fishing, processing, and marketing in the U.S. and abroad. Verification of tracking system operations is attained through the establishment of audit and document review requirements. The tracking program is consistent with the international tuna tracking and verification program adopted by the Parties to the IDCP.

(a) *Tuna tracking forms.* Whenever a U.S. flag tuna purse seine vessel of greater than 400 st (362.8 mt) carrying capacity fishes in the ETP, IDCP approved Tuna Tracking Forms (TTFs), bearing the IATTC cruise number assigned to that trip, are used by the observer to record every set made during that trip. One TTF is used to record ''dolphin-safe'' sets and a second TTF is used to record ''non-dolphin-safe'' sets. The information entered on the TTFs following each set includes date of trip, set number, date of loading, name of the vessel, vessel Captain's name, observer's name, well number, weights by species composition, estimated tons loaded, and date of the set. The observer and the vessel engineer initial the entry for each set, and the vessel Captain and observer review and sign both TTFs at the end of the fishing trip certifying that the information on the form is accurate. The captain's and observer's certification of the TTF on which dolphin-safe sets are recorded complies with 16 U.S.C. 1385(h).

(b) *Tracking fishing operations.* (1) During ETP fishing trips by purse seine vessels, tuna caught in sets designated as ''dolphin-safe'' by the vessel observer must be stored separately from tuna caught in ''non-dolphin-safe'' sets from the time of capture through unloading, except as provided in paragraph (b)(2) of this section. Vessel personnel will decide into which wells tuna will be loaded. The observer will initially designate whether each set is ''dolphin-safe'' or not, based on his/her observation of the set. The observer will initially identify a vessel fish well as ''dolphin-safe'' if the first tuna loaded into the well during a trip was captured in a set in which no dolphin died or was seriously injured. The observer will initially identify a vessel fish well as ''non-dolphin-safe'' if the first tuna loaded into the well during a trip was captured in a set in which a dolphin died or was seriously injured. Any tuna loaded into a well previously designated ''non-dolphin-safe'' or ''mixed well'' is considered ''non-dolphin-safe'' tuna. Except as provided for in paragraph (b)(2)(i) of this section, the observer will change the designation of a ''dolphin-safe'' well to ''non-dolphin-safe'' if any tuna are loaded into the

well that were captured in a set in which a dolphin died or was seriously injured.

(2) *Mixed wells*. Only two acceptable conditions exist under which a ''mixed'' well can be created.

(i) In the event that a set has been designated ''dolphin-safe'' by the observer, but during the loading process dolphin mortality or serious injury is identified, the ''dolphin-safe'' designation of the set will change to ''non-dolphin-safe.'' If one or more of the wells into which the newly designated ''non-dolphin-safe'' tuna are loaded already contains ''dolphin-safe'' tuna loaded during a previous set, the observer will note in his or her trip records the well numbers and the estimated weight of such ''non-dolphin-safe'' tuna and designate such well(s) as ''mixed well(s).'' Once a well has been identified as ''non-dolphin-safe'' or ''mixed'' all tuna subsequently loaded into that well will be designated as ''non-dolphin-safe.'' When the contents of such a ''mixed well'' are received by a processor, the tuna will be weighed and separated according to the observer's report of the estimated weight of ''dolphin-safe'' and ''non-dolphin-safe'' tuna contained in that well. In addition, 15 percent of the ''dolphin-safe'' tuna unloaded from the ''mixed well'' will be designated as ''non-dolphin-safe.''

(ii) Near the end of an ETP fishing trip, if the only well space available is in a ''non-dolphin-safe'' well, and there is an opportunity to make one last set, ''dolphin-safe'' tuna caught in that set may be loaded into the ''non-dolphin-safe'' well. The ''dolphin-safe'' tuna must be kept physically separate from the ''non-dolphin-safe'' tuna already in the well, using netting or other material.

(3) The captain, managing owner, or vessel agent of a U.S. purse seine vessel returning to port from a trip, any part of which included fishing in the ETP, must provide at least 48 hours notice of the vessel's intended place of landing, arrival time, and schedule of unloading to the Administrator, Southwest Region.

(4) If the trip terminates when the vessel enters port to unload part or all of its catch, new TTFs will be assigned to the new trip, and any information concerning tuna retained on the vessel will be recorded as the first entry on the TTFs for the new trip. If the trip is not terminated following a partial unloading, the vessel will retain the original TTFs and submit a copy of those TTFs to the Administrator, Southwest Region, within 5 working days. In either case, the species and amount unloaded will be noted on the respective originals.

(5) Tuna offloaded to trucks, storage facilities or carrier vessels must be loaded or stored in such a way as to maintain and safeguard the identification of the ''dolphin-safe'' or ''non-dolphin-safe'' designation of the tuna as it left the fishing vessel.

(6)(i) When ETP caught tuna is to be offloaded from a U.S. purse seiner directly to a U.S. canner within the 50 states, Puerto Rico, or American Samoa, or in any port and subsequently loaded aboard a carrier vessel for transport to a U.S. processing location, a NMFS representative may meet the U.S. purse seiner to receive the TTFs from the vessel observer and to monitor the handling of ''dolphin-safe'' and ''non-dolphin-safe'' tuna.

(ii) When ETP caught tuna is offloaded from an U.S. purse seiner in any port and subsequently loaded aboard a carrier vessel for transport to a cannery outside the jurisdiction of the United States, a NMFS representative may meet the vessel to receive copies of the TTFs from the observer and monitor the offloading. The U.S. caught tuna becomes the tracking and verification responsibility of the foreign buyer when it is offloaded from the U.S. vessel.

(iii) If a NMFS representative does not meet the vessel in port at the time of arrival, the observer may take the signed TTFs to the IATTC office and mail copies to the Administrator, Southwest Region, from that location within 5 working days of the end of the trip.

(iv) When ETP caught tuna is offloaded from a U.S. purse seiner directly to a processing facility located outside the jurisdiction of the United States in a country that is a party to the IDCP, the national authority in whose area of jurisdiction the tuna is

to be processed will assume the responsibility for tracking and verification of the tuna offloaded. A representative of the national authority will receive copies of the TTFs from the observer, and copies of the TTFs will be forwarded to the Administrator, Southwest Region.

(c) *Tracking cannery operations.* (1) Whenever a tuna canning company in the 50 states, Puerto Rico, or American Samoa is scheduled to receive a domestic or imported shipment of ETP caught tuna for processing, the company must provide at least 48 hours notice of the location and arrival date and time of such a shipment, to the Administrator, Southwest Region, so that a NMFS representative can be present to monitor delivery and verify that ''dolphin-safe'' and ''non-dolphin-safe'' tuna are clearly identified and remain segregated.

(2) At the close of delivery activities, which may include weighing, boxing or containerizing, and transfer to cold storage or processing, the company must provide a copy of the processor's receiving report to the NMFS representative, if present. If a NMFS representative is not present, the company must submit a copy of the processor's receiving report to the Administrator, Southwest Region, electronically, by mail, or by fax within 5 working days. The processor's receiving report must contain, at a minimum: date of delivery, catcher vessel name and flag, trip number and dates, storage container number(s), ''dolphin-safe'' or ''non-dolphin-safe'' designation of each container, species, product description, and weight of tuna in each container.

(3) Tuna canning companies will report on a monthly basis the amounts of ETP-caught tuna that are removed from cold storage. This report may be submitted in conjunction with the monthly report required in paragraph (c)(5) of this section. This report must contain:

(i) The date of removal;

(ii) Storage container number(s) and ''dolphin-safe'' or ''non-dolphin-safe'' designation of each container; and

(iii) Details of the disposition of fish (for example, canning, sale, rejection, etc.).

(4) During canning activities, ''non-dolphin-safe'' tuna may not be mixed in any manner or at any time in its processing with any ''dolphin-safe'' tuna or tuna products and may not share the same storage containers, cookers, conveyers, tables, or other canning and labeling machinery.

(5) Canned tuna processors must submit a report to the Administrator, Southwest Region, of all tuna received at their processing facilities in each calendar month whether or not the tuna is actually canned or stored during that month. Monthly cannery receipt reports must be submitted electronically or by mail before the last day of the month following the month being reported. Monthly reports must contain the following information:

(i) *Domestic receipts*: species, condition (round, loin, dressed, gilled and gutted, other), weight in short tons to the fourth decimal, ocean area of capture (eastern tropical Pacific, western Pacific, Indian, eastern and western Atlantic, other), catcher vessel, trip dates, carrier name, unloading dates, and location of unloading.

(ii) *Import receipts*: In addition to the information required in paragraph (c)(5)(i) of this section, a copy of the FCO for each imported receipt must be provided.

(d) *Tracking imports.* All tuna products, except fresh tuna, that are imported into the United States must be accompanied by a properly certified FCO as required by § 216.24(f).

(e) *Verification requirements.*—(1) *Record maintenance.* Any exporter, transshipper, importer, or processor of any tuna or tuna products containing tuna harvested in the ETP must maintain records related to that tuna for at least 3 years. These records include, but are not limited to: FCO and required certifications, any report required in paragraph (a) and (b) of this section, invoices, other import documents, and trip reports.

