

**SUPPORTING STATEMENT
LIMITS ON APPLICATION OF TAKE PROHIBITIONS
OMB CONTROL NO. 0648-0399**

A. JUSTIFICATION

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

Section 4(d)¹ of the Endangered Species Act of 1973 (ESA) requires the National Marine Fisheries Service (NMFS) to adopt such regulations as it “deems necessary and advisable to provide for the conservation of” threatened species. Those regulations may include any or all of the prohibitions provided in section 9(a)(1) of the ESA, which specifically prohibits “take” of any endangered species (“take” includes actions that harass, harm, pursue, kill, or capture). There are presently 22 separate Evolutionarily Significant Units (ESU) of west coast salmonids listed as threatened, covering a large percentage of the land base in California, Oregon, Washington and Idaho. On June 28, 2005 (70 FR 37160), February 1, 2006 (71 FR 5178), and September 25, 2008 (73 FR 55451), NMFS issued final regulations which makes ESA section 9 prohibitions generally applicable to these threatened ESUs except in 14 programs and circumstances.

The final regulations at 50 CFR 223.203 describe 14 programs or circumstances that contribute to the conservation of, or are being conducted in a way that adequately limits impacts on, listed salmonids. Certain of these 14 “limits” on the take prohibitions entail voluntary submission of a plan(s) to NMFS and require annual or occasional reports by entities wishing to take advantage of these limits, or continue within them.

Each of the 14 limits applies to a different sector of activity, and to different potential populations of responders. The sectors include: Tribal Resource Management Plans (Joint State and Tribal Resource Management Plans); Fishery Harvest and Hatchery Plans; Scientific Research Activities; Diversion Screening; Routine Road Maintenance (in which any city, state, county or port or regional government therein may adopt the Oregon Department of Transportation (ODOT)’s program or submit an equally protective program); Urban Development; Reports of Salmonids Assisted, Disposed of, or Salvaged; Artificial Propagation; and Annual Reports. A brief description of the Limits that may involve the collection of information follows, and the burdens associated with each of these is discussed in Questions 12-14).

Reports of Salmonids Assisted, Disposed of, or Salvaged: This limit (Limit 3) relieves certain agency (including tribes) and official personnel (or their designees) from the take prohibitions when they are acting to: (1) aid a sick, injured, or stranded salmonid, (2) to dispose of a dead salmonid, or (3) to salvage a dead salmonid for scientific study. Each agency, acting under this

¹ Section 4(d) of the Endangered Species Act, 16 U.S.C. et seq., states: “Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1)”

limit on the take prohibition must annually report to NMFS on the numbers of fish handled and their status.

Fishery Management (Harvest/Hatchery) Plans: These plans (Limits 4 and 5) are mainly used by states. The state would prepare a plan that addresses fishery harvest and submits it to NMFS. NMFS evaluates the plan for its completeness and impact on the listed species and agrees or disagrees with the action. If NMFS disagrees, the plan is returned to the state for revision. If NMFS agrees, the plan is approved.

Artificial Propagation: The artificial propagation section (Limit 5) of the 4(d) rule provides a way to continue to conserve listed species while implementing a variety of hatchery purposes. To qualify for limitation on take prohibitions under Limit 5, a state or Federal hatchery management agency must develop a Hatchery and Genetics Management Plan (HGMP) that meets the criteria of Limit 5 and seek NMFS' approval of the plan. Some of the benefits of the HGMP approach are long-term management planning, more public involvement, and less government paperwork.

Tribal Resource Management Plans and Joint State and Tribal Resource Management Plans: This (Limit 6) is available to any tribe, tribal member, tribal permittee, tribal employee, or tribal agent provided the Secretary determines their action will not appreciably reduce the likelihood of survival and recovery of that species. The applicant would prepare a plan that addresses fishery harvest, artificial propagation, research, or water or land management and submit it to NMFS. NMFS evaluates the plan for its completeness and impact on the listed species and agrees or disagrees with the action. If NMFS disagrees, the plan is returned to the applicant for revision.

Scientific Research Activities: Research activities involving listed salmonids have typically been authorized solely in the context of the ESA's section 7 and section 10 processes. While these processes remain valid (and in many cases necessary) pathways for researchers, the new "research limit" is significant in that it provides both NMFS and the state fishery agencies with a way to streamline the ESA's traditional authorization processes in a manner that allows the state fishery agencies to maintain key oversight and coordination roles. Specifically, coverage under the limit (Limit 7) requires that the state fishery agencies either conduct or oversee research/monitoring efforts, or become involved in coordinating those efforts. In addition, compliance with the limit will require that the state fishery agencies submit annual reports describing research-related take for each of the affected ESUs. These provisions have intentionally been crafted to provide state fishery agencies with considerable discretion in determining eligibility under the research limit. However, they also underscore the fact that NMFS and the state fishery agencies will share the responsibility of ensuring that authorized research involving listed salmonids is both coordinated and conducted in a manner that prevents overutilization of the resource. NMFS works closely with the state fishery agencies to develop a 4(d) research review process that adapts existing state permit processes to the ESA's accountability requirement for research-related take of listed species.

