

elements of the international tracking and verification program. In addition, nations must apply for and receive an affirmative finding under the IDCPC before tuna may be imported into the United States. To receive an affirmative finding, nations must submit documentary evidence that will allow the Secretary to make a determination of compliance with the IDCPC.

*Comment 93:* One commenter recommended that a harvesting nation must have a tracking and verification system for all tuna it harvests, not just the tuna it imports.

*Response:* NMFS has no authority to require a nation to implement a tuna tracking and verification program. However, each party to the IDCPC agreement is required to implement a tuna tracking and verification program in its respective territory, on vessels subject to its jurisdiction and in marine areas with respect to which it exercises sovereignty with respect to ETP harvested tuna. The U.S. tracking and verification plan includes all U.S. caught tuna and all tuna imported into the United States from the ETP.

*Comment 94:* One commenter indicated that there needs to be two certification processes to allow tuna to be imported into the United States. One certification would be for tuna caught by purse seine vessels fishing within the ETP and the other certification would be for tuna caught by purse seine vessels, or by other fisheries, outside the ETP.

*Response:* NMFS agrees. The NOAA Form 370, Certificate of Origin, allows for the appropriate certification of tuna, except fresh tuna, imported into the United States. The DPCIA and these regulations require different certifications for tuna harvested in different ocean areas and by different gear types.

*Comment 95:* One commenter indicated that § 216.93(b) would be clearer and conform better to other provisions of the proposed rule if it were revised to read: "the documents are endorsed as required by § 216.92(a)(4) and the final processor delivers the endorsed documents to the Administrator, Southwest Region, or to the U.S. Customs Service."

*Response:* NMFS agrees and has made the suggested change.

*Comment 96:* One commenter believed that it would be impractical for U.S. Customs to receive the Fisheries Certificate of Origin at the time of import because of existing duties and responsibilities of the U.S. Custom Service and limited available personnel. The commenter suggested that the importer retain the required

documentation for later verification by either NMFS or U.S. Customs.

*Response:* NMFS has depended on U.S. Customs offices around the United States and in Puerto Rico for a number of years. Only the U.S. Customs Service can assure that the NOAA Form 370 accompanies imported shipments of tuna. Under the interim final rule, importers are required to include the NOAA Form 370, Certificate of Origin, with all other required import documents when the documents are filed with U.S. Customs. In addition, importers are required by §§ 216.94(d)(1) and 216.94(d)(2) to: (1) maintain their tuna import records for a period of 3 years, and (2) to provide copies of such records requested by the Administrator, Southwest Region within 30 days of receiving a written request.

*Comment 97:* One commenter asked whether the sentence in § 216.94, "The tracking program includes procedures and reports for use when importing tuna into the U.S. and during domestic purse seine fishing, processing, and marketing into the U.S. and abroad ..." was intended to include fishing by U.S. vessels in waters not subject to U.S. jurisdiction. If so, the commenter suggested it would be more accurate to revise this provision to read: "during purse seine fishing operations by U.S. vessels ..."

*Response:* NMFS agrees that one could misunderstand "domestic purse seine fishing" to mean that vessels are fishing within the U.S. Exclusive Economic Zone; therefore, the requested change has been made.

*Comment 98:* Commenters indicated that the IDCPC does not sanction the collection of information about gear type and method of capture on the Fisheries Certificate of Origin. In addition, the collection of such information is contrary to the intent of the Panama Declaration and inconsistent with the IDCPC. Collecting such information on the Fisheries Certificate of Origin will undermine the IDCPC. Finally, the regulations should not require observer data forms to accompany imported tuna.

*Response:* NMFS disagrees in part. Information collected on the Fisheries Certificate of Origin includes gear type because the use of some gear types indicates the tuna was not caught in association with dolphin, while the use of other gear types indicate interactions with dolphins (and require captain statements, etc.). Moreover, NMFS is not requiring observer data forms or TTFs to accompany imported tuna.

*Comment 99:* One commenter expressed concern that the proposed IATTC tracking system has no

provisions for international inspections or enforcement.

*Response:* The international tracking and verification system approved by the Parties to the Agreement of the IDCPC contains provisions for development of an international program to facilitate general reviews and spot checks of national tracking and verification programs. In addition, the Parties have agreed to make TTFs and documentation on national tracking and verification programs available to the IATTC's IRP. The IRP can then recommend a nation take enforcement action on a violation.

*Comment 100:* One commenter indicated that it is not clear what effort NMFS intends to undertake to observe and monitor offloading, deliveries, and processing of yellowfin tuna. It would be useful if NMFS were to provide an estimate of the effort (annual budget, total hours per year, percentage of off loadings and deliveries) expected to be made to track tuna under the tracking and verification program. If only a few off loadings are expected to be observed each year, then maybe the reporting burden to provide advance notice of the scheduled arrival in port may not be necessary.

*Response:* NMFS plans to monitor all off loadings by U.S. purse seine vessels fishing in the ETP and does not consider the time for a radio message and/or a phone call to be overly burdensome. NMFS requested and has received funding to operate the tuna tracking and verification program and hire two inspectors to monitor the unloading of tuna from U.S. tuna purse seine vessels.

*Comment 101:* One commenter indicated that the practicality of tracking tuna throughout a trip is not realistic for one observer. The commenter suggested mandatory use of wide-angle time-lapse cameras encoded with position data in addition to observers.

*Response:* NMFS disagrees since there is no data that supports the conclusion that any type of camera would be more efficient than a trained observer assigned to a vessel.

*Comment 102:* One commenter indicated NMFS should clarify that the requirement to notify NMFS at least 48 hours prior to unloading fish only pertains to U.S. vessels. In addition, the commenter indicated that NMFS does not have the authority to inspect and monitor U.S. vessels unloading in foreign nations because the Declaration of Panama and the Agreement on the IDCPC (Article XVI paragraph 1) reserves the right to the sovereign territory to exercise enforcement authority.