(2) *Record submission.* Within 30 days of receiving a written request from the Administrator, Southwest Region, any exporter, transshipper, importer, or processor of any tuna or tuna products containing tuna harvested in the ETP must submit to the Administrator any record required to be maintained under paragraph (e)(1) of this section.

(3) *Audits and spot-checks*. Upon request of the Administrator, Southwest Region, any such exporter, transshipper, importer, or processor must provide the Administrator, Southwest Region, timely access to all pertinent records and facilities to allow for audits and spot-checks on caught, landed, and processed tuna.

(f) *Confidentiality of proprietary information*. Information submitted to the Assistant Administrator under this section will be treated as confidential in accordance with NOAA Administrative Order 216–100 ''Protection of Confidential Fisheries Statistics.''

[65 FR 57, Jan. 3, 2000]

§ 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.

§ 216.96 Official mark for ''Dolphin-safe'' tuna products.

(a) This is the ''official mark'' (see figure 1) designated by the United States Department of Commerce that may be used to label tuna products that meet the ''dolphin-safe'' standards set forth in the Dolphin Protection Consumer Information Act, 16 U.S.C. 1385, and implementing regulations at §§ 216.91 through 216.94:

H. R. 408

One Hundred Fifth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the seventh day of January, one thousand nine hundred and ninety-seven

An Act

To amend the Marine Mammal Protection Act of 1972 to support the International Dolphin Conservation Program in the eastern tropical Pacific Ocean, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the "International Dolphin Conservation Program Act".

(b) REFERENCES TO MARINE MAMMAL PROTECTION ACT.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.).

SEC. 2. PURPOSES AND FINDINGS.

(a) PURPOSES.—The purposes of this Act are—

(1) to give effect to the Declaration of Panama, signed October 4, 1995, by the Governments of Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, Spain, the United States of America, Vanuatu, and Venezuela, including the establishment of the International Dolphin Conservation Program, relating to the protection of dolphins and other species, and the conservation and management of tuna in the eastern tropical Pacific Ocean;

(2) to recognize that nations fishing for tuna in the eastern tropical Pacific Ocean have achieved significant reductions in dolphin mortality associated with that fishery; and

(3) to eliminate the ban on imports of tuna from those nations that are in compliance with the International Dolphin Conservation Program.

(b) FINDINGS.—The Congress finds that—

(1) the nations that fish for tuna in the eastern tropical Pacific Ocean have achieved significant reductions in dolphin mortality associated with the purse seine fishery from hundreds of thousands annually to fewer than 5,000 annually;

(2) the provisions of the Marine Mammal Protection Act of 1972 that impose a ban on imports from nations that fish for tuna in the eastern tropical Pacific Ocean have served as an incentive to reduce dolphin mortalities;

(3) tuna canners and processors of the United States have led the canning and processing industry in promoting a dolphin-safe tuna market; and

(4) 12 signatory nations to the Declaration of Panama, including the United States, agreed under that Declaration to require that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean not exceed 5,000 animals, with the objective of progressively reducing dolphin mortality to a level approaching zero through the setting of annual limits and with the goal of eliminating dolphin mortality.

SEC. 3. DEFINITIONS.

Section 3 (16 U.S.C. 1362) is amended by adding at the end the following new paragraphs:

"(28) The term 'International Dolphin Conservation Program' means the international program established by the agreement signed in LaJolla, California, in June, 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama.

"(29) The term 'Declaration of Panama' means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.".

SEC. 4. AMENDMENTS TO TITLE I.

(a) EXCEPTIONS TO MORATORIUM.—Section 101(a)(2) (16 U.S.C. 1371(a)(2)) is amended—

(1) by inserting after the first sentence "Such authorizations may be granted under title III with respect to purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, subject to regulations prescribed under that title by the Secretary without regard to section 103."; and

(2) by striking the semicolon in the second sentence and all that follows through "practicable".

(b) DOCUMENTATION REQUIRED.—Section 101(a)(2) (16 U.S.C. 1371(a)(2)) is further amended—

(1) by striking subparagraph (B) and inserting the following:

"(B) in the case of yellowfin tuna harvested with purse seine nets in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

"(i)(I) the tuna or products therefrom were not banned from importation under this paragraph before the effective date of section 4 of the International Dolphin Conservation Program Act; or

"(II) the tuna or products therefrom were harvested after the effective date of section 4 of the International Dolphin Conservation Program Act by vessels of a nation which participates in the International Dolphin Conservation Program, and such harvesting nation is either a member of the Inter-American Tropical Tuna Commission or has initiated (and within 6 months thereafter completed) all steps required of applicant nations, in accordance with article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

"(ii) such nation is meeting the obligations of the International Dolphin Conservation Program and the

obligations of membership in the Inter-American Tropical Tuna Commission, including all financial obligations; and

"(iii) the total dolphin mortality limits, and per-stock per-year dolphin mortality limits permitted for that nation's vessels under the International Dolphin Conservation Program do not exceed the limits determined for 1997, or for any year thereafter, consistent with the objective of progressively reducing dolphin mortality to a level approaching zero through the setting of annual limits and the goal of eliminating dolphin mortality, and requirements of the International Dolphin Conservation Program;";

(2) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F), respectively;

(3) by inserting after subparagraph (B) the following:

"(C) shall not accept such documentary evidence if—

"(i) the government of the harvesting nation does not provide directly or authorize the Inter-American Tropical Tuna Commission to release complete and accurate information to the Secretary in a timely manner—

"(I) to allow determination of compliance with the International Dolphin Conservation Program; and

"(II) for the purposes of tracking and verifying compliance with the minimum requirements established by the Secretary in regulations promulgated under subsection (f) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)); or

"(ii) after taking into consideration such information, findings of the Inter-American Tropical Tuna Commission, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the International Dolphin Conservation Program, the Secretary, in consultation with the Secretary of State, finds that the harvesting nation is not in compliance with the International Dolphin Conservation Program."; and

(4) by striking "subparagraph (E)" in the matter after subparagraph (F), as redesignated by paragraph (2) of this subsection, and inserting "subparagraph (F)".

(c) CERTAIN INCIDENTAL TAKINGS.—Section 101 (16 U.S.C. 1371) is further amended by adding at the end the following new subsection:

"(e) ACT NOT TO APPLY TO INCIDENTAL TAKINGS BY UNITED STATES CITIZENS EMPLOYED ON FOREIGN VESSELS OUTSIDE THE UNITED STATES EEZ.—The provisions of this Act shall not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations outside the United States exclusive economic zone (as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) when employed on a foreign fishing vessel of a harvesting nation which is in compliance with the International Dolphin Conservation Program.".

(d) PERMITS.—Section 104(h) (16 U.S.C. 1374(h)) is amended to read as follows:

"(h) GENERAL PERMITS.—

"(1) Consistent with the regulations prescribed pursuant to section 103 of this title and to the requirements of section 101 of this title, the Secretary may issue an annual permit to a United States purse seine fishing vessel for the taking of such marine mammals, and shall issue regulations to cover the use of any such annual permits.

"(2) Such annual permits for the incidental taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean shall be governed by section 306 of this Act, subject to the regulations issued pursuant to section 303 of this Act.".

(e) INTERNATIONAL NEGOTIATIONS.—Section 108(a)(2) (16 U.S.C. 1378(a)(2)) is amended—

(1) by striking "and" at the end of subparagraph (A);

(2) by inserting after subparagraph (B) the following:

"(C) negotiations to revise the Convention for the Establishment of an Inter-American Tropical Tuna Commission (1 U.S.T. 230; TIAS 2044) which will incorporate—

"(i) the conservation and management provisions agreed to by the nations which have signed the Declaration of Panama and in the Straddling Fish Stocks and Highly Migratory Fish Stocks Agreement, as opened for signature on December 4, 1995; and

"(ii) a revised schedule of annual contributions to the expenses of the Inter-American Tropical Tuna Commission that is equitable to participating nations; and

"(D) discussions with those countries participating, or likely to participate, in the International Dolphin Conservation Program, for the purpose of identifying sources of funds needed for research and other measures promoting effective protection of dolphins, other marine species, and the marine ecosystem;".

(f) RESEARCH GRANTS.—Section 110(a) (16 U.S.C. 1380(a)) is amended—

(1) by striking "(1)" in paragraph (1); and

(2) by striking paragraph (2).

SEC. 5. AMENDMENTS TO DOLPHIN PROTECTION CONSUMER INFORMATION ACT.

