

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Madeleine Clayton 12/07/2001  
Departmental Forms Clearance Officer  
Office of the Chief Information Officer  
14th and Constitution Ave. NW.  
Room 6086  
Washington, DC 20230

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for the extension of approval of an information collection received on 10/05/2001.

TITLE: Swordfish Import Certificate of Eligibility

AGENCY FORM NUMBER(S): None

ACTION : APPROVED  
OMB NO.: 0648-0363  
EXPIRATION DATE: 12/31/2004

BURDEN	RESPONSES	BURDEN HOURS	BURDEN COSTS
Previous	6,500	6,500	0
New	5,700	5,700	0
Difference	-800	-800	0
Program Change		0	0
Adjustment		-800	0

TERMS OF CLEARANCE: None

NOTE: The agency is required to display the OMB control number and inform respondents of its legal significance (see 5 CFR 1320.5(b)).

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OMB Authorizing Official Title

Donald R. Arbuckle Deputy Administrator, Office of  
Information and Regulatory Affairs

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# PAPERWORK REDUCTION ACT SUBMISSION

**Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.**

1. Agency/Subagency originating request	2. OMB control number <span style="float: right;">b. <input type="checkbox"/> None</span> a. _____ - _____
3. Type of information collection ( <i>check one</i> ) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested ( <i>check one</i> ) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) ( <i>if applicable</i> )	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	10. Abstract
11. Affected public ( <i>Mark primary with "P" and all others that apply with "x"</i> ) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond ( <i>check one</i> ) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden ( <i>in thousands of dollars</i> ) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection ( <i>Mark primary with "P" and all others that apply with "X"</i> ) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting ( <i>check all that apply</i> ) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission)  Name: _____ Phone: _____

## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

**NOTE:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator or head of MB staff for L.O.s, or of the Director of a Program or Staff Office)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT**  
**SWORDFISH IMPORT CERTIFICATE OF ELIGIBILITY**  
**Extension of a Currently Approved Collection Applicable to Imported Swordfish**  
**OMB #0648-0363**

**Section A. Justification**

**1. Explain the circumstances that make the collection of information necessary.**

This supporting statement is submitted as part of PRA request for approval of an extension of a currently approved collection of information to require that imports of swordfish be accompanied by a certificate of eligibility for lawful entry into the customs territory of the United States.

The purpose of the collection of information through a certificate of eligibility (COE) for swordfish imports is to comply with the United States obligations under the Atlantic Tunas Convention Act of 1975 (ATCA; 16 U.S.C. 971, 50 CFR Part 630. ATCA requires the Secretary of Commerce (Secretary) to implement recommendations adopted by the International Commission of the Conservation of Atlantic Tunas (ICCAT). As a member nation of ICCAT, the United States is required to take part in the collection of biological statistics for research purposes. Thus, collection of information through mandatory dealer reporting provides current information on swordfish imports and allows the United States to monitor the size composition of imports and the relative value of these products. This information is important in the assessment of future rulemaking necessary to conserve overfished species.

A 1990 amendment of the Magnuson Fishery Conservation and Management Act (MFCMA; 16 U.S.C 1812, Section 102) authorized the Secretary of Commerce to manage the Highly Migratory Species in the Atlantic Ocean, Gulf of Mexico, and the Caribbean Sea. By delegation, Atlantic swordfish are managed by the National Marine Fisheries Service (NMFS) Office of Sustainable Fisheries (F/SF). One of the responsibilities of F/SF is to regulate U.S. fishers and control fishing mortality of this overfished species. The 1996 Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) requires NMFS to rebuild overfished stocks. In the case of Atlantic swordfish, minimum size limits are used to control the fishing mortality rate of mature fish. As quotas decrease due to conservation efforts of ICCAT, the U.S. fishing season for Atlantic swordfish will shorten, and imports are expected to increase due to the large demand for swordfish. It is necessary to monitor these imports to develop regulations to implement an ICCAT recommendation to ban the sale of undersized swordfish.

As management falls under MSFCMA as well as ATCA and the National Environmental Policy Act (NEPA), data and analyses on the socio-economics of the U.S. Atlantic swordfish fishery constitute an integral part of the basis for rulemaking and fishery management plan (FMP) preparation, particularly in determining Optimum Yield (OY) and in preparing the mandatory Regulatory Impact Review (RIR), Environmental Impact Statement (EIS), and other documentation. A certificate of eligibility for lawful entry into the customs territory of the

United States would provide essential information on the quantity, size, origin, and product form for management of the Atlantic swordfish fishery in the United States, particularly in terms of decisions concerning international trade of this overfished species which follow ICCAT and MSFCMA recommendations (ban the sale of undersize swordfish in the United States and prevent the disadvantaging of U.S. fishers).

