

SUPPORTING STATEMENT

HIGHLY MIGRATORY SPECIES SCIENTIFIC RESEARCH PERMITS, EXEMPTED FISHING PERMITS, LETTERS OF ACKNOWLEDGEMENT, DISPLAY PERMITS, AND SHARK RESEARCH FISHERY PERMITS

OMB CONTROL NO. 0648-0471

A. JUSTIFICATION

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

This revision requests approval for extension of the information collection with some program changes, including updating forms for information collection for the Highly Migratory Species (sharks, tunas, swordfish and billfish) Exempted Fishing Permits (EFPs), including Scientific Research Permits (SRPs), Display Permits, and Letters of Acknowledgement (LOAs) and shark research permits. With this request, we are also changing the title from “Highly Migratory Species Scientific Research Permits, Exempted Fishing Permits, and Letters of Authorization” to “Highly Migratory Species Scientific Research Permits, Exempted Fishing Permits, Letters of Acknowledgement, Display Permits, and Shark Research Fishery Permits”.

The success of fisheries management programs depends on ensuring that allowable harvests are not exceeded. The requirements in this collection derive their authority from two separate acts, and the differences in those acts are responsible for the variations in the requirements applying to different species as discussed below.

The [Magnuson-Stevens Fishery Conservation and Management Act](#) (16 U.S.C. 1801 et seq.) (Magnuson-Stevens Act) governs domestic fisheries and is the sole authority for management of fishing activities for Atlantic sharks (for which there is no international management). The [Atlantic Tunas Convention Act](#) (ATCA) regulates U.S. fishing activities of tunas, swordfish and billfish. Under the Magnuson-Stevens Act, the National Marine Fisheries Service (NMFS) may authorize fishing activities outside the established regulations. NMFS needs the ability to monitor exempted fishing activities to ensure compliance with authorized harvest levels in a timely and accurate manner, as this is crucial to enforcement. ATCA at 16 U.S.C. 971 requires the Secretary of Commerce (Secretary) to promulgate regulations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue these regulations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA. Section 971 d (c)(3) of ATCA provides the statutory authority to require the collection of information necessary to implement the recommendations of ICCAT.

Under both the Magnuson-Stevens Act and ATCA, non-scientific activities, including collection for education or display, may be authorized under EFPs. Exempted Fishing Permits are necessary to allow research conducted from a commercial or recreational fishing vessel that would otherwise be prohibited by existing regulations. A Display permit is issued for the collection of Highly Migratory Species (HMS) for the purpose of public display. In 2008, a shark research permit began to be issued under the exempted fishing permit program. Under the exempted fishing program, shark research permits are issued each year to a few, selected applicants who have submitted an application in response to a call for proposals outlining NMFS’ shark research objectives for a given year. Research within the shark research fishery facilitates scientific research for limited testing of fishing gear and methods; for the acquisition of data

from some portion of the historical Atlantic shark fishery; and/or for investigating means of reducing bycatch, economic discards, or regulatory discards.

In 2008, the application for the shark research fishery was combined with the application for EFPs, SRPs, Display permits, and LOAs. However, since implementation of the shark research fishery, having the applications combined has created some confusion for applicants of all the permits. To lessen confusion for applicants, NMFS is creating a separate application for the shark research fishery. No new information would be collected, however, having separate applications for the shark research fishery and for other permits under the purview of the exempted fishing program would make it more transparent for applicants regarding which permit they are applying for.

Technically, scientific research is exempted from regulation under the Magnuson-Stevens Act, so NMFS does not issue EFPs for bona fide research activities (*i.e.*, research conducted from a research vessel and not a commercial or recreational fishing vessel) involving species regulated under Magnuson-Stevens Act FMPs. To avoid enforcement issues, however, NMFS does request copies of scientific research plans. In such cases, NMFS issues a LOA to researchers to indicate concurrence by NMFS that the proposed activity meets the definition of research and is therefore exempt from regulation.

ATCA, on the other hand, confers regulatory authority over scientific research so that all sources of mortality for species regulated by ICCAT can be reported by the Secretary. In cases where tunas, swordfish, and billfishes are being collected, NMFS will issue an EFP if the research/collection occurs in conjunction with regulated commercial or recreational fishing activity, or a SRP if the collection of regulated species occurs as part of a research cruise (*e.g.*, NMFS or university research vessel).

