

**SUPPORTING STATEMENT
VIRGINIA MODIFIED POUND NET LEADER INSPECTION PROGRAM
OMB CONTROL NO.: 0648-0559**

A. JUSTIFICATION

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

On June 23, 2006, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS) issued a final rule (71 FR 36024) requiring that, during the period of May 6 through July 15, any offshore pound net leader in the Virginia waters of the mainstem Chesapeake Bay, south of 37 19.0' N. lat. and west of 76 13.0' W. long., and all waters south of 37 13.0' N. lat. to the Chesapeake Bay Bridge Tunnel at the mouth of the Chesapeake Bay, and the James and York Rivers downstream of the first bridge in each tributary (referred to as "Pound Net Regulated Area I"), meet the definition of a modified pound net leader. A modified pound net leader is a pound net leader that is affixed to or resting on the sea floor and made of a lower portion of mesh and an upper portion of only vertical lines such that: the mesh size is equal to or less than 8 inches stretched mesh; at any particular point along the leader the height of the mesh from the seafloor to the top of the mesh must be no more than one-third the depth of the water at mean lower low water (average low water point during the lowest of two low tidal cycles) directly above that particular point; the mesh is held in place by vertical lines that extend from the top of the mesh up to a top line, which is a line that forms the uppermost part of the pound net leader; the vertical lines are equal to or greater than 5/16 inch in diameter and strung vertically at a minimum of every 2 feet; and the vertical lines are hard lay lines with a level of stiffness equivalent to the stiffness of a 5/16 inch diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and containing approximately 42 visible twists of strands per foot of line. Without this final rule, existing regulations would have continued to prohibit all offshore pound net leaders in that area during that time frame. While restrictions promulgated in 2004 on pound net leaders in the Virginia waters of the Chesapeake Bay outside the aforementioned area remain in effect (referred to as "Pound Net Regulated Area II"; May 5, 2004, 69 FR 24997), this final rule created an exception to those restrictions by allowing the use of modified pound net leaders in this area.

After the 2006 final rule was published, NMFS determined that an onshore inspection program that checked a modified leader ready for deployment against the regulatory definition would help ensure the protection of sea turtles, while limiting the difficulties of and potential costs to fishermen associated with post-deployment inspections at sea. For example, most of the pound net leader is typically set under the water, the water clarity in the Chesapeake Bay is generally poor, and there may be debris in the water that could endanger the inspector. In addition, if a fisherman was asked to haul the leader for an inspection once it was deployed, there would be a loss in fishing time. The modified leader configuration was developed to protect sea turtles, and it is important that the leaders deployed in this fishery meet the standards embodied in the regulations. NMFS proposes an inspection program that would: (1) provide fishermen with the assurance that their leaders meet the definition of a modified pound net leader before setting their gear, thereby limiting the costs associated with having to: (a) to haul their gear during the fishing season, (b) fix any parts of the leader determined by an authorized officer during an at-sea inspection to be non-compliant with the regulation, and (c) reset the gear; (2) provide managers

with the knowledge that the offshore leaders in Pound Net Regulated Area I are configured in a “turtle-safe” manner; and (3) aid in enforcement efforts.