(a) LABELING STANDARD.—Subsection (d) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(d)) is amended to read as follows:

"(d) LABELING STANDARD.—

"(1) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term 'dolphin safe' or any other term or symbol that falsely claims or suggests that the tuna contained in the product were harvested using a method of fishing that is not harmful to dolphins if the product contains tuna harvested—

"(A) on the high seas by a vessel engaged in driftnet fishing;

"(B) outside the eastern tropical Pacific Ocean by a vessel using purse seine nets—

"(i) in a fishery in which the Secretary has determined that a regular and significant association occurs between dolphins and tuna (similar to the association between dolphins and tuna in the eastern tropical Pacific Ocean), unless such product is accompanied by a written statement, executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Secretary, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna were caught and no dolphins were killed or seriously injured in the sets in which the tuna were caught; or

"(ii) in any other fishery (other than a fishery described in subparagraph (D)) unless the product is accompanied by a written statement executed by the captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna was harvested;

"(C) in the eastern tropical Pacific Ocean by a vessel using a purse seine net unless the tuna meet the requirements for being considered dolphin safe under paragraph (2); or

"(D) by a vessel in a fishery other than one described in subparagraph (A), (B), or (C) that is identified by the Secretary as having a regular and significant mortality or serious injury of dolphins, unless such product is accompanied by a written statement executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Secretary that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught, provided that the Secretary determines that such an observer statement is necessary.

"(2) For purposes of paragraph (1)(C), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets is dolphin safe if—

"(A) the vessel is of a type and size that the Secretary has determined, consistent with the International Dolphin Conservation Program, is not capable of deploying its purse seine nets on or to encircle dolphins; or

"(B)(i) the product is accompanied by a written statement executed by the captain providing the certification required under subsection (h);

"(ii) the product is accompanied by a written statement executed by—

"(I) the Secretary or the Secretary's designee;

"(II) a representative of the Inter-American Tropical Tuna Commission; or

"(III) an authorized representative of a participating nation whose national program meets the requirements of the International Dolphin Conservation Program,

which states that there was an observer approved by the International Dolphin Conservation Program on board the vessel during the entire trip and that such observer provided the certification required under subsection (h); and

"(iii) the statements referred to in clauses (i) and (ii) are endorsed in writing by each exporter, importer, and processor of the product; and

"(C) the written statements and endorsements referred to in subparagraph (B) comply with regulations promulgated by the Secretary which provide for the verification of tuna products as dolphin safe.

"(3)(A) The Secretary of Commerce shall develop an official mark that may be used to label tuna products as dolphin safe in accordance with this Act.

"(B) A tuna product that bears the dolphin safe mark developed under subparagraph (A) shall not bear any other label or mark that refers to dolphins, porpoises, or marine mammals.

"(C) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to label a tuna product with any label or mark that refers to dolphins, porpoises, or marine mammals other than the mark developed under subparagraph (A) unless—

"(i) no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught;

"(ii) the label is supported by a tracking and verification program which is comparable in effectiveness to the program established under subsection (f); and

"(iii) the label complies with all applicable labeling, marketing, and advertising laws and regulations of the Federal Trade Commission, including any guidelines for environmental labeling.

"(D) If the Secretary determines that the use of a label referred to in subparagraph (C) is substantially undermining the conservation goals of the International Dolphin Conservation Program, the Secretary shall report that determination to the United States Senate Committee on Commerce, Science, and Transportation and the United States House of Representatives Committees on Resources and on Commerce, along with recommendations to correct such problems.

"(E) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) willingly and knowingly to use a label referred to in subparagraph (C) in a campaign or effort to mislead or deceive consumers about the level of protection afforded dolphins under the International Dolphin Conservation Program.".

(b) TRACKING REGULATIONS.—Subsection (f) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)) is amended to read as follows:

"(f) REGULATIONS.—The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement this Act, including regulations to establish a domestic tracking and

verification program that provides for the effective tracking of tuna labeled under subsection (d). In the development of these regulations, the Secretary shall establish appropriate procedures for ensuring the confidentiality of proprietary information the submission of which is voluntary or mandatory. The regulations shall address each of the following items:

"(1) The use of weight calculation for purposes of tracking tuna caught, landed, processed, and exported.

"(2) Additional measures to enhance current observer coverage, including the establishment of criteria for training, and for improving monitoring and reporting capabilities and procedures.

"(3) The designation of well location, procedures for sealing holds, procedures for monitoring and certifying both above and below deck, or through equally effective methods, the tracking and verification of tuna labeled under subsection (d).

"(4) The reporting, receipt, and database storage of radio and facsimile transmittals from fishing vessels containing information related to the tracking and verification of tuna, and the definition of set.

"(5) The shore-based verification and tracking throughout the fishing, transshipment, and canning process by means of Inter-American Tropical Tuna Commission trip records or otherwise.

"(6) The use of periodic audits and spot checks for caught, landed, and processed tuna products labeled in accordance with subsection (d).

"(7) The provision of timely access to data required under this subsection by the Secretary from harvesting nations to undertake the actions required in paragraph (6) of this paragraph.

The Secretary may make such adjustments as may be appropriate to the regulations promulgated under this subsection to implement an international tracking and verification program that meets or exceeds the minimum requirements established by the Secretary under this subsection.".

(c) FINDINGS CONCERNING IMPACT ON DEPLETED STOCKS.—The Dolphin Protection Consumer Information Act (16 U.S.C. 1385) is amended by striking subsections (g), (h), and (i) and inserting the following:

"(g) SECRETARIAL FINDINGS.—(1) Between March 1, 1999, and March 31, 1999, the Secretary shall, on the basis of the research conducted before March 1, 1999, under section 304(a) of the Marine Mammal Protection Act of 1972, information obtained under the International Dolphin Conservation Program, and any other relevant information, make an initial finding regarding whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean. The initial finding shall be published immediately in the Federal Register and shall become effective upon a subsequent date determined by the Secretary.

"(2) Between July 1, 2001, and December 31, 2002, the Secretary shall, on the basis of the completed study conducted under section 304(a) of the Marine Mammal Protection Act of 1972, information obtained under the International Dolphin Conservation Program, and any other relevant information, make a finding

regarding whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean. The finding shall be published immediately in the Federal Register and shall become effective upon a subsequent date determined by the Secretary.

"(h) CERTIFICATION BY CAPTAIN AND OBSERVER.—

"(1) Unless otherwise required by paragraph (2), the certification by the captain under subsection (d)(2)(B)(i) and the certification provided by the observer as specified in subsection (d)(2)(B)(ii) shall be that no dolphins were killed or seriously injured during the sets in which the tuna were caught.

"(2) The certification by the captain under subsection (d)(2)(B)(i) and the certification provided by the observer as specified under subsection (d)(2)(B)(ii) shall be that no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphins, and that no dolphins were killed or seriously injured during the sets in which the tuna were caught, if the tuna were caught on a trip commencing—

"(A) before the effective date of the initial finding by the Secretary under subsection (g)(1);

"(B) after the effective date of such initial finding and before the effective date of the finding of the Secretary under subsection (g)(2), where the initial finding is that the intentional deployment on or encirclement of dolphins is having a significant adverse impact on any depleted dolphin stock; or

"(C) after the effective date of the finding under subsection (g)(2), where such finding is that the intentional deployment on or encirclement of dolphins is having a significant adverse impact on any such depleted stock.".

SEC. 6. AMENDMENTS TO TITLE III.

(a) CHANGE OF TITLE HEADING.—The heading of title III is amended to read as follows:

"TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM".

(b) ADDITIONAL FINDINGS.—Section 301 (16 U.S.C. 1411) is amended—

(1) by striking paragraph (4) of subsection (a) and inserting the following:

"(4) Nations harvesting yellowfin tuna in the eastern tropical Pacific Ocean have demonstrated their willingness to participate in appropriate multilateral agreements to reduce dolphin mortality progressively to a level approaching zero through the setting of annual limits, with the goal of eliminating dolphin mortality in that fishery. Recognition of the International Dolphin Conservation Program will assure that the existing trend of reduced dolphin mortality continues; that individual stocks of dolphins are adequately protected; and that the goal of eliminating all dolphin mortality continues to be a priority."; and

(2) by striking paragraphs (2) and (3) of subsection (b) and inserting the following:

"(2) support the International Dolphin Conservation Program and efforts within the Program to reduce, with the goal of eliminating, the mortality referred to in paragraph (1);

"(3) ensure that the market of the United States does not act as an incentive to the harvest of tuna caught with driftnets or caught by purse seine vessels in the eastern tropical Pacific Ocean not operating in compliance with the International Dolphin Conservation Program;".

(c) Title III (16 U.S.C. 1411 et seq.) is amended by striking sections 302 through 306 (16 U.S.C. 1412 through 1416) and inserting the following:

"SEC. 302. INTERNATIONAL DOLPHIN CONSERVATION PROGRAM.

