



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD338

Determination of Observer Programs as Qualified and Authorized by the Assistant Administrator for Fisheries

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

ACTION: Notice of Adoption of Observer Criteria, Decision on Qualified and Authorized Programs.

SUMMARY: The NMFS Assistant Administrator (AA) has determined that observers participating in observer programs, in the seven domestic fisheries in which tuna is regularly harvested, are qualified to issue observer statements for purposes of the dolphin-safe labeling program under the Dolphin Protection Consumer Information Act (DPCIA). These seven domestic fisheries are: the American Samoa Pelagic Longline Fishery, the Atlantic Bluefin Tuna Purse Seine Fishery, the Atlantic Highly Migratory Species Pelagic Longline Fishery, the California Deep-set Pelagic Longline Fishery, the California Large-mesh Drift Gillnet Fishery, the Hawaii Deep-set Longline Fishery, and the Hawaii Shallow-set Longline Fishery. Observer statements will certify that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught and, in purse seine fisheries, that the net was not intentionally deployed on or used to encircle dolphins during the fishing trip in which the tuna were caught. The AA makes the determinations pursuant to new observer criteria, which are published in this notice, and were developed after consideration of public comment. This notice

announces that these NMFS observer programs are authorized by the AA to issue observer statements for dolphin-safe labeling purposes for fishing trips that begin on or after the effective date of this notice.

DATES: Tuna product labeled “dolphin safe” derived from any of the seven fisheries identified in this notice must be accompanied by observer statements for observed trips beginning on or after [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of this notice are available from the Regional Administrator, West Coast Region (WCR), William W. Stelle, Jr., 7600 Sand Point Way, NE, Bldg 1, Seattle, WA 98115-0070, or by email at RegionalAdministrator.WCRHMS@noaa.gov.

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

SUPPLEMENTARY INFORMATION:

Presently, only tuna product prepared from tuna harvested by purse seine vessels of more than 400 short tons carrying capacity in the eastern tropical Pacific Ocean and labeled “dolphin safe” is required to be accompanied by an observer’s statement that the tuna meets the “dolphin safe” criteria under the DPCIA (16 U.S.C. section 1385). Tuna product means any food product processed for retail sale and intended for human or animal consumption that contains an item under one of the harmonized tariff schedule numbers set forth at 50 CFR 216.24(f)(2)(i) or (ii), but does not include perishable items with a shelf life of less than 3 days (50 CFR 216.3). Under this definition, tuna product does not include fresh tuna nor does it include frozen tuna that has never been processed.

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. Specifically, under §

216.91(a)(2)(iii)(B) and (a)(4)(ii), the AA is authorized to determine if observers participating in observer programs using any fishing gear type in any ocean are qualified and authorized to make statements pertaining to the following written certifications. The first certification is that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught. The second certification, if applicable, is that no purse seine net was intentionally deployed on or used to encircle dolphins during the fishing trip in which the tuna were caught. A NMFS AA determination of an observer program as “qualified and authorized” triggers a requirement that when an observer from the program is on board a vessel harvesting tuna destined to be labeled “dolphin safe” such tuna will require an observer statement. The observer statement would be executed by the observer or by an authorized representative of the nation participating in the observer program based on information provided by the observer. The observer statement would be in addition to the requirement that tuna labeled “dolphin safe” be accompanied by a written statement executed by the captain of the harvesting vessel (codified in § 216.91(a)(2)(ii), (a)(2)(iii)(A) and (a)(4)(i)).

On February 24, 2014, NMFS published a Federal Register notice soliciting public comment on development of observer criteria to assist the AA when making a determination of whether an observer program is qualified and authorized for purposes of the dolphin-safe labeling program under the DPCIA. In the only comment received, the American Tunaboat Association (ATA) stated that no observers aboard purse seine vessels, except those serving under the program organized under the joint auspices of the Inter-American Tropical Tuna Commission (IATTC) and the Agreement on the International Dolphin Conservation Program are qualified or authorized to make the certifications noted in the Federal Register notice. ATA strongly recommended that NMFS adopt criteria similar to the criteria used by the IATTC for

training observers. NMFS agrees in part, but believes that observers participating in NMFS observer programs already undergo rigorous training programs, appropriate for the applicable fishery, and that training, where applicable, is similar to or exceeds the training given by the IATTC. NMFS training programs include such topics as dolphin species identification, dolphin mortality recognition, data collection requirements for use in making a serious injury determination, and recognition of an intentional purse seine set. After consideration of this comment, the AA adopted the final observer criteria on June 13, 2014, to be used in making qualified and authorized determinations. Satisfaction of all criteria is necessary before the AA will determine that an observer program is qualified and authorized. The final observer criteria are as follows:

- Observers are trained and able to identify dolphins endemic to the area of the fishery. “Dolphins” mean the species of the family Delphinidae.
- Observers, or an authorized representative participating in the observer program, as applicable, are trained and able to determine dolphin mortality and serious injury. “Serious injury” means any injury likely to cause mortality.
- Observers are trained and able to collect written or photographic documentation, sufficient for an authorized representative participating in the observer program, to verify or make a determination about the disposition of any dolphin, if statements certifying that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught are to be made.
- For purse seine fisheries only: observers are trained and able to determine whether a purse seine net was intentionally deployed on or used to encircle dolphins.

- For purse seine fisheries only: observers are trained and able to collect written or photographic documentation, sufficient for an authorized representative participating in the observer program, to verify or make a determination that no purse seine net was intentionally deployed on or used to encircle dolphins during a fishing trip, if statements certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the fishing trip in which the tuna was harvested are to be made.
- Observers, or an authorized representative of a nation participating in the observer program based on information from the observer, as applicable, are authorized by the applicable observer authority to certify that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were harvested, and in the case of purse seine vessels, that no purse seine net was intentionally deployed on or used to encircle dolphins during the fishing trip in which the tuna were caught.

NMFS compared the observer criteria with all U.S. observer programs operating in fisheries where tuna is regularly harvested, and concluded that observers in all seven observer programs are capable of providing the documentation necessary to complete an observer statement for dolphin-safe labeling purposes. Under the authority at § 216.91(a)(2)(iii)(B) and (a)(4)(ii), the AA has determined that observers, or an authorized representative of the observer program, operating in the following fisheries are qualified to issue observer statements and are authorized by this notice to issue such statements on or after the effective date of this notice:

- the American Samoa Pelagic Longline Fishery
- the Atlantic Bluefin Tuna Purse Seine Fishery
- the Atlantic Highly Migratory Species Pelagic Longline Fishery
- the California Deep-set Pelagic Longline Fishery

- the California Large-mesh Drift Gillnet Fishery
- the Hawaii Deep-set Longline Fishery
- the Hawaii Shallow-set Longline Fishery

The observer statements are intended to be used for the documentation of dolphin-safe status only. Mortality and serious injury determinations under Marine Mammal Protection Act (MMPA) Section 117 will continue to be made in accordance with current NMFS policy and protocols.

The determinations are also publicized on the NMFS WCR website at <http://www.westcoast.fisheries.noaa.gov>. In order for tuna product made from tuna harvested in one of the fisheries listed above to be labeled “dolphin safe,” it must be accompanied by an observer statement, provided an observer was on board the vessel and the fishing trip began on or after the effective date of this notice. The observer statement must certify that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught and, if applicable, that no purse seine net was intentionally deployed on or used to encircle dolphins during the fishing trip.

Dated: July 8, 2014.

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

[FR Doc. 2014-16455 Filed 07/11/2014 at 8:45 am; Publication Date: 07/14/2014]