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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No.: 160204080-6080-01]

RIN 0648-BF73

Enhanced Document Requirements and Captain Training Requirements to Support Use of the Dolphin Safe Label on Tuna Products

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS issues this interim final rule to revise regulations implementing the Dolphin Protection Consumer Information Act (DPCIA) to enhance the requirements for documentation that demonstrates the accuracy of dolphin-safe labels on tuna products.

This interim final rule: modifies the regulations (referred to hereafter as the “determination provisions”) under which the NMFS Assistant Administrator (Assistant Administrator) may require proof of an observer certification if the Assistant Administrator determines that a fishery has a regular and significant association between dolphins and tuna and/or has a regular and significant mortality or serious injury of dolphins, to apply equally to purse seine and other gear-type tuna fisheries; provides that a government certificate validating the catch documentation, segregation, and chain of custody may be required for tuna produced from a fishery about which the Assistant Administrator has made a determination under the determination provisions; restructures

NOAA regulations such that they now provide for one straightforward certification regarding intentional deployment and mortality/serious injury for all fisheries that produce tuna that is potentially eligible for the dolphin-safe label; modifies the Fisheries Certificate of Origin (FCO) to require captains to complete a training for certifications that must accompany the FCO; enhances chain of custody tracking requirements for tuna and tuna product; and makes several non-substantive modifications to the regulations. This interim final rule brings the United States into compliance with its obligations as a Member of the World Trade Organization (WTO).

DATES: This interim final rule is effective March 22, 2016, except for amendatory instruction 2, which is effective May 21, 2016. Comments must be submitted in writing by *[Insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2016-0012, by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.
 1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0012*,
 2. Click the “Comment Now!” icon, complete the required fields, and
 3. Enter or attach your comments.

- OR -

- *Mail:* Submit written comments to William W. Stelle, Jr., NMFS West Coast Region (WCR), 7600 Sand Point Way NE., Bldg 1, Seattle, WA 98115-0070.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might not be considered by

NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: William Jacobson, NMFS WCR, 562-980-4035.

SUPPLEMENTARY INFORMATION:

Background

The DPCIA (16 U.S.C. 1385), enacted in 1990, established a dolphin-safe labeling standard for tuna products. The law addressed a Congressional finding that “consumers would like to know if the tuna they purchase is falsely labeled as to the effect of the harvesting of the tuna on dolphins.” Specifically, the DPCIA makes it a violation of U.S. law regarding deceptive practices to use any label with 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, except under the conditions laid out in the DPCIA and associated regulations. The authority of the Secretary of Commerce under the DPCIA has been delegated to the Assistant Administrator.

In 2008, Mexico initiated WTO dispute settlement proceedings to challenge the U.S. dolphin-safe labeling scheme as being inconsistent with certain provisions of the WTO’s General Agreement on Tariffs and Trade 1994 (GATT 1994) and Agreement on

Technical Barriers to Trade (TBT Agreement). Mexico challenged three components of the U.S. measure: the DPCIA, Department of Commerce DPCIA regulations (50 CFR 216.91 and 216.92), and a Federal court decision (*Earth Island Institute v. Hogarth*, 494 F.3d 757 (9th Cir. 2007)). These components of the measure establish conditions under which tuna products may voluntarily be labeled dolphin-safe. Among other requirements, these conditions do not allow tuna products to be labeled dolphin-safe if they contain tuna that was caught by intentionally encircling and deploying purse seine nets on dolphins. On June 13, 2012, the WTO Dispute Settlement Body adopted WTO Panel and Appellate Body reports ruling that the U.S. measure accords less favorable treatment to Mexican tuna products and therefore is inconsistent with Article 2.1 of the TBT Agreement.

