

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

A. JUSTIFICATION

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

This is a resubmission with the final rule, RIN 0648-BC78, of a request for revision of this information collection.

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 *et seq.*, and the [Dolphin Protection Consumer Information Act](#) (DPCIA), 16 U.S.C. 1385. The MMPA and the DPCIA authorizes the Secretary of Commerce to promulgate regulations that restrict 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, and to implement the DPCIA's dolphin-safe labeling standard.

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 (U.S.).

Under the currently approved information collection, statements and/or certificates are required to be attached to the Fisheries Certificate of Origin (FCO) when import shipments contain tuna harvested by large purse seine vessels (greater than 400 st, 362.8mt carrying capacity) in the eastern tropical Pacific Ocean (ETP) and by purse seine vessels of any carrying capacity size outside of the ETP. These statements and/or certificates must include the statement that no purse seine net was intentionally deployed on or to encircle dolphins during the fishing trip.

Proposed changes to the information collection, per Proposed Rule 0648-BC78, would modify the criteria found on the dolphin-safe status section of an FCO, to add requirements necessitating the attachment of a captain's statement and, where applicable, either a statement by the observer on board the vessel or by an authorized representative of the nation participating in the observer program based on official information from the observer, certifying that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught, for: (1) tuna not harvested with a purse seine net and (2) tuna harvested in the ETP by a purse seine vessel having a carrying capacity of 400 short tons (362.8 mt) or less. For tuna harvested with a purse seine net outside the ETP, the proposed changes to the dolphin-safe status section of the FCO would necessitate the attachment of a captain's statement and, where applicable, either a statement by the observer on board the vessel or by an authorized representative of the nation participating in the observer program based on official information from the observer, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the fishing trip in which the tuna were caught and that no dolphins were killed or seriously injured in the sets in which the tuna were caught.

The proposed changes to the information collection are expected to increase the public reporting burden 5 additional minutes, so that the total time estimated time per response will average 25 minutes, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data, and completing and reviewing the collection of information.

The proposed changes to the information collection are intended to better ensure “dolphin safe” labels comply with the requirements of the DPCIA and to ensure the United States satisfies its obligation as a member of the World Trade Organization.

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 FCO provides the National Marine Fisheries Service (NMFS) with information concerning the origin, type, and quantity of the imported tuna and tuna products. The FCO also provides a mechanism for foreign exporters and government officials to document and certify 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, thus, assisting the CBP in preventing tuna products from entering the U.S. without proper documentation. In addition, the CBP importer of record is required to send a copy of the FCO to NMFS within 10 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, but need not submit it unless it is requested at a later time during a tuna tracking audit.

If an importation includes tuna and/or tuna products harvested by a purse seine net outside of the ETP, then a statement executed by the captain, that no purse seine net was intentionally deployed on or to encircle dolphins during the fishing trip and that no dolphins were killed or seriously injured in the sets in which the tuna were caught, and where applicable, a statement executed either by a qualified and authorized observer or by an authorized national government representative of the observer program, certifying that no dolphins were killed or seriously injured in the sets in which the tuna were caught 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 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; and 3) a listing of the numbers for the associated Tuna Tracking Forms which contain the captain’s and observer’s certifications has been provided.

If the importation includes tuna and/or tuna products harvested in all other fisheries, other than large scale high seas driftnets, then a statement executed by the captain of the vessel and, where applicable, either a qualified and authorized observer or an authorized representative of a nation participating in the observer program, certifying that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught must be attached to the FCO.

NMFS has made use of the FCO in documenting the entry of tuna and certain other fish products into the U.S. for a number of years. NMFS 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. NMFS will retain control over the information and safeguard it from improper use, modification, and destruction, consistent with National Oceanic and Atmospheric Administration (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 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 from the NMFS Southwest Region web site at <http://swr.nmfs.noaa.gov> and at <http://www.DolphinSafe.gov> web site for use on the respondent's own computer system. Respondents are encouraged to provide electronic copies to NMFS via a secure FTP server. Currently, about 50% 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 because the time needed to gather and submit a written statement by the captain of the harvesting vessel and by the observer on board the vessel or by an authorized representative, if applicable, would be minimal (about 5

minutes each). An additional cost to provide the written statements would be about \$0.10 for each one page written statement. However, it is noted that many of the affected entities already voluntarily collect and submit written statements. Therefore, for many entities, there would be minimal, if any, additional time or cost burden realized.

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 OMB guidelines (5 CFR 1320.6), except that submission is required for each shipment of tuna and covered fish products that enters the U.S. This may be more frequent than quarterly for some importers.

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-BC78) published on 4/5/2013 (78 FR 20604) solicited public comment.

Two comments were received, described below with NMFS responses.

Comment: The expansion of the certification requirements to non-purse seine captains and the new requirements for statements by observers, if applicable, will result in a significant increase in paperwork and associated tracking, reporting and auditing for the seafood supply chain and for the United States Government. Measures to reduce paperwork, such as consolidation of required NMFS forms and allowing cell phone photos of captain and observer statements, should be considered.