In 1991, in order to protect small Atlantic swordfish, ICCAT adopted a minimum size measure recommending that each Contracting Party take necessary steps to prohibit the taking of swordfish in the Atlantic Ocean, as well as the landing and sale in each party's jurisdiction, of swordfish and swordfish parts less than 125 cm lower jaw fork length or the equivalent in weight, but allowing Contracting Parties to grant a 15 percent tolerance of small fish in number of fish to boats that incidentally catch such fish. Logbooks and dealer reports indicated that most of the small swordfish brought in under the 15 percent tolerance were greater than the alternative minimum size.

In 1996, under the authority of ATCA, the United States implemented an alternative minimum size limit recommended by ICCAT to prohibit the taking of swordfish in the Atlantic Ocean, as well as the landing and sale of swordfish and swordfish parts less than 119 cm lower jaw fork length, (73 cm or 29 inches cleithrum to keel length), or the equivalent in weight or the equivalent in weight (33 lb dressed weight) with no tolerance of swordfish smaller than this alternative minimum size allowed. This recommendation was estimated to result in the equivalent fishing mortality rate as the previous higher minimum size limit with the tolerance.

Regulations on the minimum size for possession or retention of Atlantic swordfish apply to both commercial (permitted) and recreational fishing vessels, regardless of ocean area or port of landing. Further, § 971(e) of ATCA prohibits the purchase or possession of any regulated species taken contrary to recommendations of ICCAT that have been adopted as U.S. regulations, without regard to the citizenship of the person or vessel that took the fish. As such, no swordfish below the minimum size limit should ever come into possession of a U.S. dealer by way of a U.S. vessel. However, because other ICCAT Contracting Parties have adopted the original option with a larger minimum size but with a 15% tolerance for undersized fish per trip, swordfish smaller than the U.S. minimum size could be lawfully taken by vessels of these countries and lawfully imported by U.S. dealers.

A 1995 ICCAT recommendation states that Contracting Parties shall ban the sale of swordfish less than the minimum size of 33 lbs dw. The United States fishermen are not permitted to land undersized fish; however, U.S. importers are currently permitted to import swordfish of any size. A certificate of eligibility for lawful entry into the customs territory of the United States would provide essential information on the quantity, size, origin, and product form for management of the Atlantic swordfish fishery in the United States, particularly in terms of decisions concerning international trade of this overfished species which follow ICCAT and MSFCMA recommendations (ban the sale of undersize swordfish in the United States and prevent the disadvantaging of U.S. fishers). Based on Customs data, about 5700 swordfish import shipments can be expected on an annual basis.

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

The information supplied on the COE will certify that the imported swordfish was harvested in compliance with the U.S. minimum size requirement, thus enabling Customs to release the shipment. Further, the COE will provide information on the flag nation of the harvesting vessel and the ocean area of catch, information not available from entry documents filed with the U.S. Customs Service. This information will be submitted to the NMFS' Science and Research Director twice each month by all swordfish importers by attachment to the Dealer Report for Highly Migratory Species (0648-0013). This information is used by NMFS to monitor the imports of Atlantic swordfish, thereby ensuring that the United States complies with its international obligations to ICCAT. In addition, the certificate of eligibility provides essential information for domestic management policy and rulemaking and for monitoring of international trade activities.

The fish size information supplied for imported swordfish will allow NMFS to characterize the conservation implications of the minimum size standards recommended by ICCAT. Information on the harvesting country will also be necessary to identify those nations that are fishing inconsistent with ICCAT recommendations so that NMFS can determine if trade restrictions are necessary.

Importers of swordfish must submit biweekly dealer reports (not required to be on a standard form) of their importing activities. The required information collected from the importer report (separate collection 0648-0013) would include the following data elements from the COE:

- (A) Total weight of swordfish shipment
- (B) Flag state of harvesting vessel for each shipment
- (C) Ocean area of catch for each shipment

Without a COE completed by the exporter, this information would not be readily accessible to U.S. importers. If this information collection were not conducted, the United States would not be able to effectively enforce the minimum size requirement for swordfish imports. Without such a requirement, the conservation standard applied to fishing vessels of the United States could not be applied to vessels of other nations, thus disadvantaging U.S. fishermen.

**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.**

This collection of information does not involve the use of automated, electronic, mechanical, or other technological techniques. However, to facilitate compliance, a model form shall be made

available on the World Wide Web for printing by persons exporting swordfish to the United States.