If a pound net fisherman is to use a modified pound net leader anywhere in Pound Net Regulated Area I or Pound Net Regulated Area II at any time during the period from May 6 through July 15, he or she must adhere to the following requirements of the inspection program. First, the pound net fisherman, or his/her representative, must call NMFS at 757-414-0128 at least 72 hours before the modified leaders are to be deployed. During this call, the fisherman or representative and NMFS will discuss a meeting date, time, and location, as well as the fisherman’s plans for setting his/her gear. While NMFS realizes that setting pound net gear is dependent upon weather conditions, allotting a window of 72 hours or more enables the fishermen and NMFS to arrange a mutually agreeable meeting time to examine the modified leaders. The second component of the inspection program involves NMFS meeting the fisherman at the dock, or another mutually agreeable place, to examine the gear for compliance with the definition of a modified pound net leader. During the inspection, NMFS will ascertain whether the leader meets the following four criteria taken from the modified leader definition: (1) the lower portion of the leader is mesh and the upper portion consists of only vertical lines; (2) the mesh size is equal to or less than 8 inches stretched mesh; (3) the vertical lines are equal to or greater than 5/16 inch in diameter and strung vertically at least every 2 feet; and (4) the vertical lines are hard lay lines with a level of stiffness equivalent to the stiffness of a 5/16 inch diameter line composed of polyester wrapped around a blend of polypropylene and polyethylene and containing approximately 42 visible twists of strands per foot of line. NMFS will also measure the height of the mesh in relation to the height of the entire leader. During the inspection, the fisherman must provide accurate and specific latitude and longitude coordinates of the location at which the leader will be deployed. If the fisherman does not know his or her modified pound net leader latitude and longitude coordinates prior to the inspection, NMFS will have a detailed nautical chart available during the inspection for the fisherman to ascertain the specific coordinates of the gear. During the inspection, the fisherman must also provide NMFS with information on the low water depth at each end of the modified leader. If the leader meets the four criteria previously described, the measurement of the height of the mesh in relation to the total height of the leader is recorded, and the low water depth and the latitude and longitude coordinates of the specific location at which the leader will be deployed are provided and recorded, the leader will pass inspection. If it passes inspection, NMFS will tag the leader with one or more tamperproof tags (supplied by NMFS), each of which will be marked with a unique identification number. Additionally, the fisherman will receive a letter from NMFS noting that the leader has been inspected, the date of the inspection, the license holder’s name, the tag number(s) of the attached tag(s), information on the modified leader as collected during the inspection, and the low water depth and latitude and longitude coordinates for the specific location at which the inspected leader will be deployed. This letter must be retained on the vessel tending the inspected leader at all times it is deployed. The fisherman may set the inspected leader only after passing the inspection; the tags must remain on the gear. After tagging by NMFS, the tags may not be tampered with or removed. If a tag is damaged, destroyed, or lost due to any cause, the fisherman must call NMFS at 757-414-0128 within 48 hours of discovery to report this incident.

If the onshore inspection indicates that the leader does not meet one or more of the four criteria, NMFS will tell the fisherman how to modify his or her gear in order to meet the criteria. Pound

net fishermen are required to have their modified leaders inspected annually, even if the tags from the preceding year remain on the 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.

The details of the inspection program are included in Question 1. The obtained information will be shared with NMFS staff, including law enforcement agents and protected resources staff, to ensure compliance with the previously established regulations and to ensure sea turtles are being adequately protected. It is estimated that the information will be obtained one time per modified leader per season, likely occurring before May 6 of each year.

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 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. Although the information collected is not expected to be disseminated directly to the public, general results on the modified leader configuration may be used in scientific, management, technical or general informational publications. Should NOAA NMFS Northeast Region (NER) decide to disseminate the information, it will be subject to the quality control measures and 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.

The collection of information in question involves the public entity setting up a meeting with NMFS via a telephone call. This method of communication consists of the most effective means to collect the information on a meeting date, time and location. While the meeting specifics could be arranged via electronic mail, it is believed that Virginia pound net fishermen will more easily set up the meeting via a telephone call. Furthermore, it is unknown how many Virginia fishermen have computer access. The second part of the information collection involves a meeting between NMFS and the pound net fisherman, which does not involve any automated, electronic, mechanical or other technological techniques.

There are no plans to disseminate any of this information over the internet.

4. Describe efforts to identify duplication.

NMFS does not believe this information collection represents a duplication of other efforts. While fishermen may know if their modified leaders meet the definition as included in the regulations, no one is specifically collecting this information.

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

This information collection will not have a significant impact on small entities. This collection of information does involve small entities (Virginia pound net fishermen), but the impacts are minimized by the relatively infrequent nature of the reporting (i.e., only one time per leader per year, with a possibility of additional reporting if a tag is lost) and type of reporting (e.g., telephone call and meeting at a mutually agreeable location).

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

If this information is not collected, the evaluation and effectiveness of the June 2006 regulations (71 FR 36024) will be compromised. It will be difficult to determine if fishermen are complying with the regulations regarding modified pound net leaders, and the regulations were developed to reduce sea turtle mortality. Without this collection, the effectiveness of sea turtle protection measures in Virginia cannot be established. The NMFS NER and Northeast Fisheries Science Center (NEFSC) have dedicated a significant amount of funding and staff time to evaluate and reduce spring sea turtle mortality in Virginia, and the previously established regulations are essential to protect sea turtles in the Chesapeake Bay. This compliance program is the best way to ensure sea turtles will be protected as intended in the 2006 modified leader rule. Conducting the information collection less frequently would be the same as not conducting it at all, and the same concerns apply. Fishermen are only required to contact NMFS before the set their modified leader (likely one time per year), and it is unknown how reporting less than one time a year would assist in sea turtle recovery efforts. Acquiring this information to fulfill the aforementioned objectives is an important aspect of the NMFS Northeast sea turtle program.

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

The information collection will not be conducted in a manner inconsistent with OMB guidelines.

