

## Title 50—Wildlife and Fisheries

## CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

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

## Taking of Marine Mammals Incidental to Commercial Fishing Operations

Final regulations are herein published to implement the final decision in the matter of the promulgation of such regulations authorizing the issuance of a permit to allow the taking of marine mammals incidental to yellowfin tuna purse seine fishing in the eastern tropical Pacific Ocean and governing the importation of yellowfin tuna. Proposed regulations on this matter were published on October 14, 1976, 41 FR 45015. The final decision is simultaneously published at page 12015 of this issue.

## SUMMARY OF AMENDMENTS

1. Section 216.24(c)(5)(vi) has been added to require that a Category 2 certificate applicant document the status of the fine mesh webbing required on the vessel on which he intends to operate.

2. Section 216.24(d)(2)(i)(A) has been amended to add two subparagraphs. Subparagraph (1) has been added to prohibit the encircling of pure or mixed schools of coastal spotted dolphin, Costa Rican spinner, and eastern spinner dolphin stocks. Subparagraph (2) has been added to restrict encircling of pure schools to offshore spotted dolphin stock and common dolphin species only. The paragraph has been also amended to reflect the Director's method of assessing the separate stock mortalities in 1977.

3. Section 216.24(d)(2)(ii) has been amended to clarify the requirement that marine mammals incidentally taken in commercial fishing operations may not be retained.

4. Section 216.24(d)(2)(iii) has been amended to clarify where logs are to be sent.

5. Section 216.24(d)(2)(iv) has been amended for clarification.

6. Section 216.24(d)(2)(iv)(A) has been deleted and new subparagraphs (1) and (2) have been added to describe in detail the required installation of new fine mesh webbing on different classes of purse seiners.

7. Section 216.24(d)(2)(iv)(E)(i) has been renumbered as § 216.24(d)(2)(iv)(E).

8. Section 216.24(d)(2)(iv)(E)(i) has been renumbered as § 216.24(d)(2)(iv)(F) and its language amended to clarify placement of bunnclines.

9. Section 216.24(d)(2)(iv)(E)(iii) has been renumbered as § 216.24(d)(2)(iv)(G) and its language amended for clarification. Furthermore, a documentation requirement has been added for certificate holders on Class I vessels desiring to be granted a waiver of the two speed-boat regulation.

10. Section 216.24(d)(2)(iv)(E)(iv) has been renumbered as § 216.24(d)(2)(iv)(H).

11. Section 216.24(d)(2)(v) has been renumbered as § 216.24(d)(2)(iv)(I) and the last two sentences have been transferred to the following new section.

12. Section 216.24(d)(2)(iv)(J) has been added to incorporate all the personnel requirements of porpoise rescue other than backdown, including adding a requirement for use of an inflatable rubber raft and facemask.

13. Section 216.24(d)(2)(iv)(K) has been added to require use of floodlights and searchlights in sets which continue after darkness.

14. Section 216.24(d)(2)(vi) has been renumbered as § 216.24(d)(2)(iv)(L) and has been amended to require an annual inspection of all purse seine vessels used by certificate holders, and to allow vessels unable to install the new fine mesh safety panel due to supply delays, to continue fishing until the webbing can be delivered.

15. Section 216.24(d)(2)(vii) has been renumbered as § 216.24(d)(2)(iv)(M) and has been amended to make suspension or revocation of a certificate a penalty for lack of proficiency in required release procedures, and recognizes the advisory capability of an established "Skipper's Panel" in determining proficiency of certificate holders.

16. Section 216.24(d)(2)(viii) has been deleted.

17. Section 216.24(d)(2)(ix) has been renumbered as § 216.24(d)(2)(iv)(N) and has been amended to add, as a requirement of the general permit application, documentation that the requested take is consistent with the purposes of the Act.

18. Section 216.24(e)(2)(i) has been amended to list all categories of fish, other than yellowfin tuna, which require documentation under these regulations.

19. Section 216.24(e)(2)(ii) has been added to list those categories under which yellowfin tuna is imported, and for which documentation under these regulations is required.

