

SUPPORTING STATEMENT
U.S. Department of Commerce
National Oceanic & Atmospheric Administration
Fishery Products Subject to Trade Restrictions Pursuant to Certification Under the High
Seas Driftnet Fishing (HSDF) Moratorium Protection Act
OMB Control No. 0648-0651

Abstract

Extension of this approved collection is requested. Pursuant to the High Seas Driftnet Fishing Moratorium Protection Act (MPA) or the Marine Mammal Protection Act (MMPA), certain fish products may be excluded from U.S. markets. If certain fish or fish products of a nation are subject to import prohibitions (e.g., harvest of a particular fishery), the National Marine Fisheries Service (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. A duly authorized official/agent of the applicant's Government must certify that the fish being imported into the U.S. are of a species, or from a fishery, that is not subject to the import restriction. If a nation is identified under the MPA and fails to receive a positive certification decision from the Secretary of Commerce, products from that nation may be prohibited, and other products not subject to the import prohibitions must be accompanied by certification of admissibility. Likewise, if a nation does not receive a comparability finding for a fishery under the MMPA, products from that nation's fishery may be prohibited and products from other fisheries that are not subject to the import prohibitions must be accompanied by the certification of admissibility.

Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

This action requests the extension of an existing information collection. The information collection is currently 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 (MPA) and for certification of admissibility in the case of fish imports prohibited under the Marine Mammal Protection Act (MMPA).

The MPA final rule (76 FR 2011, 12 January 2011, RIN 0648-AV51) established a procedure for identifying nations that have vessels engaged in illegal fishing or bycatch of protected living marine resources. The 2011 enactment of the Shark Conservation Act established a requirement to also identify nations that have vessels engaged in unsustainable shark fishing on the high seas. Identified nations must take corrective action or risk a negative certification. Nations that are negatively certified are subject to trade restrictions on fish or fish products harvested in the identified fisheries.

The MMPA final rule (81 FR 54390, 15 August 2016, RIN 0648-AY15), 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 information collection is necessary to ensure compliance with any trade restrictions imposed on foreign nations under the authority of the MPA or the MMPA. If a nation is negatively certified, or a nation's export fishery fails to receive a comparability finding, certain fish or fish products from that fishery become subject to import prohibitions into the United States. 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 form will only have to be completed by a harvesting nation that receives a negative certification or is denied a comparability finding for some of its fisheries. In such cases, fish products from certain fisheries would be prohibited from entry into the U.S. market but not from other fisheries exporting fish products of like species. 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. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

Pursuant to the trade provisions of the MPA or MMPA, if certain fish or fish products of a nation's export fishery 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 sourced from a fishery that is not subject to an import restriction of the United States. The exporter and the duly authorized official/agent of the exporter's Government must specify the nation of origin and complete the 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.

In the event of the United States imposing trade measures in response to a negative certification (MPA) or a denial or revocation of a comparability finding (MMPA), 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 the “Certification of Admissibility” form and the general instructions to account for the situation of negatively certified nations or 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. For products subject to a trade restriction, NOAA/NMFS will provide U.S. Customs and Border Protection a list of nations and Harmonized Tariff Schedule Codes to delineate the embargoes and those products eligible for entry only with Certification of Admissibility. The U.S. Importer of Record must submit the certification to U.S. Customs and Border Protection via the Document Image System of the Automated Commercial Environment. Absent certification, the entry filing will be denied and the inbound shipment will not be released.

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 (CBP) 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 collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.

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. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Question 2

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 or like species of fish or fish products otherwise subject to embargo when such an embargo is imposed under the authority of the MPA or MMPA.

5. If the collection of information impacts small businesses or other small entities, describe any 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 a verification activity that is already being undertaken.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

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 or 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 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 positive certification or comparability finding.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner inconsistent with OMB guidelines.

The collection is consistent with the guidelines.

8. If applicable, provide a copy and identify the date and page number of publications in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Prior to this request for renewal, NMFS published a Federal Register Notice to solicit public comment on the burden imposed by this information collection (86 FR 62154, 9 November 2021). One comment was received from the Fisheries Agency of Japan (FAJ) in response to this 60-day Federal Register notice and NMFS considered this comment in the context of the current information collection as well as a planned regulatory amendment to the program. FAJ notes a domestic practice of commingling catches from multiple vessels at the landing port. In such cases, FAJ noted that attributing catch to particular vessels at the time of export would require search of past landing records. Also, FAJ noted that, under the MMPA, trade embargos would be applied against individual fisheries, rather than whole classes of fish products. Therefore, FAJ requested that individual foreign export fisheries be assigned a unique identification number by the United States and that number could be recorded on the Certification of Admissibility to validate that the catch did not originate from the prohibited fishery. NMFS plans to revise the Certification of Admissibility regulations to address enforcement issues that have come to light in the implementation of the program. (See entry for Seafood Import Procedures and Certification of Admissibility (RIN 0648-BK86) on the Fall 2021 Unified Agenda.) Because the program changes suggested by FAJ would require regulatory revisions, the comments from FAJ will be addressed in the course of that rulemaking rather than in this extension request.