In response to this finding, on July 9, 2013, NMFS published a final rule under the DPCIA titled “Enhanced Document Requirements to Support Use of the Dolphin Safe Label on Tuna Products” (78 FR 40997) that amended regulations at 50 CFR part 216, subpart H. The 2013 final rule modified the labeling conditions to more fully address the risks to dolphins posed by tuna fishing outside the eastern tropical Pacific Ocean (ETP) large purse seine fishery (i.e., where the vessel has a carrying capacity of more than 400 short tons (362.8 mt)).¹ Specifically, the 2013 final rule amended the eligibility condition that tuna product may not be labeled dolphin-safe if a dolphin was killed or seriously injured in the set or other gear deployment in which the tuna was caught so that the condition now applied to all tuna caught in any fishery in the world. The 2013 final rule further required that a captain’s certificate stating that this condition was met was required for tuna caught by any eligible method in any fishery to be labeled dolphin-safe.

¹ The ETP is defined as the waters of the Pacific Ocean bounded by 40° N. latitude, 40° S. latitude, 160° W. longitude and the coastlines of North, Central and South America (50 CFR 216.3).

Additionally, all dolphin-safe tuna must be kept physically separate, from the time of catch through the time of unloading, from non-dolphin-safe tuna.

The WTO established a compliance panel on January 27, 2014, to determine whether the 2013 final rule brought the dolphin-safe labeling requirements into compliance with the United States' WTO obligations. The compliance panel circulated its final report on April 14, 2015. In that report, the compliance panel found that the amended dolphin-safe labeling measure discriminates against Mexican tuna product in breach of Article 2.1 of the TBT Agreement and Articles I:1 and III:4 of the GATT 1994. The compliance panel considered three regulatory distinctions of the amended measure: 1) the ineligibility for the dolphin-safe label of tuna caught by setting on dolphins; 2) the certification requirements; and, 3) the tracking and verification requirements.

First, the compliance panel found that the provisions in U.S. law making any dolphin-safe label ineligible to be used for tuna product containing tuna caught by setting on dolphins and the potential eligibility of tuna caught by other methods was consistent with Article 2.1 of the TBT Agreement and, while inconsistent with Articles I:1 and III:4 of the GATT 1994, was justified under Article XX of the GATT 1994. Second, the compliance panel found that the certification requirements discriminated against Mexican tuna product because it is more burdensome for Mexican producers to comply with the certification requirements of the Agreement on the International Dolphin Conservation Program (AIDCP) than the certification requirements applicable outside the ETP large purse seine fishery. In the compliance panel's view, this difference in burden was not justified given the lack of training for captains making such certifications outside the ETP large purse seine fishery as well as the perceived "gaps" in coverage of the determination

provisions. Third, the compliance panel found that the tracking and verification requirements discriminated against Mexican tuna produced from large purse seine vessels in the ETP because it was more burdensome for Mexican producers to comply with the AIDCP tracking and verification requirements than the tracking and verification requirements applicable for fisheries other than the ETP large purse seine fishery and that this burden could not be justified.

The United States and Mexico both appealed aspects of the compliance panel's report, and the WTO Appellate Body issued its report on November 20, 2015. The Appellate Body found that the United States had not brought its measure into compliance with its WTO obligations. Specifically, the Appellate Body found the amended dolphin-safe labeling measure to be inconsistent with the non-discrimination obligations contained in the TBT Agreement and the GATT 1994 because the measure had a detrimental impact on the conditions of competition for Mexican tuna product in the U.S. market and that this detrimental impact reflected prohibited discrimination in light of the perceived "gaps" in the design of the determination provisions. In particular, the Appellate Body criticized the determination provisions because, as designed, the determination provisions allowed for the possibility that no observer requirement would be imposed where a "regular and significant" dolphin mortality or serious injury is occurring in a purse seine fishery without a regular and significant tuna-dolphin association, or where a "regular and significant" tuna-dolphin association is occurring in a non-purse seine fishery without "regular and significant" dolphin mortality or serious injury.

