

**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 request for revision of a currently approved collection.

The purpose of this collection of information is to implement certain 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 authorize 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 large-scale high seas driftnets (for which entry into the United States (U.S.) is prohibited), and to implement the DPCIA's dolphin-safe labeling standard. The National Oceanic and Atmospheric Administration (NOAA) Form 370 (also known as the Fisheries Certificate of Origin; FCO) documents the dolphin-safe status of tuna import shipments and may also be used on a voluntary basis by U.S. fishermen to document domestic tuna harvests.

The National Marine Fisheries Service (NMFS) issued an interim final rule (RIN 0648-BF73) on March 23, 2016 that amended regulations governing use of the dolphin-safe label. As it relates to this revision, regulations at 50 CFR 216.91(a)(3)(v) and 216.91(a)(5)(ii) allow the NMFS Assistant Administrator (Assistant Administrator) to make a determination that a regular and significant association between dolphins and tuna (similar to the association between dolphins and tuna in the eastern tropical Pacific Ocean (ETP)) or a regular and significant mortality or serious injury of dolphins is occurring in a fishery. Any such determination by the Assistant Administrator will be published in a *Federal Register* notice and apply to tuna harvested on fishing trips that begin on or after 60 days after the publication of the *Federal Register* notice.

On September 28, 2016, the Assistant Administrator made a determination of regular and significant mortality and serious injury of dolphins in gillnet fisheries in the Indian Ocean (see Federal Register Notice 81 FR 66625). This will affect certain importations of frozen and/or processed tuna product labeled dolphin-safe where the tuna was harvested on fishing trips that begin on or after November 28, 2016. Importers of applicable product will need to include, among other already approved information from collection 0648-0335, a dolphin-safe tuna related observer statement and a chain of custody document signed by a government representative. There is no standard format or form for an observer statement or chain of custody government certificate. Requirements of each statement/certification are discussed in Question 2.

In regards to public reporting burden for this information collection, the total estimated average time per response remains at 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 changes to the information collection due to this revision are intended to better ensure “dolphin safe” labels comply with the requirements of the DPCIA and to ensure the U.S. 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 NMFS with information concerning the origin, type, and quantity of 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. As of September 20, 2016 FCO submissions, along with related importation data, must be submitted electronically and as attachments to the U.S. Customs and Border Protection (CBP) Automated Commercial Environment (ACE) and Document Imaging System (DIS) in advance of or at the time of importation, thus, assisting the CBP in preventing tuna products from entering the U.S. without proper documentation.

If the importation includes tuna and/or tuna products harvested by an ETP large purse seine vessel (having a carrying capacity of more than 400 short tons), 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; and 3) a listing of the numbers for the associated Tuna Tracking Forms that contain the captain’s and observer’s certifications has been provided.

If an importation includes frozen tuna and/or tuna products harvested by fishing vessels other than ETP large purse seine vessels or large-scale high seas driftnet vessels (the latter for which entry into the United States is prohibited), in any fishery for which the Assistant Administrator **has not** determined that there is a regular and significant mortality or serious injury of dolphins and/or a regular and significant association occurring between dolphins and tuna, NMFS regulations require for fishing trips that begin on or after May 21, 2016, valid documentation by 1) the captain of the vessel, and where applicable, documentation by either a qualified and authorized observer or an authorized representative of a nation participating in the observer program, certifying that no purse seine net or other fishing gear was intentionally deployed on or used 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 2) the captain of the vessel certifying completion of the NMFS dolphin-safe captain’s training course.

If an importation includes frozen tuna and/or tuna products harvested by fishing vessels other than ETP large purse seine vessels or large-scale high seas driftnet vessels (the latter for which entry into the United States is prohibited), in any fishery for which the Assistant Administrator **has** determined that there is a regular and significant mortality or serious injury of dolphins and/or a regular and significant association occurring between dolphins and tuna, NMFS

regulations require for fishing trips that begin on or after 60 days after publication in the *Federal Register* of such determination, a written statement executed by 1) the Captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator (unless the Assistant Administrator determines an observer statement is unnecessary) certifying that: (A) no fishing gear was intentionally deployed on or used to encircle dolphins during the trip on which the tuna were caught; (B) no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught; and (C) dolphin-safe tuna was physically kept separate from non-dolphin-safe tuna by the use of netting, other material, or separate storage areas from the time of capture through unloading; and 2) a statement from the the captain of the vessel certifying completion of the NMFS dolphin-safe captain's training course. Additionally, a government certificate is required, signed by a representative of the vessel flag nation or the processing nation (if processed in another nation) certifying that: (A) the catch documentation is correct; (B) the tuna or tuna products meet the U.S. dolphin-safe labeling standards; and (C) the chain of custody information is correct.

