

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## FARM CREDIT ADMINISTRATION

### 12 CFR Part 602

RIN 3052-AD18

#### Releasing Information; Availability of Records of the Farm Credit Administration; FOIA Fees

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of effective date.

**SUMMARY:** The Farm Credit Administration (FCA or Agency) issued a final rule amending its regulations to reflect changes to the Freedom of Information Act (FOIA). The FOIA Improvement Act of 2016 requires FCA to amend its FOIA regulations to extend the deadline for administrative appeals, to add information on dispute resolution services, and to amend the way FCA charges fees. In accordance with the law, the effective date of the rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session.

**DATES:** *Effective date:* Under the authority of 12 U.S.C. 2252, the regulation amending 12 CFR part 602 published on September 15, 2016 (81 FR 63365) is effective December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4124, TTY (703) 883-4056, or Autumn Agans, Attorney-Advisor, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4056.

**SUPPLEMENTARY INFORMATION:** The Farm Credit Administration (FCA or Agency) issued a final rule amending its regulations to reflect changes to the Freedom of Information Act (FOIA). The FOIA Improvement Act of 2016 requires

FCA to amend its FOIA regulations to extend the deadline for administrative appeals, to add information on dispute resolution services, and to amend the way FCA charges fees. In accordance with 12 U.S.C. 2252, the effective date of the final rule is no earlier than 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is December 9, 2016. (12 U.S.C. 2252(a)(9) and (10))

Dated: December 6, 2016.

**Dale L. Aultman,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 2016-29555 Filed 12-8-16; 8:45 am]

**BILLING CODE 6705-01-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 902

#### 50 CFR Parts 300 and 600

[Docket No. 150507434-6638-02]

RIN 0648-BF09

#### Magnuson-Stevens Fishery Conservation and Management Act; Seafood Import Monitoring Program

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

**ACTION:** Final rule.

**SUMMARY:** Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), this final rule establishes permitting, reporting and recordkeeping procedures relating to the importation of certain fish and fish products, identified as being at particular risk of illegal, unreported, and unregulated (IUU) fishing or seafood fraud, in order to implement the MSA's prohibition on the import and trade, in interstate or foreign commerce, of fish taken, possessed, transported or sold in violation of any foreign law or regulation or in contravention of a treaty or a binding conservation measure of a regional fishery organization to which the United States is a party. Collection of catch and landing documentation for

certain fish and fish products will be accomplished through the government-wide International Trade Data System (ITDS) by electronic submission of data through the Automated Commercial Environment (ACE) maintained by the Department of Homeland Security, Customs and Border Protection (CBP). The information will be collected through the ITDS electronic single window consistent with the Safety and Accountability for Every (SAFE) Port Act of 2006 and other applicable statutes. Specifically, this rule revises an existing NMFS requirement for the importer of record to file electronically through ACE data prescribed under certain existing NMFS programs (and to retain records supporting such filings) to also cover the data required to be reported under this rule. This rule requires data to be reported on the harvest of fish and fish products. In addition, this rule requires retention of additional supply chain data by the importer of record and extends an existing NMFS requirement to obtain an annually renewable International Fisheries Trade Permit (IFTP) to the fish and fish products regulated under this rule. The information to be reported and retained, as applicable, under this rule will help authorities verify that the fish or fish products were lawfully acquired by providing information to trace each import shipment back to the initial harvest event(s). The rule will also decrease the incidence of seafood fraud by requiring the reporting of this information to the U.S. Government at import and requiring retention of documentation so that the information reported (*e.g.*, regarding species and harvest location) can be verified.

**DATES:** *Effective date:* This final rule is effective January 9, 2017. Title 50 CFR 300.324(a)(3) is stayed indefinitely. NMFS will publish a document in the **Federal Register** lifting the stay and announcing the effective date of 50 CFR 300.324(a)(3).

*Compliance date:* The compliance date for this rule for the species included at 50 CFR 300.324(a)(2) is January 1, 2018.

**ADDRESSES:** Applications for the International Fisheries Trade Permit may be completed and submitted at: <https://fisheriespermits.noaa.gov/>. Copies of the Final Regulatory Impact Review, Final Regulatory Flexibility Analysis and the information collection

request submitted to OMB may be obtained at: <http://www.iuufishing.noaa.gov/>.

**FOR FURTHER INFORMATION CONTACT:** Christopher Rogers, Office for International Affairs and Seafood Inspection, NOAA Fisheries (phone 301-427-8350, or email [christopher.rogers@noaa.gov](mailto:christopher.rogers@noaa.gov)).

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 17, 2014, the White House released a *Presidential Memorandum* entitled “Establishing a Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud.” Among other actions, the Memorandum established a Presidential Task Force on Combating Illegal, Unreported, and Unregulated (IUU) Fishing and Seafood Fraud (Task Force), co-chaired by the Departments of State and Commerce, with membership including a number of other Federal agency and White House offices. The Task Force provided recommendations to the President through the National Ocean Council, and NMFS requested comments from the public on how to effectively implement the recommendations of the Task Force (79 FR 75536, December 18, 2014). Oversight for implementing the recommendations of the Task Force has been charged to the National Ocean Council Standing Committee on IUU Fishing and Seafood Fraud (NOC Committee).

Of the recommendations advanced to the President, Recommendations 14 and 15 called for the development of a risk-based traceability program (including defining operational standards and the types of information to be collected) as a means to combat IUU fishing and seafood fraud. The multiple steps toward implementation of Recommendations 14 and 15, as set out in the Task Force Action Plan, were described in the preamble to the proposed rule (81 FR 6210, February 5, 2016) and are not repeated here (see also <https://www.regulations.gov/docket?D=NOAA-NMFS-2014-0090>).

The proposed rule set forth a program of permitting, reporting and recordkeeping applicable to importers of record for imported fish and fish products within the scope of the initial phase of the seafood traceability program. A number of public webinars and meetings were held to explain the proposed rule and to take comments about the potential impacts of the trade reporting and recordkeeping requirements on entities engaged in seafood trade. Written comments that

were received through the Federal e-rulemaking portal are available for viewing in the docket for this rulemaking (see <https://www.regulations.gov/docket?D=NOAA-NMFS-2015-0122>).

**Comments and Responses**

NMFS received comments on the proposed rule from fishing industry groups, including fish importers, processors, trade organizations, non-governmental organizations (NGOs), private citizens, other government agencies, and foreign governments. Comments are summarized by category and NMFS responses are presented. NMFS received more than 67,933 signatures on group comment letters from private citizens through environmental NGOs supporting implementation of the Seafood Import Monitoring Program (Program). Comments are summarized by category and NMFS responses are presented.

Several comments received were not germane to this rulemaking and are not addressed in this section. These comments addressed actions outside the scope of the statutory mandate (e.g., sharing information with consumers) or actions covered under other rulemakings (e.g., the International Trade Data System integration or the Marine Mammal Protection Act fish import requirements.) In the following section, NMFS responds to the specific comments applicable to this rulemaking.

*General Comments*

*Comment 1:* Many commenters asked the agency to implement a Seafood Inspection Monitoring Program that includes all seafood and traceability from the point of harvest to the point of final sale, and to incorporate consumer labeling.

*Response:* As indicated in the Task Force’s recommendations to the President, it is the goal of the U.S. government “to eventually expand the program to all seafood at first point of sale or import.” The process for expansion will account for, among other factors, consideration of authorities needed for more robust implementation, stakeholder input, and the cost-effectiveness of program expansion. The NOC Committee will issue a report that includes an evaluation of the program as set out in a final rule, as well as recommendations of how and under what timeframe it would be expanded and measures that could be taken to provide traceability information to the consumer.

In recognition of the fact that expansion of the seafood traceability

program to include all species will result in the inclusion of species having a lower perceived risk of IUU fishing and seafood fraud, NMFS will refer to the species that have been identified as “at-risk” of IUU fishing and seafood fraud as “priority” species in this rulemaking and associated guidance and outreach materials. See response to Comment 14 below for additional discussion on the transition from use of the term “at risk” in the final rule.

*Comment 2:* NMFS received numerous comments questioning the extent to which the rule, as proposed, meets U.S. obligations to comply with international trade agreements, and in particular with respect to national treatment.

*Response:* As described in the preamble to the proposed rule, this regulation addresses only the collection of information on imported fish and fish products at the point of entry into U.S. commerce. For U.S. domestic wild capture fisheries, entry into U.S. commerce occurs at the first point of landing or sale or transfer to a dealer or processor in the United States. For U.S. aquaculture products, entry into U.S. commerce is the first sale to a processor or directly to a consumer market.

For the priority species to which this rule applies, equivalent information is already being collected at the point of entry into commerce for the products of U.S. domestic fisheries pursuant to various federal and/or state fishery management and reporting programs. For this reason, this regulation does not duplicate data reporting requirements already in place for products of U.S. domestic fisheries, and instead focuses on accessing the data necessary to establish traceability from point of harvest or production to entry into U.S. commerce for imported fish and fish products.

However, current data collection for U.S. aquacultured shrimp and abalone is not equivalent to the data that would be reported for imports. Consequently, the effective date of this rule for imported shrimp and abalone products is stayed indefinitely.

*Comment 3:* A number of comments were driven by assumptions that, through this rulemaking, NMFS intended to require that fish and fish products from individual harvest events be segregated throughout the supply chain and identifiable by harvest event at the point of entry into U.S. commerce.

*Response:* NMFS clarifies that segregation of harvest events through the supply chain was not an intended requirement in the proposed rule and is not a requirement in the final rule.

Instead, a product offered for entry may be comprised of products from more than one harvest event. In such instances, an importer of record must provide information on each harvest event relevant to the contents of the shipment offered for entry but does not need to provide specific links between portions of the shipment and particular harvest events. See response to Comment 27 for further discussion. A mass balance calculation will not be applied at the time of entry to determine admissibility of the shipment because all of the product from any single harvest event may not be exported to the U.S. market.

#### *Scope of the Program*

*Comment 4:* Several commenters from the seafood industry expressed their opinion that the Program will not combat illegal fishing and seafood fraud, arguing that limited resources to combat these issues would be most effectively spent on international capacity building.

*Response:* NMFS and the other agencies contributing to this effort agree that the Program will in fact serve to reduce IUU fishing. On June 17, 2014, the White House released a Presidential Memorandum entitled “Establishing a Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud” which established and directed the President’s Task Force on Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud to develop a comprehensive framework of integrated programs to combat IUU fishing and seafood fraud that emphasizes areas of greatest need. Per the Task Force’s recommendations, it is in the national interest to prevent the entry of illegal seafood into U.S. commerce. Creating the Program, an information system that better facilitates data collection, sharing, and analysis among relevant regulators and enforcement authorities is a significant step forward in addressing IUU fishing and seafood fraud. The National Ocean Council Committee on IUU Fishing and Seafood Fraud continues to move forward on all of the 15 recommendations of the Task Force, including development of a program for capacity building and assistance as called for in Recommendation 6 of the Task Force action plan. The approach to capacity building will include technical assistance with fisheries governance, monitoring, recordkeeping and enforcement. For more information please visit [www.iuufishing.noaa.gov](http://www.iuufishing.noaa.gov).

*Comment 5:* NOAA received several comments regarding the inclusion of aquaculture products in the Program,

noting that the application of measures to combat IUU fishing to aquaculture products is inappropriate.

*Response:* NOAA agrees that IUU fishing is not a concern directly related to the aquaculture industry. That said, the recommendations of the Presidential Task Force were intended to combat both IUU fishing and seafood fraud, and the scope of its recommendation to establish a seafood traceability program includes both wild-capture and aquaculture fish and fish products. Specifically, the Program is intended and designed to trace seafood from its entry into commerce back to the point of harvest or production. Inclusion of aquaculture products in the Program addresses several concerns. First, some imported fish products are sourced from both wild capture fisheries and aquaculture operations, yet are indistinguishable in product form. Excluding aquaculture products from the import reporting requirement of the Program presents enforcement issues if shipments are declared to be of aquaculture origin with no information to support such declaration. Additionally, similar to wild capture fisheries, aquaculture operations are likely to be subject to foreign laws or regulations pertaining to licensing and reporting on production and distribution; importation of aquaculture products harvested in violation of those laws would make them subject to the MSA provision under which this rule is promulgated. Finally, evidence exists that aquaculture products have been subject to various types of product misrepresentation, some of which can cause risk to human health. As is the case for wild capture fisheries, collecting information on the origin of aquaculture products supports the determination of conformance with foreign law or regulation, including the determination that the fish products are not fraudulently misrepresented.

*Comment 6:* NMFS received comment that, with respect to misrepresented products, the Program is redundant to existing Food and Drug Administration (FDA) programs and authorities. A commenter also questioned whether MSA section 307(1)(Q) provided authority to determine if seafood imports were the product of unregulated or unreported fishing.

*Response:* NMFS disagrees that the Program is redundant with existing programs and authorities. When developing its recommendations to the President, the Task Force on Combating IUU Fishing and Seafood Fraud considered existing rules and authorities and determined that measures to ensure that misrepresented

products do not enter the U.S. market should be expanded. The Task Force’s evaluation indicated the need to develop and implement a seafood traceability program that placed greater scrutiny of the source of seafood products and on the entire supply chain from point of harvest to entry into U.S. commerce. While existing authorities empower the FDA to enforce the accuracy of seafood labeling and trace food products through the supply chain, it does not currently administer any laws or programs which enable the U.S. government to ensure that seafood products imported into the United States were not taken, possessed, transported, or sold in violation of any foreign law or regulation. For example, the co-mingling of legally harvested and IUU seafood products between the point of harvest and entry into U.S. commerce would not be identified by existing FDA inspections.

MSA section 307(1)(Q) prohibits, among other things, imports of fish “taken, possessed, transported, or sold in violation of any foreign law or regulation or any treaty or in contravention of any binding conservation measures adopted by an international agreement or organization to which the United States is a party.” 16 U.S.C. 1857(1)(Q) (emphasis added). To effectively enforce this section, NMFS is adopting the reporting and recordkeeping requirements set forth in this rule. NMFS has broad discretion under the MSA to promulgate regulations as necessary to carry out provisions of the MSA. *Id.* 1855(d).

*Comment 7:* A number of comments were received urging NMFS to establish data collection programs for domestic shrimp and abalone aquaculture production to ensure that shrimp and abalone can be included in the Program when it begins.

*Response:* As described in the preamble to the proposed rule, gaps exist in the collection of traceability information for domestic aquaculture-raised shrimp and abalone, which is currently largely regulated at the state level. (81 FR 6212, February 5, 2016). Since publication of the proposed rule, NMFS has explored the opportunity to work with its state partners to establish reporting and recordkeeping requirements for aquaculture traceability information that could be shared with NMFS. However, this did not prove to be a viable approach at the present time. NMFS is thus staying the effective date of the rule as it pertains to shrimp and abalone until appropriate reporting and/or recordkeeping requirements for domestic aquaculture production can be established. To that

end, NMFS is continuing to work with its Presidential Task Force partner agencies with respect to measures that could be adopted to close the gaps and to ensure comparability between traceability requirements and NMFS' access to traceability information for imported and domestic shrimp and abalone.

For example, FDA, whose parent agency Health & Human Services is also a member of the Presidential Task Force, is currently exploring which of its authorities could fill the gap, including regulations that would require designating high risk foods for certain additional recordkeeping by food processors under the authority of section 204 of the Food Safety Modernization Act (21 U.S.C. 2223), which addresses enhanced tracking and tracing of food through recordkeeping and was passed by Congress in 2011. See, e.g., *Designation of High-Risk Foods for Tracing; Request for Comments and Scientific Data and Information* (79 FR 6596, February 4, 2014). Such additional recordkeeping requirements to enhance food safety are expected to facilitate FDA's ability to track the origin of and prevent the spread of foodborne illness. FDA is also planning to make revisions to its Seafood Hazard Analysis and Critical Control Points (Seafood HACCP) provisions.