On February 5, 2016, NMFS published a proposed rule (81 FR 6210) entitled “Magnuson-Stevens Fishery Conservation and Management Act; Seafood Import Monitoring Program,” also known as the Traceability Proposed Rule. The Traceability Proposed Rule proposes establishing filing and recordkeeping procedures for certain fish and fish products to combat illegal, unreported, and unregulated fishing and seafood fraud in the U.S. market. NMFS has incorporated into this interim final rule the approach taken in the Traceability Proposed Rule with regard to chain of custody documentation requirements.

The Action

This interim final rule makes six amendments to the regulations, as explained below, none of which affect the labeling of tuna originating from the ETP large purse seine fishery.

First, effective upon publication in the **Federal Register**, this interim final rule revises the determination provisions that previously had been codified at 50 CFR 216.91(a)(2)(i) and (a)(4)(iii), and which are now codified at 50 CFR 216.91(a)(3)(v). Under the amended determination provisions, the Assistant Administrator now has the authority to require, as a condition for labeling tuna product dolphin-safe, that an on-board observer (in addition to the captain) certify the tuna was caught in a manner that meets the dolphin-safe labeling requirements where the Assistant Administrator has determined that a fishery has a regular and significant association between tuna and dolphins (similar to the association between dolphins and tuna in the ETP) and/or has a regular and significant mortality or serious injury of dolphins. This expanded authority applies equally to purse seine and other gear-type tuna fisheries other than the ETP large

purse seine fishery (where an observer certificate is already required) and large-scale driftnet fisheries (which produce tuna that is ineligible for the label). See 50 CFR 216.91(a)(1) and (a)(2). In the case of either “regular and significant” determination, only observers participating in a national or international observer program acceptable to the Assistant Administrator would be able to provide the necessary observer certifications.

NMFS notes that while the revised regulations provide for one standard for making determinations, NMFS will interpret in 50 CFR 216.91(a)(3)(v) consistent with both the DPCIA and U.S. WTO obligations on a fishery-by-fishery basis. In particular, NMFS will take into account that the DPCIA instructs NMFS to impose an observer requirement where the Assistant Administrator has determined that “a regular and significant association occurs between dolphins and tuna (similar to the association between dolphins and tuna in the ETP)” for purse seine fisheries outside the ETP, while the DPCIA affords NMFS more discretion to impose an observer requirement either when evaluating other types of fisheries or when evaluating all 50 CFR 216.91(a)(3) fisheries under the mortality or serious injury prong of 50 CFR 216.91(a)(3)(v). See 16 U.S.C. 1385(d)(1)(B)(i) and (D). At the same time, NMFS will also take U.S. WTO obligations into account in any exercise of such discretion.

Second, effective upon publication in the **Federal Register**, this interim final rule revises the determination provisions under which the Assistant Administrator is authorized to impose an observer certification requirement if a tuna fishery is determined to have either a “regular and significant” association of dolphins or a “regular and significant” mortality or serious injury of dolphins. If the Assistant Administrator makes such a determination, NMFS will now also require a government certificate validating: 1)

the catch documentation; 2) whether the tuna or tuna products meet the dolphin-safe labeling standards under 50 CFR 216.91; and 3) the chain of custody information reported to the U.S. Government or maintained by the importer of record or the U.S. processor, as applicable.