**4. Describe efforts to identify duplication.**

A COE helps the agency characterize imports of swordfish from all ocean areas. To this extent, the COE provides unique information that is essential for estimating the impacts of future rulemaking. NMFS currently receives some information of this sort from U.S. Customs; However, Customs data do not include specific information on the size of swordfish, the flag state of the harvesting vessel, or the ocean area of catch. It is necessary to collect this information to assess the effectiveness of the ICCAT swordfish conservation program. While the COE information will actually be reported to NMFS by transcription or attachment to the biweekly dealer report (separate collection 0648-0013), lack of a COE completed by exporters would increase the burden on U.S. importers for obtaining the needed information after the fact.

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

A COE would not have a significant impact on small businesses, organizations or government bodies. The information required on the COE is readily available to dealers in exporting countries and assembly of this information would not require any significant incremental investment in information processing technology or infrastructure. There could be some delays in shipping fresh fish while government validation is obtained for the COE. NMFS is addressing this issue through ICCAT with the pending development of a comprehensive statistical documentation program for which OMB approval will be requested.

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

A COE for all shipments is necessary for enforcement of the prohibition on sale of undersized Atlantic swordfish. The information from the COE will be used for completion of the importation reports. A COE for each shipment will ensure that importers obtain the required information in time to submit the biweekly reports (separate collection 0648-0013).

**7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.**

Collection of information will be made in a manner consistent with OMB guidelines.

**8. Provide a copy of 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 issued a Notice for the continuing information collection (66 FR 33531, June 22, 2001) and no comments were received during the 60-day comment.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

The agency does not provide gifts or payment to permit holders upon submitting reports.

**10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.**

It is agency policy not to release confidential information, other than in aggregate form, as Section 402 of the MSFCMA protects (in perpetuity) the confidentiality of those submitting information. On occasion, NMFS produces summaries of permit information by category (vessel permits vs dealer permits) but information on individual permit holders is not released.

**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 information of a sensitive nature is requested.

**12. Provide an estimate in hours of the burden of the collection of information.**

Approximately 5700 COEs would be required to account for all swordfish entries on an annual basis. Current Customs data indicate 204 exporters would be affected by this requirement. It is estimated that the swordfish COE form will take 60 minutes to complete including the time to obtain government validation. Negative reports will not be necessary because NMFS can cross reference Customs data to determine if reports are delinquent. Assuming all importers submit a report for each biweekly period, the total annual burden is :

$$5700 \text{ COEs} * 1 \text{ hour/report} = 5700 \text{ hours/year}$$

This is an average estimate and includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Assuming a wage rate for a clerical worker of \$20.00/hour (including overhead and fringe benefits), annual cost burden per respondent is estimated at \$114,000.00.

**13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection.**

The information required on the COE is readily available to exporters. Requiring the COE to accompany all import shipments will ensure that the information is available to U.S. importers for inclusion in the bi-weekly reports. Assembly of this information would not require any significant incremental investment in information processing technology or infrastructure. There are no costs associated with this reporting requirement other than the burden hour costs estimated in Item #12.

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

The government costs of the COE information collection are already accounted for by processing importation reports. The information from each COE will be transferred to the biweekly importation report (separate PRA submission under OMB #0648-0013). Alternatively, importers may attach all COEs received to the biweekly report for that period.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

An adjustment in burden hours (Item #12) has been made to reflect a re-estimate of the number of respondents.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

Information collected from the COE will be published in environmental assessments, environmental impact statements, reports to ICCAT and regulatory impact reviews. The data will be presented in aggregate form, which will not lead to the identification of individual permit holders.

**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.**

The model COE form will display the OMB Control Number and expiration date.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

No exceptions are requested.

**SECTION B. COLLECTIONS EMPLOYING STATISTICAL METHODS**

This collection of information will not employ statistical methods.



## Swordfish Certificate of Eligibility

Date: \_\_\_\_\_

I, \_\_\_\_\_ (a government official or authorized person), for the Government of \_\_\_\_\_, certify that the shipment of swordfish (*Xiphias gladius*) accompanied by this certificate, consisting of \_\_\_\_\_ (total weight in kg) in \_\_\_\_\_ (number and kind of packages) containers bearing the following marks and numbers (e.g., Box 3 of 5): \_\_\_\_\_

\_\_\_\_\_.

(a) Contains no swordfish harvested from the Atlantic Ocean.

(b) Contains no swordfish or pieces of swordfish harvested from the Atlantic Ocean that are less than 33 lb (15 kg).

(c) Contains pieces of swordfish harvested from the Atlantic Ocean that are less than 33 lb (15 kg) that were derived from a swordfish that weighed greater than 33 lb (15 kg) dressed weight.