20. Section 216.24(e)(3) has been amended to reflect the use of a revised documentation form for importation of fish categories other than yellowfin tuna.

21. Section 216.24(e)(3)(v) has been deleted, as have subsections (A) and (B) thereunder. Statements under this section are no longer relevant.

22. Section 216.24(e)(3)(vi) has been renumbered as § 216.24(e)(3)(v).

23. Section 216.24(e)(4) has been added to establish the documentation requirements for yellowfin tuna products.

24. Section 216.24(e)(5)(i) has been added to prohibit unloading of yellowfin tuna from those countries whose vessels the Director has determined operate in the eastern tropical tuna purse seine fishery, unless documentation can be provided which allows him to determine that their fishing operations conform with our regulations and standards.

25. Section 216.24(e)(5)(ii) has been added to describe the procedures by

which countries, listed by the Director pursuant to § 216.24(e)(5)(i), can apply for a finding of conformity with our regulations and standards.

26. Section 216.24(e)(4) has been renumbered as § 216.24(e)(6) and amended to reflect other renumbered sections.

27. Section 216.24(e)(5) has been renumbered as § 216.24(e)(7) and the 5 day redelivery deadline amended to be 30 days, in line with normal U.S. Customs procedures.

28. Section 216.24(e)(6) has been renumbered as § 216.24(e)(8) and amended to reflect other renumbered sections.

29. Section 216.24(f) has been amended to remove the requirement for a five day advance notice of departure for observer placement, and has added a requirement that accurate locations be supplied to the observer.

30. All Figures pertaining to § 216.24(d)(2) have been deleted. Sections 216.24(d)(2), 216.24(e) and 216.24(f) have been hereby published in their entirety to provide continuity and clarity in the regulations.

Dated: February 24, 1977.

ROBERT W. SCHONING,  
Director, National  
Marine Fisheries Service.

Section 216.24 is hereby amended by adding a new subparagraph (c)(5)(vi), and by amending paragraphs (d)(2), (e), (f) and (g) as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

\* \* \* \* \*  
(c) Certificates of Inclusion: \* \* \*  
(5) \* \* \*

(vi) For 1977 only, all applicants for a Category 2 Certificate shall either, (A) provide a statement that small mesh webbing not exceeding 1¼" stretch mesh has been installed in the net of the vessel he intends to operate as required by (d)(2)(iv)(A) below; or (B) provide a statement that small mesh webbing not exceeding 1¼" stretch mesh is on order giving the expected delivery date. The Regional Director may require further documentation verifying an order for fine mesh webbing prior to issuing a certificate.

\* \* \* \* \*  
(d) \* \* \*

(2) Encircling gear; yellowfin tuna purse seining. (i) (A) A certificate holder may take marine mammals so long as taking is an incidental occurrence in the course of normal commercial fishing operations, except that a certificate holder shall not encircle either (1) pure schools of coastal spotted dolphin (*Stenella attenuata*), and Costa Rican spinner or eastern spinner dolphin (*Stenella longirostris*) stocks or mixed schools including these stocks, or (2) pure schools of any species of dolphin except offshore spotted dolphin (*Stenella attenuata*) stocks and common dolphin (*Delphinus delphis*) stocks. The numbers of marine mammals that may be killed by U.S. vessels in the course of commercial fish-

ing operations will be determined by the Director and limited in the general permit. The mortality of marine mammals permitted under the general permit for yellowfin tuna purse seining, will be monitored according to methodology which will be published in the FEDERAL REGISTER. The effective date when fishing on a stock or species will be prohibited, will be published in the FEDERAL REGISTER not less than 7 days prior to that date. The Director may change the maximum number of marine mammals that may be killed, as specified in the general permit, whenever new information becomes available which results in the reevaluation of the population or OSP level of any stock or species.