Third, this interim final rule combines the previously separate categories of “non-ETP purse seine vessel” (50 CFR 216.91(a)(2)) and “Other fisheries” (50 CFR 216.91(a)(4)) into one category under the title “Other fisheries” (revised 50 CFR 216.91(a)(3)). Under the revised 50 CFR 216.91(a)(3)(iii), captains of all vessels in fisheries not covered in paragraphs (a)(1) (i.e., the ETP large purse seine fishery) and (a)(2) (i.e., a large-scale driftnet fishery) must certify that, no purse seine net or other fishing gear was intentionally deployed on or used to encircle dolphins during the fishing trip in which the tuna were caught, and that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught. This revision makes clear that tuna does not meet the dolphin-safe standard if it is harvested by vessels that intentionally deploy fishing gear (regardless of the type) on dolphins. Moreover, this revision also makes clear that captains of *all* vessels not covered by 50 CFR 216.91(a)(1) (where the same certification is already required) and (a)(2) (which produces tuna that is ineligible for the label) must make such a certification. To be clear, a non-purse seine vessel intentionally deploys its fishing gear on a dolphin(s) where a vessel intentionally targets a dolphin(s) with the fishing gear. However, as is the case with intentional encirclement, the deployment must be intentional, and where a dolphin(s) is seen only after the fishing gear was deployed, then the vessel did not intentionally deploy the fishing gear on a dolphin(s). This revised certification will apply to tuna caught by a

vessel on a fishing trip that begins on or after May 21, 2016. Until that date, the certifications provided by paragraphs (a)(3)(i) or (ii), as applicable, will continue to apply.

Fourth, this interim final rule modifies the FCO and the requirements for the associated captain's statement by requiring captains of vessels operating in "other fisheries" to certify completion of a NMFS Tuna Tracking and Verification Program (TTVP) dolphin-safe training course (training course). The training course will include information on: 1) identifying dolphins of the taxonomic family Delphinidae; 2) identifying intentional gear deployment on or encirclement of dolphins; 3) identifying dolphin mortality and serious injury; and 4) physically separating dolphin-safe tuna from non-dolphin-safe tuna from the time of capture through unloading. The training course is available on the NMFS TTVP Internet home page at <http://www.nmfs.noaa.gov/pr/dolphinsafe>. Captain certification of completion of the training course applies to all tuna product labeled dolphin-safe if the product contains tuna harvested on a fishing trip that begins on or after May 21, 2016. Existing captain's statement templates found at the NMFS TTVP Internet home page have been modified and may be used to certify completion of the NMFS TTVP training course. The 2013 final rule required all completed FCOs to have associated captain's statement certifications for all tuna harvested other than the ETP large purse seine fishery.

As a starting point, NMFS will translate the TTVP training course into a sufficient number of languages to ensure that the vast majority of languages spoken by captains producing tuna for the U.S. tuna product market are covered by the translation. Internet links to the translated courses will be posted on the TTVP Internet home page at

<http://www.nmfs.noaa.gov/pr/dolphinsafe> as they become available. In addition to posting on the Internet translated versions of the training course, the United States Government will send a démarche to embassies of all countries that supply tuna product to the United States, explaining the new requirements and enclosing a copy of the training course. The démarche will also include the TTVP Internet home page address, as well as a copy of this interim final rule. Providing this information to embassies is intended to aid in disseminating the training course to tuna captains as well as in the dissemination of the new U.S. dolphin-safe tuna labeling requirements to processors.

Fifth, this interim final rule requires U.S. processors and importers of record to collect and retain for 2 years, information on each point in the chain of custody regarding the shipment of the tuna or tuna product to the point of entry into U.S. commerce as a recordkeeping requirement on the part of that U.S. processor or importer of record. The information must be maintained at the place of business, or be accessible from that place of business through, for example, an Internet connection to an off site server where the information is held. This is to ensure that information is readily available to NMFS to allow it to trace the tuna or tuna product back to the point of harvest. As is the case for the Traceability Proposed Rule (discussed above), such information would include records regarding each custodian of the tuna or tuna product, including, as applicable, transshippers, processors, storage facilities, and wholesalers/distributors. The retained information must be provided to NMFS upon request and must be sufficient for NMFS to conduct a trace back to verify that the tuna product certified as dolphin-safe to NMFS, in fact, meets the dolphin-safe labeling requirements for such certification. NMFS expects that typical supply chain records that are kept in the normal course of business, including

declarations by harvesting and carrier vessels, bills of lading and forms voluntarily used or required under foreign government or international monitoring programs, which include such information as the identity of the custodian, the type of processing, and the weight of the product, would provide sufficient information for NMFS to conduct a trace back. In addition, the information maintained must be sufficient in order to trace any non-dolphin-safe tuna loaded onto the vessel back to one or more storage wells or other storage locations for a particular fishing trip to prove that such non-dolphin-safe tuna was kept physically separate from dolphin-safe tuna through unloading.