I further certify that such swordfish were caught in the waters of the \_\_\_\_\_ (Atlantic, Pacific, Indian) Ocean by a vessel bearing the flag of \_\_\_\_\_ (nation) .

Signature of government official or authorized person \_\_\_\_\_

SEAL/STAMP below Title/Agency \_\_\_\_\_

Address \_\_\_\_\_

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Form 7501 Entry Number (to be added by importer) \_\_\_\_\_

**Importer: Please submit this form to NMFS with the appropriate bi-weekly dealer report form that documents this swordfish shipment.**

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**PAPERWORK REDUCTION ACT NOTICE:** Collection of information through a Certificate of Eligibility provides essential information for the conservation and management of Atlantic swordfish. Information on harvesting country and ocean will be used to enforce the U.S. minimum size limit for Atlantic swordfish. Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, gathering and maintaining the data needed, and completing, validating, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: NMFS, F/SF1, 1315 East-West Highway, Silver Spring, MD 20910. Under the authority of the Atlantic Tunas Convention Act and its implementing regulations at Title 50 Code of Federal Regulations Part 630, all swordfish imported into the customs territory of the United States must be accompanied by a Certificate of Eligibility. This Certificate must be executed by a duly authorized official of the country exporting swordfish to the United States and the certificate must be authenticated with respect to the signature and official position of the person. It is NOAA policy to preserve the confidentiality of information submitted under this reporting requirement, except that NMFS may release such information in aggregate or summary form, such that individual identifiers are not disclosed (NAO 216-100). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. OMB Control # 0648-0363, Expires 12/31/2001. (3/29/99)

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**§ 635.45**

Such list will indicate the circumstances of exemption for each issuing country and the non-government institutions, if any, accredited to validate BSDs for that country.

(b) *Exports.* The approved BSD accompanying any export of BFT from the United States must be validated by a U.S. Government official, except pursuant to a waiver, if any, specified on the form and accompanying instructions, or in a letter to the permitted dealer from NMFS. Any waiver of government validation will be consistent with ICCAT recommendations concerning validation of BSDs. If authorized, such waiver of government validation may include:

(1) Exemptions from government validation for fish with individual BSD tags affixed pursuant to § 300.26 of this title or § 635.5(b)(2)(ii); or

(2) Validation by non-government officials authorized to do so by NMFS under paragraph (c) of this section.

(c) *Authorization for non-government validation.* An institution or association seeking authorization to validate BSDs accompanying exports from the United States must apply in writing to the Director for such authorization. The application must indicate the procedures to be used for verification of information to be validated, list the names, addresses, and telephone/fax numbers of individuals to perform validation, and provide an example of the stamp or seal to be applied to the BSD. NMFS, upon finding the institution or association capable of verifying the information required on the BSD, will issue, within 30 days, a letter specifying the duration of effectiveness and conditions of authority to validate BSDs accompanying exports from the United States. The effectiveness of such authorization will be delayed as necessary for NMFS to notify the ICCAT Secretariat of non-government institutions and associations authorized to validate BSDs.

**§ 635.45 Import restrictions for Belize, Honduras, and Panama.**

All shipments of BFT or BFT products in any form harvested by a vessel of Belize, Honduras, or Panama will be denied entry into the United States.

**50 CFR Ch. VI (10–1–00 Edition)**

**§ 635.46 Import restrictions on swordfish.**

(a) *General.* To facilitate enforcement of domestic regulations, a swordfish, or part thereof, less than the minimum size specified at § 635.20(e) may not be imported, or attempted to be imported, into the United States unless it is accompanied by the swordfish certificate of eligibility as specified in paragraph (b) of this section attesting either that the swordfish was harvested from an ocean area other than the Atlantic Ocean or that the fish part was derived from a swordfish, harvested from the Atlantic Ocean, that weighed at least 33 lb (15 kg) dw at harvest.

(b) *Swordfish COE.* (1) A shipment of swordfish in any form offered for import into the United States, directly or indirectly, from any country is admissible only if accompanied by a swordfish COE. A swordfish COE is required for swordfish identified by any item number from the Harmonized Tariff Schedule including but not limited to the following:

(i) Fresh or chilled swordfish steaks, No. 0302.69.20.41.

(ii) Fresh or chilled swordfish, excluding steaks, No. 0302.69.20.49.

(iii) Frozen swordfish steaks, No. 0302.79.20.41.

(iv) Frozen swordfish, excluding fillets, steaks and other fish meat, No. 0302.79.20.49.

(v) Frozen swordfish, fillets, No. 0304.20.60.92.