As FDA conducts this work, NMFS, together with the other Presidential Task Force agencies, would assess the extent to which FDA's program, or other changes in state or federal law or regulation, have resulted in closing gaps in traceability requirements between domestic and imported shrimp and abalone. At such time that the domestic reporting and recordkeeping gaps have been closed, NMFS will then publish an action in the **Federal Register** to lift the stay of the effective date for § 300.324(a)(3) of the rule pertaining to shrimp and abalone. Adequate advance notice to the trade community would be provided in setting the effective date so that producers, processors, exporters and importers will have the opportunity to establish recordkeeping and reporting systems necessary to comply with the program.

*Comment 8:* One commenter asserted that NMFS only has the authority to trace aquaculture conducted in federal waters.

*Response:* Under the Magnuson-Stevens Act, NMFS cannot establish reporting requirements for domestic aquaculture that occurs within state waters or in terrestrially located facilities, which is where most domestic aquaculture occurs.

*Comment 9:* A number of commenters proposed that NMFS include reporting on production method for aquaculture imports of priority species, as a way to ascertain whether the feed used to raise imported farmed fish may have been illegally harvested.

*Response:* The Task Force clearly defined traceability for the purpose of the Program as beginning at the point of harvest for wild-capture fisheries, and at the point of production for aquaculture products. Therefore, it is outside the scope of Program to trace feed sources for imported aquaculture seafood, even if those feeds contain priority species.

*Comment 10:* NMFS received comments questioning the appropriateness of addressing both IUU fishing and seafood fraud through one data collection program.

*Response:* While IUU fishing and seafood fraud are indeed different issues, both can be effectively addressed through traceability within the scope of the Program (from the point of harvest or production to entry into U.S. commerce) because both are enabled by lack of transparency within the seafood supply chain. Many commenters referred to seafood fraud further down in the supply chain—at the dealer and wholesale level—and NMFS acknowledges these concerns but notes that they are beyond the scope of the Program.

*Comment 11:* Several groups suggested various reasons and methods for which the Program can and should be used to combat forced labor in the seafood industry.

*Response:* While NMFS agrees that forced labor and unfair labor practices are important issues in several fisheries and in the fish processing sector, the stated objective of the Program is to trace seafood products from the point of entry into U.S. commerce back to the point of harvest or production for the purpose of ensuring that illegally harvested or falsely represented seafood does not enter U.S. commerce. The data elements captured by the reporting and recordkeeping requirements were chosen to serve this specific objective. Data collected under the authority of the Magnuson-Stevens Act is considered to be confidential and may not be shared publicly. However, subject to the data confidentiality provisions of the Magnuson-Stevens Act (16 U.S.C. 1881a (b)), and other federal law, NMFS will provide information regarding entries of seafood product to aid in the investigation or prosecution of labor crimes by one of the U.S. government agencies that has the mandate and authority to do so. NMFS will determine the legal basis to share such information

with those government agencies for such enforcement purposes.

#### *Species and Harmonized Tariff Schedule Codes*

*Comment 12:* Several commenters questioned the description of species included in this rulemaking as “at-risk” and suggested that NMFS had failed to provide adequate rationale for inclusion of certain species in the Program. Commenters also recommended that species be added or removed from the initial phase of Program. Species suggested for addition included orange roughy, skates and rays. Species suggested for removal include Atlantic and Pacific cod, shrimp, and blue crab, in some cases on the basis that keeping individual harvest events separated throughout the supply chain would place an unnecessary burden on industry relative to the risk of IUU fishing for these species.

*Response:* NMFS led a rigorous, interactive public process to identify the priority species for the Program and did not find sufficient new information from commenters to warrant changes to the “at-risk” (now referred to as, “priority”) species list as was included in the proposed rule. The Presidential Task Force on Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud directed development of an initial traceability program for seafood products of particular concern because the species at issue are subject to significant seafood fraud or because they are at significant risk of being caught through IUU fishing.

In developing the seafood traceability program, NMFS requested and received extensive public comment regarding principles for identifying species at particular risk of IUU fishing or seafood fraud and on the application of those principles to a list of candidate species. An interagency expert working group reviewed public comments and confidential enforcement information and developed a draft list of “at-risk” species and once again sought public comment prior to publication of the final list of species to which this rule applies in October 2015 (80 FR 66867, October 30, 2015). In publishing the final list of species, NMFS provided the rationale for inclusion of each species on the list. NMFS considers the list of species to which this rule applies to be accurately and appropriately identified as those species most “at-risk” of IUU fishing or seafood fraud. The issue of reporting burden with respect to the risks applicable to particular species will become less relevant as traceability systems expand in global commerce and industry improves its ability to comply

with them in a cost-effective manner. However, the response to Comment 42 below addresses reporting burden issues for this initial phase of the Program.

*Comment 13:* Several commenters requested that species managed under Regional Fisheries Management Organization (RFMO) catch documentation schemes (CDS) be excluded from the scope of this rule.

*Response:* Bluefin tuna is the only priority species currently managed under an RFMO CDS, and NMFS, in the preamble to the proposed rule, discussed its reasons for inclusion in the Program. Although bluefin tuna species were determined to be at a lower risk of IUU fishing and seafood fraud than other tuna species and were not included on the list of at-risk species, the reporting and recordkeeping requirements proposed in this rule apply to HTS codes for fish and fish products of all tuna species including bluefin tuna. NMFS notes that bluefin tuna was historically a target of IUU fishing, and in response, two RFMOs implemented a CDS which together, include two of the three species worldwide. While NMFS continues to view the bluefin tuna to be at considerably lower risk of IUU fishing and seafood fraud than other tuna species and has made no modification to the list of at-risk species published on October 30, 2015, NMFS proposed to cover bluefin tuna in this rule (and has therefore included the HTS codes for bluefin tuna in the list of HTS codes to which this rule applies) in order to establish consistent treatment of tuna species, and avoid possible concerns that one species of tuna may be treated differently than others and therefore affect certain producers less favorably.

*Comment 14:* NMFS received comments from members of the domestic seafood sector as well as from several national governments expressing the opinion that the determination of “at-risk” was an implicit indictment of the management and biological status of fisheries for those species both in the United States and abroad and expressing concern that the inference will have a negative impact on the consumer’s willingness to purchase products from those fisheries.

*Response:* NMFS has been clear about the fact that identification of priority species has been necessarily broad with respect to both area (it is applied at the species level without distinction of specific fisheries across the geographic range of the species) and principles (species were identified as priority on the basis of IUU-related principles, seafood fraud related principles, or any combination thereof). Records and data

from both domestic and international sources were considered by the priority species working group. The process for making these determinations is described at: <http://www.iuufishing.NMFS.gov/RecommendationsandActions/RECOMMENDATION1415.aspx>.

NMFS has been clear throughout the process that inclusion of any species in the risk-based first phase of implementation of this seafood traceability program should not be considered in any way an indictment, either explicit or implicit, of the management system or biological status of a fishery in the United States or any foreign nation. NMFS believes that the seafood traceability program will ultimately serve to reassure the U.S. seafood consumer that seafood products harvested in, or imported to, the United States are harvested legally and conveyed through a transparent supply chain.

*Comment 15:* NMFS received a number of comments noting that priority species could be imported under HTS codes not listed in the proposed rule, and that some HTS codes not listed clearly contain priority species (e.g. Shrimp frozen in ATC, canned light meat tuna) while other HTS codes for highly processed products could contain priority species (e.g. Fish NSPF Dried, Marine Fish NSPF Frozen).

*Response:* NMFS notes that importers are legally obligated under CBP regulations to use the most detailed and descriptive HTS code applicable to the product being entered (see 19 CFR 141.90), and NMFS will monitor shifts in HTS code usage to ensure that importers are not illegally avoiding obligations to provide information pursuant to this rule through the use of less specific codes. While it remains operationally infeasible to apply this rule to all highly-processed products, NMFS will include in the set of HTS codes to which the Program applies all seafood products, including highly processed products, for which the priority species can be accurately determined and tracked from its point of harvest. NMFS will not apply this rule to HTS codes representing products such as fish oil, slurry, sauces, sticks, balls, cakes, puddings, meal and other similar highly processed fish products for which the species of fish comprising the product or the harvesting event(s) or aquaculture operation(s) of the product being entered, cannot be feasibly identified, either through inspection, labeling, or HTS code. NMFS disagrees that the failure to apply the rule to those products would provide sufficient

economic incentive for businesses to increase production of highly processed products over traditional product forms in order to circumvent the requirements of the rule.

*Comment 16:* One commenter noted that a number of duplicate HTS codes were listed in the proposed rule.

*Response:* NMFS has removed duplicate HTS codes in the associated compliance guide, where HTS codes applicable to this rule will be updated as needed. This approach, which NMFS has used in other recent rulemakings, allows the agency to update the list of applicable HTS codes for priority species as described in the rule in the compliance guide as codes are revised by the U.S. International Trade Commission and published in the **Federal Register** (see 19 U.S.C. 1202). NMFS, however, wants to be clear that the expansion of the Program through its application to additional species will require new rulemaking with opportunity for public comment.

*Comment 17:* NMFS received comments expressing concern that importers may resort to the use of generic HTS codes in order to circumvent reporting and recordkeeping requirements associated with the Program and suggesting that those HTS codes should be included in the rule. One commenter identified several HTS codes for priority species products that were not included in the publication of the proposed rule.

*Response:* NMFS acknowledges the potential risk that an importer seeking to circumvent the requirements of this rule might attempt to utilize a more general HTS code to which the rule is not being applied. As NMFS noted in the response to Comment 15, importers are legally obligated to use the most detailed and descriptive HTS code applicable to the product being entered. Therefore, if a more specific HTS code (to which this rule is applied) is not used for the entry filing, such misspecification would be a violation of customs regulations. NMFS considered applying this rule to generic (non-species specific) HTS codes and requiring a disclaimer from the importer of record that the shipment does not include any of the species to which the Program applies, but decided against doing so as it would expand considerably the universe of importers required to obtain an International Fisheries Trade Permit for the sole purpose of making that disclaimer. NMFS does not consider such an approach to be a reasonable burden on the trade community for the initial phase of the Program. NMFS will monitor for significant increases in the

use of generic HTS codes or decreases in the use of HTS codes to which this Program applies.

NMFS has made corrections to the list of HTS codes to which the rule is applied. This list is not included in the regulatory language but will instead be described in the compliance guidance. This will allow for technical corrections and adjustments in the list of HTS codes applicable to the priority species without requiring additional rulemaking.

*Comment 18:* NMFS received numerous comments regarding the use of various combinations of names and codes for providing species information under this rulemaking.

*Response:* Per the recommendation of the interagency working group for the Presidential Task Force's Recommendation 10, the proposed rule required that for each entry, the scientific name, the accepted common name, and the United Nations Food and Agriculture Organization's (FAO) Aquatic Sciences and Fisheries Information System (ASFIS) 10-digit number and 3-alpha code must be reported. The recommendation and its inclusion in the proposed rule intentionally created redundancies within that data reporting element that would serve as a "cross-check" to reduce unintentional reporting errors.

NOAA agrees that reporting all three (scientific name, common name, and ASFIS code) may represent an unnecessary burden on industry and has, therefore, modified the rule to require only the ASFIS 3-alpha code. NOAA is confident that elimination of the requirement to report the scientific and common name of the fish or fish products while requiring the use of the ASFIS 3-alpha code will not diminish the effectiveness of the Program. If needed, a cross-check can be made between the product description reported to CBP, the HTS code, the product code reported to FDA, and the ASFIS 3-alpha code.

#### *Data Requirements/Elements*

*Comment 19:* A number of comments were received requesting clarity on expectations for the fishing area data element, whether it be FAO area, exclusive economic zone (EEZ), GPS coordinates (as the European Union (EU) requires) or otherwise.

*Response:* In consideration of comments received regarding area of wild capture, NMFS has described the format and coding for this data element in greater detail in the NMFS Implementation Guide posted by CBP at <http://www.cbp.gov/trade/ace/catair>. Several format options are recognized

given the many differences in data collection and reporting conventions world-wide. For fisheries conducted in a nation's exclusive economic zone (EEZ) or territorial waters, the area of wild capture is the area that the competent authority exercising jurisdiction over the wild capture operation requires to be reported (e.g., sub-area of the harvesting nation's EEZ). If no such reporting requirement exists, then for fishing within the EEZ, the area of wild capture is specified using the relevant International Organization for Standardization (ISO) 2-alpha code. See <http://www.fao.org/3/a-az126e.pdf> and [ftp://ftp.fao.org/FI/STAT/by\\_FishArea/Fishing\\_Areas\\_list.pdf](ftp://ftp.fao.org/FI/STAT/by_FishArea/Fishing_Areas_list.pdf). For fishing beyond national jurisdiction, the United Nations Food and Agriculture Organization (FAO) Major Fishing Area codes (<http://www.fao.org/fishery/cwp/handbook/H/en>) should be used. Specific instructions for reporting fishing area are provided in the NMFS Implementation Guide.

*Comment 20:* A number of commenters suggested that NMFS include transshipment information as a reporting data element.

*Response:* NMFS acknowledges the value and importance of tracking transshipment information as a tool for combating IUU fishing. As drafted, the rule establishes access to this data by NMFS through audits of chain of custody information for selected entries. During the first year of implementation of the Program, NMFS will consider key chain of custody data elements that could be established as mandatory reporting requirements; as part of that process, the merits of requiring the reporting of transshipment data will be assessed. Any new mandatory reporting requirements for chain of custody data would be promulgated through a rulemaking.

*Comment 21:* NMFS received several comments regarding the value of using established naming and code conventions for fishing gear.

*Response:* As with fishing area, in response to comments, NMFS is providing further detail on the format and coding for the fishing gear data element in the NMFS Implementation Guide posted by CBP at <http://www.cbp.gov/trade/ace/catair>. The type of fishing gear should be specified per the reporting convention and codes used by the competent authority exercising jurisdiction over the wild capture operation. If no such reporting requirements exist, the FAO fishing gear code should be used. See <http://www.fao.org/fishery/cwp/handbook/M/en> (providing International Standard

Statistical Classification of Fishing Gear).

*Comment 22:* Several groups commented on the requirement of Automatic Identification Systems and International Maritime Organization numbers for all fishing vessels whose seafood is imported into the United States.

*Response:* While noting that some entities utilize Automatic Identification System (AIS) for vessel monitoring, the purpose of AIS is to ensure vessel safety at sea and AIS is not an appropriate substitute for a Vessel Monitoring System (VMS) as a primary means of vessel monitoring for fisheries. The fifteen Task Force recommendations for combating IUU fishing and seafood fraud represent a broad set of tools and strategies for combating IUU fishing including international engagement, enforcement authorities, partnerships, and supply-chain transparency. Specifically, Recommendation 3 speaks to the enhancement of maritime domain awareness, a goal for which AIS may be, in certain circumstances, an effective tool.

Recommendation 2 of the Task Force Action Plan focuses on efforts to advance the elimination of IUU fishing through Regional Fishery Management Organizations. Within those fora and others, the U.S. government has consistently advocated for use of unique, permanent identifiers in support of a global record. Included in the set of data elements to be reported at the time of entry for wild-capture fish and fish products is the "unique vessel identifier(s)" (if available). For larger scale vessels, this may be a number assigned by the International Maritime Organization, or an identifier assigned by a Regional Fishery Management Organization. Smaller scale vessels may be assigned registration numbers by national or regional governments.

#### *Reporting and Recordkeeping*

*Comment 23:* Numerous commenters provided detailed feedback regarding the significant burden that the Program's data collection requirements would pose to small-scale fisheries. In addition to the substantial number of individual catches that could be contained in a single shipment of seafood, and the burden to industry that reporting each of those harvest events would represent, it was noted that small commercial fishing vessels in some developing countries are not required to have unique vessel identifiers, and in some cases unique identifiers for small vessels are required but not enforced. NMFS was also asked to consider the EU's approach to an aggregated

reporting for small-scale fisheries in an effort to reduce the burden to industry.

