

**SUPPORTING STATEMENT
FISHERY PRODUCTS SUBJECT TO TRADE RESTRICTIONS PURSUANT TO
CERTIFICATION UNDER THE HIGH SEAS DRIFTNET FISHING MORATORIUM
PROTECTION ACT AND THE MARINE MAMMAL PROTECTION ACT
OMB CONTROL NO. 0648-0651**

A. JUSTIFICATION

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

This final rule action revises an existing information collection by adding two new requirements. Under the import certification requirements in the final rule, there is a procedure for making comparability findings for nations that are eligible for exporting fish and fish products to the United States. The nations may receive a comparability finding to export fish and fish products to the United States by providing documentation that a nation’s bycatch reduction regulatory program is comparable in effectiveness to that of the United States. A comparability finding is valid for four years. In the interim, nations are required to submit progress reports demonstrating that their regulatory programs are still meeting the conditions for a comparability finding.

This proposed revision makes minor modifications to the “certification of admissibility” (OMB Control No. 0648-0651) established in conjunction with the High Seas Driftnet Fishing Moratorium Protection Act final rule (RIN 0648-BA89). This revision also changes the title of the collection and the Certification of Admissibility Form from “Fishery Products Subject to Trade Restrictions Pursuant to Certification under the High Seas Driftnet Fishing Moratorium Protection Act” to “Fishery Products Subject to Trade Restrictions Pursuant to Certification under the High Seas Driftnet Fishing Moratorium Protection Act and the Marine Mammal Protection Act”.

This information collection is necessary to comply with the [Marine Mammal Protection \(MMPA\)](#) Act 16 U.S.C. 1371 and 1372 and the final rule RIN 0648-AY15 to implement these provisions within the regulations of [50 CFR 216.24](#). The MMPA contains provisions to address the incidental mortality and serious injury of marine mammals in both domestic and foreign commercial fisheries. With respect to foreign fisheries, section 101(a)(2) of the MMPA (16 U.S.C. 1371(a)(2)) states that “The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying the preceding sentence, the Secretary [of Commerce] (A) shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States.”

Section 102 (c)(3) states that “It is unlawful to import into the United States...any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner which the Secretary has proscribed for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.” 16 U.S.C. 1372(c)(3). This

final rule, RIN 0648-AY15, codifies these provisions of the MMPA in regulations at 50 CFR 216.24.

These regulations establish standards for evaluating a nation's regulatory program to reduce marine mammal incidental mortality and serious injury in its fisheries that export to the United States (U.S.) (export fisheries). Under the final rule, to import fish and fish products into the United States, a nation's exporting fisheries must apply for and receive a comparability finding from the Assistant Administrator. The rule establishes procedures that a nation must follow to receive such finding for its export fishery. To receive the finding the nation must provide reasonable proof that it has adopted and is implementing in its export fishery a regulatory program governing the incidental mortality and serious injury of marine mammals in the commercial fishery that is comparable in effectiveness to the U.S. regulatory program. The nation must also provide reasonable proof that it has calculated a bycatch limit for marine mammal stocks that interacts with a fishery whose fish and fish products are exported to the U.S. and that the total incidental mortality and serious injury of marine mammals in these fisheries does not exceed that bycatch limit. The proposed rule also calls for any intermediary nation that exports fish and fish products to the U.S. to prohibit the re-exportation to the U.S. of fish and fish products from any nation's export fishery that is subject to a direct import prohibition to the United States.

If a nation's export fishery fails to receive a comparability finding certain fish or fish products of that fishery become subject to import prohibitions into the U.S. market. To facilitate enforcement of the prohibition against certain products, the National Marine Fisheries Service (NMFS) will require that other fish or fish products from that nation, not subject to the import prohibitions, must be accompanied by certification of admissibility.

The information collected by these documents is necessary to carry out these provisions of the MMPA. The final rule (RIN 0648-AY15) implements these import prohibitions and the associated information collection in regulations at 50 CFR Part 216.24. The regulations require that a nation provide reasonable proof that it is meeting the conditions for issuance of a comparability finding for its export fisheries and continue to demonstrate such by submitting progress reports. No standardized application or progress report forms are required.

These regulations are implemented by adding one check box to the Certification of Admissibility (OMB Control No. 0648-0651) previously established in conjunction with the High Seas Driftnet Fishing Moratorium Protection Act Final Rule (RIN 0648-BA89). The certification will have to be completed by a harvesting nation that has received a comparability finding for some of its fisheries and fish products exported to the United States when other fisheries of that nation that are exporting fish products of the same or similar species have not received comparability finding.

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

Nations will receive as part of the consultations mandated by the proposed rule a compliance guide to assist nations in submitting their application and progress reports to obtain and maintain a comparability finding. The conditions that nations must meet to receive a comparability finding are varied and flexible depending in the nature of the fishery. Consequently, no uniform application or set of instructions is applicable to all nations and fisheries. Nations will be required to submit every four years, reasonable proof demonstrating that they have met the conditions for a comparability finding applicable to a particular fishery that exports fish and fish products to the United States. Similarly, every four years (not coinciding with the comparability finding) a nation must submit a progress report for those fisheries demonstrating that they continue to meet the conditions for a comparability finding. The length and detail for such submissions will vary greatly depending on the number of fisheries for which a nation is seeking a comparability finding. The information will be used by the Assistant Administrator to determine whether to make a comparability finding based upon the reasonable proof provided by the nation.

Respondents will receive all instructions and forms for a certificate of admissibility document as a package. NMFS is proposing minor modifications to the “Certification of Admissibility” form and the general instructions to include a check box for nations or export fisheries with a comparability finding seeking to import fishery products into the United States.