These chain of custody requirements augment existing requirements that dolphin-safe tuna shall, from the time of capture, during unloading, storage, transfer, and processing, be kept separate from non-dolphin safe tuna set out in 50 CFR 216.91(a)(4) and 50 CFR 216.93(c)(2) and (3). These chain of custody requirements apply to all tuna product labeled dolphin-safe if the product contains tuna harvested on a fishing trip that begins on or after May 21, 2016.

Sixth, this interim final rule makes several non-substantive modifications to 50 CFR 216.91 including redesignating regulatory text paragraphs; updating Internet Web addresses to the NMFS TTVP Internet home page located at <http://www.nmfs.noaa.gov/pr/dolphinsafe>; and changing the word “distributor” to “wholesaler/distributor” for consistency in the regulatory text. NMFS is publishing 50 CFR 216.91 in its entirety (including provisions that were not changed) for the convenience of readers and to improve clarity.

NMFS has broad authority to issue regulations to implement the DPCIA, including specifically the authority to establish a domestic tracking and verification

program to track tuna labeled dolphin-safe, and to adjust such regulations as appropriate to implement an international tracking and verification program (16 U.S.C. 1385(f)).

Among other things, this rule is expected to better ensure that consumers are more easily able to determine the veracity of dolphin-safe labels on tuna products they purchase, in accordance with the findings of the DPCIA (16 U.S.C. 1385(b)).

Classification

The NMFS Assistant Administrator has determined that this interim final rule is consistent with the DPCIA and other applicable laws.

Administrative Procedure Act

NOAA finds good cause to issue this interim final rule without advance notice in a proposed rule or the opportunity for public comment, and to make the rule effective immediately without providing a 30-day delay, because the limited time available to the United States to come into compliance with its WTO obligations makes advance notice and comment or delaying the effectiveness contrary to the public interest. Specifically, any delay in the effective date of the rule would delay the federal government's ability to have the United States come into compliance with its WTO obligations. Furthermore, any delay may adversely affect U.S. trade as well as the federal government's ability to respond to Mexico's request for authorization to suspend the application to the United States of WTO concessions or other obligations, which could result in Mexico taking action that adversely affects U.S. interests (e.g., increasing tariffs on U.S. goods).

However, NMFS will consider public comments on this interim final rule and issue a final rule.

Executive Order 12866

This interim final rule has been determined to be not significant for purposes of Executive Order 12866.

Paperwork Reduction Act (PRA)

This interim final rule contains two new collection-of-information requirements subject to PRA under control numbers 0648-0335 and 0648-0387. These requirements have been approved by the Office of Management and Budget (OMB). There is no additional public reporting burden for OMB control number 0648-0335, titled “Fisheries Certificate of Origin,” as collection of an FCO and/or a captain’s certification are already required to be submitted to NMFS. The additional public reporting burden under OMB control number 0648-0387, titled “International Dolphin Conservation Program,” is estimated to average 30 minutes per response for chain of custody recordkeeping, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. NMFS will ensure compliance with PRA requirements before requiring new observer certifications that might be triggered by a determination of the Assistant Administrator under sections 216.91(a)(3)(v) and (a)(5)(ii) of this interim final rule.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 216

Commercial fisheries, Food labeling, Imports, Marine mammals, Reporting and

recordkeeping requirements, Seafood.

Dated: March 17, 2016.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 216 is amended as follows:

**PART 216— REGULATIONS GOVERNING THE TAKING AND IMPORTING
OF MARINE MAMMALS**

Subpart H—Dolphin Safe Tuna Labeling

1. The authority citation for 50 CFR part 216, subpart H, continues to read as follows:

Authority: 16 U.S.C. 1385.