Finally, the exempted fishing program requirements have changed, based on a 2009 rule (August 25, 2009, 74 FR 42786), which changed some aspects of the exempted fishing program. For this collection, the change resulted in NMFS scientific observers (*i.e.*, the bottom longline observer, the pelagic longline observer, and the Northeast observer programs) no longer having to obtain an EFP in order to conduct authorized research activities. This revision reflects these programmatic changes.

To regulate these fishing activities, NMFS needs information to determine the justification of granting an EFP, display, LOA, or SRP. The application requirements for an EFP, display, LOA, or SRP are detailed at 50 CFR 600.745(b)(2). Although the HMS program authority for requiring this information is found at 50 CFR 635.32(c), and NMFS is requesting clearance for the requirements as defined in those regulations, for consistency the application requirements are the same as for non-HMS permits covered by 600.745(b).

The specific requirements on the applications for an exempted activity (either a Display permit, SRP, EFP, LOA or a shark research permit) are outlined below.

Display permits, SRPs, EFPs, and LOAs:

- purpose for the exempted fishing permit,
- advance notification of the fishing or research vessel to be used,
- a list of authorized samplers,
- the number and size classes of fish to be caught or retained,
- anticipated interactions with endangered or protected species, including marine mammals, and essential fish habitat,
- the anticipated locations to be fished,
- commencement dates and duration of the activities,
- sources of funding,

- the fishing methods to be employed, and
- notification of departure to collect animals for public display.

Shark research fishery:

- how the applicant plans on meeting the research objectives set forth by the Agency,
- past participation with the NMFS observer program,
- ability to carry a NMFS observer,
- past enforcement actions,
- past involvement in the commercial shark fishery,
- advance notification of the fishing or research vessel to be used,
- a list of authorized samplers,
- the anticipated locations to be fished,
- commencement dates and duration of the activities, and
- the fishing methods to be employed.

Post-activity reports would include (for all permits except the shark research permit):

- catch/collection (interim) reports and “no-catch” reporting,
- tagging animals collected for public display, and
- year-end (annual) reports of results.

These specific reporting requirements will be identified in each EFP and failure to comply would result in a revocation of the authorization and/or issuance of a notice of violation. NMFS needs to know the amount and species of fish caught, where they are caught, and the catch disposition in order to effectively manage a fishery, and the other information is needed for enforcement purposes.

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.

For SRPs and/or LOAs, NMFS Regions, Fishery Science Centers, and NMFS and Coast Guard enforcement use information obtained from submitted research plans and subsequent reports in monitoring such activities to ensure they are bona fide scientific research activities. NMFS reviews each scientific research plan submitted to establish that the sponsoring organization and personnel involved are recognized scientific investigators, that the specific project contemplated appears to be scientific research and not commercial or recreational fishing, and that the vessel or vessels to be used are, or will be, used exclusively for research for the duration of the scientific research cruise. NMFS uses any reports or articles voluntarily submitted to document catch taken in scientific research for inclusion in the total catch, confirm the activities conducted were scientific research, and consider the appropriateness of acknowledging future requests.

For exempted fishing activities, NMFS Regions, Fishery Science Centers, and NMFS and Coast Guard enforcement use EFP and shark research permit requests and their reports to evaluate proposals for issuance of permits, ensure activities are carried out as described in the permit, and document the catch by exempted fishing for inclusion in the total catch. NMFS evaluates EFP requests and shark research permit requests to determine their usefulness to the overall goals of the HMS fishery management plans; determines their impact on the fishery stocks, endangered species, and marine mammals; and evaluates them comparatively with other applicants for the same fishery. Management and enforcement use the information to identify the entities and vessels involved and ensure the applicant carries out activities

within the restraints of the permit; the shark research permit also allows commercial fishermen to retain sandbar sharks. Management and enforcement use the reports from EFPs, SRPs, Display Permits, and LOAs to document catch for inclusion in the total catch, confirm the activities conducted were in accordance with the permit, and consider the permittee for future permits. Shark research permit holders do not have to submit interim or annual reports. These permit holders are subject to 100 percent observer coverage, and scientific observer reports describing all fishing activities (*i.e.*, landings, discards, interactions with protected resources) are used by managers and enforcement to monitor catch. Fishermen with a shark research permit, however, must report their commercial catch in the appropriate logbook for quota monitoring of other species.

For exempting educational activities such as Display permits, NMFS evaluates the authorization request for these activities to determine whether they are complete, confirms their educational value, and determines their consistency with the goals, objectives, and requirements of the HMS fishery management plans. Management and enforcement use the information to identify the entities and vessels involved and ensure the applicant carries out activities within the restraints of the permit. Management and enforcement use reports to document catch taken for inclusion in the total catch, to confirm the activities conducted were in accordance with the permit, and for consideration of future requests.

