

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 action revises an existing information collection to account for new import certification requirements under an additional authority. Currently, the information collection is approved for certification of admissibility of fish or fish products subject to trade measures under the authority of the High Seas Driftnet Fishing Moratorium Protection Act. An additional authority for certification of admissibility is under the Marine Mammal Protection Act (MMPA). The MMPA final rule, RIN 0648-AY15 (81 FR 54390, 15 August 2016), established 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.

This proposed revision makes minor modifications to the "certification of admissibility" form (OMB Control No. 0648-0651) established in conjunction with the High Seas Driftnet Fishing Moratorium Protection Act Final Rule (RIN 0648-BA89). This action also changes the title of the collection 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 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). The final rule, RIN 0648-AY15, codified these provisions of the MMPA at 50 CFR 216.24.

These regulations established 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 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 established 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 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 an import prohibition.

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. To facilitate enforcement of import prohibitions, 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 (i.e., certification that the imported products are not from the fish or the fishery subject to restrictions).

The information collected by these admissibility documents is necessary to carry out the import provisions of the MMPA. The MMPA requirement will add an additional authority for mandating use of 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 form will only have to be completed by a harvesting nation that receives a comparability finding for some of its fisheries and fish products but not for other fisheries exporting fish products of like species or processed product to those that have a comparability finding. For example, if a nation receives a comparability finding for a purse seine fishery harvesting yellowfin tuna, but does not receive a comparability finding for a longline fishery harvesting yellowfin tuna, an embargo will be placed on yellowfin tuna harvested in the longline fishery. Yellowfin tuna harvested in the purse seine fishery will be eligible for import, but will require certification from a government official of the exporting nation that the fish were not harvested in the prohibited longline fishery.

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

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.

Exporting nations have received, as part of the consultations mandated by the rule, a compliance guide to assist them in obtaining and maintaining a comparability finding for an export fishery. In the event of imposing trade measures in response to a denial or revocation of a comparability finding, respondents (foreign government officials, foreign exporters and U.S importers) will receive all instructions and forms for certification of admissibility. NMFS is requesting OMB approval of minor modifications to the "Certification of Admissibility" form and the general instructions to include the situation of nations for which an export fishery is without a comparability finding, yet the nation is seeking to export otherwise eligible fishery products to the United States.

The Assistant Administration has the discretion to require Certification of Admissibility to accompany a shipment of fish or fish product that is offered for entry to the U.S. if such a fish or fish product might be harvested in 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 (i.e., not the product of the fishery subject to embargo).

As already required in the currently 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 importer must submit the form to NMFS.

It is anticipated that information collected will be disseminated to the public only in summary (aggregate) form or used to support publicly releasable information products. 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, NMFS will work with the affected nations to determine who will serve as duly authorized official/agent. In a situation where import prohibitions are applied, NMFS will work with U.S. Customs and Border Protection and the exporting nations 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 under the currently approved information collection, 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 associated with the entry and submitted by the importer of record via electronic filing in the CBP Automated Commercial Environment (ACE) by upload to the Document Image System (DIS). At the time of automated entry processing, or post-release, the documents will be reviewed by NMFS for validation. If shipments are determined to be ineligible after release, NMFS will work with CBP to issue a redelivery order to the importer and require that the products be returned to the port of entry. The requirement for a signature by the exporting government official and U.S. importer of record precludes the use of fully automated technologies (i.e., electronic signature) for completing the form at this time. However, NMFS will work with U.S. CBP to consider automated procedures for collecting the information at the border through fully electronic entry processing rather than DIS.

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 establish admissibility of products which are of the same species of fish otherwise subject to embargo.

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

A U.S. Importer of Record/Agent may be a small business. To minimize the burden of the information collection on small businesses, the “Certification of Admissibility” form only requires the importer to provide contact information and a signature certifying that the fish or fish products contained in the shipment are accurately described on the form (responsibility of exporter) to the best of the importer’s knowledge and belief. Verifying the contents and value of an import shipment is an essential business practice necessary to avoid fraud, so the incremental burden on importers is minor – they need only report on the results of verification already being undertaken.

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

The frequency of the information collection is on a per shipment basis. Not collecting, or less frequent collection of, this information would not provide NMFS with data it must have to ensure that fish and fish products subject to import prohibitions do not enter United States commerce. NMFS and CBP could not enforce the import prohibitions without this collection of information

In the alternative, NMFS would have to implement an import ban on all fish products that could be harvested in the foreign export fishery that does not receive a comparability finding, regardless of whether the fish were harvested in that fishery. As the United States is a member of the World Trade Organization, there are obligations to ensure that import requirements are non-discriminatory and do not impose restrictions on foreign suppliers that are not imposed on domestic producers. A blanket prohibition on fishery products from all of a nation's fisheries would be discriminatory and raise issues of unequal national treatment. Use of the Certification of Admissibility allows NMFS to tailor a trade measure to the specific fishery with unaddressed marine mammal bycatch issues, while allowing continued access to the U.S. market for products from other fisheries that are deemed eligible to export by virtue of a comparability finding.

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-AY15, solicited public comment. No comments on the information collection aspects of the Certification of Admissibility were received. Once the final rule was published, NMFS conducted an extensive public outreach campaign via visits to foreign embassies in Washington, D.C., webinars scheduled to allow participation by foreign exporters, and some personal visits with government officials from key exporting countries. While the focus of outreach was primarily to inform about the procedures to obtain comparability findings for export fisheries, the provisions for Certification of Admissibility were explained. Explicit discussion of the Certification of Admissibility was helpful in achieving a cooperative framework for outreach on the MMPA rule. Exporting nations were assured that the intent of the rule is first and foremost to conserve marine mammals through reduced fishery interactions, not to serve as a protectionist trade measure. For exporters, Certification of Admissibility is viewed as a way to avoid blanket trade prohibitions, while working to achieve bycatch mitigation programs in specific fisheries.

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.

In the operational protocol for this information collection, respondents include the foreign country exporter who completes information about the contents of the shipment, the foreign government official or designee who certifies the form prior to export, the U.S importer who verifies the contents of the shipment received and the customs broker who files the certification with CBP. The information collected via the Certification of Admissibility is already available to the respondents identified above and is normally recorded on various business and trade documents. The burden to transfer already available information is minimal, but it is necessary to pull the information together in one place so it can be submitted at the time of entry filing and evaluated at the time of entry processing or soon after release from the port.

The estimate to complete the Certification of Admissibility Form is 10 minutes, including gathering supporting documentation (e.g., landing reports, processor receipts) readily available to parties in the relevant business transactions. The proposed additional authority for use of this document will not change the estimate of time per response, only the number of responses. NMFS estimates that, in the event of import restrictions imposed on 10 foreign export fisheries, additional responses under the MMPA authority may increase the burden by 50% from the initial estimates for trade restrictions imposed under the authority of the High Seas Driftnet Fishing Moratorium Protection Act.

Revised 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. Costs for submitting the forms to NMFS via the ACE portal are nominal at an estimated \$10.00 total per year in incremental filing costs (paid by U.S. importer as part of entry filing).

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

NMFS estimates, in the event that import restrictions are imposed, it may increase the burden by 50% from the initial estimates for certification required 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 in certifications filed due to the new MMPA requirement, new totals would be: 90 respondents, 900 responses and 150 hours, with recordkeeping/reporting costs remaining at a maximum of \$10 per U.S. importer per year.

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.