2. Section 216.91 is revised to read as follows:

§ 216.91 Dolphin-safe labeling standards.

(a) It is a violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) for any producer, importer, exporter, wholesaler/distributor, or seller of any tuna products that are exported from or offered for sale in the United States to include on the label of those products the term “dolphin-safe” or any other term or symbol that claims or suggests that the tuna contained in the products were harvested using a method of fishing that is not harmful to dolphins if the products contain tuna harvested:

(1) *ETP large purse seine vessel.* In the ETP by a purse seine vessel of greater than 400 st (362.8 mt) carrying capacity unless:

(i) The documentation requirements for dolphin-safe tuna under §§ 216.92 and 216.93 are met;

(ii) No dolphins were killed or seriously injured during the sets in which the tuna were caught; and

(iii) None of the tuna were caught on a trip using a purse seine net intentionally deployed on or to encircle dolphins, provided that this paragraph (a)(1)(iii) will not apply if the Assistant Administrator publishes a notification in the **Federal Register** announcing a finding under 16 U.S.C. 1385(g)(2) that the intentional deployment of purse seine nets on or encirclement of dolphins is not having a significant adverse impact on any depleted stock.

(2) *Driftnet.* By a vessel engaged in large-scale driftnet fishing; or

(3) *Other fisheries.* By a vessel in a fishery other than one described in paragraph (a)(1) or (2) of this section unless such product is accompanied as described in § 216.93(d), (e), or (f), as appropriate, by:

(i) For tuna caught in a purse seine fishery outside the ETP by a vessel on a fishing trip that began before July 13, 2013, 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 trip on which the tuna was harvested.

(ii) For tuna caught by a vessel on a fishing trip that began on or after July 13, 2013, a written statement executed by the Captain of the vessel certifying:

(A) For a purse seine vessel outside the ETP, that no purse seine net was

intentionally deployed on or used to encircle dolphins during the fishing trip in which the tuna were caught, and that no dolphins were killed or seriously injured in the sets in which the tuna were caught;

(B) For a vessel other than one described in paragraph (a)(3)(ii)(A) of this section, that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught.

(iii) [Reserved]

(iv) For tuna caught in a fishery where the Assistant Administrator has determined that observers participating in a national or international observer program are qualified and authorized to issue observer statements for purposes of the dolphin-safe labeling program, and where such an observer is on board the vessel, a written statement executed by the observer, or by an authorized representative of a nation participating in the observer program based on information from the observer. Any determination by the Assistant Administrator shall be announced in a notice published in the FEDERAL REGISTER. Determinations under this paragraph (a)(3)(iv) will also be publicized on the Web site of the NMFS Tuna Tracking and Verification Program (<http://www.nmfs.noaa.gov/pr/dolphinsafe>). The written statement shall certify:

(A) That no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught; and,

(B) In purse seine fisheries, that no purse seine net was intentionally deployed on or used to encircle dolphins during the trip on which the tuna were caught.

(v) For tuna caught in a fishery in which the Assistant Administrator has determined that either a regular and significant association between dolphins and tuna

(similar to the association between dolphins and tuna in the ETP) or a regular and significant mortality or serious injury of dolphins is occurring, a written statement, executed by the Captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, unless the Assistant Administrator determines an observer statement is unnecessary. Determinations under this paragraph (a)(3)(v) will also be publicized on the Web site of the NMFS Tuna Tracking and Verification Program (<http://www.nmfs.noaa.gov/pr/dolphinsafe>). The written statement shall certify that:

(A) No fishing gear was intentionally deployed on or used to encircle dolphins during the trip on which the tuna were caught;

(B) No dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught; and

(C) Any relevant requirements of paragraph (a)(4) of this section were complied with during the trip on which the tuna were caught.

