

accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether the benefit of designation would outweigh threats to the species caused by the designation, such that the designation of critical habitat is prudent.

(2) Specific information on:

- The amount and distribution of habitat of the southwest Alaska DPS of the northern sea otter,
- What areas occupied at the time of listing and that contain features essential for the conservation of the species we should include in the designation and why, and
- What areas not occupied at the time of listing are essential to the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts.

(5) Any areas that might be appropriate for exclusion from the final designation under section 4(b)(2) of the Act.

(6) Special management considerations or protections that the proposed critical habitat may require.

(7) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

We are also in the process of preparing a draft Economic Analysis of the proposed critical habitat designation, which will be made available for public review and comment. We will publish a separate Notice of Availability for the draft Economic Analysis.

#### Public Comments Solicited

We will accept written comments and information we receive on or before July 1, 2009. You may submit comments and materials concerning the proposed rule by one of the methods listed in the **ADDRESSES** section.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including your personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on <http://www.regulations.gov>. Comments previously submitted on the December 16, 2008 proposed rule (73 FR 76454) need not be resubmitted, as they have been incorporated into the public record and will be fully considered in preparation of the final rule. Comments submitted during this reopened comment period also will be incorporated into the public record and will be fully considered in the final rule.

Comments and materials we receive, as well as supporting documentation we used in preparing this notice, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Marine Mammals Management Office (see **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the proposed rule on the Internet at <http://www.regulations.gov>, or by mail from the Marine Mammals Management Office in Anchorage, Alaska.

#### Author

The primary author of this package is the Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503.

#### Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 29, 2009.

#### Will Shafroth,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[Docket No. 090223227–9691–01]

RIN 0648–AX63

#### Electronic Filing of Trade Documents for Fishery Products

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Advance notice of proposed rulemaking; request for comments.

**SUMMARY:** NMFS issues this advance notice of proposed rulemaking to announce that it is revising procedures to file import and export documentation for certain fishery products to meet requirements of the SAFE Port Act of 2006, the Magnuson–Stevens Fishery Conservation and Management Act, other applicable statutes, and obligations that arise from U.S. participation in regional fishery management organizations. Specifically, NMFS intends to integrate the collection of trade documentation within the government-wide International Trade Data System and require electronic information collection through the automated internet portal maintained by the United States Customs and Border Protection. NMFS is seeking advance public comment on the feasibility of electronic reporting by parties involved in an import or export transaction for applicable seafood products.

**DATES:** Written comments must be received by August 6, 2009.

**ADDRESSES:** Written comments on this action and requests for background information should be addressed to Christopher Rogers, Trade and Marine Stewardship Division, Office of International Affairs, NMFS. Comments and requests, identified by 0648–AX63, may be submitted by any of the following methods:

- Federal e–Rulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Christopher Rogers, Trade and Marine Stewardship Division, Office of International Affairs, NMFS, 1315 East–West Highway, Room 12657, Silver Spring, MD 20910.
- Fax: 301–713–9106, Attn: Christopher Rogers.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change.

All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**

Christopher Rogers (phone:301-713-9090, fax:301-713-9106, e-mail: [christopher.rogers@noaa.gov](mailto:christopher.rogers@noaa.gov)).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Security and Accountability For Every Port Act of 2006 (SAFE Port Act, Public Law 109-347) requires all Federal agencies with a role in admissibility decisions for imports to collect information electronically through the international trade data system (ITDS). The Department of the Treasury has the lead on ITDS development and Federal agency integration. The U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has developed the Automated Commercial Environment (ACE) as the internet-based portal for the collection and dissemination of information for ITDS. The Office of Management and Budget, through its e-government initiative, has oversight regarding Federal agency participation in ITDS, with a focus on reducing duplicate reporting across agencies and migrating paper based reporting systems to electronic information collection.

Numerous Federal agencies are involved in the regulation of international trade and many of these agencies participate in the import, export and transportation related decision-making process. Agencies also use trade data to monitor and report on trade activity. ITDS is an integrated, government-wide system for the electronic collection, use, and dissemination of the international trade and transportation data Federal agencies need to perform their missions. ITDS is a "single window" concept: a single internet portal (ACE) for the trade community to submit all the required standardized commodity and transportation data pertaining to an import or export transaction. Data from ITDS is transmitted to all government agencies legally authorized to receive such information. Detailed information

on ITDS and the ACE portal is available at: <http://www.itds.gov>.

NMFS has become a participating government agency in the ITDS project because of its role in monitoring the imports of certain fishery products. NMFS is working with CBP to determine the extent to which current seafood import documentation programs can be adapted to collect required data through the ACE portal. Electronic collection of seafood trade data through the ACE portal will reduce the public reporting burden, reduce the agency's data collection costs, improve the timeliness and accuracy of admissibility decisions, and increase the effectiveness of applicable trade restrictive measures.

