

**SUPPORTING STATEMENT
FISHERIES CERTIFICATE OF ORIGIN
OMB CONTROL NO.: 0648-0335**

A. JUSTIFICATION

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

The purpose of this collection of information is to comply with the requirements of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361, and the Dolphin Protection Consumer Information Act (DPCIA), 16 U.S.C. 1385, as amended by the International Dolphin Conservation Program Act (IDCPA), 16 U.S.C. 1414. The MMPA and the DPCIA required the Secretary of Commerce to promulgate regulations that restricted the fishing, sale, importation, and transportation of tuna that is not dolphin-safe and of certain other fish and fish products when they have been harvested by high seas driftnets. The IDCPA primarily amends provisions in the MMPA and the DPCIA governing marine mammal mortality in the U.S. eastern tropical Pacific Ocean (ETP) tuna purse seine fishery and the importation of yellowfin tuna and yellowfin tuna products from other nations with vessels engaged in the ETP tuna purse seine fishery.

A final rule, affecting 50 CFR Part 216 published in the Federal Register on September 13, 2004 (amended by a final rule affecting 50 CFR Parts 216 and 300 published on April 12, 2005), implemented provisions of the IDCPA which allows the entry of ETP-caught yellowfin tuna into the United States under certain conditions and establishes a tuna tracking program to ensure adequate tracking and verification of dolphin-safe labeled tuna. This information collection documents the dolphin-safe status of tuna import shipments; verifies that import shipments of fish were not harvested by large scale, high seas driftnets; and verifies that tuna was not harvested by a nation under embargo or otherwise prohibited from exporting tuna to the United States.

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

The Fisheries Certificate of Origin (FCO) provides the National Marine Fisheries Service (NMFS) information concerning the origin, type, and quantity of the imported tuna. The FCO provides a mechanism for foreign exporters and government officials to use in documenting and certifying the fishing method and dolphin-safe status of the accompanying shipment. It requires U.S. importers to provide this information to the U.S. Customs and Border Protection (CBP) at the time of importation which assists the CBP in preventing tuna, not properly documented, from entering the United States. In addition, the CBP importer of record is required to send a copy of the FCO to NMFS within 30 days of the shipment. All parties that submit FCOs are required to retain a copy of the FCO for a period of two years and to provide such copies to the NMFS within thirty days of receiving a written request from the NMFS Regional Administrator, Southwest Region.

If the importer of record is not the final destination of the entire shipment, additional importers or processors who take custody of the shipment are asked to endorse and date the form to certify that the form and attached documentation accurately describes the accompanying shipment. The additional endorsers are required to file the form and retain for two years but need not submit it unless it is requested at a later time during a tuna tracking audit, which occurs every two to four years.

If an importation includes tuna and/or tuna products harvested by a purse seine net outside of the ETP (where there is no requirement for an onboard observer), then a statement signed by the vessel captain certifying that no purse seine net was intentionally deployed on or to encircle dolphins during the fishing trip must be attached to the FCO.

If the importation includes tuna and/or tuna products harvested in the ETP by a purse seine vessel of more than 400 short tons carrying capacity, then valid documentation signed by a representative of the appropriate International Dolphin Conservation Program (IDCP)-member nation must be attached to the FCO certifying that 1) there was an IDCP-approved observer on board the vessel during the entire trip; 2) no purse seine net was intentionally deployed on or to encircle dolphins during the fishing trip and no dolphins were killed or seriously injured in the sets in which the tuna were caught; 3) a listing of the numbers for the associated Tuna Tracking Forms which contain the captain's and observer's certifications.

National Oceanic and Atmospheric Administration (NOAA) has made use of the FCO in documenting the entry of tuna and certain other fish products into the United States for a number of years. NOAA has also used the information collected on the FCO in litigation, fisheries management decisions, and international negotiation decisions.

The information collected will not be disseminated to the public since the individual forms contain no information useful to anyone outside of the involved federal agencies. The main purpose of the form is to satisfy the legal mandates of Congress.

In the event summarized information is used to support publicly disseminated information, then as explained in the preceding paragraphs, the information gathered can be shown to have utility. NOAA, NMFS will retain control over the information and safeguard it from improper use, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

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

The FCO form is available for online completion or downloading (the NMFS Southwest Region web site (<http://swr.nmfs.noaa.gov/>) has a link to "Tuna Tracking and Verification" , at <http://dolphinsafe.gov>) for use on the respondent's own computer system. Respondents are

encouraged to provide electronic copies to NMFS via a secure File Transfer Protocol (FTP) server. Currently, approximately 15% of the responses are received in this manner.

4. Describe efforts to identify duplication.

The FCO was one of the first forms developed by NMFS to document information regarding the importation of tuna products, to certify that certain fishery products were not harvested using high seas driftnets, and to declare the dolphin-safe status of the tuna import. The same or similar information is not available through any other known information collection.

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

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

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

The Secretary of Commerce would not be able to meet the mandates of the applicable laws if the information collection was not conducted. Litigation against the Federal Government would likely ensue.