It should be noted that the 2018 imposition of trade measures on Mexico under the authority of the MMPA (and subsequent extension in 2020) has not been disruptive to otherwise lawful trade. NMFS worked with CBP and the trade community, as well as the Government of Mexico, to communicate the requirements for certification, the list of affected tariff codes, and the protocol for submitting the certification via the DIS capability in ACE. Approximately 2,600 entries per year were received with certification in 2019 through 2021. In future instances of a certification requirement, NMFS anticipates ample time for consultation with the exporting nation and the

affected trade community, thereby allowing the completion of the Certification of Admissibility without disruption to otherwise lawful trade.

9. Explain any decision to provide any payment or gift 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 the assurance in statute, regulation, or agency policy. If the collection requires a systems of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.

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 or attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

No sensitive questions are asked.

12. Provide estimates of the hour 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 fishery reports, 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, or 0.167 hours, including gathering supporting documentation (e.g., landing reports, processor receipts) that is readily available to parties in the relevant business transactions. Using data provided by U.S. Customs and Border Protection on the number of Certification of Admissibility entries received during 2019, 2020 and 2021, NMFS calculated an average of 2,657 entries per year. In

speculating that import prohibitions could increase under the MPA or MMPA authority, we estimate that 5,000 entries will be the upper bound and we used that number for the calculations made in this document. NMFS, therefore, estimates that, in the event of import restrictions imposed on 10 foreign export fisheries, responses would be required of 100 respondents (“a” in the below table), each of which would submit an average of 50 responses per year (“b” in the below table), to yield a total of 5,000 responses (certified shipments) per year (“c” in the below table). As previously noted, this estimate of 5,000 responses is the upper bound of our estimate. These numbers are based on an examination of trade statistics and the number of traders that could potentially be subject to import restrictions. Using a time to complete of 0.167 hours (or 10 minutes, “d” in the table below) this results in an estimated burden of 835 total hours per year (“e” in the table below). Based upon May 2020 U.S. Bureau of Labor Statistics data, customs brokers are classified as business operations specialists and have a mean hourly range of \$40.53 (“f” in the table below), which yields a total annual wage burden cost of approximately \$33,842.55 (“g” in the table below).

Information Collection	Type of Respondent (e.g., Occupational Title)	# of Respondents / Year (a)	Annual # of Responses / Respondent (b)	Total # of Annual Responses (c) = (a) x (b)	Burden Hrs / Response (d)	Total Annual Burden Hrs (e) = (c) x (d)	Hourly Wage Rate (for Type of Respondent) (f)	Total Annual Wage Burden Costs (g) = (e) x (f)
Certification of Admissibility Form	Foreign Country Exporters, Foreign government officials, U.S. importers and U.S. customs broker	100	50	5000	0.167	835	\$40.53	\$33,842.55
TOTALS		100	50	5000	0.167	835	\$40.53	\$33,842.55

13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

Costs for submitting the forms to CBP and NMFS via the ACE portal are nominal at an estimated \$6.76 per form (“h” in table below, paid by U.S. importer to the customs broker as part of entry filing), which was derived by multiplying the time to upload each form to ACE via the document Image System (0.167 hours) by the average salary of such an employee (\$40.53/hour). Using the values for a, b, and c from the table in Question 12, this would yield a total annual cost burden of \$33,800 for broker fees paid by importers.

Information Collection	# of Respondents / Year (a)	Annual # of Responses /	Total # of Annual	Cost Burden /	Total Annual
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		Respondent (b)	Responses (c) = (a) x (b)	Respondent (h)	Cost Burden (i) = (c) x (h)
Certification of Admissibility Form	100	50	5000	\$6.76	\$33,800
TOTALS	100	50	5000	\$6.76	\$33,800

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

NMFS estimates, in the event that import restrictions are imposed, the estimated Federal costs for public notice of import restrictions, processing forms, assisting importers, and facilitating CBP enforcement are as follows:

Cost Descriptions	Grade/Step	Loaded Salary /Cost	% of Effort	Fringe (if Applicable)	Total Cost to Government
Federal Oversight	ZA - Band 3, Step 1	\$74,950	30%		\$ 22,485
Other Costs:	FRN Printing	-	-	-	\$ 2,000
TOTALS					\$ 24,485

15. Explain the reasons for any program changes or adjustments reported in ROCIS.

No program changes are made concurrent with this request for extension. NMFS is projecting a significant increase in the reporting burden estimates based on collection of more trade data on the implementation of the program, and speculation on an increase under MPA or MMPA authority due to potential trade restrictions.

Information Collection	Respondents		Responses		Burden Hours		Reason for change or adjustment
	Current Renewal / Revision	Previous Renewal / Revision	Current Renewal / Revision	Previous Renewal / Revision	Current Renewal / Revision	Previous Renewal / Revision	
Certification of Admissibility Form	100	90	5,000	900	835	150	Increase in respondents due to updated estimates based on recent trade data
Total for Collection	100	90	5,000	900	835	150	
Difference	+10		+4,100		+685		

Information Collection	Labor Costs		Miscellaneous Costs		Reason for change or adjustment
	Current	Previous	Current	Previous	
Certification of	\$33,843	NA	\$33,800	9,000	

Admissibility Form					
Total for Collection	\$33,843	NA	\$33,800	9,000	
Difference	+33,843		+24,800		

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

There are no plans to publish results.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

The expiration date will be displayed.

18. Explain each exception to the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

The agency certifies compliance with [5 CFR 1320.9](#) and the related provisions of [5 CFR 1320.8\(b\)\(3\)](#).