

**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 extension of a currently approved information collection is necessary to comply with the final rule RIN 0648-AY15 to implement these provisions within the regulations of [50 CFR 300](#), and the [High Seas Driftnet Fishing Moratorium Protection Act](#) (Moratorium Protection Act or Act), 16 U.S.C. 1826d-k.

High Seas Driftnet Fishing Moratorium Protection Act

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 U.S. President in January 2007. This Act contains a number of provisions for both domestic and international fisheries stewardship. This Act was also 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.

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 United States has identified as 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 United States, 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 and shark catch in areas beyond national jurisdiction. 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 a negative certification and restrictions on the importation of certain fisheries products into the United States 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)).

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.

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.

Respondents will receive all instructions and forms for a certificate of admissibility document as a package. 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 United States from a nation subject to a trade restrictive measure under the Moratorium Protection Act, 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 the form.

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 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 United States under the Moratorium 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.

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 importer must submit the form to NMFS by use of the Customs and Border Protection Automated Commercial Environment Document Image System or by fax within 24 hours of the release from U.S. Customs custody.

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 restrictions 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 restrictions 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.

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 and Seafood Inspection 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 fully automated technologies at this time. However, NMFS will work with U.S. Customs to implement automated procedures for collecting the information at the border through electronic entry processing in the Automated Commercial Environment.

4. Describe efforts to identify duplication.

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 certification of import of fish or fish products eligible for entry under the Moratorium Protection Act applicable regulations.

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

This collection will not have a significant impact on small businesses, organizations or governmental entities because these are the minimum necessary requirements.

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.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

Not requiring reporting at all, 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 restrictions 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.

NMFS solicited public comment on these information collection requirements on May 13, 2015 (80 FR 27289) and August 11, 2015 (80 FR 48172). No comments were received in response to the May 2015 notice, or submitted regarding the reporting burden associated with the August notice. 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 import restrictions under the Moratorium Protection Act would also make use of the electronic data reporting capabilities of ITDS. Additionally, NMFS issued a separate rulemaking (RIN 0648-BF09) to require information to be reported via ITDS for fish and fish products subject to import monitoring requirements to determine that the fish were lawfully acquired. During the comment period applicable to both proposed rules, NMFS received comments on the information collection burden estimates and the use of ITDS for electronic reporting. In the respective final rules, NMFS responded to comments about the data elements to be captured in the message set, the forms to be submitted via the Document Image System, and ways to avoid duplication and minimize the reporting burden.

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 Forms is estimated to take 10 minutes on average to complete, including gathering supporting documentation.

In total, it is estimated that there will be 60 respondents and 600 responses (these numbers based on an examination of trade statistics and the number of traders), resulting in a burden of 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 approximate \$10.00 cost total (paid by U.S. importer), resulting in a total of \$6,000.

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	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.

This extension is now for the Moratorium Protect Act requirements only. In addition, a correction was made to recordkeeping/reporting costs.

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.