(B) Marine mammals taken incidental to commercial fishing operations shall be immediately returned to the environment where captured without further injury. Each certificate holder shall take every possible step to minimize the incidental mortality and serious injury of marine mammals in the course of commercial fishing operations, including refraining from using a sharp or pointed instrument on porpoise and refraining from causing or permitting a purse seine under his control to be set around marine mammals when conditions of wind, sea, visibility, or the number of marine mammals and/or fish concerned would, in his judgment, be likely to prevent the effective use of the backdown and other procedures required herein. Such steps to minimize mortality and serious injury shall include, where appropriate, causing a purse seine already set on marine mammals to be released, and/or opened to facilitate release of marine mammals where such a step will, in his judgment, be effective and conditions prevent the effective use of the procedures required hereunder. The Director may publish findings relating to conditions of wind, sea, visibility or numbers of marine mammals and fish concerned which prevent the effective use of equipment and procedures required hereunder and result in an unacceptably high rate of incidental mortality and serious injury of marine mammals and under which conditions it would not be permissible to cause a set to be made on marine mammals.

(1) A certificate holder may take such steps as are necessary to protect his catch, gear, or person from depredation, damage, or threat of personal injury. However, all marine mammals taken in the course of commercial fishing operations shall be subject to the provisions of § 216.3 with respect to "incidental catch", and may not be retained except where a specific permit has been obtained authorizing the retention.

(iii) All certificate holders shall maintain daily logs, in such form as the Regional Director, Southwest Region, National Marine Fisheries Service may prescribe, of all sets in which marine mammals are taken. Such logs must include the location, time and date of set; weather and water conditions; estimated number and species of marine mammals upon which the set was made; estimated

number and species of marine mammals caught; method used to remove marine mammals from the net; amount and kind of tuna caught; and an actual count of marine mammals killed and seriously injured, if any, on each set. Such logs shall be subject to inspection at the discretion of the Southwest Regional Director, or his designated personnel. In addition, certified copies of all such logs shall be mailed or delivered to the field office, Southwest Region, National Marine Fisheries Service, 1140 N. Harbor Drive, Room 7, San Diego, California 92101, within forty-eight hours after arrival in port.

(iv) A certificate will be valid only on a vessel equipped with a porpoise safety panel in its purse seine, and which uses other gear and procedures as described herein. Porpoise safety panels and all other gear used in the course of catching and landing yellowfin tuna, and for backdown and other marine mammal release procedures, shall be maintained in a functional and seaworthy condition. The requirements for the porpoise safety panel and other gear are as follows:

(A) (1) For purse seiners of 400 short tons carrying capacity or less, and for those greater than 400 tons carrying capacity built before 1961, the porpoise safety panel shall be a minimum of 100 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 10 strips shall be determined at a ratio of 10 fathoms in length for each strip that the net is deep. It shall be installed beginning at the outboard end of the number three bow bunchline, and shall extend toward the stern of the net, protecting the perimeter of the backdown area. The porpoise safety panel shall consist of small mesh webbing not to exceed 1 1/4" stretch mesh, extending from the corkline downward to a minimum depth equivalent to one strip of 100 meshes of 4 1/4" stretch mesh webbing.

(2) For purse seiners greater than 400 short tons carrying capacity built after 1960, the porpoise safety panel shall be a minimum of 180 fathoms in length (as measured before installation). It shall begin in the second bow bunch at any point between the middle and the outboard end of the bunchline and shall extend toward the stern of the net protecting the perimeter of the backdown area. The porpoise safety panel shall consist of small mesh webbing not to exceed 1 1/4" stretch mesh, extending from the corkline downward to a minimum depth equivalent to two strips of 100 meshes of 4 1/4" stretch mesh webbing.

(B) Each end of the porpoise safety panel must be identified with an easily distinguishable marker.

(C) Throughout the length of the corkline in which the porpoise safety panel is located, hand hold openings are to be secured so that the insertion of a 1 3/8" diameter cylindrical-shaped object meets resistance.

(D) Throughout the length of the corkline in which the porpoise safety panel is located, corkline hangings shall be in-

spected by the certificate holder following each trip. Hangings found to have loosened to the extent that a cylindrical object with a 1 3/8" diameter will not meet resistance when inserted between the cork and corkline hangings, must be tightened so that a cylindrical object with a 1 3/8" diameter cannot be inserted.

