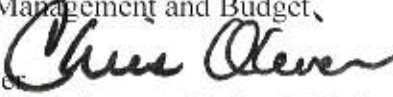




AUG 03 2018

MEMORANDUM FOR: Neomi Rao
Administrator, Office of Information and Regulatory Affairs
Office of Management and Budget,

FROM: Chris Oliver 
Assistant Administrator, National Marine Fisheries Service
National Oceanic and Atmospheric Administration
U.S. Department of Commerce

SUBJECT: Request for Emergency Review and Approval of a Revision to
OMB Control No. 0648-0651 to include the Fish and Fish Product
Import Provisions of the Marine Mammal Protection Act
[Final Rule RIN: 0648-AY15]

We are seeking an emergency Paperwork Reduction Act (PRA) clearance of revisions to an information collection previously approved under OMB Control No. 0648-0651. That collection implements certification of admissibility requirements for certain fish products exported from nations that are subject to trade restrictions under the authority of the High Seas Driftnet Fishing Moratorium Protection Act. The revisions are necessary to extend the certification of admissibility requirements for certain fish products exported from nations that are subject to trade restrictions under the authority of the Marine Mammal Protection Act (MMPA). These certification requirements are necessary to ensure that fish products subject to trade restrictions are not admitted into United States commerce. This action is intended to implement requirements of the MMPA while also ensuring that the United States is also in compliance with its obligations as a Member of the World Trade Organization (WTO). Failure to approve the MMPA certification of admissibility requirements on this emergency basis could lead to a violation of a recent court ruling to prohibit imports of fish products.

BACKGROUND

In August 2016, The National Marine Fisheries Service (NMFS) published a final rule (81 FR 54390; August 15, 2016) implementing the fish and fish product import provisions (section 101(a)(2)) of the Marine Mammal Protection Act (MMPA). This rule established conditions for evaluating a harvesting nation's regulatory programs to address incidental and intentional mortality and serious injury of marine mammals in fisheries operated by nations that export fish and fish products to the United States. Under this rule, fish or fish products cannot be imported into the United States from commercial fishing operations, which result in the incidental mortality or serious injury of marine mammals in excess of United States standards. Such fish and fish products can only be imported into the United States if the harvesting nation has applied for and received a comparability finding from NMFS. The rule established procedures that a harvesting nation must follow and conditions it must meet to receive a comparability finding for a fishery. The rule also established provisions for intermediary nations to ensure that such nations do not import and re-export to the United States fish or fish products that are subject to an import prohibition.



Given the need to consult with exporting nations about their commercial fishing operations and regulatory programs for the protection of marine mammals, the final rule established a five-year interim exemption period before import prohibitions would be applied. However, during the five-year interim exemption, NMFS would consider emergency action to ban imports of fish and fish products from a fishery having or likely to have an immediate and significant adverse impact on a marine mammal stock.

Plaintiffs Natural Resources Defense Council, Center for Biological Diversity, and Animal Welfare Institute brought action in the United States Court of International Trade to prevent irreparable harm to the vaquita, a critically endangered marine mammal endemic to Mexican waters of the northern Gulf of California. The principal cause of the vaquita's decline is entanglement and drowning in gillnets. If current levels of legal and illegal gillnet fishing continue, the species will likely be extinct in a few years. Prior to the lawsuit, the plaintiffs had petitioned NMFS to prohibit, under the authority of the MMPA, the import of fish and fish products from these fisheries.

On July 26, 2018, the court granted plaintiffs' motion for "a preliminary injunction requiring the Government, pending final adjudication of the merits, to ban the importation of all fish and fish products from Mexican commercial fisheries that use gillnets within the vaquita's range."

To ensure that the United States is compliant with its obligations as a Member of the WTO to be non-discriminatory in matters of trade, it is necessary to avoid trade restrictions that are so broad as to affect fisheries not governed by the injunction. Products of fisheries that do not employ gillnets or do not operate within the marine areas occupied by the vaquita must remain admissible to the U.S. seafood market. To accomplish the necessary balance, NMFS proposes to use a certification of admissibility whereby an official of the Government of Mexico would attest to the origin of the fish offered for entry into the United States as being derived from a fishery that did not employ gill nets or that was not operating the range of the vaquita. Absent such certification, the fish products would be deemed inadmissible and the entry filing would be rejected. NMFS would work with Customs and Border Protection (CBP) to identify those fish and fish products that would be subject to the import certification requirements so as not to unnecessarily burden fisheries not subject to the court-ordered injunction.

NMFS previously sought, and OMB approved, an information collection for certification of admissibility of fish and fish products subject to trade restrictions under the authority of the High Seas Driftnet Fishing Moratorium Protection Act (OMB control Number 0648-0651). That information collection operates in essentially the same manner as proposed for the MMPA in the current case. Trade restrictive measures imposed under the authority of the Moratorium Protection Act cannot be so broad as to be deemed arbitrary and/or discriminatory in contravention to U.S. obligations to the WTO. This emergency request would extend the existing information collection approval to include necessary trade documentation requirements implemented under the authority of the MMPA, thus allowing NMFS to comply with the court order and U.S. obligations to the WTO.