

**SUPPORTING STATEMENT  
APPLICATIONS AND REPORTING REQUIREMENTS FOR THE  
INCIDENTAL TAKE OF MARINE MAMMALS BY SPECIFIED ACTIVITIES  
(OTHER THAN COMMERCIAL FISHING OPERATIONS)  
UNDER THE MARINE MAMMAL PROTECTION ACT  
OMB CONTROL NO. 0648-0151**

**A. JUSTIFICATION**

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

This request is for renewal of an existing information collection.

The [Marine Mammal Protection Act of 1972](#) (MMPA; 16 U.S.C. 1371 *et. seq.*) prohibits the “take” of marine mammals unless otherwise authorized or exempted by law. Among the provisions that allow for lawful take of marine mammals, sections 101(a)(5)(A) and (D) of the MMPA direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States (U.S.) citizens who engage in a specified activity (other than commercial fishing), within a specified geographical region, 1) if certain findings are made and either regulations are issued or 2) if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review. Authorization for incidental takings shall be granted if the Secretary, acting by delegation through the National Oceanic and Atmospheric Administration’s (NOAA) National Marine Fisheries Service (NMFS), finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

Issuance of an incidental take authorization (ITA) under section 101(a)(5)(A) or (D) of the MMPA requires three sets of information collection:

- (1) a complete application for an ITA, as set forth in NMFS’ implementing regulations at [50 CFR 216.104](#), which provides the information necessary for NMFS to make the necessary statutory determinations;
- (2) information relating to required monitoring; and
- (3) information related to required reporting.

These collections of information enable NMFS to:

- (1) evaluate the proposed activity’s impact on marine mammals;
- (2) arrive at the appropriate determinations required by the MMPA and other applicable laws prior to issuing the authorization; and
- (3) monitor impacts of activities for which ITAs have been issued, to determine if predictions regarding impacts on marine mammals were valid.

### **Letters of Authorization (LOA) – MMPA § 101(a)(5)(A)**

In 1981, Congress amended the MMPA to provide for ITAs for activities other than commercial fishing, provided NMFS found the takings would be of small numbers and have no more than a "negligible impact" on those marine mammal species not listed as depleted under the MMPA, and not having an "unmitigable adverse impact" on subsistence harvests of these species by Alaskan Natives. NMFS may prescribe regulations authorizing take for periods of up to five consecutive years. Implementing regulations require that any such regulations set forth:

- Permissible methods and the specified geographical region of taking;
- The means of effecting the least practicable adverse impact on the species or stock and its habitat and on the availability of the species or stock for "subsistence" uses; and,
- Requirements for monitoring and reporting, including requirements for the independent peer-review of proposed monitoring plans where the proposed activity may affect the availability of a species or stock for taking for subsistence uses.

[50 C.F.R. 216.105](#). Once NMFS issues the regulations to authorize the taking, those conducting the activity must obtain an LOA and must abide by the prescribed reporting requirements.

### **Incidental Harassment Authorization (IHA) – MMPA § 101(a)(5)(D)**

In 1994, Congress amended MMPA section 101(a)(5) to establish an expedited process by which U.S. citizens can apply for an authorization to take incidentally, but not intentionally, small numbers of marine mammals by harassment. This amendment eliminates the need for applying for regulations but retains the requirements for applications for the IHA, including monitoring and reporting interactions with marine mammals. An IHA does not reduce the public paperwork burdens significantly, but, rather, it expedites NMFS' review and subsequent approval or denial of the application. The Amendments also established specific time limits for public notice and comment on requests for an IHA.

### **The Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*)**

In 1986, Congress amended both the MMPA, under the incidental take program, and the ESA, to authorize takings of depleted (and endangered or threatened) marine mammals, again, provided the taking (lethal, injurious, or harassment) was small in number and had a negligible impact on marine mammals. The Amendments provided for an authorization to incidentally take ESA-listed marine mammals, provided the taking (including mortality) was authorized under section 101(a)(5) of the MMPA. Any takings of marine mammals listed as threatened or endangered under the ESA must be authorized under both the ESA and MMPA.