*Response:* NMFS agrees that small-scale fisheries should be addressed. To this end, the final rule would exempt an importer from providing vessel- or aquaculture facility-specific information, if the importer provides other required data elements based on an aggregated harvest report. The rule defines aggregated harvest report as a record that covers: (1) Harvests at a single collection point in a single calendar day from small-scale vessels (*i.e.*, twelve meters in length or less or 20 gross tons or less); (2) landing by a vessel to which catches of small-scale vessels were made at sea; or (3) deliveries made to a single collection point (processing facility, broker, or transport) on a single calendar day by aquaculture facilities that each deliver 1,000 kg or less in that day. Even if there is an Aggregated Harvest Report, the importer must still provide all of the information required under § 300.324(b)(2)–(3), (*e.g.*, total quantity and/or weight of the product(s) as landed/delivered, harvest or landing date, fishing area, species).

This provision will substantially reduce the amount of data that is required to be provided by importers of record of seafood originating from small-boat fisheries. NMFS does not consider this provision to negatively impact the effectiveness of the Program. As explained above, in order to invoke the exemption, an importer must provide data based on an aggregated harvest report. That report will record information on aggregated harvests or landings and establish the point to which a trace back would occur. This will enable NMFS to ascertain the jurisdiction/authority whose laws and regulations are relevant to the harvests or landings. NMFS notes that, in its catch certification program design, the European Union established similar provisions to address concerns related to small vessels.

*Comment 24:* Two commenters noted that the 5-year recordkeeping requirement could be burdensome to industry.

*Response:* In many federally-managed fisheries, recordkeeping is required for 2 years, and that time frame has proven to be effective for enforcement purposes. In the final rule, NMFS has reduced the record retention period from 5 to 2 years and has accounted for the costs associated with data storage in the final regulatory flexibility analysis. However, importers must take note that CBP recordkeeping requirements may differ from NMFS requirements, depending on

the commodity and the circumstances of entry filing.

*Comment 25:* A number of comments from foreign industry sectors and governments requested decreased reporting or recordkeeping requirements at the national level, similar to the individual national reporting forms for some countries under the EU catch documentation scheme.

*Response:* NMFS will not offer nation-level treatment differences because, unlike the EU system which requires nation-level certification, the Program does not lend itself to nation-level treatment or considerations. Under the Program, accuracy in recordkeeping and reporting is the responsibility of the IFTP holder for seafood imports from any nation. The basic data about the harvest event are necessary to enable NMFS to ascertain the jurisdiction/authority whose laws and regulations are relevant to harvests or landings.

*Comment 26:* One commenter suggested that some or all of the harvest and landing data to be reported at the time of entry should be moved to the category of “summary data” that can be provided up to 10 days following the date of entry.

*Response:* NMFS believes that delayed reporting of key harvest and landing data could undermine its ability to apply risk-based enforcement strategies to identify IUU-sourced and misrepresented seafood and prevent the entry of such seafood into U.S. commerce. While NMFS does not intend to ask that CBP hold all shipments until reported data are verified, it will make that request when intelligence or risk analysis indicates that the source of the entry should be scrutinized. The final rule therefore requires that all data be reported at the time of entry. NMFS will reconsider this comment in the context of the elements and design of a Commerce Trusted Trader Program. See response to Comment 34 for further information.

*Comment 27:* NMFS received several comments regarding the logistical feasibility of tracking seafood from entry into U.S. commerce back to point of harvest or production, particularly in situations involving complex chains of custody and co-mingling of products from numerous harvest events, fishing areas, and processing facilities.

*Response:* NMFS points out that complexity of the supply chain was one of the principles established to determine the list of priority species to which this rule will initially apply, and the reporting and recordkeeping requirements of the rule will enhance NMFS’ ability to track product from

point of harvest to entry into U.S. commerce.

NMFS acknowledges that co-mingling of product is an established and essential practice within the seafood supply chain and does not consider the tracing of like products from each individual harvest event through one or more co-mingling processes to be logistically feasible or necessary for the success of the Program. Under this rule, in cases where product offered for entry is comprised of one or more events of co-mingling of fish (*e.g.*, at the landing point, processor, re-processor, etc.), the importer of record would be required to provide data on all harvest events contributing to the product(s) offered for entry that are made from priority species subject to this rule. The rule does not require, however, that the importer provide data linking each unit (*e.g.*, each fish, fillet, block, etc.) of the product(s) offered for entry to a specific harvest event. This will in some cases result in reported harvest records totaling more than the product weight of the shipment in question, but mass balance is not a criterion for admissibility. Reporting requirements under the Program will enable NMFS to ascertain, among other things, the jurisdiction/authority whose laws and regulations are relevant to harvests or landings.

*Comment 28:* NMFS received comment that the proposed requirement that importers of record retain chain of custody records for five years creates a significant burden that could be mitigated by allowing suppliers to retain records and provide them to importers as needed.

*Response:* One of the Program’s basic design objectives is that importers devote adequate attention to their supply chain so as to confirm that the fish and fish products that they are importing were legally harvested and are accurately represented. NMFS has therefore maintained a recordkeeping requirement in the final rule, and as noted in response to Comment 24, has reduced the requirement from 5 to 2 years. For purposes of this record keeping, digital records are entirely acceptable.

*Comment 29:* NMFS received comment stressing that the timeline for expanding the reporting requirements for inclusion of chain of custody information in the ITDS message set should be specified in the final rule.

*Response:* The preamble to the proposed rule for the Program describes NMFS’ intent to consider, during the first year of implementation of the Program, key chain of custody data elements to be reported rather than kept

as records as currently proposed. Modifying that requirement of the Program will require additional rulemaking.

NMFS chose to not require the reporting of chain of custody information at this time for three primary reasons: (1) Introduction of data elements that are less similar to those message sets already developed for ITDS implementation of NMFS-administered catch documentation programs would very likely expand and prolong the ITDS programming requirements, resulting in implementation uncertainty; (2) were NMFS to require document images as a means to collect chain of custody data at the time of entry, it would have no way of manipulating and analyzing the data through automated processes as it can with data provided through the ITDS message sets; and (3) chain of custody events represent a broad and diverse universe of potential movements and transactions and cannot, without some analysis of baseline reports, establish standardized chain of custody data elements that will be useful for screening entries and informing risk-based enforcement.

Following implementation of the Program, NMFS intends to evaluate chain of custody information as part of the post-entry auditing process. These evaluations will, over time, inform the Agency as to the types of chain of custody data that can feasibly be collected through the ITDS reporting process and the costs and benefits associated with requiring reporting of the additional data.

#### *Harmonization/Intersection With Other Relevant Programs/Requirements*

*Comment 30:* NMFS received several comments asking that it consider potential interfaces of the Program and third-party traceability and certification entities. One commenter advised that NMFS take care in not expressing an implicit endorsement or requirement for use of, or participation in, any such third-party programs as a condition for compliance with the rule.

*Response:* The Program neither prevents nor requires the use of third-party certification or traceability systems in support of compliance with its reporting and recordkeeping requirements. NMFS acknowledges that some third-party programs use data similar to that required by the Program. To the extent that third-party traceability systems or certification programs serve as conduits for data elements described in this rule, there is nothing prohibiting the importer of record or their authorized agent from

utilizing those data, either manually or electronically, to meet the Program reporting requirements or from using those systems to meet Program recordkeeping requirements. The Program thus affords flexibility in terms of meeting reporting and recordkeeping requirements, but does not endorse, explicitly or implicitly any third party traceability systems. NMFS requested, and will consider, comments regarding the use of third-party certification and traceability systems in the context of the Commerce Trusted Trader Program. See response to Comment 34 for further information.

*Comment 31:* NMFS received several comments that it should consider, recognize, or adopt the EU's Catch Documentation Program in the design of the U.S. Program.

*Response:* The Task Force considered the European Union's Catch Documentation Program in developing its recommendation to establish a risk-based traceability program to allow fish and fish product to be tracked from point of harvest or production to entry into U.S. commerce. The United States recognizes and appreciates the European Union's leadership and innovation in establishing its program and fully supports its continued application. While fundamental structural differences exist between the European Union's program and both the domestic and import components of the United States' seafood traceability program, the types of information and actual data elements with respect to harvest and landing information are highly comparable. Furthermore, NMFS looked to the European Union's example in addressing operational challenges for small-boat fleets and structured the small boat provision in the Program to closely resemble that approach. Further consideration will be given to the European Union's Catch Documentation Program in the development of the Commerce Trusted Trader Program. See response to Comment 34 for further information.

*Comment 32:* NMFS received numerous comments describing the importance of data standardization across other national and RFMO catch documentation and traceability programs and data interoperability in the design of the Program. Commenters also noted the importance of careful integration of the Program and the Tuna Tracking and Verification Program.

*Response:* NMFS acknowledges the benefit of standardization and interoperability of data and has, in its design of the Program, attempted to balance those values against the specific strategic and operational objectives of

the Program. For example, while the EU catch documentation program is essentially a "government-to-government" framework, the Program is designed to shift the responsibility for preventing the import of IUU-sourced and misrepresented seafood to the supply chain itself and stands as a "government-to-business" program. That said, the harvest and landing data elements captured by the two programs are quite similar. In order to minimize the burden of similar, but not identical data and reporting requirements, NMFS designed the Program for maximum flexibility in both the source and format of supporting documentation. Recognizing that harvest and landing data are reported and collected differently in various fisheries and regions of the United States, the Program is intended to accommodate the same diversity of approaches with respect to imported seafood.

With respect to the Tuna Tracking and Verification Program (TTVP), NMFS agrees that the data elements and compliance requirements of the two programs should be as closely aligned as possible given their differences in underlying authorities and regulatory objectives. To that end, NMFS published an interim final rule intended to improve the regulatory framework within which the Dolphin Protection Consumer Information Act is implemented (81 FR 15444, March 23, 2016). Among other things, this rule would bring the chain of custody recordkeeping requirements for the TTVP in closer alignment with the requirements of the Program, as proposed. For HTS codes to which both the Program and the TTVP apply, ITDS programming will ensure that common data elements are reported no more than once.

#### *Timeframe for Implementation*

*Comment 33:* Many commenters offered feedback on the implementation time frame for this rule. Some recommended a phased-in approach where mandatory reporting would be required earlier for some species than others. Suggested implementation periods ranged from six months to one year, with one commenter suggesting a 3–6 month period when industry could practice submission to the ACE portal. Some countries commented that additional capacity building and clear explanation of compliance guidelines will be necessary to meet a one year implementation time frame.

*Response:* NMFS agrees with commenters' interests in allowing time for the Program to be implemented smoothly and without disruption to



trade. To allow for development of both the ACE software maintained by the Department of Homeland Security, CBP and the industry data submission software, testing data input into ACE, and international capacity building, the Program will be implemented (*i.e.*, required permitting, reporting and recordkeeping will be mandatory) approximately twelve months following the publication of this rule, except for shrimp and abalone. NMFS believes that this implementation schedule will provide adequate time for foreign exporters to establish systems for conveying harvest, landing, and chain of custody information to the U.S. importers of record. The requirements for the U.S. importer to obtain the IFTP, to report harvest event data at entry filing, and to maintain supply chain records for auditing purposes, will be enforced beginning January 1, 2018 (except for shrimp and abalone). However, this means that U.S. importers must work with exporters to obtain harvest and supply chain records for products harvested earlier than January 1, 2018 if these products will be entered into the United States on or after that date. NMFS evaluated the time interval from harvest date to entry date for several fish products currently subject to import monitoring programs (*e.g.*, bluefin tuna, swordfish, toothfish) and determined that in most cases U.S. imports occur within a few months of the harvest event. Some products may be in the supply chain for longer periods due to processing, cold storage and shipping time. U.S. importers should work with their suppliers in advance of the compliance date of January 1, 2018 to ensure that the required information is available. NMFS will publish a document in the **Federal Register** to establish the effective date of the rule for shrimp and abalone products and, in establishing that date, due consideration will be given to the need for adequate advance notice. See response to Comment 7.

*Comment 34:* One commenter noted that the timeline for implementation of the Program should not be established until the Commerce Trusted Trader Program is closer to implementation.

*Response:* NMFS disagrees. The NOC Committee considers the development of a Commerce Trusted Trader Program to be a critical element in the long-term implementation and success of the Program. The Trusted Trader Program would allow NMFS and the trade to segment risk in supply chain management and allow for streamlined entry processing and reduced inspections for entities granted program status. NMFS announced a 60-day

public comment period on the elements and design of a Commerce Trusted Trader Program on April 29, 2016 (81 FR 25646). That announcement identifies a variety of issues that will be considered in the development and implementation of a Commerce Trusted Trader Program. It also acknowledges that while NMFS will make every effort to implement the Commerce Trusted Trader Program simultaneously with the Program, rulemaking and implementation requirements remain uncertain, and those factors could preclude simultaneous implementation. NMFS sought comment on the potential impacts and benefits of having the Commerce Trusted Trader Program implemented some weeks or months following implementation of the Program and recommendations for design and implementation of the Commerce Trusted Trader Program as well as measures that can be taken to minimize the cost and burden of those impacts and maximize available benefits. As NMFS considers comments and initiates design of the Trusted Trader Program, the requirements for additional rulemaking will be determined and the time frame for implementation will be clarified.

*Comment 35:* NMFS received comment that the timing of expansion of the seafood traceability program to all species should be prescribed in the final rule.

*Response:* NMFS disagrees. The Administration has indicated and described in the Action Plan its goal to expand the Program to all seafood, after consideration of factors including authorities needed, stakeholder input, and cost-effectiveness, which includes a risk-based implementation. The need to evaluate operational successes and challenges before expanding the Program to more, or all, species was clearly recognized by the Task Force as evidenced by its recommendation that the National Ocean Council Committee on IUU fishing and Seafood Fraud publish a report in December of 2016 evaluating the Program as set out in this final rule, identifying hurdles and potential approaches for addressing those hurdles, costs and benefits of expanding the Program, and issues associated with sharing traceability information at the consumer level.

Due to existing operational uncertainties regarding the implementation of this first phase of the Program such as the scheduling of, and time required for, the programming of the ITDS for data reporting by the importer of record, NMFS has established an implementation date for the Program of approximately 12

months following the publication of the final rule. For similar reasons, it would be inadvisable to project a schedule for expansion of the Program at this time. Furthermore, specifying the expansion of the Program to all species in this rulemaking would require that the supporting analyses (Regulatory Impact Review and Final Regulatory Flexibility Analysis) include in their scope reporting and recordkeeping for all seafood. NMFS does not consider those analyses to be feasible at this time and therefore cannot define a schedule for expansion for inclusion in this rule.

#### *Outreach and Assistance to Industry*

*Comment 36:* Several national governments commented on the importance of outreach and capacity building to support implementation of, and compliance with, the Program implementing regulations.

*Response:* NMFS recognizes the need for outreach and education in support of implementation of the Program and compliance with its requirements. NMFS noted in the proposed rule the intention to provide assistance to exporting nations to support compliance with the requirements of the program, including by providing assistance to strengthen fisheries governance structures and enforcement bodies to combat IUU fishing and seafood fraud and to establish systems to enable export shipments of fish and fish products to be traced back to the point of harvest. However, outreach will not be limited to international engagement. NMFS will work closely with the U.S. seafood trade sector as well to ensure awareness and understanding of the program requirements in support of importers' compliance with the rule. Additionally, NMFS intends to publish compliance guidance as well as a "plain language" description of the final regulation.

#### *Burden to Industry/Regulatory Impact/ Alternatives*

*Comment 37:* A number of commenters requested additional detail on how the reported data will be used. Some comments called for the data to be used to support enforcement of other statutes (*e.g.*, Lacey Act), others requested a more robust description of enforcement and auditing procedures.

*Response:* Historically, much of the enforcement effort to address imports of illegally-harvested or misrepresented seafood has been reactive, working at the border posts and following suspected shipments. The intent of this rulemaking is to enhance the ability of NOAA and its law enforcement partners to detect misrepresented or illegally

harvested fish and fish product before it enters U.S. Commerce. The data and records required by this regulation will be used to screen products in an effort to detect and prevent illegally-harvested and misrepresented seafood from entering U.S. commerce.