Diversion Screening Limit: Water diversion structures (gravity flow or pumps) that have not been screened to prevent fish from being injured or diverted into fields are a significant source of injury and mortality to listed salmonids, particularly to juveniles. State laws and Federal programs have long recognized these problems in varying ways, and encouraged or required adequate screening of diversion ditches, structures, and pumps to prevent much of the anadromous fish loss attributable to this cause. Nonetheless, large numbers of diversions are not

adequately screened and elimination of that source of injury or death is vital to conservation of listed salmonids. This limit, (Limit 9) should prompt diverters to move quickly to provide adequate screening or other protections for their diversions, because once so screened, take prohibitions would not apply. The diversion must be screened in accord with NMFS' Southwest Region "Fish Screening Criteria for Anadromous Salmonids, January 1997" or any subsequent revision (available by contacting NMFS). The operator would need to provide documentation for the screening installed, including plans, for a written acknowledgment from NMFS' engineering staff or designated agent that the screens are in compliance with the above criteria.

Routine Road Maintenance: This limit (Limit 10) is available to any city, state, county or port or regional government therein, provided that: (1) maintenance activities are conducted by the employees or agents of the state or any county, city, or port under a program that is substantially similar to that contained in the ODOT Guide or under a program that has been determined by NMFS to meet or exceed the protections provided by the ODOT guide, or that (2) maintenance activities are conducted by employees or agents of the State or any county, city, or port in a manner that has been found by NMFS to contribute to properly functioning habitat conditions for the threatened salmonid ESUs considered in the rule. The city or county would need to prepare an agreement detailing how it will assure adequate training and compliance with the ODOT or equivalent guidance, and describing any dust abatement practices it wishes to be within the limit.

The ODOT guide governs the manner in which crews should proceed on a wide variety of routine maintenance activities, including surface and shoulder work, ditch, bridge, and culvert maintenance, snow and ice removal, emergency maintenance, mowing, brush control and other vegetation management. The program directs activity toward favorable weather conditions, increases attention to erosion control, prescribes appropriate equipment use, governs disposal of vegetation or sediment removed from roadsides or ditches, and includes other improved protections for listed salmonids, as well as improving habitat conditions generally. Routine road maintenance conducted in compliance with the ODOT program or an equivalent program will adequately address the problems potentially associated with such activity.

Urban Development: This limit (Limit 12) would be available to any city or county affected by the take prohibitions, if it has land development ordinances in a sufficiently comprehensive form that they could satisfy the criteria set out in the regulation. The jurisdiction would need to provide NMFS with copies of those comprehensive ordinances, and provide any necessary explanatory materials showing how the ordinances meet those standards.

Annual Reports: Some form of a reporting requirement is built into all programs or limits that are approved by NMFS. These reports help NMFS to determine: (1) that the conditions or activities under that limit are being followed, (2) the impact of the activities on the listed species, and (3) new information about the species which may then help NMFS to better manage it.

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.

NMFS will review plans submitted to determine whether they provide sufficient biological protections to warrant not applying the take prohibitions to activities governed by that plan.

NMFS' biologists will review the plans against the criteria associated with the applicable limit on take prohibitions. Those criteria have been carefully crafted to assure that plans meeting them will adequately limit impacts on threatened salmonids, such that additional protections in the form of a federal take prohibition are not necessary or advisable.

The annual reporting associated with approved limits would aid NMFS in understanding the cumulative impacts of each action on listed ESUs, and to determine whether additional protections are required to provide for the conservation of the species (or, alternatively, whether some additional limits on federal protections may be warranted). Annual reporting also provides NMFS with the numbers of threatened salmonids being affected by such actions. This information is necessary as part of the tracking of the status of the affected threatened species. Many plans/programs have been submitted to NMFS since the rules first became effective (July 10, 2000, 65 FR 42422, and January 9, 2002, 67 FR 1116 (Correction: November 12, 2002, 67 FR 68725)). NMFS expects more programs to be submitted in the future. Reports are required for limits each year.

The practical utility of these submissions is that, assuming a plan or program is found to meet the criteria associated with the particular limit in the 4(d) rule, the state or other entity submitting the plan, and individuals acting in compliance with the plan, can carry on with its activity knowing that it is in full compliance with the ESA and need not be concerned with any possibility of ESA enforcement of take prohibitions.

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 NOAA standards for confidentiality, privacy, and electronic information. See response to Question 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.