"The Secretary of State, in consultation with the Secretary, shall seek to secure a binding international agreement to establish an International Dolphin Conservation Program that requires—

"(1) that the total annual dolphin mortality in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean shall not exceed 5,000 animals with a commitment and objective to progressively reduce dolphin mortality to a level approaching zero through the setting of annual limits;

"(2) the establishment of a per-stock per-year dolphin mortality limit, to be in effect through calendar year 2000, at a level between 0.2 percent and 0.1 percent of the minimum population estimate, as calculated, revised, or approved by the Secretary;

"(3) the establishment of a per-stock per-year dolphin mortality limit, beginning with the calendar year 2001, at a level less than or equal to 0.1 percent of the minimum population estimate as calculated, revised, or approved by the Secretary;

"(4) that if a dolphin mortality limit is exceeded under—

"(A) paragraph (1), all sets on dolphins shall cease for the applicable fishing year; and

"(B) paragraph (2) or (3), all sets on the stocks covered under paragraph (2) or (3) and any mixed schools that contain any of those stocks shall cease for the applicable fishing year;

"(5) a scientific review and assessment to be conducted in calendar year 1998 to—

"(A) assess progress in meeting the objectives set for calendar year 2000 under paragraph (2); and

"(B) as appropriate, consider recommendations for meeting these objectives;

"(6) a scientific review and assessment to be conducted in calendar year 2000—

"(A) to review the stocks covered under paragraph (3); and

"(B) as appropriate to consider recommendations to further the objectives set under that paragraph;

"(7) the establishment of a per vessel maximum annual dolphin mortality limit consistent with the established per-year mortality limits, as determined under paragraphs (1) through (3); and

"(8) the provision of a system of incentives to vessel captains to continue to reduce dolphin mortality, with the goal of eliminating dolphin mortality.

"SEC. 303. REGULATORY AUTHORITY OF THE SECRETARY.

"(a) REGULATIONS.—

"(1) The Secretary shall issue regulations, and revise those regulations as may be appropriate, to implement the International Dolphin Conservation Program.

"(2)(A) The Secretary shall issue regulations to authorize and govern the taking of marine mammals in the eastern tropical Pacific Ocean, including any species of marine mammal designated as depleted under this Act but not listed as endangered or threatened under the Endangered Species Act (16 U.S.C. 1531 et seq.), by vessels of the United States participating in the International Dolphin Conservation Program.

"(B) Regulations issued under this section shall include provisions—

"(i) requiring observers on each vessel;

"(ii) requiring use of the backdown procedure or other procedures equally or more effective in avoiding mortality of, or serious injury to, marine mammals in fishing operations;

"(iii) prohibiting intentional sets on stocks and schools in accordance with the International Dolphin Conservation Program;

"(iv) requiring the use of special equipment, including dolphin safety panels in nets, monitoring devices as identified by the International Dolphin Conservation Program to detect unsafe fishing conditions that may cause high incidental dolphin mortality before nets are deployed by a tuna vessel, operable rafts, speedboats with towing bridles, floodlights in operable condition, and diving masks and snorkels;

"(v) ensuring that the backdown procedure during sets of purse seine net on marine mammals is completed and rolling of the net to sack up has begun no later than 30 minutes before sundown;

"(vi) banning the use of explosive devices in all purse seine operations;

"(vii) establishing per vessel maximum annual dolphin mortality limits, total dolphin mortality limits and per-stock per-year mortality limits in accordance with the International Dolphin Conservation Program;

"(viii) preventing the making of intentional sets on dolphins after reaching either the vessel maximum annual dolphin mortality limits, total dolphin mortality limits, or per-stock per-year mortality limits;

"(ix) preventing the fishing on dolphins by a vessel without an assigned vessel dolphin mortality limit;

"(x) allowing for the authorization and conduct of experimental fishing operations, under such terms and conditions as the Secretary may prescribe, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce or eliminate dolphin mortality or serious injury do not require the encirclement of dolphins in the course of commercial yellowfin tuna fishing;

"(xi) authorizing fishing within the area covered by the International Dolphin Conservation Program by vessels of the United States without the use of special equipment

or nets if the vessel takes an observer and does not intentionally deploy nets on, or encircle, dolphins, under such terms and conditions as the Secretary may prescribe; and

"(xii) containing such other restrictions and requirements as the Secretary determines are necessary to implement the International Dolphin Conservation Program with respect to vessels of the United States.

"(C) ADJUSTMENTS TO REQUIREMENTS.—The Secretary may make such adjustments as may be appropriate to requirements of subparagraph (B) that pertain to fishing gear, vessel equipment, and fishing practices to the extent the adjustments are consistent with the International Dolphin Conservation Program.

"(b) CONSULTATION.—In developing any regulation under this section, the Secretary shall consult with the Secretary of State, the Marine Mammal Commission, and the United States Commissioners to the Inter-American Tropical Tuna Commission appointed under section 3 of the Tuna Conventions Act of 1950 (16 U.S.C. 952).

"(c) EMERGENCY REGULATIONS.—

"(1) If the Secretary determines, on the basis of the best scientific information available (including research conducted under section 304 and information obtained under the International Dolphin Conservation Program) that the incidental mortality and serious injury of marine mammals authorized under this title is having, or is likely to have, a significant adverse impact on a marine mammal stock or species, the Secretary shall—

"(A) notify the Inter-American Tropical Tuna Commission of his or her determination, along with recommendations to the Commission as to actions necessary to reduce incidental mortality and serious injury and mitigate such adverse impact; and

"(B) prescribe emergency regulations to reduce incidental mortality and serious injury and mitigate such adverse impact.

"(2) Before taking action under subparagraph (A) or (B) of paragraph (1), the Secretary shall consult with the Secretary of State, the Marine Mammal Commission, and the United States Commissioners to the Inter-American Tropical Tuna Commission.

"(3) Emergency regulations prescribed under this subsection—

"(A) shall be published in the Federal Register, together with an explanation thereof;

"(B) shall remain in effect for the duration of the applicable fishing year; and

"(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination if the Secretary determines that the reasons for the emergency action no longer exist.

"(4) If the Secretary finds that the incidental mortality and serious injury of marine mammals in the yellowfin tuna fishery in the eastern tropical Pacific Ocean is continuing to have a significant adverse impact on a stock or species, the Secretary may extend the emergency regulations for such additional periods as may be necessary.

"(5) Within 120 days after the Secretary notifies the United States Commissioners to the Inter-American Tropical Tuna Commission of the Secretary's determination under paragraph (1)(A), the United States Commissioners shall call for a special meeting of the Commission to address the actions necessary to reduce incidental mortality and serious injury and mitigate the adverse impact which resulted in the determination. The Commissioners shall report the results of the special meeting in writing to the Secretary and to the Secretary of State. In their report, the Commissioners shall—

"(A) include a description of the actions taken by the harvesting nations or under the International Dolphin Conservation Program to reduce the incidental mortality and serious injury and measures to mitigate the adverse impact on the marine mammal species or stock;

"(B) indicate whether, in their judgment, the actions taken address the problem adequately; and

"(C) if they indicate that the actions taken do not address the problem adequately, include recommendations of such additional action to be taken as may be necessary.

"SEC. 304. RESEARCH.

"(a) REQUIRED RESEARCH.—

"(1) IN GENERAL.—The Secretary shall, in consultation with the Marine Mammal Commission and the Inter-American Tropical Tuna Commission, conduct a study of the effect of intentional encirclement (including chase) on dolphins and dolphin stocks incidentally taken in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean. The study, which shall commence on October 1, 1997, shall consist of abundance surveys as described in paragraph (2) and stress studies as described in paragraph (3), and shall address the question of whether such encirclement is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean.

"(2) POPULATION ABUNDANCE SURVEYS.—The abundance surveys under this subsection shall survey the abundance of such depleted stocks and shall be conducted during each of the calendar years 1998, 1999, and 2000.

"(3) STRESS STUDIES.—The stress studies under this subsection shall include—

"(A) a review of relevant stress-related research and a 3-year series of necropsy samples from dolphins obtained by commercial vessels;

"(B) a 1-year review of relevant historical demographic and biological data related to dolphins and dolphin stocks referred to in paragraph (1); and

"(C) an experiment involving the repeated chasing and capturing of dolphins by means of intentional encirclement.

"(4) REPORT.—No later than 90 days after publishing the finding under subsection (g)(2) of the Dolphin Protection Consumer Information Act, the Secretary shall complete and submit a report containing the results of the research described in this subsection to the United States Senate Committee on Commerce, Science, and Transportation and the United States House of Representatives Committees on Resources and on

Commerce, and to the Inter-American Tropical Tuna Commission.

"(b) OTHER RESEARCH.—

"(1) IN GENERAL.—In addition to conducting the research described in subsection (a), the Secretary shall, in consultation with the Marine Mammal Commission and in cooperation with the nations participating in the International Dolphin Conservation Program and the Inter-American Tropical Tuna Commission, undertake or support appropriate scientific research to further the goals of the International Dolphin Conservation Program.

"(2) SPECIFIC AREAS OF RESEARCH.—Research carried out under paragraph (1) may include—

"(A) projects to devise cost-effective fishing methods and gear so as to reduce, with the goal of eliminating, the incidental mortality and serious injury of marine mammals in connection with commercial purse seine fishing in the eastern tropical Pacific Ocean;

"(B) projects to develop cost-effective methods of fishing for mature yellowfin tuna without setting nets on dolphins or other marine mammals;

"(C) projects to carry out stock assessments for those marine mammal species and marine mammal stocks taken in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean, including species or stocks not within waters under the jurisdiction of the United States; and

"(D) projects to determine the extent to which the incidental take of nontarget species, including juvenile tuna, occurs in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, the geographic location of the incidental take, and the impact of that incidental take on tuna stocks and nontarget species.