(E) Purse seine vessels engaged in fishing operations involving setting on marine mammals shall carry a minimum of two speedboats in operating condition. All speedboats carried aboard purse seine vessels and in operating condition shall be rigged with towing bridges and towlines. Vessels that do not carry at least two speedboats in operating condition and properly rigged, may not conduct fishing operations which involve setting on marine mammals.

(F) On every set involving marine mammals, a minimum of two bow bunches shall be pulled. Bunchlines, other than bow bunchlines, shall be arranged around the perimeter of the net with both ends of some bunchlines unattached to permit towing from either end or one bunchline rigged in normal fashion with an adjacent one reversed. The arrangement of bunchlines around the perimeter of the net must allow at least three towing points to be established near one-quarter, one-half and three-quarter net from the bow ortza (end of the net). The ends of all bunchlines which can be utilized as towing points shall be marked so as to be clearly visible to speedboat drivers.

(G) Except as provided herein, on every set involving marine mammals, a minimum of two manned speedboats shall be in the water until backdown commences. Speedboats shall be prepared to hook onto either the bunchline towing points established along the perimeter of the net or onto the corkline, in order to tow the net to prevent net collapse and a formation of pockets of loose webbing, such as stern bends, which might entrap marine mammals. Other speedboats that are in operating condition shall be prepared for immediate use to tow if needed. Vessels of 400 tons carrying capacity or less which have an observer duly authorized by the Secretary aboard, may have a minimum of one manned speedboat in the water from the time the set is commenced until backdown has commenced, provided that, prior to departure, the certificate holder has presented the Regional Director with a signed statement declaring that the presence of an observer will displace the crewman who would operate the second speedboat on porpoise sets.

(H) Actual towing on the net shall be performed when, in the opinion of the certificate holder, towing is necessary to prevent net collapse or the formation of pockets of loose webbing. If towing the net has been necessary, the speedboats may unhook their towlines when towing is no longer needed, or their respective bunchlines begin to go up toward the power block or backdown commences.

(I) Backdown shall be performed following a net set where marine mammals are captured in the course of utilizing a purse seine for catching and landing yellow-

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lowfin tuna. Thereafter, other release procedures required in paragraphs (J) and (K) below shall be continued until all live animals have been released from the net. "Backdown procedure" means a series of maneuvers, which take place after the net is tied down following a set and pursing; and which keep the net open to the greatest degree to allow porpoise or other marine mammals to leave the pursued net over the net floats which are submerged as a result of the vessel moving astern.

(J) On a net set where marine mammals are captured, a minimum of two men shall be engaged in hand removal of marine mammals from the net, commencing with backdown and continuing through the sacking up operation. (1) A facemask and snorkel, in addition to an inflatable rubber raft suitable to be used as a porpoise observation-and-rescue platform, shall be carried on all tuna purse seine vessels operated by a certificate holder. The raft shall be launched inside the net near the time of tying down for the backdown maneuver and shall be employed by a crewman to assist the other rescuer(s) in disentangling and releasing live marine mammals from the net. The rescuer in the raft shall use the facemask and snorkel to determine whether all live marine mammals are out of the net making every effort to remove them before backdown is terminated. If live marine mammals remain in the net after backdown, the rescuer in the raft shall make every effort to herd the animals to areas where they can be easily released. Rescue efforts using the rubber raft shall be performed using due care for the safety of the rescuer. (2) The rescue procedures above, in conjunction with other rescue efforts, shall be continued until all live marine mammals are removed from the net prior to initiating brailing operations.

(K) All tuna purse seine vessels operated by a certificate holder shall be equipped with adequate floodlights suitable for use in darkness to attract fish toward the main vessel and a spotlight to intermittently illuminate the backdown channel and apex. If the backdown maneuver or other required release procedures proceed past one-half hour after sunset, lights shall be used as necessary, to insure that rescue procedures are properly performed and that all live marine mammals are removed from the net prior to initiating brailing operations.