(2) The swordfish COE required under this section must indicate, in English, the flag state of the harvesting vessel, the ocean area of harvest and, if the shipment contains swordfish or parts thereof less than the minimum size specified at § 635.20(e), the reason such swordfish is eligible for entry, as specified in paragraph (a) of this section. The swordfish COE shall be attached to the invoice accompanying the swordfish shipment from the point of original export up to and including the point of first transaction in the United States.

(3) The swordfish COE required under this section must include, in English, the date, the name, the title of the governmental official or other authorized

## Fishery Conservation and Management

## § 635.53

person, and the name of the authorizing government agency of the country exporting the swordfish to the United States. The swordfish COE must be signed and dated by that governmental official or authorized person with an official government seal affixed, thus validating the information on the COE. (4) A swordfish COE may refer to swordfish taken from only one ocean area of harvest (i.e., Atlantic, Pacific, Indian) and by vessels under the jurisdiction of only one nation. If a shipment contains swordfish taken from more than one ocean area, or swordfish harvested by several vessels from different flag states, a separate swordfish COE must accompany the shipment for each ocean area of harvest and for each flag nation of the harvesting vessels.

(5) A model swordfish COE can be obtained by contacting the Division Chief. An equivalent form may be used provided it contains all the information required under this section.

(6) The importer must write the Customs Form 7501 entry number on each swordfish COE and attach to the dealer report form all swordfish COEs from shipments that are recorded on the bi-weekly dealer report form.

### § 635.47 Ports of entry.

NMFS shall monitor the importation of BFT and swordfish into the United States. If NMFS determines that the diversity of handling practices at certain ports at which BFT or swordfish is being imported into the United States allows for circumvention of the BSD or swordfish COE requirement, NMFS may designate, after consultation with the U.S. Customs Service, those ports at which Pacific or Atlantic bluefin tuna or swordfish from any source may be imported into the United States. NMFS shall announce through filing with the Office of the Federal Register for publication the names of ports so designated and the effective dates of entry restrictions.

### Subpart E—International Port Inspection

#### § 635.50 Basis and purpose.

The regulations in this subpart implement the ICCAT port inspection

scheme. The text of the ICCAT port inspection scheme may be obtained from NMFS.

#### § 635.51 Authorized officer.

For the purposes of this subpart, an authorized officer is a person appointed by an ICCAT contracting party to serve as an authorized inspector for ICCAT, and who possesses identification issued by the authorized officer's national government.

#### § 635.52 Vessels subject to inspection.

(a) All U.S. fishing vessels or vessels carrying fish species subject to regulation pursuant to a recommendation of ICCAT, and their catch, gear, and relevant documents, including fishing logbooks and cargo manifests, are subject to inspection under this subpart to verify compliance with ICCAT measures by an authorized officer when landing or transshipping tuna or when making a port call at a port of any ICCAT contracting party.

(b) A vessel, or a vessel carrying fish species subject to regulation pursuant to a recommendation of ICCAT, that is registered by any of the ICCAT contracting parties, and the vessel's catch, gear, and relevant documents, including fishing logbooks and cargo manifests, are subject to inspection under this subpart to verify compliance with ICCAT measures when landing or transshipping regulated species or when making a port call in the United States.

(c) The master of a vessel, or a vessel carrying fish species subject to regulation pursuant to a recommendation of ICCAT, must cooperate with an authorized officer during the conduct of an inspection in national and foreign ports. Inspections will be carried out so that the vessel suffers minimum interference and inconvenience, and so that degradation of the quality of catch is avoided.

#### § 635.53 Reports.

(a) Apparent violations shall be reported by the authorized officer on a standardized ICCAT form or form produced by the national government which collects the same quality of information. The authorized officer must sign the form in the presence of the

## Sec. 971d. Administration

- (a) Regulations; cooperation with other parties to Convention; utilization of personnel, services, and facilities for enforcement

The Secretary is authorized and directed to administer and enforce all of the provisions of the Convention, this chapter, and regulations issued pursuant thereto, except to the extent otherwise provided for in this chapter. In carrying out such functions the Secretary is authorized and directed to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this chapter, and with the concurrence of the Secretary of State, he may cooperate with the duly authorized officials of the government of any party to the Convention. In addition, the Secretary may utilize, with the concurrence of the Secretary of the department in which the Coast Guard is operating insofar as such utilization involves enforcement at sea, with or without reimbursement and by agreement with any other Federal department or agency, or with any agency of any State, the personnel, services, and facilities of that agency for enforcement purposes with respect to any vessel in the exclusive economic zone, or wherever found, with respect to any vessel documented under the laws of the United States, and any vessel numbered or otherwise licensed under the laws of any State. When so utilized, such personnel of the States of the United States are authorized to function as Federal law enforcement agents for these purposes, but they shall not be held and considered as employees of the United States for the purposes of any laws administered by the Director of the Office of Personnel Management.