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

This information collection is consistent with Office of Management and Budget (OMB) guidelines (5 CFR 1320.6), except that submission is required for each shipment of tuna and covered fish products that enter the United States. This may be more frequent than quarterly for some importers.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A Federal Register Notice, published on December 5, 2006 solicited public comment on this collection.

One comment was received due to the Notice (see below). No corrective action was taken by the agency since the comment was based on an incorrect assertion.

Comment Received from December 5, 2006 Federal Register Notice

From: John Beowulf <beowulfborealis@yahoo.com>
Subject: Comments on "Dolphin Safe" Tuna

Date: 12/13/2006 02:19 PM

I think it is really unfortunate that NOAA still looks to the fishing industry to provide evidence that they do not kill dolphins (or other marine species needing protection) after all these years. The Sam La Buddy film of the Mexican tuna fishers came out in 1990 and here we are 16 years later, expecting this same fleet to admit to killing dolphins while using purse seine nets in the North Pacific Ocean? The only fleet that willingly complied was the American tuna fleet based in San Diego, and ironically, they were the cleanest purse seine fleet of any that set nets on dolphins. Now, that fleet is gone and NOAA still thinks that the foreign fleets would comply? Ridiculous. I myself have observed Mexican tuna clippers operating on the Gordo Banks (near Cabo San Lucas) and killing dolphins. Incidentally, the Gordo Banks is supposed to be a fishing preserve for sport fishing and commercial ships are not supposed to fish there. Obviously, these foreign fleets just laugh at NOAA and it's silly rules. You can be sure that load of tuna ended up on American grocery shelves labeled "dolphin safe".

John Beowulf
PO BOX 506
Independence, CA 93526
(760) 878-2074

Agency Response

The ETP is the only ocean area in which there has been a determination that a regular and significant association occurs between dolphins and tuna. Whenever an importation contains tuna harvested in the ETP by a purse seine vessel of more than 400 short tons carrying capacity, a valid certification signed by a representative of the appropriate IDCP-member nation is required to be attached to the FCO. Thus, the assertion that NOAA relies on the "fishing industry to provide evidence that they do not kill dolphins" is not correct.

Since the last OMB approval, two final rules were published in the Federal Register (September 13, 2004 & April 12, 2005). The associated Proposed Rules solicited comments on the collection. No comments specifically addressing the estimated cost and burden were received.

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

No payments or gifts are provided.

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

None of the information collection is considered confidential; thus, there is no assurance of confidentiality provided to respondents. However, information collected is handled in compliance with agency filing and retention policy.

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

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

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

In 2006, preliminary program data shows approximately 350 different respondents submitted approximately 11,000 responses. It is estimated that each response averages 20 minutes. Therefore, the estimate in hours of the burden of the collection of information is:

$$(11,000 \text{ responses} \times 20 \text{ minutes}) / 60 \text{ minutes} = 3,667 \text{ hours.}$$

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

Approximately 15% of responses are submitted electronically, so no cost involved. Also, respondents average 3 responses per mailing. Therefore, if 11,000 responses per year are received then the cost might be:

$$\begin{aligned} \text{Copying: } & 11,000 \times 85\% \times 2 \times \$0.10/\text{copy} = \$1,870/\text{yr} \\ \text{Envelopes: } & 11,000 \times 85\% \text{ divided by } 3 \times \$0.10/\text{envelope} = \$312/\text{yr} \\ \text{Postage: } & 11,000 \times 85\% \text{ divided by } 3 \times \$0.39 \text{ (stamp)} = \$1,215/\text{yr} \\ \text{Total annual cost burden estimate: } & \$1,870 + \$312 + \$1,215 = \$3,397 \end{aligned}$$

14. Provide estimates of annualized cost to the Federal government.

Staff hours to collect, analyze, input, & file 11,000 collections per year:

$$11,000 \text{ forms} \times 10 \text{ minutes/form} = 1,826 \text{ staff hours/year}$$

$$\begin{aligned} & 5 \text{ minutes analysis per collection @ } \$36.50/\text{hr (GS-11/12)} \\ & \quad 5 \text{ minutes} = 0.0833 \text{ hrs} \times \$36.50/\text{hr} = \$3.04 \\ & 4 \text{ minutes data entry per collection @ } \$10.00/\text{hr (Student Intern)} \\ & \quad 4 \text{ minutes} = 0.0666 \text{ hr} \times \$10.00/\text{hr} = \$0.67 \\ & 1 \text{ minute for filing per collection @ } \$10.00/\text{hr (Student Intern)} \\ & \quad 1 \text{ minute} = 0.0166 \text{ hrs} \times \$10.00/\text{hr} = \$0.17 \end{aligned}$$

$$11,000 \text{ responses/yr} \times (\$3.04 + \$0.67 + \$0.17) = \$42,680$$

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

The adjustments shown on Items 13 and 14 of the OMB 83-I are due to a significant increase in the total number of responses received each year since the last estimation was made.

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

Not applicable.

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

Not applicable.

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

Not applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

(If your collection does not employ statistical methods, just say that and delete the following five questions from the format.)

This collection does not employ statistical methods.