(L) Purse seine nets and other gear and equipment utilized to catch and land fish under this section and to conduct a backdown and other procedures herein required, shall be maintained in a functional and seaworthy condition. Required vessel gear and equipment shall be subject to inspection and examination at least once annually by authorized NMFS personnel at a time and location determined by the Southwest Regional Director. Any vessel found to not be equipped with gear which is in conformity with these regulations and maintained in a functional and seaworthy condition, or whose master or managing owner has failed to notify the NMFS of delivery of

fine mesh webbing as required below, shall be ineligible for use by a certificate holder for commercial fishing operations under this section. However for 1977 only, a certificate holder may operate a vessel not equipped with the fine mesh safety panel, as required in (A) above, provided that fine mesh webbing has been ordered and documented on his 1977 application for a certificate of inclusion, as specified in paragraph (c) (5) (vi), and that the webbing will be installed and inspected upon its receipt. Webbing delivered while the vessel is still at sea shall be installed and inspected prior to initiating a new fishing voyage. The master or managing owner shall notify the field office, Southwest Region, National Marine Fisheries Service, 1140 N. Harbor Drive, Room 7, San Diego, California 92101, telephone (714) 293-6540 upon delivery of the fine mesh webbing. In no event shall a vessel greater than 400 short tons carrying capacity, not equipped with a fine mesh safety panel, be used by a certificate holder on any fishing voyage begun after 0001 hours, May 1, 1977.

(M) All certificate holders shall maintain proficiency sufficient to perform the procedures required herein. Certificate holders must attend, and satisfactorily complete, a formal training session conducted under the auspices of the National Marine Fisheries Service. At the training session, a certificate holder shall be instructed concerning the provisions of the Marine Mammal Protection Act of 1972, the regulations promulgated pursuant to the Act, the requirements of his certificate of inclusion and the appropriate general permit, and the fishing gear and techniques which are required or will contribute to reducing serious injury and mortality of porpoises incidental to purse seining for yellowfin tuna. In addition, for continuation or renewal of a certificate, a certificate holder may be required to attend other formal training sessions when there are substantial changes in the Act, the regulations or the required fishing gear and techniques. The certificate of any certificate holder who is found to lack proficiency in the procedures required herein shall be suspended or revoked. Determination by the Director to revoke or suspend a certificate may be based on recommendations from a "Skipper's Panel".

(N) Applicants for a general permit under this category, in addition to requirements under paragraph (b) (2) of this section, must demonstrate in the application that the requested taking of species or stocks during commercial fishing operations is consistent with the purposes of the Act and the applicable regulations established under section 103 of the Act. Failure to comply with the provisions of this permit or these regulations, including but not limited to: failure to submit upon demand to vessel, gear, equipment, or proficiency inspection or examination by authorized National Marine Fisheries Service personnel; falsification of logs and reports required hereunder; or failure to satisfy

the requirements of any provisions of these regulations, will subject certificate holders, vessel masters, or owners to revocation of the certificate and/or right to be included under a general permit, and further subject certificate holders, vessel masters, or owners to the penalties provided for under the Act.

(e) Importation: (1) It shall be illegal to import into the United States any fish, whether fresh, frozen or otherwise prepared, if such fish were caught in a manner prohibited by these regulations or in a manner that would not be allowed in circumstances where a person subject to the jurisdiction of the United States would be required to have a certificate of inclusion in a general permit hereunder, whether or not any marine mammals were in fact taken incidental to the catching of the fish, unless the Director makes a finding and publishes such finding in the FEDERAL REGISTER, that such fishing, although not in conformity with the specific requirements of these regulations, is accomplished in a manner which does not result in an incidental mortality and serious injury rate in excess of that which results from fishing operations under these regulations.

(2) The following fish and categories of fish, which the Director has determined are involved with commercial fishing operations which cause the death or injury of marine mammals, are subject to the prohibitions and documentation requirements of this section:

(i) Salmon, halibut, and pilchards from South Africa. The following U.S. Tariff Schedule Item Numbers identify these categories of salmon, halibut, and pilchard products which are imported into the United States and are to be covered by the documentation and certification regulations of §216.24(e) (3):

110.20-25	Halibut, fresh or chilled.
110.20-30	Halibut, frozen.
110.20-45	Salmon, fresh or chilled.
110.10-50	Salmon, frozen.
110.70-40	Halibut, other—except portion controlled steaks.
111.48-00	Salmon, salted.
111.88-00	Salmon, smoked or kippered.
112.18-00	Salmon, preserved, not in oil.
112.20-00	Canned sardines/pilchards (from S. Africa).
112.22-00	Canned sardines/pilchards (from S. Africa).