- (b) Primary enforcement responsibility

Enforcement activities at sea under the provisions of this chapter for fishing vessels subject to the jurisdiction of the United States shall be primarily the responsibility of the Secretary of the department in which the Coast Guard is operating, in cooperation with the Secretary and the United States Customs Service. The Secretary after consultation with the Secretary of the department in which the Coast Guard is operating, shall adopt such regulations as may be necessary to provide for procedures and methods of enforcement pursuant to article IX of the Convention.

- (c) Regulations and other measures to carry out Commission recommendations

- (1)

- (A) Upon favorable action by the Secretary of State under section [971c](#)(a) of this title on any recommendation of the Commission made pursuant to article VIII of the Convention, the Secretary shall promulgate, pursuant to this subsection, such regulations as may be necessary and appropriate to carry out such recommendation.
- (B) Not later than June 30, 1991, the Secretary shall promulgate any additional regulations necessary to ensure that the United States is in full compliance with all recommendations

made by the Commission that have been accepted by the United States and with other agreements under the Convention between the United States and any nation which is a party to the Convention.

- (C) Regulations promulgated under this paragraph shall, to the extent practicable, be consistent with fishery management plans prepared and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).
- (2) To promulgate regulations referred to in paragraph (1) of this subsection, the Secretary shall publish in the Federal Register a general notice of proposed rulemaking and shall afford interested persons an opportunity to participate in the rulemaking through (A) submission of written data, views, or arguments, and (B) oral presentation at a public hearing. Such regulations shall be published in the Federal Register and shall be accompanied by a statement of the considerations involved in the issuance of the regulations, and by a statement, based on inquiries and investigations, assessing the nature and effectiveness of the measures for the implementation of the Commission's recommendations which are being or will be carried out by countries whose vessels engage in fishing the species subject to such recommendations within the waters to which the Convention applies. After publication in the Federal Register, such regulations shall be applicable to all vessels and persons subject to the jurisdiction of the United States on such date as the Secretary shall prescribe. The Secretary shall suspend at any time the application of any such regulation when, after consultation with the Secretary of State and the United States Commissioners, he determines that fishing operations in the Convention area of a contracting party for whom the regulations are effective are such as to constitute a serious threat to the achievement of the Commission's recommendations.
- (3) The regulations required to be promulgated under paragraph (1) of this subsection may -
  - (A) select for regulation one or more of the species covered by the Convention;
  - (B) divide the Convention waters into areas;
  - (C) establish one or more open or closed seasons as to each such area;
  - (D) limit the size of the fish and quantity of the catch which may be taken from each area within any season during which fishing is allowed;
  - (E) limit or prohibit the incidental catch of a regulated species which may be retained, taken, possessed, or landed by vessels or persons fishing for other species of fish;
  - (F) require records of operations to be kept by any master or other person in charge of any fishing vessel;
  - (G) require such clearance certificates for vessels as may be necessary to carry out the purposes of the Convention and this chapter;
  - (H) require proof satisfactory to the Secretary that any fish subject to regulation pursuant to a recommendation of the



Commission offered for entry into the United States has not been taken or retained contrary to the recommendations of the Commission made pursuant to article VIII of the Convention which have been adopted as regulations pursuant to this section;

- (I) require any commercial or recreational fisherman to obtain a permit from the Secretary and report the quantity of the catch of a regulated species;
  - (J) require that observers be carried aboard fishing vessels for the purpose of providing statistically reliable scientific data; and
  - (K) impose such other requirements and provide for such other measures as the Secretary may determine necessary to implement any recommendation of the Convention or to obtain scientific data necessary to accomplish the purpose of the Convention; except that no regulation promulgated under this section may have the effect of increasing or decreasing any allocation or quota of fish or fishing mortality level to the United States agreed to pursuant to a recommendation of the Commission.
- (4) Upon the promulgation of regulations provided for in paragraph (3) of this subsection, the Secretary shall promulgate, with the concurrence of the Secretary of State and pursuant to the procedures prescribed in paragraph (2) of this subsection, additional regulations which shall become effective simultaneously with the application of the regulations provided for in paragraph (3) of this subsection, which prohibit -
    - (A) the entry into the United States of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission; and
    - (B) the entry into the United States, from any country when the vessels of such country are being used in the conduct of fishing operations in the Convention area in such manner or in such circumstances as would tend to diminish the effectiveness of the conservation recommendations of the Commission, of fish in any form of those species which are subject to regulation pursuant to a recommendation of the Commission and which were taken from the Convention area.
  - (5) In the case of repeated and flagrant fishing operations in the Convention area by the vessels of any country which seriously threaten the achievement of the objectives of the Commission's recommendations, the Secretary with the concurrence of the Secretary of State, may by regulations promulgated pursuant to paragraph (2) of this subsection prohibit the entry in any form from such country of other species covered by the Convention as may be under investigation