(4) *Other fisheries - segregation.* In a fishery other than one described in paragraph (a)(1) or (2) of this section on a fishing trip that began on or after July 13, 2013 unless the tuna caught in sets or gear deployments designated as dolphin-safe was stored physically separate from tuna caught in a non-dolphin-safe set or other gear deployment by the use of netting, other material, or separate storage areas from the time of capture through unloading. If tuna caught in a set or other gear deployment where a dolphin was killed or seriously injured is not stored physically separate from dolphin-safe tuna as stated in § 216.93(c)(2)(i) or (c)(3)(i), as applicable, all tuna inside the storage well or other storage location shall be considered non-dolphin-safe.

(5) [Reserved]

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

(c) A tuna product that is labeled with the official mark, described in § 216.95, may not be labeled with any other label or mark that refers to dolphins, porpoises, or marine mammals.

2. Effective May 21, 2016, § 216.91 is further amended by:

- a. Revising the introductory text of paragraph (a)(3)(ii); and
- b. Adding paragraphs (a)(3)(iii) and (a)(5).

The additions read as follows:

§ 216.91 Dolphin-safe labeling standards.

(a) * * *

(3) * * *

(ii) For tuna caught by a vessel on a fishing trip that began on or after July 13, 2013, and before May 21, 2016, a written statement executed by the Captain of the vessel certifying:

* * * * *

(iii) For tuna caught by a vessel on a fishing trip that began on or after May 21, 2016, a written statement executed by the Captain of the vessel certifying that:

(A) No purse seine net or other fishing gear was intentionally deployed on or used to encircle dolphins during the fishing trip in which the tuna were caught, and that no

dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught; and

(B) The Captain of the vessel has completed the NMFS Tuna Tracking and Verification Program dolphin-safe captain's training course. The NMFS Tuna Tracking and Verification Program dolphin-safe captain's training course is available on the Web site of the NMFS Tuna Tracking and Verification Program at

<http://www.nmfs.noaa.gov/pr/dolphinsafe>.

* * * * *

(5) *Other fisheries - chain of custody recordkeeping.* By a vessel in a fishery other than one described in paragraph (a)(1) or (2) of this section unless:

(i) For tuna designated dolphin-safe that was harvested on a fishing trip that began on or after May 21, 2016, in addition to any other applicable requirements:

(A) The importer of record or U.S. processor of tuna or tuna products, as applicable, maintains information on the complete chain of custody, including storage facilities, transshippers, processors, re-processors, and wholesalers/distributors to enable dolphin-safe tuna to be distinguished from non-dolphin-safe tuna from the time it is caught to the time it is ready for retail sale;

(B) The importer of record or the U.S. processor, as appropriate, ensures that information is readily available to NMFS upon request to allow it to trace any non-dolphin-safe tuna loaded onto the vessel back to one or more storage wells or other storage locations for a particular fishing trip and to show that such non-dolphin-safe tuna was kept physically separate from dolphin-safe tuna through unloading.

(ii) For tuna designated dolphin-safe that was harvested in a fishery about which

the Assistant Administrator made a determination under paragraph (a)(3)(v) of this section, and harvested on a fishing trip that begins on or after 60 days after the date of the **Federal Register** notice of that determination, the tuna or tuna products are accompanied by valid documentation signed by a representative of the vessel flag nation or the processing nation (if processed in another nation) certifying that:

(A) The catch documentation is correct;

(B) The tuna or tuna products meet the dolphin-safe labeling standards under this section; and

(C) The chain of custody information is correct.

(iii) The information referred to in paragraphs (a)(5)(i) and (ii) of this section is maintained at the place of business of the importer of record or the U.S. processor, as applicable, for a period of 2 years from the date of the import or receipt, and be made available to NMFS for inspection upon request.

* * * * *

[FR Doc. 2016-06450 Filed: 3/22/2016 8:45 am; Publication Date: 3/23/2016]