"(c) AUTHORIZATION OF APPROPRIATIONS.—

"(1) There are authorized to be appropriated to the Secretary the following amounts, to be used by the Secretary to carry out the research described in subsection (a):

"(A) $4,000,000 for fiscal year 1998.

"(B) $3,000,000 for fiscal year 1999.

"(C) $4,000,000 for fiscal year 2000.

"(D) $1,000,000 for fiscal year 2001.

"(2) In addition to the amount authorized to be appropriated under paragraph (1), there are authorized to be appropriated to the Secretary for carrying out this section $3,000,000 for each of the fiscal years 1998, 1999, 2000, and 2001.

"SEC. 305. REPORTS BY THE SECRETARY.

"Notwithstanding section 103(f), the Secretary shall submit annual reports to the Congress which include—

"(1) results of research conducted pursuant to section 304;

"(2) a description of the status and trends of stocks of tuna;

"(3) a description of the efforts to assess, avoid, reduce, and minimize the bycatch of juvenile yellowfin tuna and bycatch of nontarget species;

"(4) a description of the activities of the International Dolphin Conservation Program and of the efforts of the United States in support of the Program's goals and objectives, including the protection of dolphin stocks in the eastern tropical Pacific Ocean, and an assessment of the effectiveness of the Program;

"(5) actions taken by the Secretary under section 101(a)(2)(B) and section 101(d);

"(6) copies of any relevant resolutions and decisions of the Inter-American Tropical Tuna Commission, and any regulations promulgated by the Secretary under this title; and

"(7) any other information deemed relevant by the Secretary.

"SEC. 306. PERMITS.

"(a) IN GENERAL.—

"(1) Consistent with the regulations issued pursuant to section 303, the Secretary shall issue a permit to a vessel of the United States authorizing participation in the International Dolphin Conservation Program and may require a permit for the person actually in charge of and controlling the fishing operation of the vessel. The Secretary shall prescribe such procedures as are necessary to carry out this subsection, including requiring the submission of—

"(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof; and

"(B) the tonnage, hold capacity, speed, processing equipment, and type and quantity of gear, including an inventory of special equipment required under section 303, with respect to each vessel.

"(2) The Secretary is authorized to charge a fee for granting an authorization and issuing a permit under this section. The level of fees charged under this paragraph may not exceed the administrative cost incurred in granting an authorization and issuing a permit. Fees collected under this paragraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in granting authorizations and issuing permits under this section.

"(3) After the effective date of the International Dolphin Conservation Program Act, no vessel of the United States shall operate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean without a valid permit issued under this section.

"(b) PERMIT SANCTIONS.—

"(1) In any case in which—

"(A) a vessel for which a permit has been issued under this section has been used in the commission of an act prohibited under section 307;

"(B) the owner or operator of any such vessel or any other person who has applied for or been issued a permit under this section has acted in violation of section 307; or

"(C) any civil penalty or criminal fine imposed on a vessel, owner or operator of a vessel, or other person who has applied for or been issued a permit under this section has not been paid or is overdue,

the Secretary may—

"(i) revoke any permit with respect to such vessel, with or without prejudice to the issuance of subsequent permits;

"(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

"(iii) deny such permit; or

"(iv) impose additional conditions or restrictions on any permit issued to, or applied for by, any such vessel or person under this section.

"(2) In imposing a sanction under this subsection, the Secretary shall take into account—

"(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

"(B) with respect to the violator, the degree of culpability, any history of prior offenses, and other such matters as justice requires.

"(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of transfer.

"(4) In the case of any permit that is suspended for the failure to pay a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

"(5) No sanctions shall be imposed under this section unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this title or otherwise.".

(d) Section 307 (16 U.S.C. 1417) is amended—

(1) by striking paragraphs (1), (2), and (3) of subsection (a) and inserting the following:

"(1) for any person to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product unless the tuna or tuna product is either dolphin safe or has been harvested in compliance with the International Dolphin Conservation Program by a country that is a member of the Inter-American Tropical Tuna Commission or has initiated and within 6 months thereafter completed all steps required of applicant nations in accordance with Article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

"(2) except as provided for in subsection 101(d), for any person or vessel subject to the jurisdiction of the United States intentionally to set a purse seine net on or to encircle any marine mammal in the course of tuna fishing operations in the eastern tropical Pacific Ocean except in accordance with this title and regulations issued pursuant to this title; and

"(3) for any person to import any yellowfin tuna or yellowfin tuna product or any other fish or fish product in violation of a ban on importation imposed under section 101(a)(2);";

(2) by inserting "(a)(5) or" before "(a)(6)" in subsection (b)(2); and

(3) by striking subsection (d).

(e) Section 308 (16 U.S.C. 1418) is repealed.

(f) CLERICAL AMENDMENTS.—The table of contents in the first section of the Marine Mammal Protection Act of 1972 is amended by striking the items relating to title III and inserting in lieu thereof the following:

"TITLE III—INTERNATIONAL DOLPHIN CONSERVATION PROGRAM

"Sec. 301. Findings and policy.
"Sec. 302. International Dolphin Conservation Program.
"Sec. 303. Regulatory authority of the Secretary.
"Sec. 304. Research.
"Sec. 305. Reports by the Secretary.
"Sec. 306. Permits.
"Sec. 307. Prohibitions.".

SEC. 7. AMENDMENTS TO THE TUNA CONVENTIONS ACT.

(a) Section 3(c) of the Tuna Conventions Act (16 U.S.C. 952(c)) is amended to read as follows:

"(c) at least one shall be either the Administrator, or an appropriate officer, of the National Marine Fisheries Service; and".

(b) Section 4 of the Tuna Conventions Act (16 U.S.C. 953) is amended to read as follows:

"SEC. 4. GENERAL ADVISORY COMMITTEE AND SCIENTIFIC ADVISORY SUBCOMMITTEE.

"(a) APPOINTMENTS; PUBLIC PARTICIPATION; COMPENSATION.—The Secretary, in consultation with the United States Commissioners, shall—

"(1) appoint a General Advisory Committee which shall be composed of not less than 5 nor more than 15 persons with balanced representation from the various groups participating in the fisheries included under the conventions, and from nongovernmental conservation organizations;

"(2) appoint a Scientific Advisory Subcommittee which shall be composed of not less than 5 nor more than 15 qualified scientists with balanced representation from the public and private sectors, including nongovernmental conservation organizations;

"(3) establish procedures to provide for appropriate public participation and public meetings and to provide for the confidentiality of confidential business data; and

"(4) fix the terms of office of the members of the General Advisory Committee and Scientific Advisory Subcommittee, who shall receive no compensation for their services as such members.

"(b) FUNCTIONS.—

"(1) GENERAL ADVISORY COMMITTEE.—The General Advisory Committee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and shall be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations, and regulations of the Commission. The General Advisory Committee may attend all meetings of the international commissions to which they are invited by such commissions.

"(2) SCIENTIFIC ADVISORY SUBCOMMITTEE.—

"(A) ADVICE.—The Scientific Advisory Subcommittee shall advise the General Advisory Committee and the Commissioners on matters including—

"(i) the conservation of ecosystems;

"(ii) the sustainable uses of living marine resources related to the tuna fishery in the eastern Pacific Ocean; and

"(iii) the long-term conservation and management of stocks of living marine resources in the eastern tropical Pacific Ocean.

"(B) OTHER FUNCTIONS AND ASSISTANCE.—The Scientific Advisory Subcommittee shall, as requested by the General Advisory Committee, the United States Commissioners, or the Secretary, perform functions and provide assistance required by formal agreements entered into by the United States for this fishery, including the International Dolphin Conservation Program. These functions may include—

"(i) the review of data from the Program, including data received from the Inter-American Tropical Tuna Commission;

"(ii) recommendations on research needs, including ecosystems, fishing practices, and gear technology research, including the development and use of selective, environmentally safe and cost-effective fishing gear, and on the coordination and facilitation of such research;

"(iii) recommendations concerning scientific reviews and assessments required under the Program and engaging, as appropriate, in such reviews and assessments;

"(iv) consulting with other experts as needed; and

"(v) recommending measures to assure the regular and timely full exchange of data among the parties to the Program and each nation's National Scientific Advisory Committee (or its equivalent).

"(3) ATTENDANCE AT MEETINGS.—The Scientific Advisory Subcommittee shall be invited to have representatives attend all nonexecutive meetings of the United States sections and the General Advisory Subcommittee and shall be given full opportunity to examine and to be heard on all proposed programs of scientific investigation, scientific reports, and scientific recommendations of the commission. Representatives of the Scientific Advisory Subcommittee may attend meetings of the Inter-American Tropical Tuna Commission in accordance with the rules of such Commission.".

(c) BYCATCH REDUCTION.—The Tuna Conventions Act (16 U.S.C. 951 et seq.) is amended by adding at the end thereof the following:

"SEC. 15. REDUCTION OF BYCATCH IN THE EASTERN TROPICAL PACIFIC OCEAN.