An incidental taking of a listed species by a private citizen or State action must be permitted under section 10(a)(1)(B) of the ESA. The Section 10 permit must be accompanied by a Conservation Plan, often referred to as a Habitat Conservation Plan (HCP) which describes the action, evaluates the effect of the take, and establishes the level of take.

## The National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.)

Issuance of an ITA is subject to preparation of an environmental review under NEPA which may take the form of a Categorical Exclusion, an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). If an ITA application does not contain sufficient information on the environmental impact of the proposed activity to determine whether an EA or EIS is necessary, or if the information is insufficient to complete such analyses, application processing may be delayed.

### **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.**

Requests for an ITA (IHA or LOA and/or regulations\*) are initiated by the applicant on an as-needed basis, and the collection of information is the responsibility of the individual, organization, state, local, or tribal government, or business petitioning NMFS for an authorization to allow the incidental, but not intentional, taking of small numbers of marine mammals.

The Director, Office of Protected Resources will use the information collection as:

- (1) a basis for a decision on issuance or denial of an ITA and/or regulations under the MMPA (application); and
- (2) a basis for monitoring and evaluating the impacts of the authorized activity's impact on marine mammals (monitoring and reporting);

The MMPA also requires that the U.S. Marine Mammal Commission review all ITA applications and provide recommendations to the NMFS.

### **Information Collection – Application and Supporting Documentation**

The regulations for an ITA (IHA or LOA) require applicants to include responses to fourteen questions listed in 50 CFR 216.104(a)(1-14). All applications for marine mammal ITAs must include this information in sufficient detail necessary for NMFS to conduct appropriate analyses and make necessary findings under the MMPA and other applicable laws. In addition to the information collection required under 50 CFR 216.104, applicants often voluntarily provide environmental analyses, raw data, or geospatial data files to further support their request for an ITA.

\* MMPA gives the option to request regulations and a letter of authorization or to request a more expedited process for just one incidental harassment authorization.

NMFS uses the information to:

- (1) Review the application and ensure that it is adequate and complete.
- (2) Determine the status of the proposed action under the ESA and NEPA.
- (3) Determine the size, scope and duration of the proposed activity (Questions 1 and 2).
- (4) Determine the environmental setting of the activity (Questions 3 and 4).
- (5) Complete an analysis of the effects of the action on marine mammals, their habitat, and subsistence uses (including methods of take) (Questions 5 -10).
- (6) Verify an estimate of the numbers of animals likely to be taken (Questions 5-10).
- (7) Ensure that the applicant included adequate mitigation measures (Question 11).
- (8) Ensure the applicant included adequate monitoring and reporting measures (Question 13).

Question 14 requests information on what plans the applicant may have to conduct research on the impacts on marine mammals from the activity. This information is requested to effectuate legislative intent behind the 1981 Amendments to the MMPA (H. Rept. 97-228, p. 20) that persons operating under the incidental take authority engage in appropriate research designed to reduce incidental take. For activities conducted in the Arctic, the MMPA and/or implementing regulations require that the monitoring plan be independently reviewed.

NMFS reviews the application and analyzes the information collection to make statutory findings under the MMPA that the taking: will be small; will have a negligible impact on the species or stock(s) (Questions 1-11); and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant) (Questions 8, 11, and 12). The authorization (if issued) must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and monitoring and reporting of such takings.

NMFS' review of a complete application is followed by one 30-day public comment period in the Federal Register for an IHA (Section 101(a)(5)(D)) or by two public comment periods (one 30-day and a second comment period lasting a minimum of 45-days) for an LOA (Section 101(a)(5)(A)).

### **Information Collection – Monitoring and Reporting**

NMFS uses monitoring requirements and interim, annual, and comprehensive reports to determine:

- (1) if the activity took place as described in the request for an ITA;
- (2) if the applicant complied with the terms and conditions of the ITA;
- (3) if the applicant conducted the monitoring plan as authorized;
- (4) if the taking of marine mammals was more than that authorized; and
- (5) if the impacts of the activity are consistent with what was anticipated by and authorized in the ITA.

The reports must include a description of the activity including the time, location, and place; a summary of the monitoring program; and an assessment of the effects of the activity on marine mammals including the estimated level of incidental take by species.