**Authorities for Trade Measures**

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (Public Law 109-479), amended the High Seas Driftnet Moratorium Protection Act (Public Law 104-43) to require U.S. actions to address illegal, unregulated and unreported (IUU) fishing activity and bycatch of protected living marine resources (PLMR). Specifically, the amendments require the Secretary of Commerce (Secretary) to identify in a biennial report to Congress those foreign nations whose vessels are engaged in IUU fishing or fishing that results in bycatch of PLMR. The Secretary is also required to establish procedures to certify whether nations identified in the biennial report are taking appropriate corrective actions to address IUU fishing or bycatch of PLMR by its fishing vessels (74 FR 1919, January 14, 2009). Based upon the outcome of the certification procedure, these nations could be subject to import prohibitions under the authority provided in the High Seas Driftnet Fisheries Enforcement Act (codified at 16 U.S.C. 1826a).

Additionally, there are identification and/or certification procedures in other statutes, including the Pelly Amendment to the Fishermen's Protective Act (codified at 22 U.S.C. 1978) and the Atlantic Tunas Convention Act (codified at 16 U.S.C. 971). These procedures may result in trade restrictive measures for a certified country for those fishery products associated with the activity that resulted in the certification. Further, import prohibitions for certain fishery products could also be applied under provisions of the Tariff Act (codified at 19 U.S.C. 1323), Marine Mammal Protection Act (codified at 16 U.S.C. 1371), Lacey Act (codified at 16 U.S.C. 3371) and other statutes, depending on the circumstances of the fish harvest and

the conservation concerns of the United States. Trade monitoring authority is also provided by the Dolphin Protection Consumer Information Act (codified at 16 U.S.C. 1385) which specifies the conditions under which tuna products may be imported into the United States with a dolphin-safe label.

Multilateral efforts to combat IUU fishing may also result in trade action. The United States is a contracting party to several regional fishery management organizations (RFMOs). Many of these RFMOs have established procedures to identify nations and/or vessels whose fishing activities undermine the effectiveness of the conservation and management measures adopted by the organization. Fishery products exported by such nations or harvested by such vessels may be subject to import prohibitions specified by the RFMO as a means to address the activity of concern. In these cases, the United States is obligated to deny entry of the designated products into its markets.

**Trade Monitoring and Documentation Programs**

As a result of unilateral authorities and/or multilateral agreements, NMFS has implemented a number of monitoring programs to collect information from the trade regarding the origin of certain fishery products. The purpose of these programs is to determine the admissibility of the products in accordance with the specific criteria of the trade measure or documentation requirement in effect. NMFS trade monitoring programs cover tunas, swordfish, billfish, shark fins, toothfish, krill and certain other fishery products under the authority of the High Seas Driftnet Fisheries Enforcement Act (refer to <http://swr.nmfs.noaa.gov/fmd/italy.htm> for an exhaustive list.) Generally, these trade monitoring programs require importers to obtain a blanket permit, to obtain from exporters documentation on the authorization for the harvest by the flag nation, and to submit this information to NMFS for review and approval. Depending on the commodity, specific information may be required on the flag state of the harvesting vessel, the ocean area of catch, the fishing gear used, and details of landing, transshipment and export.

In most cases, these monitoring programs require the importer to provide paper documents to NMFS, while other relevant information on the inbound shipments is provided by the shipper, carrier, or customs broker to CBP by electronic means. NMFS reconciles the information reported by importers with the information obtained from CBP to determine if the

admissibility requirements have been satisfied. If documentation is incomplete, fraudulent or missing, or if the shipment is not admissible given its ocean area of origin, flag nation, harvesting vessel or the circumstances under which it was harvested, entry into U.S. commerce is prohibited for that shipment.

As a participating government agency, access to the ACE portal has improved NMFS' ability to evaluate trends and potential problems with seafood imports including real time information on ports of entry, potential cases of tariff code misspecification, or indications of lack of proper documentation. It has helped NMFS communicate with the trade community to educate importers and brokers on the documentation requirements. It has also helped NMFS target enforcement resources by taking a risk management approach. NMFS anticipates that ITDS integration will result in reduced reporting burden for the trade community, reduced data processing time for government, increased compliance with product admissibility requirements, and quicker response time on admissibility decisions.

#### **Information Collection and Respondents**

This advance notice of proposed rulemaking solicits public input on the development of electronic information collection procedures for the purposes of determining which shipments of seafood products are eligible for entry into the United States. Timely information is critical to making accurate and effective admissibility decisions. However, NMFS is aware that many different parties serve different roles in the trade process, and it is important to identify the correct party who can supply the required information at any particular point in the transaction. Potential sources of information on an inbound shipment could be the foreign exporter, freight forwarder/consolidator, shipper, carrier, customs broker, importer or ultimate consignee. Specific information is available to some or all of these parties and could be supplied to NMFS at various points in the trade process. Certain information may be available on a pre-arrival basis, while other information might not be available until arrival, upon the start of the entry process or even post-release.