The Assistant Administration has the discretion to require a Certification of Admissibility form attached to the invoice for a shipment of fish in any form, offered for entry to the U.S. from a nation’s export fishery that is subject to a trade restrictive measure. A duly authorized official/agent of the exporter’s Government must certify that the fish in the shipment meet the requirements of Section III of the form.

Pursuant to the MMPA, if certain fish or fish products of a nation’s export fishery that failed to receive a comparability finding are subject to import prohibitions, to facilitate enforcement, NMFS may require other fish or fish products from that nation’s other export fisheries that are not subject to the import prohibitions to 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 newly added Section III of the form, the exporter must specify that the fish species or products are from a fishery that is not subject to an import restriction of the U.S. under the Marine Mammal Protection Act. The duly authorized official/agent of the exporter’s Government must specify the nation of origin and complete the existing first section of the form. In that section, the exporter must specify the fish species or fish product, weight, fishing gear type, and harvesting vessel flag, name and number, for the fish product in the shipment. The duly authorized official/agent of the applicant’s Government must sign, date the form, and provide the requested contact information.

As already required in the current approved form, 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 import must submit the form to NMFS.

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](#).

During the time provided to prepare for import prohibitions and the implementation of this documentation requirement, we will work with the affected nations to determine who will serve as duly authorized official/agent. Once import prohibitions are applied, we will work with each 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.

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.

As already required, the “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 in the next few years to consider automated procedures for collecting the information at the border through electronic entry processing.

4. Describe efforts to identify duplication.

NMFS is modifying the existing Certificate of Admissibility form to meet the needs of this MMPA regulation. Information collected in connection with these requirements is unique. There are no other collections or existing forms which can substitute for the information required to complete foreign fishing comparability finding application packages.

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 only to provide 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.

With regard to the collection of information for a comparability finding, this collection will not have a significant impact on small businesses, organizations or governmental entities because these are the minimum necessary requirements.

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

No or less frequent collection of data would not provide DOC/NOAA with data it must have to ensure that fish and fish products subject to import prohibitions do not enter the United States. NMFS and the U.S. Customs and Border Patrol could not enforce the import prohibitions without this collection of information. 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.

This information collection was originally established by a final rule (76 FR 2011, January 12, 2011) to implement procedures to identify and certify nations engaged in illegal fishing or with bycatch of protected resources, RIN 0648-AV51. This current rulemaking, RIN 0648-AY15, proposed revisions to that information collection and NMFS solicited public comment on the new information collection requirements of this rule (80 FR 48172, August 11, 2015). No comments were submitted regarding the reporting burden associated with the new information collection requirements of the current rule. Given that no comments were received, no changes to the proposed information collection were made. However, NMFS had recently (December, 2015) renewed this collection of information and sought comments from outside the agency regarding the data elements and clarity of instructions for the Certification of Admissibility. At that time, the NOAA Fisheries Office of International Affairs and Seafood Inspection reached out to members of one of its Federal Advisory Committees for assistance in soliciting public comments. In response, comments were submitted by the Blue Water Fishermen’s Association (BWFA) and by Thomas Kraft, Managing Director of Norpac Fisheries Export.

The BWFA comments implied that the Certificate of Admissibility, in a paper-based format, would allow opportunities for fraudulent declarations by governments that have not implemented robust fishery monitoring and control systems. Therefore, the certificate could be used to circumvent import restrictions imposed on nations, limiting the effectiveness of the Moratorium Protection Act. The BWFA recommended that NMFS seek private sector assistance in implementing a traceability system to ensure the legality of seafood imports.

Thomas Kraft commented that the Certificate of Admissibility would make it impractical to determine the credibility of statements made on the form and advocated for an electronic data reporting system.

NMFS has issued a separate rulemaking to require electronic reporting on imports (RIN 0648-AX63) through use of the U.S. Customs and Border Protection International Trade Data System (ITDS). The reporting requirements for imports subject to certification under this current MMPA rule would also make use of the electronic data reporting capabilities of ITDS.

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 and the MMPA.

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 original estimate to complete the Certification of Admissibility Form was 10 minutes, including gathering supporting documentation. The proposed additional check box as added under this information collection will not change this estimate. We estimated, in the event that import restrictions are imposed on 10 fisheries, additional responses may increase the burden by 50% from the initial estimates under the High Seas Driftnet Fishing Moratorium Protection Act FR 0648-BA89.

Totals = 90 respondents, increased from 60; 900 responses, increased from 600 (these numbers based on an examination of trade statistics and the number of traders), and 150 total hours, increased from 100, 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).

There are no changes from the estimates for the Certificate of Admissibility under the High Seas Driftnet Fishing Moratorium Protection Act FR 0648-BA89. Faxing and/or e-mailing costs for sending the forms to NMFS are nominal at an estimated \$10.00 total (paid by U.S. importer).

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

We estimated, in the event that import restrictions are imposed, it may increase the burden by 50% from the initial estimates under the High Seas Driftnet Fishing Moratorium Protection Act FR 0648-BA89. Therefore, the estimated Federal costs for processing forms are as follows:

<u>Category</u>	<u>NOAA</u>
Computer	270
FR Printing	1500
Mailing/Copying	0
<u>Salaries/Benefits</u>	<u>22,500</u>
Total	\$24,270

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

Program Change: Based on an estimated 50% more activity due to the new requirement, new totals would be: 90 respondents, 900 responses and 150 hours, with recordkeeping/reporting remaining at a maximum of \$10.

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.