Additional reporting requirements (submission of raw data and/or geospatial data files) may be required on a case-by-case basis for activity-specific regulations and authorizations.

## **Compliance with the Information Quality Act Guidelines**

NMFS disseminates the information collection to the public to provide a detailed description of the proposed action and to explain how NMFS arrived at a determination (either preliminary or final) that an ITA is appropriate under the MMPA.

The information collected is available to the public under the Freedom of Information Act and on-line at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. NMFS provides the information in a standard data format (Adobe PDF files) and provides unit style conventions within the *Federal Register* notice to facilitate the public's understanding.

Before disseminating information in any format, data are reviewed internally (pursuant to [Section 515 of Public Law 106-554](#)) to ensure that they are scientifically sound and meet standards for data quality. The review process for ITAs includes review of the application by the principal drafter of the ITA to ensure that the applicant has met the requirements under section 101(a)(5) of the MMPA. The principal drafter's supervisor and NOAA's Office of General Counsel review the proposed and final Federal Register notices for the ITA, as well as the actual ITA. If applicable, a NMFS biologist also conducts an independent review of the action's effects on ESA-listed species under Section 7 of the ESA.

All electronic information disseminated by NOAA adheres to the standards set out in [Appendix III, Security of Automated Information Resources, Office of Management and Budget Circular A-130](#); the [Computer Security Act](#); and the [Government Information Security Reform Act](#).

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.

### **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.**

Applicants may transmit an electronic application or report (e.g. a Microsoft Word (.doc) or Adobe Acrobat (.pdf) file) via email or deliver paper forms via hand delivery, the U.S. Postal Service, or by an overnight delivery service. During the processing of the ITA application, NMFS corresponds with the applicant either by e-mail or by telephone.

All ITA applications and reports are available on the internet as Adobe Acrobat (.pdf) files at <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. The interested public may also obtain a copy of an application by writing to the Office of Protected Resources or by telephoning the contact listed in the Federal Register notice.

The application instructions are available for downloading on the NMFS Office of Protected Resources website at <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Upon request, NMFS can forward these instructions to the interested party via e-mail in either Adobe Acrobat (.pdf) or Microsoft Word .doc format.

#### **4. Describe efforts to identify duplication.**

NMFS and the U.S. Fish and Wildlife Service (USFWS), Department of the Interior (DOI), are responsible for different species under the MMPA. NMFS manages and conserves whales, dolphins, porpoise, seals and sea lions and the USFWS is responsible for the manatee, dugong, sea otter, walrus and polar bear populations. The applicant may submit a single application to both agencies when a marine mammal species under each agency's jurisdiction may be taken incidental to the same activity.

The Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE, formerly known as the Minerals Management Service (MMS)) of the DOI has an overlapping collection requirement with NMFS and the USFWS for reporting impacts on the marine environment from offshore oil and gas activities. This is a large information collection which mostly does not involve NMFS (or the USFWS). There is a small overlap of collecting responsibilities when oil companies apply for an ITA. When there is an overlap, NMFS, the USFWS, and BOEMRE work cooperatively to implement a unified mitigation, monitoring and reporting system thereby eliminating duplicative information collection on the part of the applicant.

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

There should not be a significant burden to small businesses or other small entities. NMFS does not anticipate significant impacts to small businesses, unless they are involved in an activity that will otherwise have an unauthorized taking of a marine mammal (i.e., they have not applied for an ITA and are subject to prosecution).

NMFS anticipates that the affected applicants would include university researchers; oil and gas exploration companies, other energy companies, and their contractors. While contractors may be considered small businesses, in many cases they are contracted to supply the information required under this collection, and thereby obtain a benefit. Otherwise, they are unaffected.

In cases where a small businesses might be affected (such as oil rig removal contractors in the Gulf of Mexico), NMFS would contact a larger entity (e.g., the American Petroleum Institute or the MMS) associated with the activity to gather the necessary information. Thus, the small business would provide NMFS with minimal information (such as company name and appropriate contact) in order to obtain an ITA under the larger entity conducting the activity.

