

**SUPPORTING STATEMENT
FISHERY PRODUCTS SUBJECT TO TRADE RESTRICTIONS PURSUANT TO
CERTIFICATION UNDER THE HIGH SEAS DRIFTNET FISHING (HSDF)
MORATORIUM PROTECTION ACT
OMB CONTROL NO. 0648-XXXX**

A. JUSTIFICATION

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

This is a resubmission of the proposed information collection in conjunction with FR 0648-BA89. No changes were made due to public comments. Minor changes to the original form were made based on internal review.

This new information collection is necessary to comply with the [High Seas Driftnet Fishing Moratorium Protection Act](#) (Moratorium Protection Act or Act), 16 U.S.C. 1826d-k. The Moratorium Protection Act was amended by the reauthorized [Magnuson-Stevens Act](#) (16 U.S.C. 1801 et al), which was signed into law by the United States (U.S.) President in January 2007. This Act contains a number of provisions for both domestic and international fisheries stewardship. This Act was also recently amended by the [Shark Conservation Act](#) (P.L. 111-348) in January 2011 to include additional shark conservation measures. The overarching approach of the Act is a call for the United States to work multilaterally through various fora, such as Regional Fishery Management Organizations (RFMOs), to address illegal, unreported and unregulated (IUU) fishing, bycatch of protected living marine resources (PLMRs), and achieve shark conservation. A final rule, RIN 0648-BA89, will codify the Act in [50 CFR 300](#).

The Moratorium Protection Act, as amended by the Shark Conservation Act, requires the Secretary of Commerce to produce a biennial report that lists nations that the U.S. has identified as having vessels engaged in IUU fishing, bycatch of PLMRs, and/or high seas fisheries targeting or incidentally catching sharks. Nations will be identified only for having vessels engaged in bycatch of PLMRs or high seas fisheries targeting or incidentally catching sharks if the nation's vessels are not subject to a regulatory program for PLMRs or the conservation of sharks comparable to that of the U.S., taking into account different conditions. For example, in the case that nations are identified as having pelagic longline vessels engaged in bycatch of sea turtles, the Secretary of Commerce will consider whether the nation has adopted a regulatory program requiring the use of circle hooks, careful handling and release equipment, and training and observer programs. Pursuant to this Act, final regulations have been promulgated that establish identification and certification procedures to address IUU fishing activities and bycatch of PLMRs. Under these regulations, identified nations will receive either a positive or negative certification in the subsequent biennial report to Congress.

Nations identified as having vessels engaged in IUU fishing activities are required to take appropriate corrective action to address the activities described in the biennial report. Nations

identified as having vessels engaged in PLMR bycatch or targeted or incidental catch of sharks are required to adopt regulatory programs for PLMRs and the conservation of sharks that are comparable to U.S. programs, taking into account different conditions, and establish management plans that will assist in the collection of species-specific data for the species of concern. The absence of sufficient action to address problems of IUU fishing, bycatch of PLMRs, and shark conservation may lead to prohibitions on the importation of certain fisheries products into the U.S. and the denial of port privileges of the vessels of the nation into the United States (16 U.S.C. 1826 j (d)(3); 16 U.S.C. 1826k (c)(5)).

If certain fish or fish products of a nation become subject to import prohibitions into the U.S., to facilitate enforcement, the National Marine Fisheries Service (NMFS) will require that other fish or fish products from that nation that are not subject to the import prohibitions must be accompanied by certification of admissibility.

The Moratorium Protection Act provides that NMFS may allow certification on a shipment-by-shipment, shipper-by-shipper, or other basis of fish or fish products from a vessel of a harvesting *nation* that has been identified as having vessels engaged in IUU fishing but has not received a positive certification (16 U.S.C. 1826j (d)(2)). Fish and fish products entering the U.S. under this alternative certification procedure must be accompanied by certification of admissibility indicating that the fish or fish products were harvested by a *vessel* that has not engaged in IUU fishing under an international fishery management agreement to which the United States is a party, or a *vessel* not identified by an international fishery management organization as participating in IUU fishing activities.

The Moratorium Protection Act also provides that NMFS may allow certification on a shipment-by-shipment, shipper-by-shipper, or other basis of fish or fish products from a vessel of a harvesting nation that has been identified as having vessels engaged in PLMR bycatch but has not received a positive certification (16 U.S.C. 1826k (c)(4)). Fish and fish products entering the United States under this alternative certification procedure must be accompanied by certification of admissibility indicating that the fish or fish products were harvested by practices that do not result in the bycatch of PLMRs; or were harvested by practices that are comparable to those of the United States, and include the gathering of data that can be used to support stock assessments and conservation for PLMRs.