by the Commission and which were taken in the Convention area. Any such prohibition shall continue until the Secretary is satisfied that the condition warranting the prohibition no longer exists, except that all fish in any form of the species under regulation which were previously prohibited from entry shall continue to be prohibited from entry.

- (6) Identification and notification. -
  - (A) Not later than July 1, 1996, and annually thereafter, the Secretary, in consultation with the Secretary of State, the Commissioners, and the advisory committee, shall -
    - (i) identify those nations whose fishing vessels are fishing, or have fished during the preceding calendar year, within the convention area in a manner or under circumstances that diminish the effectiveness of a conservation recommendation;
    - (ii) notify the President and the nation so identified, including an explanation of the reasons therefor; and
    - (iii) publish a list of those Nations identified under clause
      - (i) notify the President and the nation so identified,
    - (B) In identifying those Nations, the Secretary shall consider, based on the best available information, whether those Nations have measures in place for reporting, monitoring, and enforcement, and whether those measures diminish the effectiveness of any conservation recommendation.
  - (7) Consultation. - Not later than 30 days after a Nation is notified under paragraph (6), the President may enter into consultations with the Government of that Nation for the purpose of obtaining an agreement that will -
    - (A) effect the immediate termination and prevent the resumption of any fishing operation by vessels of that Nation within the Convention area which is conducted in a manner or under circumstances that diminish the effectiveness of the conservation recommendation;
    - (B) when practicable, require actions by that Nation, or vessels of that Nation, to mitigate the negative impacts of fishing operations on the effectiveness of the conservation recommendation involved, including but not limited to, the imposition of subsequent-year deductions for quota overages; and
    - (C) result in the establishment, if necessary, by such Nation of reporting, monitoring, and enforcement measures that are adequate to ensure the effectiveness of conservation recommendations.
- (d) Recommended Commission actions regarding large-scale driftnet fishing and conservation of Atlantic swordfish
  - (1) It is the sense of the Congress that the Secretary, in consultation with the Secretary of

State, should seek support for a recommendation by the Commission to ban large-scale driftnet fishing (as that term is defined in section 3(16) [\[1\]](#) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(16))) in the Convention area.

- (2) The Secretary, in consultation with the Secretary of State, shall request the Commission to adopt recommendations necessary for the conservation and management of Atlantic swordfish. In making the request, the Secretary shall seek the establishment of an international minimum harvest size and a reduction in harvest levels to the extent necessary to conserve the stock. Until the Commission adopts all the conservation and management measures requested by the Secretary, the Secretary, within 3 months after each annual meeting of the Commission, shall notify Congress as to the nature and results of his request. These notifications shall identify those nations not acting to conserve and manage Atlantic swordfish, and recommend measures which could be taken to achieve effective international conservation and management of the stock.
- 

## Footnotes

[\[1\]](#) See References in Text note below.

## Sec. 1822. International fishery agreements

- (a) Negotiations

The Secretary of State -

- (1) shall renegotiate treaties as provided for in subsection (b) of this section;
- (2) shall negotiate governing international fishery agreements described in section [1821](#)(c) of this title;
- (3) may negotiate boundary agreements as provided for in subsection (d) of this section;
- (4) shall, upon the request of and in cooperation with the Secretary, initiate and conduct negotiations for the purpose of entering into international fishery agreements -
  - (A) which allow fishing vessels of the United States equitable access to fish over which foreign nations assert exclusive fishery management authority, and
  - (B) which provide for the conservation and management of anadromous species and highly migratory species; and
- (5) may enter into such other negotiations, not prohibited by subsection (c) of this section, as may be necessary and appropriate to further the purposes, policy, and provisions of this chapter.

- (b) Treaty renegotiation

The Secretary of State, in cooperation with the Secretary, shall initiate, promptly after April 13, 1976, the renegotiation of any treaty which pertains to fishing within the exclusive economic zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area, and which is in any manner inconsistent with the purposes, policy, or provisions of this chapter, in order to conform such treaty to such purposes, policy, and provisions. It is the sense of Congress that the United States shall withdraw from any such treaty, in accordance with its provisions, if such treaty is not so renegotiated within a reasonable period of time after April 13, 1976.

