

**SUPPORTING STATEMENT
GEAR-MARKING REQUIREMENTS FOR THE HARBOR PORPOISE TAKE
REDUCTION PLAN
OMB CONTROL NO.: 0648-0357**

A. JUSTIFICATION

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

This information collection was developed in order to implement a Take Reduction Plan (TRP), pursuant to section 118 of the Marine Mammal Protection Act (MMPA), for reduction of the incidental mortality and serious injury of harbor porpoise in the Gulf of Maine and mid-Atlantic coastal gillnet fisheries to below the Potential Biological Removal level for that stock. The TRP includes gear modifications and time/area closures between January 1 and April 30 to reduce bycatch of harbor porpoise.

The mid-Atlantic portion of the proposed action modifies those fishery-specific gear characteristics and fishing activities that appear to be most closely linked with higher harbor porpoise bycatch. The gear modifications include requiring changes in floatline length and twine size and limiting the number of nets that can be fished. The gear requirements differ depending on whether the vessel is employing large mesh gear or small mesh gear

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

One of the regulatory steps taken by National Marine Fisheries Service (NMFS) to carry out its conservation and management objectives is limiting fishing vessel effort. Limiting the number of nets in use per vessel is a method to keep mid-Atlantic gillnets operations consistent with the conservation goals of the Harbor Porpoise Take Reduction Plan (HPTRP), described at **50 C.F.R. 229.34**. The purpose and use of the gillnet net tagging program is to cap the number of nets for those vessels that are subject to the regulations, by issuing uniquely numbered tags, with a maximum number of tags for each vessel. This assures consistency throughout the mid-Atlantic fleet of affected vessels. In addition, it allows NMFS to determine the number of gillnets in use in the fishery to better monitor fishing effort in the future.

It is anticipated that the information collected will be disseminated to the public or used to support publicly disseminated information. As explained in the preceding paragraphs, the information gathered has utility. NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with National Oceanic and Atmospheric Administration (NOAA) standards for confidentiality, privacy, and electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

Automated techniques are not deemed appropriate for this purpose.

4. Describe efforts to identify duplication.

NOAA is aware of other fishery regulations and no duplication has been identified.

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

There is no significant impact on any respondents, so no special methods have been developed.

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

If this collection is not conducted, it will result in inadequate enforcement of the mid-Atlantic portion of the HPTRP. If the plan cannot be enforced it will be very difficult to identify whether the proposed requirements are effective in reducing the bycatch of harbor porpoise. This could result in continuing to require measures that may become unnecessary.

Inaction might also nullify the intended benefits of the Mid-Atlantic TRP to reduce harbor porpoise bycatch and therefore violate the MMPA.

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

The collection is consistent with the guidelines.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A notice was published in the Federal Register on July 26, 2007. Below are comments received and NMFS responses:

Comment: Ban all gillnet use. Ban them as they are terribly environmentally destructive. That would eliminate this process. There is far too much killing of harbor porpoises by commercial fish profiteers at present. Ban the gill nets totally. They are an environmental disaster. One has to wonder why this agency is not enforcing the laws against this overfishing and overkilling that

is going on. NOAA is so under the thumb of commercial fish profiteers and lets them do whatever they want. This is known to be harmful environmentally.

Response: The comment does not directly question the paperwork burden. The regulations implementing the Harbor Porpoise Take Reduction Plan (63 FR 66464, December 2, 1998) provides authority to the National Marine Fisheries Service, United States Coast Guard, and State Marine Fisheries Offices of Law Enforcement to enforce the net tagging requirements. Compliance with the net tagging requirements and other regulations implementing the Harbor Porpoise Take Reduction Plan does occur. Therefore, NMFS disagrees with the commenter's claims that the net tagging requirements are not being monitored for compliance.

Comment: I believe the number of nets used is necessary for by catch analysis as it relates to size, frequency and total catch. The burden appears to be minimal as that; the Chinese porpoise has officially been reported as extinct from the same fishery practice. Issuing electronic tags with Global Positioning System (GPS) capabilities with five-year licenses for gill net may reduce paperwork while allowing scientists to better track by catch per season per geographic location. I am not sure if I have studied this subject with enough detail to know if a durable electronic signature device would survive this fishery.

Response: The comment does not directly question the paperwork burden associated with the gillnet tagging requirement. The commenter believes that the number of gillnets specified in the regulations implementing the Harbor Porpoise Take Reduction Plan (63 FR 66464, December 2, 1998) is necessary solely for conducting bycatch analysis. However, the intent of the requirement concerning net limitations is not intended to enhance the analytical bycatch analysis. Rather, the intent of the regulation is to minimize the risk of bycatch resulting from entanglement in gillnet fishing gear. The less gillnet gear in the water, the less risk of entanglement of harbor porpoise resulting in a decrease in harbor porpoise bycatch. The commenter further stated that the burden appears to be minimal. However, the commenter based its comment on an analogy of the Chinese porpoise, noting that the Chinese porpoise has officially been reported as extinct from the same fishery practice. This rationale does not provide meaningful insight related to the paperwork burden associated with gillnet limits contained in this action.

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

No payments or gifts are provided.

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

No confidentiality is promised or provided.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

There are no sensitive questions.

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

NMFS estimates that the net tagging requirements affect 150 vessels. The total number of nets which will need to be tagged is estimated by assuming that combination gillnet vessels are on average fishing 60 nets, and all other vessels are on average fishing 30 nets. This gives a weighted average of 49 nets per vessel. The average response time is 1 minute to attach one tag per net. The average vessel will require 49 minutes to attach the tags. The total responses for all 150 vessels is therefore 7,350 (150 x 49) and total hours are 123 (150 x 49 minutes/60 minutes). Including loss of or damage to net tags, the average response frequency is only once over three years. The annual average over the 3 years would be 50 vessels, 2,450 responses and 41 hours.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

Each tag costs approximately \$1.20. The costs annualized over three years are \$2,940.

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

There is no additional cost to the Federal government beyond general monitoring and enforcement costs.

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

There are no program changes. An adjustment has been made to the estimate of the total annual burden and cost to the respondents. In December 2006 and January 2007, the National Marine Fisheries Service (NMFS) held a series of public outreach meetings concerning the Harbor Porpoise Take Reduction Plan (HPTRP) requirements. As part of that effort, NMFS conducted a general canvass of gillnet vessels that operate in the area affected by the gear marking requirements implemented under the HPTRP. The information ascertained by NMFS revealed a significant increase in the number of respondents. The number of respondents approximately doubled from previous estimates. The increase in respondents is likely due to new or emerging gillnet fisheries that were not previously activated at the time of earlier estimates.

In addition, the cost of the tags increased from \$0.50 to \$1.20 over the past three years. The cost increase based on increase in responses is \$619. Additional cost increase for the new number of responses, based on the new tag cost, is \$1,715, with a net cost increase of \$2,334, from an original \$606.

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

No results will be published.

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

N/A.

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

There are no exceptions.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

The collection does not employ statistical methods.