8. Provide information on 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.

Public comment on the information collection was solicited in the proposed rule, RIN 0648-AU98 (72 FR 9297, March 1, 2007). No comments were specifically received on the information collection portion of the proposed rule.

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

No payments or gifts will be provided to respondents.

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

Personal identifiers and any commercial information will be kept confidential to the extent permitted under the Freedom of Information Act (FOIA) (5 U.S.C. 552), the Department of Commerce FOIA regulations (15 CFR Part 4, Subpart A), the Trade Secrets Act (18 U.S.C. 1905), and NOAA Administrative Order 216-100.

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.

This collection of information does not involve any questions of a sensitive nature.

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

The collection of information involves two parts: 1) the fisherman must call NMFS at least 72 hours before deploying his or her modified pound net leader to set up a meeting time, date and location, and 2) the fisherman must meet NMFS at a mutually agreeable location, so that NMFS may inspect the modified leader.

Based upon information obtained from the Virginia Marine Resources Commission (VMRC) on 2005 pound net license holders, there are 58 licensed pound net fishermen in the Virginia Chesapeake Bay. Additional information obtained from VMRC found that, in 2004, there were 34 fishermen who reported landings with pound net gear, with 27 (79%) reporting at least some landings from pounds in Pound Net Regulated Areas I and II of the Chesapeake Bay. Of these 27 fishermen, 18 reported landings from the upper part of the Bay while 9 reported landings from the lower portion of the Bay. During the time frame of the 2006 regulations (May 6 – July 15), 16 fishermen reported landings in the upper Bay while only 5 reported landings in the lower Bay in 2004. As mentioned, only fishermen in a portion of the lower Bay are required to use modified pound net leaders, if they set a leader, from May 6 to July 15. Fishermen in the upper Bay may use a modified leader if they so choose, but they are not required to do so. While the specific number of fishermen that may be affected by this collection of information is dependent upon whether they switch their leader voluntarily, there is the option for every licensed Virginia pound net fisherman (n=58) to use a modified leader. However, fishermen are required to arrange a meeting with NMFS only if they are planning to set a modified leader during the regulated period (May 6 to July 15). Thus, a total of 21 fishermen (16 in upper and 5 in lower Bay) may be affected by this collection of information.

From May 6 to July 15, 2004, there were five fishermen fishing in the lower Bay, and 16 in the upper Bay. In 2004, during the regulated time period, fishermen in the lower Bay fished an average of 3.4 pound nets, while fishermen in the upper Bay fished an average of 1.8 pound nets. This results in 17 pound nets in the lower Bay (5 fishermen * 3.4 pounds/fisherman) and 29 in the upper Bay (16 fishermen * 1.8 pounds/fisherman). Using the allocation between offshore and nearshore nets as determined from a NMFS NEFSC gear survey, this results in 7 offshore nets and 10 nearshore nets in the lower Bay, and 25 offshore nets and 4 nearshore nets in the upper Bay, during the May 6 to July 15 period. As such, the information collection will apply to

a total of 46-pound net leaders. The actual burden will most likely be on much fewer leaders (and fishermen) as it is unlikely that every Virginia pound net fisherman will switch to a modified leader in each of his or her nets and then be required to call NMFS to arrange an inspection. It is more likely that the information collection requirement will fall upon 7 offshore nets in the lower Bay, and approximately 5 fishermen. However, for the purposes of this analysis, the maximum number of respondents and applicable nets must be considered.

The hourly burden for the first part of the information collection was calculated by assuming a phone call to NMFS to set up an inspection meeting will last for a maximum of 5 minutes. Therefore, if each fisherman makes one call per each net, there would be a total of 46 calls lasting 5 minutes per call. The maximum hourly burden for this portion of the information collection would be 230 minutes, or 3.8 (4) hours, although it is likely to be less than this amount, because fishermen will likely call NMFS to arrange meeting specifics for more than one of their nets at a time, instead of making one call per one net.

The hourly burden for the second part of the information collection was calculated by assuming the gear compliance meeting between NMFS and the pound net fisherman will last for a maximum of 1 hour per net. For 46-pound net leaders, the hourly burden for this portion of the information collection would be 46 hours.