- (c) International fishery agreements

No international fishery agreement (other than a treaty) which pertains to foreign fishing within the exclusive economic zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area

- - (1) which is in effect on June 1, 1976, may thereafter be renewed, extended, or amended; or
  - (2) may be entered into after May 31, 1976; by the United States unless it is in accordance

with the provisions of section [1821](#)(c) of this title or section [1824](#)(e) of this title.

- (d) Boundary negotiations

The Secretary of State, in cooperation with the Secretary, may initiate and conduct negotiations with any adjacent or opposite foreign nation to establish the boundaries of the exclusive economic zone of the United States in relation to any such nation.

- (e) Highly migratory species agreements

- (1) Evaluation

The Secretary of State, in cooperation with the Secretary, shall evaluate the effectiveness of each existing international fishery agreement which pertains to fishing for highly migratory species. Such evaluation shall consider whether the agreement provides for -

- (A) the collection and analysis of necessary information for effectively managing the fishery, including but not limited to information about the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the catch and bycatch levels in the fishery, and the present and probable future condition of any stock of fish involved;
    - (B) the establishment of measures applicable to the fishery which are necessary and appropriate for the conservation and management of the fishery resource involved;
    - (C) equitable arrangements which provide fishing vessels of the United States with (i) access to the highly migratory species that are the subject of the agreement and (ii) a portion of the allowable catch that reflects the traditional participation by such vessels in the fishery;
    - (D) effective enforcement of conservation and management measures and access arrangements throughout the area of jurisdiction; and
    - (E) sufficient and dependable funding to implement the provisions of the agreement, based on reasonable assessments of the benefits derived by participating nations.

- (2) Access negotiations

The Secretary of State, in cooperation with the Secretary, shall initiate negotiations with respect to obtaining access for vessels of the United States fishing for tuna species within the exclusive economic zones of other nations on reasonable terms and conditions.

- (3) Reports

The Secretary of State shall report to the Congress -



suspension of liquidation instructions will remain in effect until further notice.

### International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether imports of subject merchandise are causing material injury, or threaten material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceedings will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing Customs Service officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 14, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

### Appendix—Issues in Decision Memorandum

1. Whether LM Is Affiliated with a Trading Company
2. Facts Available
3. Brokerage Expenses in the Third Country Market
4. Inclusion of Non-Operating Expenses in Revised G&A Ratio
5. Credit Expenses

[FR Doc. 01-15744 Filed 6-21-01; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 061901A]

### Proposed Information Collection; Comment Request; Swordfish Import Certificate of Eligibility

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to

take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506 (c)(2)(A)).

**DATES:** Written comments must be submitted on or before August 21, 2001.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Christopher Rogers, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 (phone 301-713-2347).

### SUPPLEMENTARY INFORMATION:

#### I. Abstract

Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), NOAA is responsible for management of the Nation's marine fisheries. In addition, NOAA must comply with the United States' obligations under the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*). A Certificate of Eligibility for Swordfish is required under 50 CFR part 635 to accompany all imported swordfish. This documentation certifies that the accompanying swordfish is not from the Atlantic Ocean, or is from the Atlantic Ocean but is larger than the minimum size, or is Atlantic swordfish pieces derived from a fish greater than the minimum size limit. The certificate must accompany the swordfish from the point of original export up to and including the point of first transaction in the United States. This collection is necessary to implement the Fishery Management Plan for Atlantic Tunas, Sharks, and Swordfish and is consistent with the objective of that plan to rebuild Atlantic swordfish and manage a sustainable fishery.

#### II. Method of Collection

A paper certificate is completed and must be maintained.

#### III. Data

*OMB Number:* 0648-0363.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 204.

*Estimated Time Per Response:* 1 hour.

*Estimated Total Annual Burden*

*Hours:* 5,700.

*Estimated Total Annual Cost to Public:* \$0.

### IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 15, 2001.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 01-15745 Filed 6-21-01; 8:45 am]

BILLING CODE 3510-22-S

## COMMODITY FUTURES TRADING COMMISSION

### Study of the Commodity Exchange Act and Rules Thereunder

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of solicitation of comments.

**SUMMARY:** The Commodity Futures Trading Commission (Commission) is soliciting comments to assist it in conducting a study of the Commodity Exchange Act (Act) and the Commission's rules and orders governing the conduct of registrants under the Act, as mandated by Section 125 of the Commodity Futures Modernization Act of 2000 (CFMA). That provision requires that the Commission, in conducting the study, solicit the views of the public, Commission registrants, registered entities and registered futures associations, and that an analysis of