Response: While current regulations require the submission of a captain's statement for purse seine vessels outside of the ETP, a significant number of FCOs for tuna product importations already include statements submitted by captains of non-purse seine vessels on a voluntary basis. Thus, while the number of captain's statements required to be submitted under this rule would increase paperwork submission requirements for segments of industry and increase paperwork handling for the U.S. Government, the actual increase in the number of documents received by the U.S. Government will be significantly less when taking into consideration the number of documents currently being voluntarily submitted.

NMFS is also a Participating Governmental Agency working with U.S. Customs and Border Protection (CBP) in the International Trade Data System (ITDS) project. See: <http://www.itds.gov/>. The Document Imaging System, a part of ITDS expected to be tested in the near future through a pilot project, would allow customs brokers to send a version of the FCO and associated certifications in portable document format (PDF) to CBP. The NMFS copy would then be retrieved by or forwarded to NMFS, therefore eliminating the need for brokers to submit multiple copies to different U.S. agencies. If implemented, NMFS expects that the Document Imaging System will result in a significant reduction of paperwork for both the seafood supply chain and the U.S. Government, as well as allowing for more efficient tracking and auditing.

Comment: The proposed rule will require the industry to make outreach efforts to educate thousands of longliners of U.S. dolphin-safe rules in multiple languages. Adequate time will need to be allotted to the industry to reach back into its supply chain and implement a new system of collecting captain statements.

Response: The effective date of this regulation is July 13, 2013, and the rule is mandatory as of that date. As explained below, it would be impracticable and contrary to the public interest to delay the effective date of the rule beyond July 13, 2013. The rule will require certification by the captain and, if applicable, by a qualified and authorized observer or an authorized representative of a nation participating in the observer program for all tuna labeled dolphin-safe that is harvested on fishing trips that begin on or after July 13, 2013. NMFS has determined that a period for education and outreach by NMFS and industry is appropriate. NMFS believes that a period through January 1, 2014 is sufficient time for the industry to become educated on and fully transition to the new requirements under the rule. During this period, NMFS will continue to educate the industry on NMFS' compliance and enforcement procedures so that fishermen, processors, importers, brokers, and others responsible for the paperwork required by this rule have clear expectations as to the requirements of this rule.

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.

As stated on the Fishery Certificate of Origin form, the information collection is considered confidential as per the Dolphin Protection Consumer Information Act and is treated as such in accordance with [NOAA Administrative Order 216-100](#). 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 2011, program data showed approximately 430 different respondents submitted approximately 13,000 responses. It is estimated that each response averages 25 minutes, including records retention and making copies as needed. Therefore, the estimate in hours of the burden of the collection of information is:

$$13,000 \text{ responses} \times 25 \text{ minutes/response} \times 1 \text{ hour/60 minutes} = 5,417 \text{ hours.}$$

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 Question 12 above).

Every response would require a captain's statement attached to the FCO form. Approximately 50% of responses are submitted electronically, so for those respondents, there would be only the cost of one copy for Customs and Border Protection submission with the entry package. Also, respondents average 4 responses per mailing. Therefore, if 13,000 responses per year are received, then the cost might be:

Copying for CBP submission only (Electronic to NMFS):

$$6,500 \times 2 \times \$0.10/\text{copy} = \$1,300/\text{yr}$$

Copying for all other submissions (One to CBP, one to NMFS):

$$6,500 \times 2 \times 2 \times \$0.10/\text{copy} = \$2,600/\text{yr}$$

Envelopes: 6,500 divided by 4 x \$0.03/envelope = \$49/yr

Postage: 6,500 divided by 4 x \$0.45 (stamp) = \$731/yr

Total annual cost burden estimate: \$1,300 + \$2,600 + \$49 + \$731 = \$4,680

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

Staff hours to collect, analyze, input, and file 13,000 collections per year:

$$13,000 \text{ forms} \times 6 \text{ minutes/form} \times 1 \text{ hour/60 minutes} = 1,300 \text{ staff hours/year}$$

Three minutes analysis per collection @ \$19.79/hr (hourly wage average for student intern and contractor)

$$\text{Three minutes} = 0.05 \text{ hours} \times \$19.79 = \$0.99$$

Two minutes data entry per collection @ \$19.79

$$\text{Two minutes} = 0.0333 \text{ hours} \times \$19.79 = \$0.66$$

One minute filing per collection @ \$19.79

$$\text{One minute} = 0.0166 \text{ hours} \times \$19.79 = \$0.33$$

$$13,000 \text{ responses/year} \times (\$0.99 + \$0.66 + \$0.33) = \$25,740$$

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

Program Change: Due to an estimated increase of 5 minutes per response, total burden for the updated estimate of 13,000 responses will increase by 1,084 hours.

Adjustment: There is an increase of 500 responses (from 12,500 to 13,000) and 166 hours, as well as \$626 in recordkeeping/reporting costs, due to an 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.

Not Applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.