As noted previously, if a tag placed on the leader during inspection is damaged, destroyed or lost by debris, vessel traffic, marine life, or any other cause, the fisherman must call NMFS within 48 hours of discovery to report this incident. As such, fishermen may be required to call NMFS after their inspection, resulting in an additional hourly burden on the fisherman. It is unknown how many tags will be damaged, destroyed or lost in the course of one year; thus, NMFS is estimating 10% of tags will be affected. Of 46 pound net leaders, each leader would have 3 tags, for a maximum total of 138 tags placed on all pound net leaders; 10% of these would be 13.8 (14) tags, necessitating 14 notification calls to NMFS. Assuming each call would last a maximum of 5 minutes, this would result in an additional hourly burden of 70 minutes (or 1.17 (1) hours) for all Virginia pound net fishermen.

For the 21 respondents, total responses would be 106: 46 calls, 46 meetings, and 14 additional notification calls. Total hourly burden would be 51.17 (51) hours, with approximately 2.5 hours per fisherman.

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).

The cost burden was obtained by using the information on anticipated numbers of reports as presented in question #12 and the following information:

An estimated initial 46 calls to set up meetings are anticipated to be conducted annually. The cost of a 5 minute call was estimated to be \$1.25 per call (\$0.25 per minute). This cost estimate was determined to be \$57.50 for all Virginia pound net fishermen annually. If a tag placed on the leader during inspection is lost, damaged, or destroyed, the notification to NMFS would result in an additional 14 calls at \$1.25, resulting in an additional \$17.50.

Therefore, a total annual cost estimate was determined to be \$76.00 (\$57.50 (\$58) + \$17.50 (18)).

NMFS does not foresee any cost burden to fishermen from participating in the inspection meeting or the actual tagging of their gear. NMFS will meet the fishermen at their place of choosing so it is very likely that they will not travel for this meeting. NMFS will also purchase the tags for the modified leaders.

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

The estimate cost to the Federal government will be in terms of staff hours, and mileage and gas to travel to the meeting location. An anticipated 46 calls will take place, and each call is expected to last a maximum of 5 minutes. NMFS staff will be able to compile any notes during this phone call. As such, the hourly burden on NMFS for this portion of the information collection would be 230 minutes, or 4 hours. For the second portion of the information collection, the inspection meeting, each gear check would last approximately 1 hour. For 46-pound net leaders, the hourly burden for this portion of the information collection would be 46 hours. It may take an additional 15 minutes per net to prepare a summary of the inspection meeting, resulting in an additional 11 ½ (12) hours of NMFS staff time. If a tag placed on the leader during inspection is lost, damaged, or destroyed, the notification to NMFS would result in an additional 14 calls. Assuming each call would last a maximum of 5 minutes, this would result in an additional hourly burden of 70 minutes (or 1.17 (1) hours) of NMFS staff time. The total hourly burden would be 62.67 (63) hours for NMFS staff (4 + 46 + 12 + 1).

The financial burden would depend upon the pay band level of the party answering the phone call and participating in the inspection meeting. As the staff fielding these calls likely will be pay band level III (with an approximate of \$31.37 per hour), approximately 63 hours of work (about 1 ½ weeks) would cost the Federal government approximately \$1976. However, this task would be included in the respective staff's performance plan and would not be an additional monetary requirement (as it is included in the staff's current salary).

NMFS will purchase the tamperproof tags to be placed on each modified pound net leader that passes the inspection. The tags that will be used are tamperproof plastic truck seal tags, as those have been found to be successfully deployed in other fisheries. NMFS estimates that 3 tags will be placed on each modified leader (resulting in a maximum of 138 tags needed (46 leaders * 3 tags)). Tags come in multiples of 1000, with 1000 being the minimum order, and each tag is \$0.16. Therefore, the cost for 1000 tags would be \$160. This is not anticipated to be an annual cost, and it is likely that tags will need to be reordered every approximately 5 years, with an estimated annualized cost of \$32.

NMFS staff must travel to the meeting location. The meeting location has not yet been determined, and could vary with each fisherman. However, it is 28 miles from the NMFS inspector's home to Cape Charles (where most of the pound net fishermen are located). Assuming an average of \$2.15/gallon, a round trip mileage of 56 miles, and use of 4 gallons of gas per round trip, the cost of gas would be \$8.60 for each trip down to Cape Charles. While it is highly unlikely that NMFS would make a separate trip for each pound net leader inspection, there is no way of estimating the exact number of trips to be completed each year. Thus, this analysis considers the maximum number of trips that NMFS may take (n=46). For 46

inspections and 46 separate round trips, the total amount for gas would be \$395.60. The total annualized cost to the Federal government would be \$32 + \$395.60, or \$427.60.

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

This information collection is a new requirement.

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

The results of this information collection are not anticipated to 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.

This item is not applicable to this information collection request.

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

This item is not applicable to this information collection request.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This information collection request does not employ statistical methods.