The National Marine Fisheries Service Seafood Inspection Program (SIP) inspects over two billion pounds of seafood per year for export and domestic consumption. About 20 percent of domestic consumption is examined by SIP. These examinations include checks for proper labeling, proper net weight and proper nomenclature. The NOAA Office of Law Enforcement also conducts inspections of imported fish and fish products. These inspections are conducted in collaboration with our federal and state law enforcement partners to ensure compliance with statutes administered by NOAA, such as the requirements of the Magnuson-Stevens Fishery Conservation and Management Act and the Lacey Act. The new data and reporting requirements will further enhance the effectiveness of these inspections and provide information that will allow limited enforcement resources to be better targeted at fish and fish products suspected of being misrepresented or illegally harvested.

NOAA has also actively increased collaboration on analysis of U.S. fisheries imports with other law enforcement agencies in an effort to detect and prevent illegally-harvested and misrepresented fish and fish products from entering the U.S. market. To this end, NOAA has entered into information sharing agreements with other law enforcement agencies and is also a partner government agency with CBP in the transition to electronic reporting of trade data through the ITDS, an initiative highlighted in the President's recent Executive Order on streamlining export/import processes.

NOAA has also recently signed a memorandum of understanding with Customs and Border Protection to participate as a member agency of its Commercial Targeting and Analysis Center (CTAC). At the multiagency CTAC facility, members have direct access to a wide array of import processing and law enforcement systems, as well as other member agencies' data systems, to enable collaborative analysis, development and coordination of operational targeting of import shipments for a wide variety of regulatory and enforcement concerns. CTAC member agencies such as NOAA, FDA and CBP are increasing collaboration to target potential seafood fraud in an effort to develop intelligence

driven targeting of high risk seafood product imports.

These partnerships, combined with the additional information and records required by this rulemaking will significantly increase the likelihood of detecting illegal seafood products before admission into U.S. commerce, allow more effective use of limited law enforcement resources available to enforce the various federal statutes designed to prevent illegal importation of products into the United States, and reduce the need for random inspections which can slow the entry of legal products into the United States.

*Comment 38:* NMFS received a number of comments requesting that it remove certain species, in particular Atlantic and Pacific cod, from the initial phase of the Seafood Import Monitoring Program based on a lack of documented foreign illegal fishing activity for the species in question.

*Response:* Many factors were considered in determining the potential for a species to be susceptible to IUU fishing or seafood fraud, including known foreign or domestic unlawful harvest of the species, susceptibility to mislabeling or species substitution, and presence of international catch documentation schemes among others. While not widespread, there have been reports to NOAA of illegal fishing of both Atlantic and Pacific cod species. Additionally, there are reports of, and significant risk of, species substitution.

We note that a preliminary review of 2015 data, for example, demonstrates that at least 94% of the cod imported by the United States is filleted and/or dried or otherwise processed. The majority of such processed product is imported under tariff codes which are not specific with regard to ocean area of origin (Atlantic, Pacific). Given the use of non-specific tariff codes, there is considerable potential for such generic and ready-to-use cod products to be described, for instance, "Atlantic cod fillets", even if not of Atlantic origin—the sort of misrepresentation that would be precluded by requiring a report on the harvest event. It is also important to consider that processing into fillets is regarded under international customs convention and implementing national regulations as a "substantial transformation" of the underlying product, and therefore the product acquires a new country of origin with the result that the harvesting nation may no longer be apparent without specific data on the harvest event.

*Comment 39:* A number of commenters provided input on liability for data accuracy. One commenter saw a lack of clarity in NMFS' definition of

the 'importer of record' and expressed that this person may not always be the best person to hold responsible for accuracy of the information submitted to ACE. One nation's comments indicated that it would be helpful for NMFS to clarify if there is any liability for nations/flag states under this rule.

*Response:* Nations or flag states are not expected to certify the accuracy of data. Under the Program, responsibility for accurate reporting is borne by the IFTP holder, which NMFS has referred to as the importer of record as required to be designated on each entry filed with CBP. See response to Comment 49 for further information.

*Comment 40:* The U.S. Small Business Administration Office of Advocacy (Advocacy) commented that NMFS did not adequately comply with requirements under the Regulatory Flexibility Act, and expressed concerns that NMFS did not adequately assess the burden on small businesses.

*Response:* NMFS has made adjustments to the final rule that reduce the burden on industry without compromising the integrity of the Program. As discussed in the Initial Regulatory Flexibility Analysis (IRFA), all businesses directly affected by this rulemaking are considered small businesses. The Regulatory Flexibility Act (RFA) has two main requirements for an initial regulatory flexibility analysis (IRFA): (1) "describe the impact" the rule would have on small entities, and (2) discuss alternatives that "minimize any significant economic impact . . . on small entities." NMFS did both with the information available at the time the proposed rule was published. To assess the impact on small entities, in the Regulatory Impact Review (RIR) and IRFA together, NMFS analyzed the costs associated with the proposed rule which included the precise amount of permit fees and an acknowledgement of incremental costs of reporting and recordkeeping. As much of the reporting is either already required or already otherwise undertaken by the impacted entities, NMFS could not definitively provide precise incremental costs and, instead, described the types of incremental costs that regulated entities would face. The RFA specifically acknowledges that costs often cannot be precisely quantified and, thus, allows that "an agency may provide . . . more general descriptive statements if quantification is not practicable or reliable." 5 U.S.C. 607. NMFS sought comment on these incremental costs to allow small entities the chance to provide relevant quantifiable information. Granting small businesses a voice in the rulemaking

process is one of the main purposes of the RFA. See Regulatory Flexibility Act of 1980, Public Law 96–354 (2)(a)(8).

The commenter incorrectly states that “NMFS asserts that the only new cost will be the industry wide cost of \$60,000 due to permitting fees.” The proposed rule did not state that this would be the *only* cost—it simply stated that “there will be approximately 2,000 new applications for the IFTP, with an estimated industry-wide increase in annual costs to importers of \$60,000 in permit fees.” NMFS then later states that “[i]ncremental costs are likely to consist of developing interoperable systems . . .”. NMFS also discusses the issue of incremental costs in the IRFA summary in the proposed rule and section 1.3.2 of the RIR.

The commenter asserted that “the IRFA does not have information about the costs of the reporting requirements”. However, NMFS states that there will not likely be significant additional costs because the industry is otherwise in compliance with the rule. The IRFA stated that “[d]ata sets to be submitted electronically . . . are, to some extent, either already collected by the trade in the course of supply chain management, already required to be collected and submitted . . ., or collected in support of third-party certification schemes voluntarily adopted by the trade.” NMFS acknowledges that there will be incremental costs; it just could not quantify them.

The commenter also stated that the number of required data points increases the economic burden on small entities and encouraged NMFS to reconsider whether all of the data points were necessary to collect from small entities. NMFS notes that the proposed rule explains why each data point is necessary to establish the chain of custody and an effective traceability scheme (81 FR 6210, February 5, 2016). In addition, the third alternative that was analyzed in the IRFA discussed a “reduced data set” and was not selected as the preferred alternative because it would not achieve the objectives of the rule.

*Comment 41:* Advocacy also requested that NMFS consider “less burdensome alternatives” including the voluntary third party certification, Trusted Trader, and European Union catch certification programs and, if these three programs are not viable alternatives, explain why. Advocacy requested that NMFS analyze and take advantage of opportunities to harmonize the Program requirements with the existing EU catch certification scheme and third party certification to minimize the burden on industry.

*Response:* The proposed rule noted that NMFS did not have sufficient information to analyze the extent to which voluntary third party certification, Trusted Trader, and European Union Catch Certification programs could minimize burden to industry and whether any of them could achieve the rule’s statutory objectives, and specifically sought and received public comment on these programs. NMFS received and took into consideration public comment on these programs. Throughout the Response to Comments section of this final rule, NMFS has noted where changes have been made that minimize the burden on industry without compromising the integrity of the Program and those changes are also reflected in the regulatory text and in the Final Regulatory Flexibility Analysis accompanying this rule.

*Comment 42:* NMFS received comments that the Program will impose substantial costs on the international seafood supply chain. Commenters challenged the cost estimated in the Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis, suggesting that the compliance burden for this rulemaking will often be incrementally higher due to multiple harvest events associated with an entry. Commenters also suggested that the total hourly cost to an importer for the labor required to enter traceability data through ITDS is \$31.25 per hour. Commenters also identified additional costs not incorporated in the Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis, including the cost of paying harvesters and farmers for traceability data, the cost of auditing suppliers to insure that reported information is accurate and complete, and the cost of insuring themselves against the risk that imported information is erroneous, and the related risk of delayed entry of imported products. Comments suggest that enforcement of the regulations implementing the Program will cause exporters to choose alternative markets to the United States.

*Response:* NMFS noted in the Draft Regulatory Impact Review and Initial Regulatory Flexibility Analysis the difficulty of estimating certain costs associated with compliance with the rule for a new program, and identified specific issues about which the public was encouraged to comment. NMFS is greatly appreciative of the thoughtful and detailed comments offered in this regard. Commenters affirmed that the operational attributes of some, if not all of the fisheries for species subject to the Program are such that entries of fish or

fish products from those fisheries will represent, and require the reporting of data for, more than one harvest event. This was anticipated by NMFS and described in the proposed rule. In response to public comment, NMFS has made some revisions in the final rule. See response to Comment 43 for information on the revisions.

With regard to cost of labor to enter data, NMFS estimated that the average hourly total cost was \$15.00 per hour in the Draft Regulatory Impact Review. In light of public comment, NMFS updated the hourly rate to \$25.00 per hour in the Final Regulatory Impact Review and Final Regulatory Flexibility Analysis, based on the Bureau of Labor Statistics’ estimate of total cost to the employer for office and administrative support services in the fourth quarter of 2015.

Commenters apparently assume a linear relationship between the number of harvest events related to an import entry and the amount of time required to provide the traceability data. This would be the case if all data were manually entered. NMFS has consulted with software developers who are in the business of automating the ITDS data-input process for importers and customs brokers. As they point out, many of the data elements will be identical across numerous harvest events, and developers will likely identify “loop-backs” that preclude the need to repeatedly enter the same species, harvest area, address, etc. for a series of harvest events in the same fishery. As well, importers are likely to build databases from which previously reported information can be pulled and entered as appropriate. These efficiencies will create economies of scale such that the actual (average) time needed to complete the harvest information associated with an entry will decrease as the number of harvest events increases.

NMFS does not agree that harvesters and farmers will be in a position to demand payment for traceability data, and commenters did not provide quantitative or qualitative information regarding the likelihood of such risks. There is no indication that the imposition of existing catch documentation systems (e.g., the EU system) resulted in measurable increases in the cost of seafood. The harvest event data required to be provided under the U.S. program aligns very closely with those data on the harvest event required in the European Union catch certification program. Providing this information to U.S. importers subject to the Program should be no more costly or burdensome.

However, we recognize that some businesses and some countries do not currently export to the EU and, for these entities, providing harvest, landing, and chain of custody information to U.S. importers subject to this rule could result in new burdens for these exporters to supply priority species to the U.S. market. There are few affected countries not currently exporting the designated priority species to the E.U. market, suggesting compliance with the U.S. requirements would not pose an inordinate burden on U.S. importers or consumers given the relatively small volume of trade involved. We note, however, that individual businesses located within each country may have different levels of experience with exporting to the EU market. While this analysis assumes minimal incremental regulatory burden for businesses located in countries that ship to the EU, it is possible that some businesses within these countries will incur costs as a consequence of this rule, in particular the chain-of-custody recordkeeping in cases of complex supply chains, that may be either passed through to U.S. consumers or result in a decline in exports to the U.S. market. Both of these responses to the Program could affect prices in the U.S. market. However, evidence indicates that there were not significant effects on supply to the EU seafood market in response to the EU's IUU regulation.

The rule does not require any formal audits by suppliers. Adoption of that practice by an importer would likely be informed by the importer's business model, relationship with suppliers, and perceived risk that the supplier might, whether intentional or not, provide incorrect traceability information to the importer.

Commenters pointed to the cost of insurance indemnifying importers against the cost of civil penalties for failure to comply with the rule. NMFS is not familiar with such insurance but assumes that need for indemnification would also pertain to risks associated with existing other agency regulations on seafood safety and trade documentation.

NMFS disagrees that implementation of the Program will result in exporters choosing alternative markets to the United States. Similar information requirements relative to harvesting authorizations and documentation of processing and transshipment were placed on fisheries exporting to the European Union through the implementation of its catch documentation program. No significant disruptions in European seafood markets were observed. The United

States represents an equally attractive international market, access to which is well worth the effort of providing traceability data to exporters.

*Comment 43:* One commenter developed three scenarios (mahi mahi, blue swimming crab, and Atlantic cod) for the purpose of demonstrating the number of harvest events that may be associated with an import entry of those species. The commenter stated that there is no evidence showing that the Program's data reporting requirements will lead to reduction of either IUU fishing or seafood mislabeling.

*Response:* NMFS greatly appreciates the detailed information provided. On the basis of those comments as well as similar information from other commenters, NMFS revised the final rule to exempt an importer from having to provide vessel- or aquaculture facility-specific information where certain criteria are met for small-scale vessels and aquaculture facilities, if the importer provides other information required under this rule from an aggregated harvest report. See response to Comment 23 for detailed explanation of the exemption.

A detailed response to each scenario follows. While NMFS does not agree with a number of assumptions and methodologies applied in the comment, the commenter's overall approach to estimating potential harvest events is sound. Below, NMFS applies the commenter's overall estimation approach to the three scenarios adjusting the estimates to reflect the aforementioned provision for aggregating data from small-scale fisheries. These alternative estimates are also provided in the Final Regulatory Impact Review and Final regulatory Flexibility Analysis.

#### *Mahi-Mahi From Ecuador*

NMFS finds the general description of the fishery operations in the comment to be consistent with information provided in publicly available peer-reviewed literature. Based on fleet composition data with respect to small "day-boats" and mothership operations described in the same journal publication, NMFS believes that the new aggregated harvest report exemption will significantly reduce the number of harvest events potentially associated with any given entry of product from this fishery. Assuming that the average aggregated harvest amount was only 20,000 pounds (considering both shore-based aggregations not to exceed one day and trip-based aggregations by motherships), a thirty-five percent yield of processed product as described in the comments would result in one "harvest event"

accounting for 7,350 pounds of mahi-mahi portions. Following the commenter's methodology, which estimated that a full container of mahi-mahi is 44,000 pounds, there would only be six harvest events that must be reported on entry of that container into the United States.

NMFS agrees that the relationship between yield of specific portions and products included in an entry may impact the actual number of harvest events associated with a shipment. That said, there are many additional variables that could incrementally increase or decrease that number of harvest events.

#### *Blue Crab From Mexico*

As noted by the commenter, blue swimming crab is not included in the list of priority species and is therefore outside the scope of this rulemaking. NMFS appreciates these comments, and notes that the new aggregated harvest report exemption will significantly reduce the number of landing events that would need to be reported by the importer of record for species covered under the Program.

#### *Atlantic Cod*

Of the major exporters of Atlantic cod products to the United States, Iceland is particularly transparent with respect to trade and fisheries statistics and will be referenced throughout this response due to the public availability of data from that nation. NMFS takes issue with several elements of the commenter's description of the Atlantic Cod fishery. Comments focused solely on minced block and treated that product as an exclusively secondary product, noting a 2.5 percent recovery rate. While minced product may, as stated in the comments, represent 2.5 percent of the catch, that does not equate to using 2.5 percent of each fish out of each harvest event. To the extent that minced product is made from mis-cut fillets or as a primary form of production, recovery per fish could approach 30 percent (FAO lists the yield of skinless cod fillets as 36 percent).

The exclusive focus on minced block product mischaracterizes the nature of U.S. imports of Atlantic cod. From 2013 through 2015, imports of product reported under the tariff schedule code for "GROUND FISH COD NSPF MINCED FROZEN >6.8KG" made up, on average, 0.6 percent of total cod imports according to NMFS's seafood trade database. During the years 2010 through 2014, Iceland's export of minced cod block ranged from 147 metric tons to 214 metric tons, while its export of fresh and frozen fillet products to the U.S. ranged from 1,799 to 4,779 metric tons. While the use of secondary-product

minced cod block as described in the comments may be useful in making an extreme example, it would be inappropriate to extrapolate the results to the entirety of U.S. Atlantic cod imports.