(ii) Yellowfin tuna. The following U.S. Tariff Schedule Item Numbers identify the categories of tuna and tuna products under which yellowfin tuna is imported into the United States, and are subject to the importation restrictions of paragraph (e) (4) of this section after May 31, 1977:

110.10-20	Tuna; yellowfin, whole fish.
110.10-25	Tuna; yellowfin, eviscerated, head on.
110.10-30	Tuna; yellowfin, eviscerated, head off.
110.10-37	Tuna; yellowfin, other.
112.30-40	Tuna; canned, other than white meat, no oil—except cans marked "Other than yellowfin tuna".

- 112.34-00 Tuna; canned, other, no oil—except cans marked "Other than yellowfin tuna".
- 112.90-00 Tuna; canned, other, in oil—except cans marked "Other than yellowfin tuna".

(3) Salmon, Halibut, and Pilchards from South Africa. All fish and categories of fish listed in paragraph (e) (2) (i) of this section shall be denied entry into the United States unless accompanied by a separate Fisheries Certificate of Origin (Standard Form 369-1) from each country whose flag vessels caught fish involved in the importation. The Fisheries Certificate of Origin should include the following information:

- (i) The country of origin; and
- (ii) The identity and quantity of fish; and, either

(iii) After the Director has published the finding referred to in paragraph (e) (1) of this section, a statement from a responsible official of the country of origin that the fishing technology permitted by the country of origin with respect to the species of fish presented for importation into the United States does not result in a rate of serious injury or death to marine mammals in excess of that which results from U.S. commercial fishing operations as prescribed by these regulations. Country of origin for the purposes of this section shall mean the country under whose flag the fish catching vessels are documented and whose fish are a part of any cargo or shipment of fish to be imported into the U.S. regardless of any transshipments; or

(iv) A statement by a responsible official of the country of origin or the master of the vessel which caught the fish that such fish were not caught in a manner prohibited for U.S. fishermen by these regulations. The statement shall identify the species, quantity, and exporter of the fish to which the statement refers; or

(v) Any nation may certify to the Director either (A) that all of its vessels fishing under its flag are fishing in conformance with these regulations; or (B) a list of the vessels, by name and official number, fishing under such nation's flag which are fishing in conformance with these regulations; or (C) that all of the vessels fishing under such nation's flag, with the exception of any vessels specifically listed by name and official number, are fishing in conformance with these regulations. If methods (B) or (C) are used, the shipping documentation must also show the name and official number of the vessel which caught the fish presented for importation.

(4) Yellowfin tuna. Prior to June 1, 1977, all yellowfin tuna listed in paragraph (e) (2) (i) of the 40 FR 56904, December 5, 1975, will continue to be subject to the importation restrictions of paragraph (e) (3) in 39 FR 32124, September 5, 1974, as amended. After May 31, 1977, all shipments of fish and products listed in paragraph (e) (2) (ii) of this section, from any nation, may not be unloaded into the United States unless a finding has been made pursuant to par-

agraph (e) (5) (i) below, and further, shall be denied entry into the U.S. unless accompanied by the following documentation: (i) A separate Yellowfin Tuna Certificate of Origin (Standard Form 370-1) from each country whose flag vessels caught yellowfin tuna involved in the importation. The Yellowfin Tuna Certificate of Origin must include the following information: (A) Country of origin of the fishing vessel(s) involved; (B) Exporter (name and address); (C) Consignee (name and address); (D) Identity and quantity of the yellowfin tuna to be imported, listed by U.S. Tariff Schedule Number; (E) Name of vessel(s) which caught the yellowfin tuna; (F) Fishing method used (i.e., purse seine, longline, pole and line, etc.); (G) Other documentation as may be required by the Director, subsequent to granting a finding in section (e) (5); (H) Must be signed by either a responsible government official of the country whose flag vessel caught the fish or the vessel master, below the following certification statements:

I certify that the yellowfin tuna described in (D) above was caught by flag vessels of a country either, (1) not required to obtain a finding from the United States Department of Commerce (National Marine Fisheries Service) under 50 CFR 216.24(e) (5), and the fish was not caught in a manner prohibited for United States fishermen by the United States Marine Mammal Regulations 50 CFR 216.24(d) (2); or (2) which has been found by the United States Department of Commerce (National Marine Fisheries Service) to be in conformance with the United States Marine Mammal Regulations 50 CFR 216.24(e) (5).

I certify that the above information is complete, true and correct to the best of my knowledge and belief. I understand that my making a false statement may subject me to the criminal penalties under the Marine Mammal Protection Act of 1972.

(I) Must also be signed by the exporter, under the following declaration:

The undersigned hereby declares that, based on the above statements, the yellowfin tuna herein offered for importation into the United States, was caught by flag vessels of (country), in conformance with the United States Marine Mammal Regulations 50 CFR 216.24.

(5) (i) After May 31, 1977, it shall be illegal to unload into the United States any tuna or tuna products in the classifications listed in paragraph (e) (2) (ii) of this section, from countries of origin (as documented under (e) (4) above) whose vessels operate in the yellowfin tuna purse seine fishery in the eastern tropical Pacific Ocean, as determined by the Director, National Marine Fisheries Service; unless the Director makes a finding in consultation with the U.S. Department of State, and publishes such finding in the FEDERAL REGISTER that fishing operations in the country of origin are conducted in conformance with U.S. regulations and standards as stated in paragraph (d) (2) of this section. The Director may make a finding that, although not in conformity with these regulations, such fishing is accomplished in a manner which does not result in an incidental mortality and serious injury in excess of that which results from U.S.

fishing operations under these regulations. Upon such a finding unloading may be allowed. Country of origin for the purposes of this section (§ 216.24(e)) shall mean the country under whose flag the fish catching vessels are documented and whose fish are a part of any cargo or shipment of fish to be imported into the U.S. regardless of any transshipments.

(ii) Countries of origin desiring to obtain a finding which will allow the importation of products listed in paragraph (e) (2) (ii) of this section must submit, by appropriate government official, to the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C. 20235, the following information: (A) A statement of the quantity and type (identified by tariff schedule numbers listed in paragraph (e) (2) (ii) of this section) of fish or fish products expected to be imported into the U.S. in the calendar year 1977; (B) A detailed description of the fishing technology and procedures utilized in tuna purse seine fishing to protect marine mammals so that a determination of conformance with 216.24 (d) (2) of these regulations can be made, or the effectiveness of any other equivalent technology or procedures be assessed; (C) A statement of the number of marine mammals killed or seriously injured (by species) incidental to the yellowfin tuna purse seine operations on porpoise for the previous year, and the manner in which the information was obtained (logbooks, observers, interviews, or other procedures); (D) A statement of the number of marine mammals which will be allowed to be killed or seriously injured incidental to yellowfin tuna purse seine operations in 1977 and the impact of such mortality or serious injury on the existing populations of marine mammals by species; (E) A statement of the procedures to be required, including quotas and other controls, which will meet the U.S. requirements to limit the level of mortality, and procedures for prohibiting sets on marine mammals after the level of mortality allowed is reached; (F) Copies of laws and regulations which protect and conserve marine mammals involved in fishing operations; and (G) A list of vessels which may be involved in the taking of marine mammals incidental to yellowfin tuna purse seining, and a list of United States citizens working on these vessels. Should a finding be made, the Director intends to require a periodic update of the above list of U.S. citizens as a condition of the finding. The Director may require verification of statements made in connection with requests to allow importations. The Director will reconsider a finding upon a request from, and the submission of additional information from, the country of origin.

(6) *Fish refused entry.* If fish is denied entry under the provisions of § 216.24 (e) (3) or § 216.24 (e) (4), 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.