The Moratorium Protection Act provides that NMFS may allow certification on a shipment-by-shipment, shipper-by-shipper, or other basis of fish or fish products from a vessel of a harvesting nation that has been identified as having vessels engaged in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks and the nation has not adopted a regulatory program for the conservation of sharks comparable to the U.S., if that nation has not received a positive certification (16 U.S.C. 1826k (c)(4)). Fish and fish products entering the United States under this alternative certification procedure must be accompanied by certification of admissibility indicating that the fish or fish products were harvested by practices that do not result in the catch of sharks; or were harvested by practices that are comparable to

those of the United States, and include the gathering of data that can be used to support stock assessments and conservation of sharks.

All the information collected by these documents is necessary to carry out the provisions of the Moratorium Protection Act. Implementing regulations are found at 50 CFR Part 300, Subpart N.

2. Explain how, by whom, how frequently, and for what purpose the information will be used.

Respondents will receive all instructions and forms for a certificate of admissibility document as a package. The package includes the general instructions for nations seeking to import fishery products into the United States if the nation has been identified under the Moratorium Protection Act for having vessels engaged in IUU fishing, bycatch of PLMRs, and/or high seas fisheries targeting or incidentally catching sharks not subject to a regulatory program for the conservation of sharks comparable to that of the U.S., taking into account different conditions. This consists of summary instructions for the “Certification of Admissibility” form and contains the PRA statement.

A shipment of fish in any form, offered for entry to the U.S. from a nation subject to a trade restrictive measure, is eligible for entry into the United States if the shipment is accompanied by the certification of admissibility form attached to the invoice. A duly authorized official/agent of the exporter’s Government must certify that the fish in the shipment meet the requirements of Section I of the form or Section II (A), (B), or (C).

Pursuant to the Moratorium Protection Act, if certain fish or fish products of a nation negatively certified are subject to import prohibitions, to facilitate enforcement, NMFS requires that other fish or fish products from that nation that are not subject to the import prohibitions must be accompanied by certification of admissibility. A duly authorized official/agent of the exporter’s Government must certify that the fish in shipments being imported into the United States are of a species that are not subject to an import restriction of the United States. In the first section of the form, the exporter must specify the species, weight, gear type, and harvesting vessel flag, name and number, for the fish product in the shipment. The duly authorized official/agent of the exporter’s Government must specify the nation of origin of the fish product and complete section “I” of the proof of admissibility form, titled “Nation Received a Negative Certification”, sign, date the form, and provide the requested contact information

If a nation is identified under the Moratorium Protection Act for having vessels engaged in IUU fishing, bycatch of PLMRs, and/or high seas fisheries targeting or incidentally catching sharks fails to receive a certification decision from the Secretary of Commerce; products from that nation must be accompanied by documentation of admissibility. If a nation has been identified as having vessels engaged in IUU fishing and fails to receive a certification decision, the duly authorized official/agent of the exporter’s Government must specify the nation of origin of the fish product and complete section “II” of the proof of admissibility form, titled “Nation Identified – No Certification Decision has been Reached”, sign, date the form, and provide the

requested contact information. In the first section of the form, the exporter must specify the species, weight, gear type, and harvesting vessel flag, name and number, for the fish product in the shipment. Under section “II (A)”, a duly authorized official/agent of the exporter’s Government must certify that the fish or fish products in shipments being imported into the U.S. were harvested by a vessel that has not engaged in IUU fishing under an international fishery management agreement to which the United States is a party; or were harvested by a vessel that is not identified by an international fishery management organization as participating in IUU fishing activities or has not engaged in IUU fishing as defined in the U.S. Code of Federal Regulations.

If a nation has been identified as having vessels engaged in PLMR bycatch and fails to receive a certification decision, the duly authorized official/agent of the exporter’s Government must specify the nation of origin of the fish product and complete section “II” of the proof of admissibility form, titled “Nation Identified – No Certification Decision has been Reached”, sign, date the form, and provide the requested contact information. Under section “II (B)”, a duly authorized official/agent of the exporter’s Government must certify that the fish or fish products in shipments being imported into the United States were harvested by practices that do not result in bycatch of a protected marine species; or were harvested by practices that are comparable to those of the U.S., and include the gathering of data that can be used to support stock assessments and conservation for PLMRs. In the first section of the form, the exporter must specify the species, weight, gear type, and harvesting vessel flag, name and number, for the fish product in the shipment. In section “II (B)” of the form, the duly authorized official/agent of the exporter’s government must specify the bycatch reduction measures utilized and data collection requirements for the fish product in the shipment.