In order to establish an electronic reporting system that meets NMFS' statutory requirements for admissibility without imposing an undue burden on the trade community, NMFS seeks input

from the public on the following questions:

As an importer, do you rely on brokers for customs clearance or file customs entries on your own?

What CBP electronic reporting systems does your business use (e.g., Automated Commercial System, Automated Broker Interface, Customs Automated Manifest Interface Requirements, Customs and Trade Automated Interface Requirements)?

Does your business (importer, customs broker, shipper, carrier) currently maintain an ACE portal user account?

Does another business entity file CBP-required information on your behalf? Does that business have cross account access for you within CBP reporting systems?

Does your business (importer, customs broker, shipper, carrier) currently have a blanket (annual) permit from NMFS for importing/exporting tuna, swordfish, shark fins or Antarctic resources (krill, toothfish)?

Does another business entity with a NMFS blanket permit submit NMFS-required information on your behalf?

As an importer, how would your business be affected if you are required to obtain a blanket permit (e.g., annual) prior to importing your product?

Is your business (importer, customs broker, shipper, carrier) currently registered with the Dun and Bradstreet Universal Numbering Service (DUNS Number)? Could this registration number serve as a unique identifier for your business with regard to reporting obligations to CBP, NOAA and other agencies? Does your business have one or more importer of record numbers registered with CBP?

What are the principal ports of import, the predominant product form (fresh, frozen or in airtight containers), and the usual transportation mode (ocean, air, truck, rail) for the import transactions of your business?

How would your business practices be affected if NMFS required imports only through a limited number of designated ports of entry?

Which established government or private sector product identifiers are generally used in your business transactions (e.g., FDA, USDA, HTSUS, UPC, GTIN, GDSN)?

What paper documents (manifest, invoice, bill of lading, harvesting or exporting government authorization, certificate of eligibility, catch document) are available to your business and at what point in trade transaction (pre-arrival, arrival, post-release)?

What problems, if any, have you encountered with the existing paper

document systems for NMFS trade monitoring programs? Could these problems be resolved by electronic reporting?

When you have questions on documentation requirements or encounter problems with release of shipments, how do you contact NMFS (telephone, email, internet, office visit)? Have you had difficulties in contacting NMFS to get answers to your questions?

What concerns do you have about timely release of perishable seafood shipments? In your view, could electronic reporting expedite the submission of information to CBP to obtain release? How would your business be affected if information collection requirements cause a delay in release of shipments?

How does your business currently meet prior notice requirements of the Food and Drug Administration (FDA) for inbound shipments of food products? Specifically, what FDA reporting system do you use?

How would your business be affected if NMFS required pre-approval for all inbound seafood shipments that are subject to documentation requirements? That is, what costs and risks would you face if all documentation must be provided prior to arrival and the shipment cannot be released until NMFS verifies the information?

As an importer, do you serve as a U.S. agent for foreign entities? If so, what trade documents are available to you prior to the arrival of the shipment?

As a foreign entity, do you use a U.S. agent to facilitate the import process into the U.S. market? If so, what trade documents do you supply to your U.S. agent prior to arrival of the shipment?

As an importer or customs broker, do you have knowledge of the ultimate consignee and or final U.S. destination at time of entry filing? Do you have this information prior to arrival or release?

As an importer, do you also re-export seafood to a destination outside of the United States?

As a re-exporter, do you move product after processing or repacking in the United States? If so, what types of processing or repacking occur and at what locations (airport, seaport, warehouse)?

What entry types are typical for your business (consumption, warehouse, foreign trade zone, informal entries)? As an importer or customs broker, do you use bonded warehouses or foreign trade zones to hold product prior to filing entry for consumption?

Do you serve as a U.S. agent to facilitate transportation and export entries for foreign firms who use U.S.

transit links to get seafood products to overseas markets?

What other Federal or state agencies, if any, require documentation or declarations for the seafood products that you import?

What industry groups or trade associations represent your business interests? Does your business maintain a membership in any associations (e.g., National Fisheries Institute, Trade Support Network, National Customs Brokers and Forwarders Association of America)?

#### Submitting Public Comment

You may submit information and comments concerning this advanced notice of proposed rulemaking by any one of several methods (see **ADDRESSES**). Information related to current programs to monitor international trade in fisheries products can be found on the NMFS Web site at <http://www.nmfs.noaa.gov/>. NMFS will consider all comments and information received during the advance notice comment period in preparing a proposed rule.

#### Classification

This advance notice of proposed rulemaking has been determined to be not significant for the purposes of Executive Order 12866.

**Authority:** 16 U.S.C. 1826d–1826k; 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 1371; 16 U.S.C. 1385; 16 U.S.C. 3371.

Dated: May 4, 2009.

**James W. Balsiger,**  
*Acting Assistant Administrator for Fisheries,*  
*National Marine Fisheries Service.*

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