"The Secretary of State, in consultation with the Secretary of Commerce and acting through the United States Commissioners, shall seek, in cooperation with other nations whose vessel fish for tuna in the eastern tropical Pacific Ocean, to establish standards and measures for a bycatch reduction program for vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean. The bycatch reduction program shall include measures—

"(1) to require, to the maximum extent practicable, that sea turtles and other threatened species and endangered species are released alive;

"(2) to reduce, to the maximum extent practicable, the harvest of nontarget species;

"(3) to reduce, to the maximum extent practicable, the mortality of nontarget species; and

"(4) to reduce, to the maximum extent practicable, the mortality of juveniles of the target species.".

SEC. 8. EFFECTIVE DATES.

(a) AMENDMENTS TO TAKE EFFECT WHEN IDCP IN FORCE.—Sections 3 through 7 of this Act (except for section 304 of the Marine Mammal Protection Act of 1972 as added by section 6 of this Act) shall become effective upon—

(1) certification by the Secretary of Commerce that—

(A) sufficient funding is available to complete the first year of the study required under section 304(a) of the Marine Mammal Protection Act of 1972, as so added; and

(B) the study has commenced; and

(2) certification by the Secretary of State to Congress that a binding resolution of the Inter-American Tropical Tuna Commission or other legally binding instrument establishing the International Dolphin Conservation Program has been adopted and is in force.

(b) SPECIAL EFFECTIVE DATE.—Notwithstanding subsection (a), the Secretary of Commerce may issue regulations under—

(1) subsection (f)(2) of the Dolphin Protection Consumer Information Act (16 U.S.C. 1385(f)(2)), as added by section 5(b) of this Act;

(2) section 303(a) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1413(a)), as added by section 6(c) of this Act,

at any time after the date of enactment of this Act.

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

Permits

16 U.S.C. 1374

Sec. 104. (a) [ISSUANCE.] — The Secretary may issue permits which authorize the taking or importation of any marine mammal. Permits for the incidental taking of marine mammals in the course of commercial fishing operations may only be issued as specifically provided for in sections 101(a)(5) or 306, or subsection (h) of this section.

(b) [REQUISITE PROVISIONS.] — Any permit issued under this section shall—

(1) be consistent with any applicable regulation established by the Secretary under section 103 of this title, and

(2) specify—

(A) the number and kind of animals which are authorized to be taken or imported,

(B) the location and manner (which manner must be determined by the Secretary to be humane) in which they may be taken, or from which they may be imported,

(C) the period during which the permit is valid, and

(D) any other terms or conditions which the Secretary deems appropriate.

In any case in which an application for a permit cites as a reason for the proposed taking the overpopulation of a particular species or population stock, the Secretary shall first consider whether or not it would be more desirable to transplant a number of animals (but not to exceed the number requested for taking in the application) of that species or stock to a location not then inhabited by such species or stock but previously inhabited by such species or stock.

(c) [IMPORTATION FOR DISPLAY OR RESEARCH.] —

(1) Any permit issued by the Secretary which authorizes the taking or importation of a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall specify, in addition to the conditions required by subsection (b) of this section, the methods of capture, supervision, care, and transportation which must be observed pursuant to such taking or importation. Any person authorized to take or import a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall furnish to the Secretary a report on all activities carried out by him pursuant to that authority.

(2)(A) A permit may be issued to take or import a marine mammal for the purpose of public display only to a person which the Secretary determines—

(i) offers a program for education or conservation purposes that is based on professionally

recognized standards of the public display community;

(ii) is registered or holds a license issued under 7 U.S.C. 2131 et seq.; and

(iii) maintains facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and that access to such facilities is not limited or restricted other than by charging of an admission fee.

(B) A permit under this paragraph shall grant to the person to which it is issued the right, without obtaining any additional permit or authorization under this Act, to—

(i) take, import, purchase, offer to purchase, possess, or transport the marine mammal that is the subject of the permit; and

(ii) sell, export, or otherwise transfer possession of the marine mammal, or offer to sell, export, or otherwise transfer possession of the marine mammal—

(I) for the purpose of public display, to a person that meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A);

(II) for the purpose of scientific research, to a person that meets the requirements of paragraph (3); or

(III) for the purpose of enhancing the survival or recovery of a species or stock, to a person that meets the requirements of paragraph (4).

(C) A person to which a marine mammal is sold or exported or to which possession of a marine mammal is otherwise transferred under the authority of subparagraph (B) shall have the rights and responsibilities described in subparagraph (B) with respect to the marine mammal without obtaining any additional permit or authorization under this Act. Such responsibilities shall be limited to—

(i) for the purpose of public display, the responsibility to meet the requirements of clauses (i), (ii), and (iii) of subparagraph (A),

(ii) for the purpose of scientific research, the responsibility to meet the requirements of paragraph (3), and

(iii) for the purpose of enhancing the survival or recovery of a species or stock, the responsibility to meet the requirements of paragraph (4).

(D) If the Secretary—

(i) finds in concurrence with the Secretary of Agriculture, that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A)(ii) and is not reasonably likely to meet those requirements in the near future, or

(ii) finds that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A) (i) or (iii) and is not reasonably likely to meet those requirements in the near future,

the Secretary may revoke the permit in accordance with section 104(e), seize the marine mammal, or cooperate with other persons authorized to hold marine mammals under this Act for disposition of the marine mammal. The Secretary may recover from the person expenses incurred by the Secretary for that seizure.

(E) No marine mammal held pursuant to a permit issued under subparagraph (A), or by a person exercising rights under subparagraph (C), may be sold, purchased, exported, or transported unless the Secretary is notified of such action no later than 15 days before such action, and such action is for purposes of public display, scientific research, or enhancing the survival or recovery of a species or stock. The Secretary may only require the notification to include the information required for the inventory established under paragraph (10).

(3)(A) The Secretary may issue a permit under this paragraph for scientific research purposes to an applicant which submits with its permit application information indicating that the taking is required to further a bona fide scientific purpose. The Secretary may issue a permit under this paragraph before the end of the public review and comment period required under subsection (d)(2) if delaying issuance of the permit could result in injury to a species, stock, or individual, or in loss of unique research opportunities.

(B) No permit issued for purposes of scientific research shall authorize the lethal taking of a marine mammal unless the applicant demonstrates that a nonlethal method of conducting the research is not feasible. The Secretary shall not issue a permit for research which involves the lethal taking of a marine mammal from a species or stock that is depleted, unless the Secretary determines that the results of such research will directly benefit that species or stock, or that such research fulfills a critically important research need.

(C) Not later than 120 days after the date of enactment of the Marine Mammal Protection Act Amendments of 1994 [August 28, 1994], the Secretary shall issue a general authorization and implementing regulations allowing bona fide scientific research that may result only in taking by Level B harassment of a marine mammal. Such authorization shall apply to persons which submit, by 60 days before commencement of such research, a letter of intent via certified mail to the Secretary containing the following:

(i) The species or stocks of marine mammals which may be harassed.

(ii) The geographic location of the research.

(iii) The period of time over which the research will be conducted.

(iv) The purpose of the research, including a description of how the definition of bona fide research as established under this Act would apply.

(v) Methods to be used to conduct the research.

Not later than 30 days after receipt of a letter of intent to conduct scientific research under the general

authorization, the Secretary shall issue a letter to the applicant confirming that the general authorization applies, or, if the proposed research is likely to result in the taking (including Level A harassment) of a marine mammal, shall notify the applicant that subparagraph (A) applies.

(4)(A) A permit may be issued for enhancing the survival or recovery of a species or stock only with respect to a species or stock for which the Secretary, after consultation with the Marine Mammal Commission and after notice and opportunity for public comment, has first determined that—

(i) taking or importation is likely to contribute significantly to maintaining or increasing distribution or numbers necessary to ensure the survival or recovery of the species or stock; and

(ii) taking or importation is consistent (I) with any conservation plan adopted by the Secretary under section 115(b) of this title or any recovery plan developed under section 4(f) of the Endangered Species Act of 1973 for the species or stock, or (II) if there is no conservation or recovery plan in place, with the Secretary's evaluation of actions required to enhance the survival or recovery of the species or stock in light to the factors that would be addressed in a conservation plan or a recovery plan.

(B) A permit issued in accordance with this paragraph may allow the captive maintenance of a marine mammal from a depleted species or stock only if the Secretary—

(i) determines that captive maintenance is likely to contribute to the survival or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing biological information, or establishing animal reserves;

(ii) determines that the expected benefit to the affected species or stock outweighs the expected benefit of alternatives which do not require removal of animals from the wild; and

(iii) requires that the marine mammal or its progeny be returned to the natural habitat of the species or stock as soon as feasible, consistent with the objectives of any applicable conservation plan or recovery plan, or of any evaluation by the Secretary under subparagraph (A).

The Secretary may allow the public display of such a marine mammal only if the Secretary determines that such display is incidental to the authorized maintenance and will not interfere with the attainment of the survival or recovery objectives.