If a nation has been identified as having vessels engaged in fishing activities or practices in waters beyond national jurisdiction that target or incidentally catch sharks not subject to a regulatory program for the conservation of sharks comparable to the United States and fails to receive a certification decision, the duly authorized official/agent of the exporter’s Government must specify the nation of origin of the fish product and complete section “II” of the proof of admissibility form, titled “Nation Identified – No Certification Decision has been Reached”, sign, date the form, and provide the requested contact information. In the first section of the form, the exporter must specify the species, weight, gear type, and harvesting vessel flag, name and number, for the fish product in the shipment. Under section “II (C)”, a duly authorized official/agent of the exporter’s Government must certify that the fish or fish products in shipments being imported into the United States were harvested by practices that do not result in the catch of sharks; or were harvested by practices that are comparable to those of the U.S. and include the gathering of data that can be used to support stock assessments and shark conservation. In section “II (C)” of the form, the duly authorized official/agent of the applicant’s Government must specify the shark conservation measures utilized and data collection requirements utilized for the fish product in the shipment.

In all of the above cases, the U.S. Importer of Record must note the U.S. Customs Entry Number and certify that the contents of the shipment described on the form are consistent with the fish or fish products actually received. The form must be submitted by the importer to NMFS.

The process authorized by this legislative authority requires identification in a biennial report to Congress as a first step. Identification launches a consultative process with the identified countries. Following consultations, the Secretary of Commerce will issue a positive or negative certification to each identified country two years after the nation's identification. Identified nations that fail to take the necessary actions to receive a positive certification could be subject to prohibitions on the importation of certain fisheries products into the United States and the denial of port privileges for fishing vessels of that nation.

During the length of time provided to prepare for import prohibitions and the implementation of this documentation requirement, we will work with the affected nation to determine who will serve as duly authorized official/agent. Once import prohibitions are applied, we will work with the nation regarding which fish and fish products are admissible with documentation and be able to provide the citations to the specific U.S. regulations of relevance. Until such decisions are made, however, it is impossible to stipulate which officials will be authorized and which U.S. regulations will be assessed for comparability.

It is anticipated that information collected will be disseminated to the public or used to support publicly disseminated information. NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy and electronic information. See response to Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet 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 documentation of admissibility (“Certification of Admissibility” form) must be completed and signed by a duly authorized official of the identified nation and validated by a responsible official(s) designated by NMFS. The documentation must be certified and submitted by the importer of record via electronic facsimile (fax) to the NMFS Office of International Affairs at (301) 713-2313. Documents will be delivered by the shipper to U.S. Customs and Border Protection (CBP) at the time of entry processing. Post-release, the documents will be submitted to NMFS for validation. The requirement for a signature by the exporting government official and U.S. importer precludes the use of automated technologies at this time. However, NMFS will work with U.S. Customs to consider automated procedures for collecting the information at the border through electronic entry processing.

4. Describe efforts to identify duplication.

There are no other collections which can substitute for the information required to complete foreign fishing application packages. The completed documents are unique based on an exporter's particular fishing strategies, and may change annually.

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

Although a U.S. importer deemed to be the Importer of Record/Agent may be a small business, to minimize the burden of the collection of information, the "Certification of Admissibility" form requires the importer to provide only contact information and a signature certifying that the fish or fish products contained in the shipment are accurately described on the form to the best of the importer's knowledge and belief.

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

Failure to collect the information would make it impossible for NMFS to carry out its responsibilities under the Moratorium Protection Act. The frequency of the information collection is on a per shipment basis, and is required by law.

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

The collection is consistent with the guidelines.

8. Provide information on 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 proposed rule, RIN 0648-BA89, soliciting public comment, was published (77 FR 40553, July 10, 2012) coincident with this submission. While public comments were received in support of imposing import restrictions when necessary, no specific comments were received relative to the documentation procedures proposed for admissible shipments of fish from identified nations.

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

No payments or gifts are made.

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

As stated on the form, regulations at [50 CFR 600 Subpart E](#) govern the confidentiality of commercial or financial information submitted under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. These regulatory protections can be applied to protect the confidentiality of commercial or financial information collected under the Moratorium Protection Act.

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 sensitive questions are asked.

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

The Certification of Admissibility Form will take 10 minutes on average each to complete, including gathering supporting documentation.

Totals = 60 respondents, 600 responses (these numbers based on an examination of trade statistics and the number of traders), and 100 total hours on an annual basis.

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 Question 12 above).

Faxing and/or e-mailing costs for sending the forms to NMFS are nominal at an estimated \$10.00 (paid by U.S. importer).

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

Estimated Federal costs for processing forms are as follows:

<u>Category</u>	<u>NOAA</u>
Computer	180
FR Printing	1000
Mailing/Copying	0
<u>Salaries/Benefits</u>	<u>15,000</u>
Total	\$16,180

15. Explain the reasons for any program changes or adjustments.

This is a new information collection.

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.

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not use statistical methods.