Comments characterize the average catch of small “in shore” boats to be about 400 pounds, or 180 kilograms per day. A review of cod landings by a variety of Icelandic harvesting vessels ranging from small inshore boats (<12 meters) to large trawlers in Iceland’s web-based catch reporting system (<http://www.fiskistofa.is>) indicates that 180 kilogram landings are much more the exception than the rule. While examples of landings less than 1,000 kilograms can be identified, there are many more that can be found in the tens of thousands of kilograms.

To the extent that small cod landings occur, small vessels are likely to be the source of those landings and the final rule exempts importers from providing vessel-specific information from small-scale vessels (*i.e.*, twelve meters in length or less or 20 gross tons or less), if the importer provides other information required under the rule based on an aggregated harvest report. See response to Comment 23 for further detail on the exemption. Under this exemption, the importer of record would be responsible for reporting fewer harvest events at the time of entry into U.S. commerce.

When considering the more common-sized cod landings in Iceland using a conservative example of 25,000 kilograms per landing, a much more probable scenario for reporting requirements emerges. Assuming a 35% yield of processed product for cod fillets, a 50,000 pound container requires 142,900 pounds of round cod, (68,836 kilograms), which results in an estimated minimum of three harvest events that an importer would be required to report upon entry of the container into U.S. commerce.

NMFS points to the recommendations of the Task Force to address the concern that NMFS has not demonstrated that the Program will lead to a decrease in IUU fishing and seafood fraud. Supply chain traceability is one of four thematic approaches identified by the Task Force. Others include international engagement, enforcement capabilities, and partnerships. NMFS considers the sum of the entire suite of recommendations to be an integrated and effective framework for combating IUU fishing and seafood fraud. Additionally, the Program’s recordkeeping and reporting requirements are very closely aligned with those used in other catch

documentation schemes which share the objective of preventing the entry of illegally harvested and misrepresented fish and fish products into commerce and reflect many of the best practices associated with seafood traceability.

*Comment 44:* Commenters asserted that NMFS failed to consider costs of audits of the information received from overseas suppliers, training costs, the longer lead time, or additional insurance for inaccurate uploads in development of the IRFA.

*Response:* NMFS appreciates comments on the cost evaluation presented in the Initial Regulatory Flexibility Analysis (IRFA) accompanying this rule. While NMFS disagrees with the comments on the actual cost of these variables, NMFS has taken all comments into consideration and included new cost estimates in the Final Regulatory Flexibility Analysis.

*Comment 45:* Two commenters expressed concern that reported information could contain trade secrets that would pose significant business impacts if disclosed to competitors.

*Response:* NMFS believes industry has or can employ measures to support this transfer of information securely to the IFTP holder. As explained in the proposed rule, data security will be given the highest priority. Information collected via ACE and maintained in CBP systems is highly sensitive commercial, financial and proprietary information, generally exempt from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552(b)(4)) and prohibited from disclosure by the Trade Secrets Act (18 U.S.C. 1905). Further, information required to be submitted under the MSA is subject to confidentiality of information requirements at 16 U.S.C. 1881a(b).

*Comment 46:* A commenter requested clarification on what constitutes a “harvest event” in the case of multi-day trips on large catcher vessels or catcher processors. The commenter pointed out that a “harvest event” could be applied to each set or tow, each day, or to the entire fishing trip in the aggregate.

*Response:* In response to that comment, NMFS has added a definition of “harvest event” in § 300.321. For trips occurring in more than one harvest area, catch from each harvest area during the trip will be considered a separate harvest event. As discussed in response to Comment 23 and other comments, the final rule includes an exemption related to an aggregated harvest report.

*Comment 47:* NMFS received comments expressing concern regarding the likely frequency of product inspection and post-entry audits and

verification of traceability information provided in accordance with this rule. One commenter noted that inspections and real-time verification of data provided at the time of entry may slow the flow of seafood imports into the United States, having an especially detrimental effect on shippers of fresh (unfrozen) product.

*Response:* NMFS agrees that frequent or lengthy delays of imported seafood import entries at the U.S. border may be costly to industry. NMFS intends to focus the use of its authority to request holds on incoming shipments primarily when risk indicators or specific intelligence indicate reason to do so. Post-entry audit and verification will be more frequent, but those activities will not impact the flow of trade or speed of entry, provided that all necessary data are provided at the time of entry.

*Comment 48:* Several commenters expressed concern over NMFS’s definition of “importer of record” in the proposed rule, stating that import entry functions and product ownership is handled in a variety of ways across importing companies and in some cases, the proposed definition may not fit the business model.

*Response:* NMFS believes the Program has been designed to accommodate all of the scenarios described in the comment provided the entity in question is located in the U.S. The determination of who should act as the importer of record is a private, business decision between the parties involved in the importation process. The importer of record is the entity required to be designated on the entry filing and this rule requires that the entity so designated is issued an IFTP. That permit number must be reported to make the entry. In some instances, there may be more than one entity involved in a transaction that holds an IFTP. In that instance, it is again up to the parties involved in the transaction to determine whose permit will be used for the entry and who will therefore be designated as the importer of record on the filing with CBP.

*Comment 49:* One commenter noted that seafood importers do not have the ability to ground-truth claims by exporters that the product is from legitimate fishing operations.

*Response:* NMFS disagrees. Per the Magnuson-Stevens Act authority by which this rule is promulgated, it is illegal to import any fish taken, possessed, transported, or sold in violation of any foreign law or regulation. Therefore, NMFS considers it to be the responsibility of seafood importers to determine the source of the product entering the U.S. market, and it

is one of the reasons that the National Ocean Council Committee determined that a “government-to-business” model would be most effective in ensuring that the U.S. seafood supply chain is closed to IUU and misrepresented fish and fish products.

### Changes From the Proposed Rule

In response to comments received on the proposed rule, NMFS has made a number of changes in the final rule. In addition, certain other changes in the regulatory text are necessary because final rules, promulgated after the proposed rule for the Seafood Traceability Program was published, amended regulatory text that is also amended by this rule.

#### *Redesignation of 50 CFR Part 300 Subpart Q*

In publishing the proposed rule for integration of NMFS current trade monitoring programs within the ITDS (see 80 FR 81251, December 29, 2015), NMFS incorrectly numbered the sections of the proposed new subpart R to 50 CFR part 300 such that the section numbers were out of sequence with existing subpart Q. Consequently, the final rule for ITDS integration (81 FR 51126, August 3, 2016) redesignated existing subpart Q as new subpart R and inserted a new subpart Q for the ITDS regulations with sections numbered in the correct order. Because the proposed rule for the Seafood Traceability Program (81 FR 6210, February 5, 2016) would have further revised regulatory text in the proposed subpart R to 50 CFR part 300, this final rule amends regulations that now exist in subpart Q.

#### *Electronic System for Atlantic Bluefin Tuna*

In a final rule published April 1, 2016 (81 FR 18796), NMFS amended the regulatory text at 50 CFR 300.181 through 300.189 to reflect the implementation of the electronic bluefin tuna catch document program of the International Commission for the Conservation of Atlantic Tunas (ICCAT). As a contracting party to ICCAT, the United States has implemented the electronic bluefin tuna catch document program and has established simplified entry and export reporting requirements for bluefin tuna accordingly. The simplified ACE reporting requirements for bluefin tuna catches recorded in the ICCAT system are sufficient to meet the requirements of the Program established under this rule. Therefore, this rule does not amend those reporting requirements.

#### *Aggregated Harvest Report Exemption*

This final rule has been revised to exempt an importer of record from providing vessel-, farm-, or aquaculture facility-specific information under § 300.324(b)(1), if the importer provides other required information from an Aggregated Harvest Report. Even if there is an Aggregated Harvest Report, the importer is still required to provide harvest information under § 300.324(b)(2)–(3).

Following an approach similar to that of the EU’s CDS regarding small-scale vessels, the final rule at § 300.321 defines Aggregated Harvest Report to mean a record made at a single collection point on a single calendar day for aggregated catches by multiple small-scale fishing vessels (20 measured gross tons or less or 12 meters length overall or less) offloaded at that collection point on that day, or for a landing by a vessel to which the catches of one or more small-scale vessels were transferred at sea. A report would include non-vessel specific harvest event information in aggregate for all fish from small-scale vessels received by an entity (e.g., fish receiver) operating at a collection point on a single calendar day. As there may be multiple receivers at a landing point, each fish receiver would generate one or more harvest event reports for their respective aggregate receipts on each day.

Aggregated Harvest Report is also defined at § 300.321 to mean a record made at a single collection point or processing facility on a single calendar day for aggregated deliveries from multiple small-scale aquaculture facilities, where each aquaculture facility delivers 1,000 kg or less to that collection point or processing facility on that day. The entity operating at the collection point or processing facility may record the harvest event information in aggregate for all receipts by that entity or processing facility on that day. As there may be multiple receivers at an intermediate collection point prior to delivery to a processor, each receiver would generate a daily harvest event report for its respective aggregate receipts.

#### *Implementation of Mandatory Reporting and Recordkeeping*

This rule establishes a compliance date of January 1, 2018, except for shrimp and abalone for which the effective date is stayed pending further action by NMFS. The requirements for permitting, ACE reporting and recordkeeping will be enforced beginning on that date, though permits would be available for issuance and

ACE reporting would be available for testing prior to that date. NMFS will publish a notice in the **Federal Register** when ACE programming has been completed to allow testing of the entry reporting. For products harvested prior to the compliance date, U.S. importers should work with their foreign suppliers to ensure that the harvest event and supply chain records are available for any entries made on or after January 1, 2018.

#### *Electronic Filing Instructions*

The proposed rule explained that the format for data elements required under this rule would be specified in the following documents: Customs and Trade Automated Interface Requirements—Appendix PGA, Customs and Trade Automated Interface Requirements—PGA Message Set, and Automated Broker Interface (ABI) Requirements—Implementation Guide for NMFS. For ease of reference, NMFS has added at § 300.323 references to where import and export electronic filing instructions can be found on the internet.

#### *Information on Fish Species, Product Description and Quantity and/or Weight*

Proposed § 300.324(b)(2) required that importers provide information on fish species using the scientific name, acceptable market name, and Aquatic Sciences Fishery Information System (ASFIS) number. In response to comment, the final rule requires reporting of only the ASFIS 3-alpha code and provides a reference to where the codes may be found on the internet. A list of ASFIS 3-Alpha codes as associated with HTS codes is provided in the NMFS Implementation Guide posted by CBP at <http://www.cbp.gov/trade/ace/catair>.

Proposed § 300.324(b)(2) required a “product description” data element referring to the product form as it exists at the time it is offered for entry. After reconsidering other data reported at entry and public comments, NMFS has deleted “product description” from the final rule, as this information is reported on transportation manifests and to FDA in prior notice reports as well as part of the entry summary reported to CBP. As in the proposed rule, NMFS will still require information on product form as landed (e.g., whole, headed/gutted). Such information is necessary to interpret the landed weight and ensure that IUU product is not associated with that harvest event if inserted later in the supply chain. If there is an Aggregated Harvest Report, NMFS has added in § 300.324(b)(2) that the importer may provide the total quantity and/or weight

of the product(s) as landed/delivered on the date of the report.

*Format for Data Elements: Area of Wild Capture and Fishing Gear*

Proposed § 300.324(b)(1) and (3) required information on area of wild capture and type of fishing gear used to harvest fish. NMFS has not changed this text in the final rule, but as explained in response to Comments 19 and 21, will provide further information on the format for these data elements in the NMFS Implementation Guide.

*Segregation of Individual Harvest Events*

The final rule defines a harvest event for the purposes of reporting landings or deliveries, and allows for reporting in the aggregate for small-scale vessels and aquaculture facilities. As explained above, the rule does not require that inbound shipments segregate imported product by each harvesting event. NMFS has clarified in § 300.324(b)(3) that a product offered for entry may be comprised of products from more than one harvest event and each harvest event must be documented. However, specific links between portions of the shipment and particular harvest events are not required.

*Record Retention Period*

The record retention period for supply chain information required by NMFS is reduced from the proposed five years to two years from the date of import for entries subject to the recordkeeping requirements of this rule.

*Requirements for Shrimp and Abalone*

As described in the preamble to the proposed rule, gaps exist in the collection of traceability information for domestic aquaculture-raised shrimp and abalone, which is currently largely regulated at the state level. (See 81 FR 6212, February 5, 2016). Since publication of the proposed rule, NMFS has explored the opportunity to work with its state partners to establish

reporting and recordkeeping requirements for aquaculture traceability information that could be shared with NMFS. However, this did not prove to be a viable approach at the present time. NMFS is thus staying the effective date of the rule for shrimp and abalone until appropriate reporting and/or recordkeeping requirements for domestic aquaculture production can be established. To that end, NMFS is continuing to work with its Presidential Task Force partner agencies with respect to measures that could be adopted to close the gaps and to ensure comparability between traceability requirements and NMFS' access to traceability information for imported and domestic shrimp and abalone.

For example, FDA, whose parent agency Health & Human Services is also a member of the Presidential Task Force, is currently exploring which of its authorities could fill the gap, including regulations that would require designating high risk foods for certain additional recordkeeping by food processors under the authority of section 204 of the Food Safety Modernization Act, which addresses enhanced tracking and tracing of food through recordkeeping and was passed by Congress in 2011. See, e.g., *Designation of High-Risk Foods for Tracing; Request for Comments and Scientific Data and Information* (79 FR 6596, Feb. 4, 2014). Such additional recordkeeping requirements to enhance food safety are expected to facilitate FDA's ability to track the origin of and prevent the spread of foodborne illness. FDA is also planning to make revisions to its Seafood Hazard Analysis and Critical Control Points (Seafood HACCP) provisions.

This final rule changes the proposed rule by staying the effective date of the program requirements to imported shrimp and abalone, originating from both wild capture fisheries and aquaculture operations. In addition, the final rule clarifies that for shrimp and abalone, the program consists of two

components, reporting of harvest events at the time of entry and permitting and recordkeeping requirements with respect to both harvest events and chain of custody information. (For covered species or species groups other than shrimp and abalone, the program similarly consists of two components, reporting of harvest events and permitting and recordkeeping requirements with respect to both harvest events and chain of custody information.)

NMFS will lift the stay of the effective date as to the reporting and/or recordkeeping components of the program once commensurate reporting and/or recordkeeping requirements have been established for domestic aquaculture-raised shrimp and abalone and will determine and announce an effective date for the rule as to these species. Application of the program's reporting and/or recordkeeping requirements to shrimp and abalone will enable audits of imports to be conducted to determine the origin of the products and confirm that they were lawfully acquired.

**Summary of Requirements**

Under this rule, importers are subject to permitting, reporting and recording keeping requirements applicable to imports of the designated priority species and species groups. The HTS codes applicable to the products subject to the requirements of this rule may be revised from time to time by the International Trade Commission. Any such changes will be reflected in the NMFS Implementation Guides for ACE that are posted to the internet by CBP. At the time of issuing this final rule, entries of the fish and fish products filed under the following HTS codes are subject to the permitting and recordkeeping requirements of this rule and are designated in ACE as requiring the additional NMFS data set in order to obtain release of the inbound shipment:

HTS code	Commodity description
0301940100	TUNA BLUEFIN ATLANTIC, PACIFIC LIVE.
0301950000	TUNA BLUEFIN SOUTHERN LIVE.
0302310000	TUNA ALBACORE FRESH.
0302320000	TUNA YELLOWFIN FRESH.
0302330000	TUNA SKIPJACK FRESH.
0302340000	TUNA BIGEYE FRESH.
0302350100	TUNA BLUEFIN ATLANTIC, PACIFIC FRESH.
0302360000	TUNA BLUEFIN SOUTHERN FRESH.
0302470010	SWORDFISH STEAKS FRESH.
0302470090	SWORDFISH FRESH.
0302510010	GROUND FISH COD ATLANTIC FRESH.
0302510090	GROUND FISH COD NSPF FRESH.
0302810010	SHARK DOGFISH FRESH.
0302810090	SHARK NSPF FRESH.