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

Without the information collection, required by statute and regulations, NMFS would be

- (1) unaware of the applicant's need for an exemption to the MMPA's moratorium on taking marine mammals;
- (2) unable to evaluate the proposed activity's impact on marine mammals;
- (3) unable to arrive at the appropriate determinations required by the MMPA and other

- applicable laws prior to issuing the authorization;
- (4) unable to meet the “shall allow” or “shall issue” requirements of the MMPA due to the agency’s inability to make the appropriate determinations without adequate information;
  - (5) unable to monitor impacts of activities for which take authorizations have been issued to determine if predictions regarding impacts on marine mammals were valid.

The interim (i.e., 90-day), annual, and/or comprehensive report must summarize activities conducted during the reporting period. If this information is not submitted, NMFS will not be able to adequately monitor compliance with the terms and conditions of the ITA. Additionally, the information gained from the annual reports is used in making management decisions to aid in assessing impacts of the incidental take on the subject species, and in assisting with analyses required under section 7 of the ESA and the NEPA.

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

Not Applicable.

**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 (75 FR 27295), published on May 14, 2010, solicited public comment. NMFS received one comment from the Marine Mammal Commission in support of the information collection. No other comments were received.

NMFS solicits input from industry, the scientific community, and other interested parties, on views on the availability of data, frequency of collection, clarity of instructions and record keeping, the amount of burden imposed, and ways to minimize burden. Such information exchanges occur via phone/email from applicants and during professional society meetings such as the Biennial Conference on Marine Mammals and other national and international protected species meetings and workshops.

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

NMFS provided no payments or gifts to respondents.

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

The information collection is a matter of public record, and the statute and regulations do not require the submission of confidential material.

NMFS is required to publish a notice of receipt of an ITA application in the Federal Register requesting comments on the proposed action. The interested public can review the application and supporting documentation at <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications> and submit comments electronically. For each Federal Register notice, NMFS includes a disclaimer that a commenter should not submit Personal Identifying Information (for example, name, address, etc.), confidential business information, or otherwise sensitive or protected information with his/her public comment, as NMFS posts the comments online without change.

The authorization documentation, including reports, is subject to the Freedom of Information Act (FOIA). However, any personal information that is subject to the Privacy Act is redacted if contained within documents released under FOIA.

**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.**

The statute and regulations do not require the submission of sensitive material.

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

NMFS estimates the total annual burden hours at 26,410 hours, as shown in Table 1 and Table 2. NMFS based these estimates on discussions with nine current ITA holders (oil and gas companies, a research institution, a non-profit organization, and state/local governments).

The complexity of the information required in applications or reports varies greatly due to the following: (a) level of controversy over the activity; (b) level and type of incidental take of marine mammals; and (c) level of unresolved questions involving the activity's long-term impact on marine mammals, habitat and/or subsistence needs for marine mammals. Response times will vary for the public based upon the complexity of the requested action.

**Table 1. Estimated total annual burden hours.**

<b>Summary</b>	<b>2010 Estimate</b>
Estimated Number of Respondents	71
Estimated Annualized Burden Hours	26,410

**Table 2 – Detailed Estimate**

<b>Estimated Information Collection Activity</b>	<b>Number of Non-Federal Responses (2007 - 2010)</b>	<b>Number of Responses Annualized over a 3-Year Period (Non-Federal)</b>	<b>Estimated Length of Time per Response</b>	<b>Estimated Total Annual Burden (hrs)</b>
IHA Application	45	15	399	5,985
IHA Interim Draft Report	2	1	310	310
IHA Draft Annual Report	45	15	422	6,330
IHA Final Annual Report	45	15	163	2,445
LOA - Initial Application Preparation for Regulations	2	1	1,100	1,100
LOA - Annual LOA Application	24	8	70	560
LOA - Draft Annual Report	24	8	220	1,760
LOA - Final Annual Report	24	8	65	520
LOA - LOA Draft Comprehensive Report	24	8	625	5,000
LOA - LOA Final Comprehensive Report	24	8	300	2,400
<b>Total</b>		<b>87</b>		<b>26,410</b>

**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).**

NMFS estimates the total annual recordkeeping/reporting cost burden to the respondents at \$3,575, as shown in Table 3. The reporting and recordkeeping estimates include costs for equipment/software, copying and printing, faxing/telephony, postage and shipping, and reporting costs.