There is no requirement for method of submission of plans or reports. However, NMFS, in conjunction with the state of Oregon, has developed a web-based system for applicants to use in applying for a scientific research permit (Limit 7), the most frequently requested permits. Historically researcher applications varied considerably in quality and level of detail. The web-based system has helped streamline the application and authorization processes for researchers and the review process for NOAA biologists.

4. Describe efforts to identify duplication.

NMFS has not identified any examples where the 4(d) rule involves duplication with other collections of information. This information collection is unique. As NMFS gains experience

with this approach to 4(d) protections, it is likely that many of the plans or reports submitted may serve to relieve the take prohibitions for an even broader range of listed species.

In the absence of 4(d) rules, NMFS provides ESA coverage through Section 10 research, enhancement, and incidental take permits with private entities, or through Section 7 consultation with Federal agencies. The Section 7 and Section 10 processes have their own specific reporting requirements associated with them.

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

None of these collections will have a significant economic impact on small entities.

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

If NMFS were not to provide the opportunity for entities to seek a limit on take prohibitions, those entities would in all cases remain subject to the take prohibitions. Before embarking on an activity that may impact threatened salmonids, those entities would need to assess the risk of actual take, and determine whether to seek an ESA Section 10 permit. Unless the entity procured a Section 10 Permit or a completed ESA Section 7 Consultation, the entity would remain at risk of ESA enforcement for violation of the take prohibitions. Less than annual reporting would hinder NMFS' ability to monitor and conserve listed species.

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

This collection is consistent 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.

A Federal Register Notice published April 2, 2009 (74 FR 14961) solicited public comment. No comments were received.

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

No payments, gifts or remuneration are associated with these voluntary collections of information.

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

There are no assurances of confidentiality associated with these voluntary collections of information. The information supplied would be a matter of public record.

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

No sensitive questions are asked.

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

The number of hours varies depending on the particular limit, ranging from 20 hours for reports involving salmon rescue/salvage to 300 hours for packages developed under the Urban Development limit (see Table 1 at the end of this section). Total estimated annual responses are 401, and hours, 1,705. We anticipate approximately 301 respondents.

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 Question 12 above).

The annual costs to respondents vary depending on the particular limit, ranging from \$360 for salmon rescue/salvage to \$5,400 for packages developed under the Urban Development limit (see Table 1 at the end of this section). Total estimated annual recordkeeping/reporting costs are \$620.

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

The annual costs to the Federal government vary depending on the particular limit, ranging from \$360 for salmon rescue/salvage to \$13,500 for packages developed under the Diversion Screening limit (see Table 1 at the end of this section).

15. Explain the reasons for any program changes or adjustments.

No changes or adjustments are needed. NOTE: when the previous renewal was migrated into ROCIS, the recordkeeping/reporting costs were rounded up to \$1,000. Therefore, it appears in ROCIS that the costs were reduced by \$420, when they remained the same.

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

There are no plans to publish the data.

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.

NA.

18. Explain each exception to the certification statement.

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NA.

Table 1. Burden and Costs to Public and Government Relating to Information Collection for NMFS' Limits on ESA Take Prohibitions

Cost to Public										
	Diversion Screens	Road Maint. Agreement	Urban Dev. Ordinance Pkgs.	Tribal Plans & Joint State/Tribe Plans	Fishery Harvest & Hatchery Plans	Report Aided/ Rescued Salmon	Research Permits	Artificial Prop.	Annual Reports ²	TOTAL
Annual # of Responses	50	10	10	10	10	4	200	7	100	401 ³
# of Hours per Response	5	20	30	20	10	5	2	5	2	
Total Annual Hours	250	200	300	200	100	20	400	35	200	1,705
Labor Cost per Response (@18/hr)	\$90	\$360	\$540	\$360	\$180	\$90	\$36	\$90	\$36	
Burden Hour Costs (Annual)	\$4,500	\$3,600	\$5,400	\$3,600	\$1,800	\$360	\$7,200	\$630	\$3,600	\$30,690
O&M Costs - Printing, Mailing (Annual)	\$50	\$50	\$70	\$50	\$80	\$20	\$40	\$20	\$200	\$580
Cost to Government										
Processing: Federal Government Hours per Response	15	20	70	40	20	5	3	15	8	
Total Annual Hours	750	200	700	400	200	20	600	105	800	3,775
Cost Per Response (@ \$18/hr)	\$270	\$360	\$1,260	\$720	\$360	\$90	\$54	\$270	\$144	
Total Annual Cost	\$13,500	\$3,600	\$12,600	\$7,200	\$3,600	\$360	\$10,800	\$1,890	\$14,400	\$67,950

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable. The collection will not employ statistical methods.

² Does not include reports related to aided/rescued salmon which are recorded separately in this table.

³ The actual number of respondents is expected to be approximately 301 (i.e., each can submit multiple responses).