NMFS has made use of the FCO in documenting the entry of frozen and/or processed tuna into the United States 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 it is confidential and handled in accordance with [NOAA Administrative Order 216-100](#). 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 web site at <http://www.nmfs.noaa.gov/pr/dolphinsafe> for use on the respondent's own computer system. As of September 20, 2016, NMFS regulations at 50 CFR 216.24(f)(2) require the electronic submission of FCOs to CBP in advance of or at the time of importation. Thus, hard copy submissions of the FCO are no longer accepted for importations that occur on or after September 20, 2016. These new regulations have eliminated the prior burden to supply the FCO twice to the U.S. Government: once to CBP at the time of importation and a copy to NMFS within 10 days of the shipment.

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 and regulations 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 United States. 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.

Public comment was sought via an interim final rule (RIN 0648-BF73), published on March 23, 2016, which imposes a new observer certificate from a national or international observer program acceptable to the Assistant Administrator due to a determination made by the Assistant Administrator that a “regular and significant” association between dolphins and tuna (similar to the association between dolphins and tuna in the ETP) or a regular and significant mortality or serious injury of dolphins is occurring unless the Assistant Administrator determines an observer statement is unnecessary. RIN 0648-BF73 also imposes a chain of custody certificate triggered by such a determination and is to be signed by a representative from the vessel flag nation or the processing nation (if processed in another nation).

Nine public comments were received for RIN 0648-BF73. Six commenters did not reference the new observer statement requirement nor the new chain of custody-related government certification due to a determination by the Assistant Administrator. Two commenters asked what

process NMFS will employ in order for the Assistant Administrator to make such a determination. Two commenters referenced the new observer statement: one strongly in favor of the requirement as written and one asked what process the Assistant Administrator will use to determine whether a national or international observer program is acceptable. One commenter also asked which government will be responsible for the issuance of the government certificate that would be required due to a determination made by the Assistant Administrator (i.e. the government of the vessel flag, the government where the catch was landed, or the government responsible for the waters where the fish was harvested).

In response to the above comments, NMFS has developed internal guidance to be used by the Assistant Administrator to make a determination of “regular and significant” association and/or “regular and significant” mortality and serious injury of dolphins. NMFS has also adopted criteria that the Assistant Administrator will use to determine whether a national or international observer program is acceptable (see *Federal Register* notice published July 14, 2014; 79 FR 40718) and whether an observer statement from the determined fishery is unnecessary. Finally, as per 50 CFR 216.91(a)(5)(ii), the chain of custody-related certificate required for tuna designated dolphin-safe, due to a determination by the Assistant Administrator, is to be signed by a representative of the vessel flag nation or the processing nation (if processed in another nation).

The first determination of regular and significant mortality and serious injury of dolphins was made by the NMFS Assistant Administrator on September 28, 2016 and will be effective on certain fishing trips that begin on or after November 28, 2016 (see Federal Register Notice 81 FR 66625). NMFS will also respond formally to all comments received from the March 2016 interim final rule when the final rule is published.

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 FCO, the information collection is considered confidential as per the DPCIA 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 recent years, program data shows 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:

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

No burden was added due to the new certifications, as they would have only affected only two shipments of tuna over the past 3 years (both by the same respondent) since 2013.

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).

In a final rule published by NMFS on August 3, 2016 (81 FR 51126; RIN 0648-AX63), there is a new requirement that 100% of FCO submissions (including the attached certifications/statements) associated with importations occurring on or after September 20, 2016 are to be submitted electronically to CBP ACE and DIS. Therefore, there is no longer an annual cost burden to the respondents, other than the *de minimis* costs associated for Internet transmission and electronic storage of files on server hardware.

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 two contractors)

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

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.

As mentioned in the response to Question 13 above, a recently published final rule (RIN 0648-AX63) now requires 100% electronic submission of the FCO and associated certifications/statements. This is a change from approximately 50% of the submissions being electronic at the time of the most recent extension renewal for this collection was approved.

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.