HTS code	Commodity description
0302895058	SNAPPER (LUTJANIDAE SPP.) FRESH.
0302895061	GROUPER FRESH.
0302895072	DOLPHIN FISH FRESH.
0303410000	TUNA ALBACORE FROZEN.
0303420020	TUNA YELLOWFIN WHOLE FROZEN.
0303420040	TUNA YELLOWFIN EVISCERATED HEAD-ON FROZEN.
0303420060	TUNA YELLOWFIN EVISCERATED HEAD-OFF FROZEN.
0303430000	TUNA SKIPJACK FROZEN.
0303440000	TUNA BIGEYE FROZEN.
0303450110	TUNA BLUEFIN ATLANTIC FROZEN.
0303450150	TUNA BLUEFIN PACIFIC FROZEN.
0303460000	TUNA BLUEFIN SOUTHERN FROZEN.
0303490200	TUNA NSPF FROZEN.
0303570010	SWORDFISH STEAKS FROZEN.
0303570090	SWORDFISH FROZEN.
0303630010	GROUND FISH COD ATLANTIC FROZEN.
0303630090	GROUND FISH COD NSPF FROZEN.
0303810010	SHARK DOGFISH FROZEN.
0303810090	SHARK NSPF FROZEN.
0303890067	SNAPPER (LUTJANIDAE SPP.) FROZEN.
0303890070	GROUPER FROZEN.
0304440010	GROUND FISH COD ATLANTIC FILLET FRESH.
0304440015	GROUND FISH COD NSPF FILLET FRESH.
0304450000	SWORDFISH FILLET FRESH.
0304530010	GROUND FISH COD ATLANTIC MEAT FRESH.
0304530010	GROUND FISH COD ATLANTIC MEAT FRESH.
0304530015	GROUND FISH COD NSPF MEAT FRESH.
0304530015	GROUND FISH COD NSPF MEAT FRESH.
0304540000	SWORDFISH MEAT FRESH.
0304711000	GROUND FISH COD NSPF FILLET BLOCKS FROZEN >4.5KG.
0304711000	GROUND FISH COD NSPF FILLET BLOCKS FROZEN >4.5KG.
0304715000	GROUND FISH COD NSPF FILLET FROZEN.
0304715000	GROUND FISH COD NSPF FILLET FROZEN.
0304870000	TUNA NSPF FILLET FROZEN.
0304895055	DOLPHINFISH FILLET FROZEN.
0304895055	DOLPHINFISH FILLET FROZEN.
0304911000	SWORDFISH MEAT FROZEN >6.8KG.
0304919000	SWORDFISH MEAT FROZEN NOT >6.8KG.
0304951010	GROUND FISH COD NSPF MINCED FROZEN >6.8KG.
0304951010	GROUND FISH COD NSPF MINCED FROZEN >6.8KG.
0304991190	TUNA NSPF MEAT FROZEN >6.8KG.
0305320010	GROUND FISH COD NSPF FILLET DRIED/SALTED/BRINE.
0305494020	GROUND FISH COD, CUSK, HADDOCK, HAKE, POLLOCK SMOKED.
0305510000	GROUND FISH COD NSPF DRIED.
0305620010	GROUND FISH COD NSPF SALTED MOISTURE CONTENT >50%.
0305620025	GROUND FISH COD NSPF SALTED MOISTURE CONTENT BET 45-50%.
0305620030	GROUND FISH COD NSPF SALTED MOISTURE CONTENT BET 43-45%.
0305620045	GROUND FISH COD NSPF SALTED MOISTURE CONTENT NOT >43%.
0305620050	GROUND FISH COD NSPF FILLET SALTED MOISTURE >50%.
0305620060	GROUND FISH COD NSPF FILLET SALTED MOISTURE CONTENT 45-50%.
0305620070	GROUND FISH COD NSPF FILLET SALTED MOISTURE CONTENT 43-45%.
0305620080	GROUND FISH COD NSPF FILLET SALTED MOISTURE NOT >43%.
0305710000	SHARK FINS.
0306142000	CRABMEAT NSPF FROZEN.
0306144010	CRAB KING FROZEN.
0306144090	CRAB NSPF FROZEN.
0308110000	SEA CUCUMBERS LIVE/FRESH.
0308190000	SEA CUCUMBERS FROZEN/DRIED/SALTED/BRINE.
1604141010	TUNA NSPF IN ATC (FOIL OR FLEXIBLE) IN OIL.
1604141091	TUNA ALBACORE IN ATC (OTHER) IN OIL.
1604141099	TUNA NSPF IN ATC (OTHER) IN OIL.
1604142251	TUNA ALBACORE IN ATC (FOIL OR FLEXIBLE) NOT IN OIL IN QUOTA.
1604142259	TUNA ALBACORE IN ATC (OTHER) NOT IN OIL IN QUOTA.
1604142291	TUNA NSPF IN ATC (FOIL OR FLEXIBLE) NOT IN OIL IN QUOTA.
1604142299	TUNA NSPF IN ATC (OTHER) NOT IN OIL IN QUOTA.
1604143051	TUNA ALBACORE IN ATC (FOIL/FLEXIBLE) NOT IN OIL OVER QUOTA.
1604143059	TUNA ALBACORE IN ATC (OTHER) NOT IN OIL OVER QUOTA.
1604143091	TUNA NSPF IN ATC (FOIL OR FLEXIBLE) NOT IN OIL OVER QUOTA.
1604143099	TUNA NSPF IN ATC (OTHER) NOT IN OIL OVER QUOTA.
1604144000	TUNA NSPF NOT IN ATC NOT IN OIL >6.8KG.
1604145000	TUNA NSPF NOT IN ATC NOT IN OIL NOT >6.8KG.
1605100510	CRAB PRODUCTS PREPARED DINNERS IN ATC.
1605100590	CRAB PRODUCTS PREPARED DINNERS NOT IN ATC.
1605102010	CRABMEAT KING IN ATC.



HTS code	Commodity description
1605102051 .....	CRABMEAT SWIMMING (CALLINECTES) IN ATC.
1605104002 .....	CRABMEAT KING FROZEN.
1605104025 .....	CRABMEAT SWIMMING (CALLINECTES) FROZEN.
1605104025 .....	CRABMEAT SWIMMING (CALLINECTES) FROZEN.

Application of this rule to entries of fish and fish products filed under the following HTS codes is stayed pending publication of an action in the **Federal**

**Register** lifting the stay and announcing an effective date for shrimp and abalone. After the effective date, these HTS codes will be designated in ACE as

requiring a NMFS data set in order to obtain release of the inbound shipment:

HTS code	Commodity description
0306160003 .....	SHRIMP COLD-WATER SHELL-ON FROZEN <15.
0306160006 .....	SHRIMP COLD-WATER SHELL-ON FROZEN 15/20.
0306160009 .....	SHRIMP COLD-WATER SHELL-ON FROZEN 21/25.
0306160012 .....	SHRIMP COLD-WATER SHELL-ON FROZEN 26/30.
0306160015 .....	SHRIMP COLD-WATER SHELL-ON FROZEN 31/40.
0306160018 .....	SHRIMP COLD-WATER SHELL-ON FROZEN 41/50.
0306160021 .....	SHRIMP COLD-WATER SHELL-ON FROZEN 51/60.
0306160024 .....	SHRIMP COLD-WATER SHELL-ON FROZEN 61/70.
0306160027 .....	SHRIMP COLD-WATER SHELL-ON FROZEN >70.
0306160040 .....	SHRIMP COLD-WATER PEELED FROZEN.
0306170003 .....	SHRIMP WARM-WATER SHELL-ON FROZEN <15.
0306170006 .....	SHRIMP WARM-WATER SHELL-ON FROZEN 15/20.
0306170009 .....	SHRIMP WARM-WATER SHELL-ON FROZEN 21/25.
0306170012 .....	SHRIMP WARM-WATER SHELL-ON FROZEN 26/30.
0306170015 .....	SHRIMP WARM-WATER SHELL-ON FROZEN 31/40.
0306170018 .....	SHRIMP WARM-WATER SHELL-ON FROZEN 41/50.
0306170021 .....	SHRIMP WARM-WATER SHELL-ON FROZEN 51/60.
0306170024 .....	SHRIMP WARM-WATER SHELL-ON FROZEN 61/70.
0306170027 .....	SHRIMP WARM-WATER SHELL-ON FROZEN >70.
0306170040 .....	SHRIMP WARM-WATER PEELED FROZEN.
0306260020 .....	SHRIMP COLD-WATER SHELL-ON FRESH/DRIED/SALTED/BRINE.
0306260040 .....	SHRIMP COLD-WATER PEELED FRESH/DRIED/SALTED/BRINE.
0306270020 .....	SHRIMP WARM-WATER SHELL-ON FRESH/DRIED/SALTED/BRINE.
0306270040 .....	SHRIMP WARM-WATER PEELED FRESH/DRIED/SALTED/BRINE.
1605211000 .....	SHRIMPS AND PRAWNS, NOT IN AIRTIGHT CONTAINERS.
1605291000 .....	SHRIMPS AND PRAWNS, OTHER.
1605570500 .....	ABALONE PRODUCTS PREPARED DINNERS.
1605576000 .....	ABALONE PREPARED/PRESERVED.

When the above listed HTS codes are listed in entry filings, the ASFIS 3-alpha code indicating the scientific name will be required to discern whether the shipment offered for entry is subject to additional data collection under the Program. Highly processed fish products (fish oil, slurry, sauces, sticks, balls, cakes, puddings, and other similar highly processed fish products) for which the species of fish comprising the product or the harvesting event(s) or aquaculture operation(s) of the product cannot be feasibly identified are not subject to the requirements of this rule. Therefore, HTS codes for such fish and fish products have not been included in the lists above. However, importers are advised to determine if other NMFS program requirements (e.g., TTVP) or other agency requirements (e.g., Fish and Wildlife Service, State Department, Food and Drug Administration) have ACE data reporting requirements applicable to HTS codes used for entry filing, whether or not those codes have

been identified for the Seafood Traceability Program.

**Data for Reporting and Recordkeeping**

The NMFS data to be reported at entry would be in addition to the information required by CBP as part of normal entry processing via the ACE portal. After consideration of comments as outlined above, this rule requires that, at the time of entry for species covered by this rule, importers of record would be required to report the following information for each entry (unless the Aggregated Harvest Report exemption under § 300.324(b)(1) is applicable) in addition to any other information that CBP and other agencies, including NMFS, currently require:

- Information on the entity(ies) harvesting or producing the fish (as applicable): Name and flag state of harvesting vessel(s) and evidence of authorization; Unique vessel identifier(s) (if available); Type(s) of

fishing gear; Name(s) of farm or aquaculture facility.

- Information on the fish that was harvested and processed, including: Species of fish (ASFIS code); Product form (whole, gilled and gutted, etc.) at point of first landing; Quantity and/or weight of the product(s) as landed/delivered.
  - Information on where and when the fish were harvested and landed: Area(s) of wild-capture or aquaculture harvest; Location(s) of aquaculture facility; Point of first landing; Date of first landing or removal from aquaculture facility; Name of entity(ies) (processor, dealer, vessel) to which fish was landed.
  - The NMFS IFTP number issued to the importer of record for the entry.
- Additional information on each point in the chain of custody regarding the shipment of the fish or fish product to point of entry into U.S. commerce is established as a recordkeeping requirement on the part of the importer of record to ensure that information is

readily available to NMFS to allow it to trace the fish or fish product from the point of entry into U.S. commerce back to the point of harvest or production to verify the information that is reported upon entry. Such information could include records regarding each custodian of the fish and fish product, including, as applicable, transshippers, processors, storage facilities, and distributors. The information contained in the records must be provided to NMFS upon request and be sufficient for NMFS to conduct a trace back to verify the veracity of the information that is reported on entry. NMFS expects that typical supply chain records that are kept in the normal course of businesses, including declarations by harvesting/carrier vessels, bills of lading and forms voluntarily used or required under foreign government or international monitoring programs which include such information as the identity of the custodian, the type of processing, and the weight of the product, would provide sufficient information for NMFS to conduct a trace back. In addition to relying on such records, the trade may choose to use model forms that NMFS has developed to track and document chain of custody information through the supply chain.

#### Reporting Mechanism

As explained above, this rule requires that the importer of record, or entry filer acting on their behalf, report the data required via the ACE portal as part of the CBP entry/entry summary process. To this end, importers of record who make entries under the designated HTS codes are required to report the data electronically through the ACE Partner Government Agency Message Set for NMFS (NMFS Message Set) and/or the Digital Image System (DIS). The format for the NMFS Message Set is designated for each of the affected commodities (by HTS code) and specified in the following documents jointly developed by NMFS and CBP and made available to importers and other entry filers by CBP (<http://www.cbp.gov/trade/ace/catair>):

- CBP and Trade Automated Interface Requirements—Appendix PGA
- CBP and Trade Automated Interface Requirements—PGA Message Set
- Automated Broker Interface (ABI) Requirements—Implementation Guide for NMFS

To obtain the IFTP, U.S. importers of record for designated priority species covered by this rule and seafood products derived from such species must electronically submit their application and fee for the IFTP via the

National Permitting System Web site designated by NMFS (*see ADDRESSES*). The fee charged for the IFTP will be calculated, at least annually, in accordance with procedures set forth in Chapter 9 of the NOAA Finance Handbook for determining the administrative costs for special products and services (<http://www.corporateservices.noaa.gov/finance/Finance%20Handbook.html>); the permit fee will not exceed such costs. An importer of record who is required to have an IFTP only needs one IFTP. Separate permits are not required, for example, if the imported species are covered under more than one NMFS import monitoring program or the importer trades in more than one covered species. Note, however, that for some commodities, other agency permits may also be required (*e.g.*, U.S. Fish and Wildlife Service permits for products of species listed under the Convention for International Trade in Endangered Species).

#### Verification of Entries

To implement this regulation, business rules are programmed into ACE to automatically validate that the importer of record has satisfied all of the NMFS Message Set and document image requirements as applicable to HTS codes subject to this rule and other applicable programs (*e.g.*, all data fields are populated and conform to format and coding specifications, required image files are attached). Absent validation of the NMFS requirements in ACE, the entry filed would be rejected and the entry filer would be notified of the deficiencies that must be addressed in order for the entry to be certified by ACE prior to release by NMFS and CBP.

In addition to automated validation of the data submitted, entries may be subject to verification by NMFS that the supplied data elements are true and can be corroborated via auditing procedures (*e.g.*, vessel was authorized by the flag state, legal catch was landed to an authorized entity, processor receipts correspond to outputs). For shipments selected for verification, if verification of the data cannot be completed by NMFS pre-release, NMFS may request that CBP place a hold on a shipment pending verification by NMFS or allow conditional release, contingent upon timely provision of records by the importer of record to allow data verification. Entries for which timely provision of records is not provided to NMFS or that cannot be verified as lawfully acquired and non-fraudulent by NMFS, will be subject to enforcement or other appropriate action by NMFS in coordination with CBP.

Such responses could include, but are not limited to, a re-delivery order for the shipment, exclusion from admission into commerce of the shipment, forfeiture of the fish or fish product, and enforcement action against the entry filer or importer of record.

To select entries for verification, NMFS will work with CBP to develop a specific program within ITDS to screen information for the covered commodities based on risk criteria. For example, risk-based screening and targeting procedures can be programmed to categorize entries by volume and certain attributes (*e.g.*, ocean area of catch, vessel type or gear), and then randomly select entries for verification on a percentage basis within groups of entries defined by the associated attributes. In applying these procedures, NMFS will implement a verification scheme, including levels of inspection sufficient to assure that imports of the priority species are not products of illegal fisheries and are not fraudulently represented. Given the volume of imports, and the perishable nature of seafood, it would not likely be cost-effective for most verifications to be conducted on a pre-release basis. However, the verification scheme may involve targeted operations on a pre-release basis that are focused on particular products or ports of concern.