(5)(A) The Secretary may issue a permit for the importation of polar bear parts (other than internal organs) taken in sport hunts in Canada, to an applicant which submits with its permit application proof that the polar bear was legally harvested in Canada by the applicant. Such a permit shall be issued if the Secretary, in consultation with the Marine Mammal Commission and after notice and opportunity for public comment, finds that—

(i) Canada has a monitored and enforced sport hunting program consistent with the purposes of the Agreement on the Conservation of Polar Bears;

(ii) Canada has a sport hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level;

(iii) the export and subsequent import are consistent with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and other international agreements and conventions; and

(iv) the export and subsequent import are not likely to contribute to illegal trade in bear parts.

(B) The Secretary shall establish and charge a reasonable fee for permits issued under this paragraph. All fees collected under this paragraph shall be available to the Secretary for use in developing and implementing cooperative research and management programs for the conservation of polar bears in Alaska and Russia pursuant to section 113(d).

(C)(i) The Secretary shall undertake a scientific review of the impact of permits issued under this paragraph on the polar bear population stocks in Canada within 2 years after the date of enactment of this paragraph [April 30, 1996]. The Secretary shall provide an opportunity for public comment during the course of such review, and shall include a response to such public comment in the final report on such review.

(ii) The Secretary shall not issue permits under this paragraph after September 30, 1996, if the Secretary determines, based on the scientific review, that the issuance of permits under this paragraph is having a significant adverse impact on the polar bear population stocks in Canada. The Secretary may review such determination annually thereafter, in light of the best scientific information available, and shall complete the review not later than January 31 in any year a review is undertaken. The Secretary may issue permits under this paragraph whenever the Secretary determines, on the basis of such annual review, that the issuance of permits under this paragraph is not having a significant adverse impact on the polar bear population stocks in Canada.

(D) The Secretary of the Interior shall, expeditiously after the expiration of the applicable 30 day period under subsection (d)(2), issue a permit for the importation of polar bear parts (other than internal organs) from polar bears taken in sport hunts in Canada before the date of enactment of the Marine Mammal Protection Act Amendments of 1994 [April 30, 1994], to each applicant who submits, with the permit application, proof that the polar bear was legally harvested in Canada by the applicant. The Secretary shall issue such permits without regard to the provisions of subparagraphs (A) and (C)(ii) of this paragraph, subsection (d)(3) of this section, and sections 101 and 102. This subparagraph shall not apply to polar bear parts that were imported before the effective date of this subparagraph [June 12, 1997].

(6) A permit may be issued for photography for educational or commercial purposes involving marine mammals in the wild only to an applicant which submits with its permit application information indicating that the taking will be limited to Level B harassment, and the manner in which the products of such activities will be made available to the public.

(7) Upon request by a person for a permit under paragraph (2), (3), or (4) for a marine mammal which is in the possession of any person authorized to possess it under this Act and which is determined under guidance under section 402(a) not to be releasable to the wild, the Secretary shall issue the permit to the person requesting the permit if that person—

(A) meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A), in the case of a request for a permit under paragraph (2);

(B) meets the requirements of paragraph (3), in the case of a request for a permit under that paragraph; or

(C) meets the requirements of paragraph (4), in the case of a request for a permit under that paragraph.

(8)(A) No additional permit or authorization shall be required to possess, sell, purchase, transport, export, or offer to sell or purchase the progeny of marine mammals taken or imported under this subsection, if such possession, sale, purchase, transport, export, or offer to sell or purchase is—

(i) for the purpose of public display, and by or to, respectively, a person which meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A);

(ii) for the purpose of scientific research, and by or to, respectively, a person which meets the requirements of paragraph (3); or

(iii) for the purpose of enhancing the survival or recovery of a species or stock, and by or to, respectively, a person which meets the requirements of paragraph (4).

(B)(i) A person which has a permit under paragraph (2), or a person exercising rights under paragraph (2)(C), which has possession of a marine mammal that gives birth to progeny shall—

(I) notify the Secretary of the birth of such progeny within 30 days after the date of birth; and

(II) notify the Secretary of the sale, purchase, or transport of such progeny no later than 15 days before such action.

(ii) The Secretary may only require notification under clause (i) to include the information required for the inventory established under paragraph (10).

(C) Any progeny of a marine mammal born in captivity before the date of the enactment of the Marine Mammal Protection Act Amendments of 1994 [April 30, 1994] and held in captivity for the purpose of public display shall be treated as though born after that date of enactment.

(9) No marine mammal may be exported for the purpose of public display, scientific research, or enhancing the survival or recovery of a species or stock unless the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit under this subsection for that purpose.

(10) The Secretary shall establish and maintain an inventory of all marine mammals possessed pursuant to permits issued under paragraph (2)(A), by persons exercising rights under paragraph (2)(C), and all progeny of such marine mammals. The inventory shall contain, for each marine mammal, only the following information which shall be provided by a person holding a marine mammal under this Act:

(A) The name of the marine mammal or other identification.

(B) The sex of the marine mammal.

(C) The estimated or actual birth date of the marine mammal.

(D) The date of acquisition or disposition of the marine mammal by the permit holder.

(E) The source from whom the marine mammal was acquired including the location of the take from the wild, if applicable.

(F) If the marine mammal is transferred, the name of the recipient.

(G) A notation if the animal was acquired as the result of a stranding.

(H) The date of death of the marine mammal and the cause of death when determined.

(d) [APPLICATION PROCEDURES; NOTICE; HEARING; REVIEW.] —

(1) The Secretary shall prescribe such procedures as are necessary to carry out this section, including the form and manner in which application for permits may be made.

(2) The Secretary shall publish notice in the Federal Register of each application made for a permit under this section. Such notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data or views, with respect to the taking or importation proposed in such application.

(3) The applicant for any permit under this section must demonstrate to the Secretary that the taking or importation of any marine mammal under such permit will be consistent with the purposes of this Act and the applicable regulations established under section 103 of this title.

(4) If within thirty days after the date of publication of notice pursuant to paragraph (2) of this subsection with respect to any application for a permit any interested party or parties request a hearing in connection therewith, the Secretary may, within sixty days following such date of publication, afford to such party or parties an opportunity for such a hearing.

(5) As soon as practicable (but not later than thirty days) after the close of the hearing or, if no hearing is held, after the last day on which data, or views, may be submitted pursuant to paragraph (2) of this subsection, the Secretary shall (A) issue a permit containing such terms and conditions as he deems appropriate, or (B) shall deny issuance of a permit. Notice of the decision of the Secretary to issue or to deny any permit under this paragraph must be published in the Federal Register within ten days after the date of issuance or denial.

(6) Any applicant for a permit, or any party opposed to such permit, may obtain judicial review of the terms and conditions of any permit issued by the Secretary under this section or of his refusal to issue such a permit. Such review, which shall be pursuant to chapter 7 of Title 5, United States Code, may be initiated by filing a petition for review in the United States district court for the district wherein the applicant for a permit resides, or has his principal place of business, or in the United States District Court for the District of Columbia, within sixty days after the date on which such permit is issued or denied.

(e) [MODIFICATION, SUSPENSION, AND REVOCATION.] —

(1) The Secretary may modify, suspend, or revoke in whole or part any permit issued by him under this

section—

(A) in order to make any such permit consistent with any change made after the date of issuance of such permit with respect to any applicable regulation prescribed under section 103 of this title,

(B) in any case in which a violation of the terms and conditions of the permit is found, or

(C) if, in the case of a permit under subsection (c)(5) authorizing importation of polar bear parts, the Secretary, in consultation with the appropriate authority in Canada, determines that the sustainability of Canada's polar bear population stocks are being adversely affected or that sport hunting may be having a detrimental effect on maintaining polar bear population stocks throughout their range.

(2) Whenever the Secretary shall propose any modification, suspension, or revocation of a permit under this subsection, the permittee shall be afforded opportunity, after due notice, for a hearing by the Secretary with respect to such proposed modification, suspension, or revocation. Such proposed action by the Secretary shall not take effect until a decision is issued by him after such hearing. Any action taken by the Secretary after such a hearing is subject to judicial review on the same basis as is any action taken by him with respect to a permit application under paragraph (5) of subsection (d) of this section.

(3) Notice of the modification, suspension, or revocation of any permit by the Secretary shall be published in the Federal Register within ten days from the date of the Secretary's decision.

(f) [POSSESSION OF PERMIT BY ISSUEE OR HIS AGENT.] — Any permit issued under this section must be in the possession of the person to whom it is issued (or an agent of such person) during—

(1) the time of the authorized or taking importation;

(2) the period of any transit of such person or agent which is incident to such taking or importation; and

(3) any other time while any marine mammal taken or imported under such permit is in the possession of such person or agent.

A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

(g) [FEES.] — The Secretary shall establish and charge a reasonable fee for permits issued under this section.

(h) [GENERAL PERMITS.] — (1) Consistent with the regulations prescribed pursuant to section 103 of this title and the requirements of section 101 of this title, the Secretary may issue an annual permit to a United States purse seine fishing vessel for the taking of such marine mammals, and shall issue regulations to cover the use of any such annual permits.

(2) Such annual permits for the incidental taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean shall be governed by section 306 of this Act, subject to the regulations issued pursuant to section 303 of this Act.