NMFS based these estimates on discussions with nine current ITA holders (oil and gas companies, a research institution, a non-profit organization, and state/local governments).

NMFS also estimates the total annual cost burden in capital and start-up costs at \$358,000. However, this figure may include only applicants from the oil and gas industry whereby they may need to fabricate specific equipment or design custom software\* for monitoring before they submit an application to NMFS.

Total costs per year are estimated to be \$361,575.

\*Specialized acoustic software is needed to obtain at information needed to complete the application. The costs were not included in the 2007 submission, because the makeup of the ITA applicant has shifted to the oil and gas industry and they were not surveyed in 2007.

**Table 3. Estimated total annual cost burden.**

	Recordkeeping / Reporting Costs					Capital Costs (\$)
	Equipment/ Software Refresh (\$)	Copying Printing (\$)	Faxing Telephony (\$)	Postage Shipping (\$)	Reporting Costs (\$)	
<b>Estimated annual costs to public (\$361,575)</b>	2,250	550	175	100	500	358,000

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

The estimated annual cost to the Federal government is estimated at \$322,000 for 4 Full Time Equivalents (FTE) calculated at \$35 per hour in Table 4.

**Table 4. Estimated annualized cost to the Federal government.**

Type of Action	Number of Responses Annualized over a 3-Year Period (Non-Federal)	Processing Time (hrs)	Estimated Cost to the Federal Govt
IHA Application	15	300	\$ 157,500
IHA Interim Draft Report	1	80	\$ 2,800
IHA Draft Annual Report	15	80	\$ 42,000
IHA Final Annual Report	15	50	\$ 26,250
LOA - Initial Application Preparation for Regulations	2	350	\$ 12,250
LOA - Annual LOA Application	8	50	\$ 14,000
LOA - Draft Annual Report	8	80	\$ 22,400
LOA - Final Annual Report	8	40	\$ 11,200
LOA - LOA Draft Comprehensive Report	8	80	\$ 22,400
LOA - LOA Final Comprehensive Report	8	40	\$ 11,200
		Total	\$ 322,000

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

**Adjustments in Burden**

NMFS has adjusted the total annual burden hours from the previous estimate of 20,456 to 26,410. The increase in burden hours is not due to a change in the requirements for an ITA, but instead reflects more realistic estimates of the current workload:

- (1) implementation of a more accurate accounting method of burden hours by surveying nine current ITA holders that represent the current demographic of applicants.

- (2) an increase in the number of applicants from the oil and gas industry and the increased complexity of conducting environmental analyses due to the: (a) level of controversy over the activity; (b) level and type of incidental take of marine mammals; and (c) level of unresolved questions involving the activity's long-term impact on marine mammals, habitat and/or subsistence needs for marine mammals.
- (3) an increase in the applicants' workload to meet the requirements for environmental analyses under NEPA and the ESA; the requirements per se have not changed, but there is an increasing understanding of the quality of documentation needed to fulfill the requirements under the laws.

Although there is a net decrease of only one respondent, there are actually 53 fewer responses estimated, as we now have a better process in place to account for responses.

### **Adjustments in Cost**

NMFS has adjusted the total annual cost to the respondents from the previous estimate of \$1,359 to \$3,575. NMFS now has more applicants from the oil and gas industry seeking ITAs, as part of a net decrease of one respondent. While the average annualized expenses per response are approximately \$4,000, these respondents' expenditures are higher than a smaller organization's costs, and may be as high as \$100,000.

NMFS also estimates the total annual cost burden in capital and start-up costs at \$358,000 from the previous estimate of \$0. This revised estimate is based upon polling representatives from the oil and gas industry and reflects the costs associated with meeting the requirements for monitoring and environmental analyses.

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

There are no immediate plans for the government to publish the data. However, at times the information contained in annual reports have been extracted, reanalyzed, and published in peer-reviewed journals.

### **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.**

Not Applicable.

### **18. Explain each exception to the certification statement.**

Not Applicable.

## **B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

The information collection described in this request does not employ statistical methods.