A verification program as described above will facilitate a determination of whether imported seafood has been lawfully acquired and not misrepresented and deter the infiltration of illegally harvested and misrepresented seafood into the supply chain. In addition to such deterrent effect, there may be price effects in that illegal or would-be fraudulent seafood would be diverted from the U.S. market to lower value markets. Taken together, deterrent and price effects would reduce the incentives for IUU fishing operations and for seafood fraud. Conversely, authorized fisheries stand to benefit from import monitoring programs that aim to identify and exclude products of IUU fishing and seafood fraud, both through enhanced market share and potentially higher prices.

#### Trusted Trader Program

NMFS received comments on the applicability of trusted trader programs in response to the proposed rule. Additionally, NMFS issued a separate notice (81 FR 25646, April 29, 2016) to specifically request comments on the potential scope of a Commerce Trusted Trader Program and how it could be applied to streamline entry processing for shipments subject to this rule. NMFS

is considering the comments received and has determined that separate rulemaking will be required to establish the Commerce Trusted Trader Program and how it would be integrated with the Seafood Traceability Program.

#### Program Expansion

NMFS received comments on the lead time needed for seafood trade participants to implement potential expansion of this rule, by inclusion of additional species and/or additional data elements. NMFS acknowledges the need for adequate lead time for program expansion and would implement changes to reporting and recordkeeping requirements for species and data elements through notice and comment rulemaking. Future proposed rules would specify the fish and fish products to be covered by the expanded program and any changes to reporting and recordkeeping requirements. The notice of proposed rulemaking would direct potentially affected parties to the pertinent CBP documents (Appendix PGA, PGA Message Set, Implementation Guide for NMFS) that would be developed jointly by NMFS and CBP to provide the implementation details (e.g., species by HTS code, data elements, message set format, DIS requirements).

#### International Cooperation and Assistance

During the period prior to the effective date of this rule, NMFS will undertake a program of communication and outreach to U.S. importers and foreign exporters to ensure understanding of the requirements of this rule. Subject to the availability of resources, NMFS intends to provide technical assistance to exporting nations to support compliance with the requirements of this proposed rule, including by providing assistance to build capacity to: (1) Undertake effective fisheries management; (2) strengthen fisheries governance structures and enforcement bodies to combat IUU fishing and seafood fraud; and (3) establish, maintain, or support systems to enable export shipments of fish and fish products to be traced back to point of harvest.

#### Intersection With Other Applicable Requirements

The requirements for additional data collection at the time of entry into the United States for imported fish and fish products of, or derived from, the priority species within the scope of this final rule could intersect with data collection requirements applicable to imports of those same species under other authorities, including programs

implemented by NMFS and other agencies. Some of these authorities are related to combating IUU fishing, while other authorities are aimed at other concerns such as managing bycatch in commercial fisheries. Through use of the ITDS single window, importers are generally able to meet all applicable requirements through a consolidated entry filing. Importers should consult the compliance guides issued by CBP for NMFS and other agency import monitoring programs (<https://www.cbp.gov/trade/ace/catair>) to determine all requirements that apply to a specific import based on the HTS codes within the scope of the respective monitoring programs.

#### Classification

This rule implements MSA section 307(1)(Q), which makes it unlawful to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish taken, possessed, transported, or sold in violation of any foreign law or regulation or any treaty or in contravention of any binding conservation measure adopted by an international agreement or organization to which the United States is a party. See 16 U.S.C. 1857(1)(Q). The NMFS Assistant Administrator has determined that this final action is consistent with the provisions of this and other applicable laws.

#### Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order (E.O.) 12866 because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866. NMFS has prepared a final regulatory impact review of this action, which is available from NMFS (see ADDRESSES). This analysis describes the economic impact this proposed action, if adopted, would have on U.S. businesses and consumers.

The regulatory action, and its legal basis, was described in the preamble of the proposed rule. This rule requires a permit (IFTP) for importers of species within the scope of the program. Additionally, information pertaining to the harvest and landing of the product prior to U.S. import is required at the time of entry into U.S. commerce, and certain records must be retained. NMFS prepared a draft Regulatory Impact Review (RIR) and released it for comment in conjunction with the proposed rule. NMFS received numerous comments, particularly focused on the costs of compliance with the proposed requirements. In

consideration of comments received, NMFS revised the RIR. With regard to the possible economic effects of this action, NMFS concludes that U.S. entities would not be significantly affected by this action because it does not directly restrict trade in the designated species and does not pose entirely new burdens with regard to the collection and submission of information necessary to determine product admissibility. Some of the data proposed to be collected at entry or to be subject to recordkeeping requirements is already collected by the seafood industry in order to comply with food safety and product labeling requirements. In addition, the majority of the countries exporting fish and fish products derived from the designated priority species to the U.S. market also export a number of these same fish and fish products to the European Union (EU) market. Consequently, many harvesting states, port states, and intermediary/exporting states that are affected by this rule may already have comparable information collection systems in place to satisfy the requirements of EU regulation on IUU fishing.

NMFS has estimated that this rule would affect 2,000 importers and 600 customs brokers making 215,000 entries per year for the priority species subject to the initial phase of the traceability program. Total costs for permits, software, data entry, recordkeeping and data storage are estimated by NMFS to amount to \$7,875,000 in the first year (including one-time broker software acquisition), and \$6,075,000 annually thereafter.

However, to obtain an upper-bound on estimated compliance costs, NMFS calculated an alternative estimate using information provided by NFI through the E.O. 12866 regulatory review (<http://www.reginfo.gov/public/do/viewEO12866Meeting?viewRule=true&rin=0648-BF09&meetingId=2004&acronym=0648-DOC/NOAA>) as well as NFI's written comments on the proposed rule (<https://www.regulations.gov/document?D=NOAA-NMFS-2015-0122-0098>). Specifically, NMFS used NFI's estimate of cost per year for complex supply chains. In certain instances, NMFS revised the NFI assumptions and resulting estimates where the assumptions were based on an inaccurate understanding of the rule or to account for changes from the proposed rule (e.g., the provision for aggregated harvest reports of landings by small vessels and small-scale aquaculture).

Based on NFI's assumptions as modified by NMFS and the methodology applied to generate a cost estimate suggested by NFI, NMFS estimates an upper-bound estimate of compliance cost for reporting, recordkeeping and supply chain auditing of \$17,815,225 per year. A species-by-species breakdown of that cost estimate is provided in Table 11. A total compliance cost for the program must also include an additional \$2,500,000 in permit fees, ACE reporting software and data storage costs. Thus, the upper bound estimate for compliance with all program requirements is \$20,315,225 for the first year (including software acquisition) and \$18,515,225 thereafter. Given the approximate \$9 billion annual value of seafood imports into the United States for the priority species subject to the initial phase of the seafood traceability program, the estimated annual compliance costs of about \$5.5 to \$18.5 million amount to less than one half of one percent of product value. Copies of the final RIR/FRFA are available from NMFS (see **ADDRESSES**).

#### *Regulatory Flexibility Act*

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA described the economic impact this proposed rule will have on small entities and includes a description of the action, why it is being considered, and the legal basis for this action. NMFS received a number of comments on the burden likely to be placed on small businesses should the rule be implemented. The purpose of the RFA is to ameliorate, to the extent possible, small businesses, small organizations, and small governmental entities of burdensome regulations and recordkeeping requirements. Major goals of the RFA are: (1) To increase agency awareness and understanding of the impact of their regulations on small business, (2) to require agencies to communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility where possible to provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action. In response to comments on the IRFA, NMFS prepared a Final Regulatory Flexibility Analysis (FRFA). Below is a summary of the FRFA for this final rule which was prepared in conjunction with the RIR. Copies of the

final RIR/FRFA are available from NMFS (see **ADDRESSES**).

The primary objective of the rule is to collect or have access to additional data on imported fish and fish products to determine that they have been lawfully harvested and are not misrepresented as well as to deter illegally caught or misrepresented seafood from entering into U.S. commerce. These data reporting and recordkeeping requirements affect mainly importers of seafood products, many of which are small businesses. Given the level of imports contributing to the annual supply of seafood, collecting and evaluating information about fish and fish products sourced overseas are a part of normal business practices for U.S. seafood dealers. The permitting, electronic reporting and recordkeeping requirements proposed by this rulemaking would build on current business practices (e.g., information systems to facilitate product recalls, to maintain product quality, or to reduce risks of food borne illnesses) and are not estimated to pose significant adverse or long-term economic impacts on small entities.

In implementing the final rule, NMFS estimates there will be approximately 2,000 new applicants for the IFTP, with an estimated industry-wide increase to importers of \$60,000 in annual costs for permit fees. Data sets to be submitted electronically to determine product admissibility are, to some extent, either already collected by the trade in the course of supply chain management, already required to be collected and submitted under existing trade monitoring programs (e.g., tuna, swordfish, toothfish), or collected in support of third-party certification schemes voluntarily adopted by the trade. Incremental costs, separate from the permit fees, are likely to consist of developing interoperable systems to ensure that the data are transmitted along with the product to ensure the information is available to the entry filer. NMFS has estimated that the software, data entry and recordkeeping costs would amount to \$7,875,000 in the first year (including one-time broker software acquisition), and \$6,075,000 annually thereafter for importers to submit data and retain records of imports of the priority species subject to the Program. An alternative approach to estimating compliance costs yields an upper bound estimate of \$20,315,225 in the first year and \$18,515,225 annually thereafter.

The rule applies to entities authorized to import fish and fish products derived from the designated species within the scope of the Program. This rule has been

developed to avoid duplication or conflict with any other Federal rules. To the extent that the requirements of the rule overlap with other reporting requirements applicable to the designated species, this has been taken into account to avoid collecting data more than once or by means other than the single window (ACE portal). Given the large volume of fish and fish product imports to the U.S. market, the number of exporting countries, and the fact that traceability systems are being increasingly used within the seafood industry, it is not expected that this rule will significantly affect the overall volume of trade or alter trade flows in the U.S. market for fish and fish products that are legally harvested and accurately represented.

NMFS considered several alternatives in this rulemaking: The requirements described in the proposed rule, a no-action alternative and various combinations of data reporting and recordkeeping for the supply chain information applicable to the priority species. NMFS believes that the final rule effectively implements the initial phase of a traceability program as envisioned by Recommendations 14 and 15 of the Task Force. In addition, it is consistent with the existing requirement that all applicable U.S. government agencies are required to implement ITDS under the authority of the SAFE Port Act and Executive Order 13659, Streamlining the Export/Import Process (79 FR 10657, February 28, 2014). Also, the Seafood Traceability Program takes into account the burden of data collection from the trade and the government requirements for admissibility determinations and has mitigated that burden to the extent possible by, among other things, implementing the Aggregated Harvest Report exemption as a change to the final rule from the proposed rule.

#### *National Environmental Policy Act*

Under NOAA Administrative Order (NAO 216-6), the promulgation of regulations that are procedural and administrative in nature are categorically excluded from the requirement to prepare an Environmental Assessment. This final regulation to implement a seafood traceability program is procedural and administrative in nature in that they would impose reporting and recordkeeping requirements for ongoing authorized catch and trade activities. There are no further restrictions on fishing activity or trade in seafood products relative to any existing laws or regulations, either foreign or domestic. Given the procedural and administrative

nature of this rulemaking, an Environmental Assessment was not prepared.

#### *Paperwork Reduction Act*

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB and has been assigned Control Number 0648-0739. The information collection burden for the requirements under this rule (IFTP, harvest and landing data submitted at entry, image files submitted at entry, recordkeeping and data storage, and provision of records of supply chain information when selected for audit) as applicable to imports of the designated species is estimated to be 367,115 hours. Compliance costs are estimated to total \$60,000 for the permit application fees, \$1,800,000 for data entry software, and \$431,630 for data storage. An upper bound estimate of compliance costs for harvest event data reporting in ACE, recordkeeping and auditing is \$11,742,311 annually.

*IFTP Requirement:* With the requirement to obtain an IFTP under this program, there would be approximately 2,000 respondents who would need approximately 5 minutes to fill out the online IFTP form (estimate consistent with that used for ITDS proposed rule 0648-AX63) resulting in a total annual burden of 167 hours and a cost of \$4,175. This estimate of the number of entities that would be required to obtain the permit under the seafood traceability program is in addition to those entities that would be required to obtain the permit under the ITDS rule. However, there may be some overlap in that importers of multiple seafood products that are covered under more than one trade monitoring program would not be required to obtain a separate permit for each program. A single, consolidated permit would suffice for all commodities covered under all programs.

*Data Set Submission Requirement:* Data sets to be submitted electronically to determine product admissibility are, to some extent, either already collected by the trade in the course of supply chain management, already required to be collected and submitted under existing trade monitoring programs (e.g., tuna, swordfish, toothfish), or collected in support of third party certification schemes voluntarily adopted by the trade. Incremental costs are likely to consist of developing interoperable systems to ensure that the data are transmitted along with the product to ensure the information is available to the entry filer. Initial feedback from one

seafood importer indicates, however, that importers may already have arrangements with software developers to update entry filing programs as needed to address required changes so no extra incremental costs may be involved to accommodate this new requirement.

Taking into account differences in fisheries (small and large catch volume), but also the allowance for aggregated harvest reports by small scale vessels, NMFS estimates that the data entry costs for vessel information would average about \$10.00 or 24 minutes for each import. In addition to the vessel information to be reported in each entry filing, the NMFS Message Set requires some header records and structural records so that the data are correctly interpreted when loaded into ACE, as well as permit data for the importer. NMFS estimates that the data entry costs for this type of information to be about 12 minutes or \$5.00 per import.

Based on 2014 CBP import records of seafood products derived from the priority species subject to the traceability program, it can be expected that approximately 215,000 entries per year would require a NMFS message set reported via ACE. However, in the final rule, NMFS has delayed shrimp and abalone imports from harvest event data reporting due to present concerns about parity with harvest data reporting in the U.S. domestic aquaculture sector. Approximately 70,000 entries of shrimp and abalone products would not immediately require permitting, harvest event data reporting in ACE, or chain-of-custody recordkeeping on the part of the U.S. importer. NMFS will request approval of these information collection requirements at the time that shrimp and abalone imports will be included in the Seafood Traceability Program. This will be dependent on the establishment of reporting and recordkeeping requirements for the domestic aquaculture industry through separate actions by other agencies.

Therefore, excluding these shrimp and abalone entries would incur reporting and recordkeeping costs for approximately 145,000 entries annually. These 145,000 entries would be subject to submission of harvest event data that would require 36 minutes of data entry each. The total increase in hours for the 145,000 responses for the data set submission requirement would therefore total 87,000 hours and labor costs of \$2,175,000@25/hour.

*Recordkeeping Requirement:* The rule also requires that the harvest event records and the chain-of-custody records be retained by the importer for two years from cargo release. NMFS

estimates that organizing and filing the records would require 24 minutes or \$10.00 for each entry subject to import reporting. The burden for the NMFS-specific recordkeeping requirements under this rule would amount to 58,000 hours or \$1,450,000 in labor costs, excluding shrimp and abalone imports. The burden for the NMFS-specific recordkeeping requirements under this rule would amount to 86,000 hours or \$2,150,000 in labor costs, when fully implemented after the compliance date for shrimp and abalone is established.

*Alternative Estimate:* As an alternative estimate, NMFS considered the NFI comments and modified certain assumptions of NFI to account for changes from the proposed rule. This yielded a burden estimate of 289,769 hours for reporting and recordkeeping, excluding the monitoring of shrimp and abalone. Under this methodology (again excluding shrimp and abalone), the information collection burden attributed to auditing of shipments is an additional 77,188 hours to assemble records requested by NMFS.

*Summary of Requirements:* Assuming that this rule would affect 2,000 importers and 600 customs brokers making 215,000 entries per year for the priority species subject to the initial phase of the traceability program (once shrimp and abalone imports are included), the total burden estimated by NMFS for permits, data entry, recordkeeping and audits would amount to 189,317 hours, and labor costs of \$4,732,925 at \$25/hour. However, in consideration of public comments received on the proposed rule, NMFS calculated an alternative estimate for reporting, recordkeeping. Assuming the NFI estimated cost of \$32.00 per hour of labor for the data reporting, recordkeeping and auditing, the burden hour estimate derived by applying the NFI methodology as modified by NMFS amounts to 328,913 hours for reporting and recordkeeping and 227,813 hours for auditing, yielding a total burden of 556,726 hours.