(3)(A) The Secretary shall, commencing on January 1, 1985, undertake a scientific research program to monitor for at least five consecutive years, and periodically as necessary thereafter, the indices of abundance and trends of marine mammal population stocks which are incidentally taken in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean.

(B) If the Secretary determines, on the basis of the best scientific information available (including that obtained under the monitoring program), that the incidental taking of marine mammals permitted under the general permit referred to in paragraph (2) is having a significant adverse effect on a marine mammal population stock, the Secretary shall take such action as is necessary, after notice and an opportunity for an agency hearing on the record, to modify the applicable incidental take quotas or requirements for gear and fishing practices (or both such quotas and requirements) for such fishing so as to ensure that the marine mammal population stock is not significantly adversely affected by the incidental taking.

(C) For each year after 1984, the Secretary shall include in his annual report to the public and the Congress under section 103(f) a discussion of the proposed activities to be conducted each year as part of the monitoring program required by subparagraph (A).

(D) There are authorized to be appropriated to the Department of Commerce for purposes of carrying out the monitoring program required under this paragraph not to exceed $4,000,000 for the period beginning October 1, 1984, and ending September 30, 1988.

Permits

16 U.S.C. 1416

Sec. 306. (a) IN GENERAL.--

(1) Consistent with the regulations issued pursuant to section 303, the Secretary shall issue a permit to a vessel of the United States authorizing participation in the International Dolphin Conservation Program and may require a permit for the person actually in charge of and controlling the fishing operation of the vessel. The Secretary shall prescribe such procedures as are necessary to carry out this subsection, including requiring the submission of--

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof; and

(B) the tonnage, hold capacity, speed, processing equipment, and type and quantity of gear, including an inventory of special equipment required under section 303, with respect to each vessel.

(2) The Secretary is authorized to charge a fee for granting an authorization and issuing a permit under this section. The level of fees charged under this paragraph may not exceed the administrative cost incurred in granting an authorization and issuing a permit. Fees collected under this paragraph shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred in granting authorization and issuing permits under this section.

(3) After the effective date of the International Dolphin Conservation Program Act, no vessel of the United States shall operate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean without a valid permit issued under this section.

(b) PERMIT SANCTIONS.--

(1) In any case in which--

(A) a vessel for which a permit has been issued under this section has been used in the commission of an act prohibited under section 307;

(B) the owner or operator of any such vessel or any other person who has applied for or been issued a permit under this section has acted in violation of section 307; or

(C) any civil penalty or criminal fine imposed on a vessel, owner or operator of a vessel, or other person who has applied for or been issued a permit under this section has not been paid or is overdue, the Secretary may--

(i) revoke any permit with respect to such vessel, with or without prejudice to the issuance of subsequent permits;

(ii) suspend such permit for a period of time considered by the Secretary to be appropriate;

(iii) deny such permit; or

(iv) impose additional conditions or restrictions on any permit issued to, or applied for by, any such vessel or person under this section.

(2) In imposing a sanction under this subsection, the Secretary shall take into account--

(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

(B) with respect to the violator, the degree of culpability, any history of prior offenses, and other such matters as justice requires.

(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of transfer.

(4) In the case of any permit that is suspended for the failure to pay a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

(5) No sanctions shall be imposed under this section unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this title or otherwise.

Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at http://ia.ita.doc.gov/frn/ under the heading ''Chile.'' The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Verification

In accordance with section 782(i) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, and examining relevant accounting records and original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit of the Department of Commerce, Room B–099.

Summary

The total net countervailable subsidy rates for Olmue, Comfrut, and Frucol are 0.01, 0.16 and 0.65 percent, *ad valorem*, respectively. All of these rates are *de minimis*. Therefore, we determine that countervailable subsidies are not being provided to producers or exporters of IQF red raspberries in Chile.

Suspension of Liquidation

In the *Preliminary Determination*, the total net countervailable subsidy rates for all the responding companies were *de minimis* and, therefore, we did not suspend liquidation. For the instant determination, because the rates for all the responding companies remain *de minimis*, we are not directing the Customs Service to suspend liquidation of IQF red raspberries from Chile.

Notification of the International Trade Commission

In accordance with section 705(d) of the Act, we have notified the International Trade Commission of our determination.

Return or Destruction of Proprietary Information

This notice will serve as the only reminder to parties subject to Administrative Protective Order of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: May 15, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memorandum

Comment 1: Benchmark Interest Rates
Comment 2: Countervailability of ProChile Export Promotion Assistance Program

[FR Doc. 02–12858 Filed 5–21–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051702A]

Proposed Information Collection; Comment Request; International Dolphin Conservation Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before July 22, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Cathy Campbell, 562–980–4060 or Cathy.E.Campbell@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Oceanic and Atmospheric Administration (NOAA) collects information to implement the International Dolphin Conservation Program Act. The Act allows entry of yellowfin tuna into the United States, under specific conditions, from nations in the Program that would otherwise be under embargo. The Act also allows U.S. fishing vessels to participate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean on terms equivalent with the vessels of other nations. NOAA collects information to allow tracking and verification of ''dolphin safe'' and ''non-dolphin safe'' tuna products from catch through the U.S. market.

NOAA has modified the existing information collection by requiring that any wholesaler or distributer of any tuna or tuna products labeled as ''dolphin-safe'' produce documentary evidence concerning the origin of the tuna or products within 30 days of receiving a written request from the National Marine Fisheries Service (NMFS). NMFS expects that this will result in an annual information burden on 20 additional respondents.

In addition, NMFS has modified the existing information collection by eliminating the requirement that canneries provide 48 hours notice of receipt of tuna shipment and eliminating the requirement that processors provide NMFS with copies of their receiving reports on a real-time basis. This has resulted in an overall reduction in the number of annual burden hours and the estimated annual cost to the public of this information collection.

II. Method of Collection

Paper forms, other paper records, telephone calls, and radio transmissions.

III. Data

OMB Number: 0648–0387.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, individuals or households.
Estimated Number of Respondents: 58.
Estimated Time Per Response: 30 minutes for a vessel permit application; 10 minutes for an operator permit application; 30 minutes for a request for a waiver to transit the eastern tropical Pacific Ocean without a permit (and subsequent radio reporting); 10 minutes for a notification of vessel departure; 10 minutes for a change in permit operator; 10 minutes for notification of a net modification; 10 hours for an experimental fishing operation waiver; 15 minutes for a request for a Dolphin Mortality Limit; 10 minutes for notification of vessel arrival; 60 minutes for a tuna tracking form; 10 minutes for

a monthly tuna storage removal report; 60 minutes for a monthly tuna receiving report; and 30 minutes for a special report documenting the origin of tuna (if requested by the NOAA Administrator).

Estimated Total Annual Burden Hours: 144.

Estimated Total Annual Cost to Public: $847.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 16, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–12777 Filed 5–21–02; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051702B]

Proposed Information Collection; Comment Request; Application for Commission in the NOAA Officer Corps

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506 (c)(2)(A)).

DATES: Written comments must be submitted on or before July 22, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lt. Cecile Daniels, 301–713–3444, ext. 119, or Cecile.Daniels@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The NOAA Corps is the smallest of the seven uniformed services of the United States and is an integral part of NOAA. The NOAA Corps provides a cadre of professionals trained in engineering, earth sciences, oceanography, meteorology, fisheries science, and other related disciplines who serve in assignments within the five major Line Offices of NOAA. Persons wishing to obtain a NOAA Corps Commission must submit an application package, including an eye test and five references.

II. Method of Collection

Paper forms are submitted via mail in postage-paid envelopes.

III. Data

OMB Number: 0648–0047.

Form Number: NOAA Forms 56–42, 56–42A, 56–42C, 5—-42D.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 130.

Estimated Time Per Response: 2 hours.

Estimated Total Annual Burden Hours: 260.

Estimated Total Annual Cost to Public: $5,850.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 16, 2002.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 02–12778 Filed 5–21–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050102H]

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of embargo for Peru.

SUMMARY: On May 17, 2002, the Assistant Administrator for Fisheries, NMFS, acted to prohibit the importation into the United States from Peru of yellowfin tuna and yellowfin tuna products harvested by purse seine in the eastern tropical Pacific Ocean (ETP). NMFS is required to take this action because Peru harvests tuna in the ETP with purse seine vessels with greater than 400 short tons (362.8 metric tons) carrying capacity and has not received an ''affirmative finding'' as required by regulations. This ban remains in effect for Peru until an affirmative finding has been granted by the Assistant Administrator.

DATES: Effective May 17, 2002.

FOR FURTHER INFORMATION CONTACT: Allison Routt, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA, 90802–4213, Phone 562–980–4020, Fax 562–980–4027.

SUPPLEMENTARY INFORMATION: In order to export to the United States yellowfin tuna harvested by purse seine in the ETP, the Marine Mammal Protection Act (MMPA) requires a nation that has purse seine vessels with over 400 short tons (362.8 metric tons) carrying capacity fishing for tuna in the ETP (i.e., a harvesting nation) submit documentary evidence to the Assistant Administrator requesting an affirmative finding. The process for such requests is described in regulations at 50 CFR 216.24(f)(9). Based