(7) *Release under bond. Provided however,* That fish not accompanied or covered by the required documentation or certification when offered for entry may be entered into the United States if the importer or consignee gives a bond on Customs Form 7551, 7553, or 7595 for the production of the required documentation or certification. The bond shall be in the amount required under 19 CFR 25.4(a). Within 90 days after such Customs entry, or such additional period as the District Director of Customs may allow for good cause shown, the importer or consignee shall deliver a copy of the required documentation or certification to the District Director of Customs, and an original of the required documentation or a copy of the certification to the Regional Director of the National Marine Fisheries Service, unless the District Director of Customs has received notification from the National Marine Fisheries Service that the fish is covered by a certification. If such documentation, certification, or notification is not delivered to the District Director of Customs for the port of entry of such fish within 90 days of the date of Customs entry or such additional period as may have been allowed by the District Director of Customs for good cause shown, the importer or consignee shall redeliver or cause to be redelivered to the District Director of Customs those fish which were released in accordance with this paragraph. In the event that any such fish is not redelivered within 30 days following the date specified in the preceding sentence, liquidated damages shall be assessed in the full amount of a bond given on Form 7551. When the transaction has been charged against a bond given on Form 7553 or 7595, liquidated damages shall be assessed in the amount that would have been demanded under the preceding sentence under a bond given on Form 7551. Fish released for entry into the United States through use of the bonding procedure

provided in this paragraph shall be subject to the civil and criminal penalties and the forfeiture provisions provided for under the Act if (i) the required documentation or certification is not delivered to the Regional Director of the National Marine Fisheries Service within 90 days of the date of Customs entry, or such additional period as may have been allowed by the District Director of Customs for good cause shown, or (ii) the required certification is not on file in the office of the Director, National Marine Fisheries Service, Washington, D.C. 20235, within this 90 day period or such additional period as may have been allowed by the District Director of Customs for good cause shown. Fish refused entry into the United States shall also be subject to the civil and criminal penalties and the forfeiture provisions provided for under the Act.

(8) *Disposition of fish refused entry into the United States; redelivered fish.* Fish which is denied entry under § 216.24 (e) (3) or § 216.24 (e) (4) or which is redelivered in accordance with § 216.24 (e) (7) 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 in violation of the Marine Mammal Protection Act of 1972.

(f) (1) The master of any commercial fishing vessel engaged in fishing operations for which a general permit is required shall, upon the proper notification by the Director as described in this section, allow an observer duly authorized by the Secretary to accompany the vessel on any or all regular fishing trips for the purpose of conducting research and observing operations.

(2) Research and observation duties shall be carried out in such a manner as to minimize interference with commer-

cial fishing operations. The navigator shall provide true vessel locations by latitude and longitude, accurate to the nearest minute, upon request by the observer. No owner, master, operator, or crew member of such vessel shall impair or in any way interfere with the research or observations being carried out.

(3) The Secretary shall provide for the payment of all reasonable costs directly related to the quartering and maintaining of such observers on board such vessels. The master or managing owner of each vessel who has been notified that he is required to carry an observer, via certified letter from the National Marine Fisheries Service, shall notify the field office, Southwest Region, National Marine Fisheries Service, San Diego, California, telephone (714) 293-6540 at least five days in advance of their fishing voyage to facilitate observer placement. No vessel whose master or managing owner has failed to comply with the provisions of this section may engage in fishing operations for which a general permit is required. Any person violating any of the provisions of this section shall be subject to the penalties provided in the Act.

(g) *Penalties and rewards:* Any person or vessel, subject to the jurisdiction of the United States shall be subject to the penalties provided for under the Act for the conduct of fishing operations in violation of these regulations. The Secretary shall recommend to the Secretary of the Treasury that an amount equal to one-half of the fine incurred but not to exceed \$2,500 be paid to any person who furnishes information which leads to a conviction for a violation of these regulations. Any officer, employee, or designated agent of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall not be eligible for payment under this section.

[FR Doc. 77-5990 Filed 2-28-77; 8:45 am]