Excluding shrimp and abalone imports lowers the NFI adjusted burden estimate to 289,760 hours for reporting and recordkeeping and 77,188 hours for auditing, yielding a total burden of 367,115 hours. NMFS has requested, and OMB has approved, the upper bound (NFI) estimate, excluding shrimp and abalone imports. A revision to the approved information collection burden will be requested of OMB when the program is expanded to include shrimp and abalone.

NMFS received public comment regarding aspects of the information collection, and has responded to those

comments (see Comments and Responses). In particular, NMFS revised the model catch certificate and provided instructions for each data element. NMFS concludes that data reporting is necessary for the enforcement of the import restrictions under MSA, that the information collected is of practical utility; that the burden estimate is as accurate as possible pending implementation of the rule; that ways to enhance the quality, utility, and clarity of the information to be collected were considered and addressed; and that ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology have been applied.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. The control number assigned to the information collection contained in this final rule is listed in the table appearing at 15 CFR part 902. In addition, the table is updated to reflect several other information collections previously approved by OMB under separate final rules recently published by NMFS (RIN 0648-AV12, RIN 0648-AX63) that are affected by the revisions to 50 CFR part 300 subpart Q in this rule.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 300

Exports, Fisheries, Fishing, Fishing vessels, Illegal, Unreported or unregulated fishing, Foreign relations, Imports, International trade permits, Treaties.

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: December 2, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902, 50 CFR part 300, subpart Q, and 50 CFR part 600 are amended as follows:

15 CFR Chapter IX—National Oceanic and Atmospheric Administration, Department of Commerce

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 et seq.

2. In § 902.1, the table in paragraph (b) under “50 CFR” is amended by removing the entries for “300.13,” “300.14” and “300.17,” and adding, in numerical order, entries for “300.322,” “300.323,” “300.324,” “300.333,” “300.336,” “300.337,” “300.338,” “300.339” and “300.341” to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Table with 2 columns: CFR part or section where the information collection requirement is located, Current OMB control No. (all numbers begin with 0648-). Rows include 50 CFR: 300.322, 300.323, 300.324, 300.333, 300.336, 300.337, 300.338, 300.339, 300.341.

50 CFR Chapter III—International Fishing and Related Activities

PART 300—INTERNATIONAL FISHERIES REGULATIONS

3. The authority citation for 50 CFR part 300 continues to read as follows:

Authority: 16 U.S.C. 951 et seq., 16 U.S.C. 1801 et seq., 16 U.S.C. 5501 et seq., 16 U.S.C. 2431 et seq., 31 U.S.C. 9701 et seq.

4. In § 300.321:

a. Add, in alphabetical order, a definition for “Aggregated Harvest Report”;

b. Revise the definitions of “Catch and Statistical Document/Documentation”, “Documentation and data sets required under this subpart” and “Fish or fish

products regulated under this subpart”; and

c. Add, in alphabetical order, definitions for “Harvest Event” and “Seafood Traceability Program”.

The additions and revisions read as follows:

§ 300.321 Definitions.

Aggregated Harvest Report means a record made at a single collection point on a single calendar day for aggregated catches by multiple small-scale fishing vessels (20 measured gross tons or less or 12 meters length overall or less) offloaded at that collection point on that day, or for a landing by a vessel to which the catches of one or more small-scale vessels were transferred at sea. An Aggregated Harvest Report also means a record made at a single collection point or processing facility on a single calendar day for aggregated deliveries from multiple small-scale aquaculture facilities, where each aquaculture facility delivers 1,000 kg or less to that collection point or processing facility on that day. An Aggregated Harvest Report may not be used for information for catches from vessels greater than 20 measured gross tons or 12 meters length overall, and deliveries of more than 1000 kg from aquaculture facilities.

Catch and Statistical Document/Documentation means a document or documentation, in paper or electronic form, accompanying regulated seafood imports and exports that is submitted by importers and exporters to document compliance with TTVP, AMLR trade program, and HMS ITP trade documentation programs or the Seafood Traceability Program as described in this subpart.

Documentation and data sets required under this subpart refers to documentation and data that must be submitted by an importer or exporter to NMFS at the time of, or in advance of, import, export, or re-export, as applicable for those seafood products regulated under the TTVP, AMLR trade program, and HMS ITP or the Seafood Traceability Program as described in this subpart. The required data sets and document images to be submitted for specific programs and transactions are posted by CBP as indicated in § 300.323.

Fish or fish products regulated under this subpart means species and products containing species regulated under this subpart, and the AMLR trade program, the HMS ITP, the TTVP, or the Seafood Traceability Program.

Harvest Event means, for wild-capture fisheries, the landing of fish in port or

offloading of fish from a fishing vessel that caught the fish to a carrier vessel at sea or in port, and for aquaculture production, the delivery of fish from the facility to a consolidator or a processor. For wild-capture fisheries, the harvest event is considered to occur at the fishing trip level, such that the harvest event concludes at the time catch is landed or offloaded from the catching vessel. For fishing trips occurring in more than one area, each area fished during the trip must be identified in the report on the harvest event.

\* \* \* \* \*

*Seafood Traceability Program* means the data reporting and recordkeeping requirements established under § 300.324 and includes the permitting requirements of § 300.322, and the requirements under § 300.323 as they pertain to species or species group subject to the Seafood Traceability Program.

\* \* \* \* \*

■ 5. Revise § 300.323 to read as follows:

**§ 300.323 Reporting and Recordkeeping Requirements.**

(a) *Reporting.* Any person, including a resident agent for a nonresident entity (see 19 CFR 141.18), who imports as defined in § 300.321, exports, or re-exports fish or fish products regulated under this subpart must file all data sets, reports, and documentation as required under the AMLR program, HMS ITP, TTVP and Seafood Traceability Program, and under other regulations that incorporate by reference the requirements of this subpart. For imports, specific instructions for electronic filing are found in Customs and Trade Automated Interface Requirements (CATAIR) Appendix PGA (<https://www.cbp.gov/document/guidance/appendix-pga>). For exports, specific instructions for electronic filing are found in Automated Export System Trade Interface Requirements (AESTIR) Appendix Q (<https://www.cbp.gov/document/guidance/aestir-draft-appendix-q-pga-record-formats>). For fish and fish products regulated under this subpart, an ACE entry filing or AES export filing, as applicable, is required, except in cases where CBP provides alternate means of collecting NMFS-required data and/or document images.

(b) *Recordkeeping.* A paper or electronic copy of all documentation and data sets required under this subpart, and all supporting records upon which an entry filing or export declaration is made, must be maintained by the importer of record or the exporting principal party in interest as applicable, and made available for

inspection, at the importer's/exporter's place of business for a period of two years from the date of the import, export or re-export.

**§ 300.324 [Redesignated as § 300.325]**

■ 6. Redesignate § 300.324 as § 300.325.

■ 7. Add new § 300.324 and immediately stay paragraph (a)(3) indefinitely to read as follows:

**§ 300.324 Seafood Traceability Program.**

This section establishes a Seafood Traceability Program which has data reporting requirements at the time of entry for imported fish or fish products and recordkeeping requirements for fish or fish products entered into U.S. commerce. The data reported and retained will facilitate enforcement of section 307(1)(Q) of the Magnuson-Stevens Act and the exclusion of products from entry into U.S. commerce that are misrepresented or the product of illegal or unreported fishing. The data reporting and recordkeeping requirements under the program enable verification of the supply chain of the product offered for entry back to the harvesting event(s). In addition, the permitting requirements of § 300.322 pertain to importers of products within the scope of the program.

(a)(1) For species or species groups subject to this Seafood Traceability Program, data is required to be reported and retained under this program for all fish and fish products, whether fresh, frozen, canned, pouched, or otherwise prepared in a manner that allows, including through label or declaration, the identification of the species contained in the product and the harvesting event. Data is not required to be reported or retained under this program for fish oil, slurry, sauces, sticks, balls, cakes, pudding and other similar fish products for which it is not technically or economically feasible to identify the species of fish comprising the product or the harvesting event(s) contributing to the product in the shipment.

(2) The following species or species groups are subject to this Seafood Traceability Program: Atlantic Cod; Pacific Cod; Blue Crab; Red King Crab; Dolphinfin (Mahi Mahi); Grouper; Red Snapper; Sea Cucumber; Sharks; Swordfish; Tunas (Albacore, Bigeye, Skipjack, Yellowfin, and Bluefin). The harmonized tariff schedule (HTS) numbers applicable to these species or species groups are listed in the documents referenced in paragraph (c) of this section. Compliance with the requirements of the Seafood Traceability Program for these species or groups of

species is mandatory beginning January 1, 2018.

(3) The following species or species groups are also subject to this Seafood Traceability Program: Abalone and Shrimp. The harmonized tariff schedule (HTS) numbers applicable to these species or species groups are listed in the documents referenced in paragraph (c) of this section. The Seafood Traceability Program for these species or species groups consists of two components:

(i) The data reporting requirements of paragraphs (b)(1) through (3) and (c) of this section in conjunction with § 300.323(a); and

(ii) The permit requirements of § 300.322, the IFTP number reporting requirement in paragraph (b)(4) of this section in conjunction with § 300.323(a), and the recordkeeping requirements of § 300.323(b) which includes the recordkeeping of all information specified in paragraphs (b) and (e) of this section.

(b) In addition to data reporting requirements applicable, pursuant to other authorities and requirements set out elsewhere in U.S. law and regulation (e.g., under other NMFS programs or U.S. Customs and Border Protection (CBP) requirements), to the particular commodity offered for entry, the importer of record is required to provide the following data set in ACE at the time of entry for each entry containing the species or species groups listed under paragraph (a) of this section:

(1) Information on the entity(ies) harvesting or producing the fish: Name and flag state of harvesting vessel(s) and evidence of fishing authorization; Unique vessel identifier(s) (if available); Type(s) of fishing gear used to harvest the fish; Name(s) of farm or aquaculture facility. Vessel-, farm-, or aquaculture facility-specific information is not required if the importer of record provides information from an Aggregated Harvest Report, unless the product offered for entry is subject to another NMFS program that requires data reporting or documentation at an individual vessel, farm, or aquaculture facility level.

(2) Information on the fish that was harvested and processed: Species of fish (Aquatic Sciences Fishery Information System 3-alpha code as listed at <http://www.fao.org/>); Product form(s) at the point of first landing whether unprocessed or processed prior to landing/delivery; Quantity and/or weight of the product(s) as landed/delivered. When an Aggregated Harvest Report is used, the importer must provide all of the information under this

paragraph (b)(2), but may provide the total quantity and/or weight of the product(s) as landed/delivered on the date of the report.

(3) Information on where and when the fish were harvested and landed: Area(s) of wild-capture or aquaculture location; Location of aquaculture facility; Point(s) of first landing; Date(s) of first landing, transshipment or delivery; Name of entity(ies) (processor, dealer, vessel) to which fish was landed or delivered. When an Aggregated Harvest Report is used, the importer must provide all of the information under this paragraph (b)(3). Some product offered for entry may be comprised of products from more than one harvest event and each such harvest event relevant to the contents of the shipment must be documented; however, specific links between portions of the shipment and a particular harvest event are not required.

(4) The NMFS-issued IFTP number for the importer of record.

(c) The importer of record, either directly or through an entry filer, is required to submit the data under paragraph (b) of this section through ACE as a message set and/or image files in conformance with the procedures and formats prescribed by the NMFS Implementation Guide and CBP and made available at: <http://www.cbp.gov/trade/ace/catair>. All harvest events contributing to the inbound shipment must be reported, but links between portions of the shipment and particular harvest events are not required.

(d) Import shipments of fish or fish products subject to this program may be selected for inspection and/or the information or records supporting entry may be selected for audit, on a pre- or post-release basis, in order to verify the information submitted at entry. To support such audits, the importer must retain records of the information reported at entry under paragraph (b) of this section in electronic or paper format, and make them available for inspection, at the importer's place of business for a period of two years from the date of the import.

(e) In addition to the entry recordkeeping requirements specified at 19 CFR part 163 and § 300.323(b), the importer of record is required to maintain records containing information on the chain of custody of the fish or fish products sufficient to trace the fish or fish product from point of entry into U.S. commerce back to the point of harvest, including individual or Aggregated Harvest Reports, if any, and information that identifies each custodian of the fish or fish product

(such as any transshipper, processor, storage facility or distributor). The latter may include widely used commercial documents such as declarations by the harvesting/carrier vessels or bills of lading. The importer must retain such chain-of-custody records in electronic or paper format, and make them available for inspection, at the importer's/exporter's place of business for a period of two years from the date of the import.

■ 8. Revise newly redesignated § 300.325 to read as follows:

**§ 300.325 Prohibitions.**

In addition to the prohibitions specified in §§ 300.4, 300.117, and 300.189 and 600.725 and 635.71 of this title, it is unlawful for any person subject to the jurisdiction of the United States to:

- (a) Violate any provision of this subpart, or the conditions of any IFTP issued under this subpart;
- (b) Import, export or re-export fish or fish products regulated under this subpart, including imports or exports otherwise eligible for informal filing procedures or the de minimis value exemption from filing requirements under CBP procedures, without a valid IFTP as required under § 300.322 or without submitting complete and accurate information as required under § 300.323; and
- (c) Import species listed in § 300.324(a) without a valid IFTP or without submitting complete and accurate information as required under § 300.324(b) and (c) or without maintaining for inspection records as required under § 300.324(d) and (e).

(c) Import species listed in § 300.324(a) without a valid IFTP or without submitting complete and accurate information as required under § 300.324(b) and (c) or without maintaining for inspection records as required under § 300.324(d) and (e).

**50 CFR Chapter VI—Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce**

**PART 600—MAGNUSON-STEVENS ACT PROVISIONS**

■ 9. The authority citation for part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 10. In § 600.725, revise paragraph (a) to read as follows:

**§ 600.725 General prohibitions.**

\* \* \* \* \*

(a) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import, export or re-export, any fish or parts thereof taken or retained in violation of the Magnuson-Stevens Act or any other statute administered by NOAA or any regulation or permit issued thereunder,

or import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish taken, possessed, transported, or sold in violation of any foreign law or regulation, or any treaty or in contravention of a binding conservation measure adopted by an international agreement or organization to which the United States is a party.

\* \* \* \* \*

[FR Doc. 2016-29324 Filed 12-8-16; 8:45 am]

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**TENNESSEE VALLEY AUTHORITY**

**18 CFR Part 1301**

**Tennessee Valley Authority Procedures**

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Final rule.

**SUMMARY:** The Tennessee Valley Authority is amending its regulations which contain TVA's procedures for the Privacy Act. These amendments reflect changes in position titles and addresses; conform references to Privacy Act systems of records to the most current publication of TVA's Privacy Act Systems Notices in the **Federal Register**; and make other editorial changes.

**DATES:** *Effective:* December 9, 2016.

**FOR FURTHER INFORMATION CONTACT:** Christopher A. Marsalis, Senior Privacy Program Manager, Tennessee Valley Authority, 400 W. Summit Hill Dr. (WT 5D), Knoxville, Tennessee 37902-1401; telephone (865) 632-2467 or by email at [camarsalis@tva.gov](mailto:camarsalis@tva.gov).

**SUPPLEMENTARY INFORMATION:** Section 1301.24(a) originally contained specific exemptions for the TVA system "Employee Alleged Misconduct Investigatory File—TVA." Notice that system of records was retired appeared in 80 **Federal Register** 24012 (April 29, 2015). TVA is revising § 1301.24(a) to replace the language for "Employee Alleged Misconduct Investigatory File—TVA" with the specific exemptions for the TVA system "Nuclear Access Authorization and Fitness for Duty Records—TVA" which were first published at 76 FR 1888 (January 11, 2011).

This rule was not published in proposed form since it relates to agency procedure and practice. TVA considers this rule to be a procedural rule which is exempt from notice and comment under 5 U.S.C. 533(b)(3)(A). This rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management