Requiring EFP recipients to report their harvest per occurrence in both Federal and state waters as well as “no-catch” reporting allows management to document catch taken for inclusion in the total catch. In addition, tagging animals collected for public display, and notifying enforcement when departing for fishing trips for collection of animals for public display provides law enforcement personnel with a means to monitor fishing activities and to ascertain whether the vessel’s observed activities are in accordance with those authorized for that vessel. Annual reports provide a validation check against the data submitted in interim reports as well as a way for NMFS to determine if all individual reports have been submitted. Additionally, as many EFPs are issued for the purposes of research and/or public display, the scientific community, as well as the general public, will benefit as unauthorized and illegal fishing are deterred and more burdensome regulations are avoided. The information collected pursuant to scientific collection activities under EFPs may be incorporated in future stock assessments. Inadequate harvest controls under these EFPs could result in curtailment of collection activity and the loss of public benefits.

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. Although the information collected is not expected to be disseminated directly to the public, results may be used in scientific, management, technical or general informational publications. Should NMFS 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.

This collection of information does not require the use of automated, electronic, mechanical, or other technological techniques; however, applications, interim, and annual reporting forms can be sent electronically to permit holders, and permit holders may also return forms electronically. These fillable forms are located on the HMS Management Division’s website at

http://www.nmfs.noaa.gov/sfa/hms/Linkpages/reporting_forms.htm. The applications, interim, and annual reports may be mailed, faxed, or e-mailed in to the HMS Management Division, as applicable, and the fishing notifications must be called in to enforcement.

NMFS requires the implantation of a dart tag or a microchip Passive Integrated Transponder (PIT) tags in animals brought back to shore for public display. This will impose no burden on the public since NMFS will supply the tags to collectors and supply the tag readers to enforcement.

4. Describe efforts to identify duplication.

Scientific Research Plans: To the extent that scientific research organizations are required to submit scientific research plans to NOAA, NMFS, or other agencies as a part of any contract or grant, those same plans would be acceptable for the purposes of this information collection. Copies of any scientific cruise report or research documentation required to be submitted by a scientific research organization would be acceptable as a voluntary report for the purposes of this collection.

Exempted fishing: There is no duplication with other collections. These EFPs are issued relative to specific requirements determined by NMFS and the applicant.

Shark research permits: There is no duplication with other collections. These permits are issued relative to specific research objectives outlined annually by NMFS.

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

Nearly all commercial fishing and collection vessels in the HMS fisheries are categorized as small businesses. The collection in and of itself will not have a significant impact on small businesses, and no special modifications of the requirements were considered necessary to accommodate the needs of small businesses.

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

Scientific research plans: Violations of the Magnuson-Stevens Act and ATCA where the violator asserts he/she was conducting scientific research and not commercially or recreationally fishing will be difficult to prove if a scientific research plan is not obtained, and a SRP or a LOAs is not issued. Without a SRP or LOA, legitimate researchers will be inconvenienced and enforcement units will conduct needless and inappropriate boardings of scientific research vessels whose activities are confused with commercial and/or recreational fishing. In addition, if the catches of some scientific activities are large and not documented, then such activities cannot be managed properly and may contribute to overfishing. Therefore, SRPs and LOAs allow the Agency to monitor quotas and track landings conducted through research, and this data is used in future stock assessments.

Exempted fishing: Issuance of EFPs allows NMFS access to relevant information that can be used in the management of fisheries. If the information requested by exempted fishing and exempted educational activity permits is not obtained, there will be no standard way of dealing with these activities from region to region, and there could be more incidents of persons who think they are conducting scientific research being found in violation of the Magnuson-Stevens Act and/or ATCA. In addition, requiring EFP applicants to report landings or collections and to provide an annual summary of these activities will

increase the efficacy of management measures and reduce costs for both the U.S. Coast Guard and NMFS Office of Law Enforcement. Less frequent reporting would not support this goal, and would not allow the Agency to track landings and monitor quotas. Dart tags and PIT tags allow NMFS to avoid significant problems with accurate and timely enforcement of fisheries management measures. All data collected under these permits would be used in future stock assessments; without accounting for this mortality, such stocks could be subject to overfishing.

Shark research permits: Issuance of shark research permits identifies commercial shark fishermen that are participating in the shark research fishery. Without such a permit, these vessels would not be able to retain and sell sandbar sharks. Therefore, such a permit helps with enforcement of this fishery and allows commercial fishermen to retain and sell sandbar sharks. The shark research fishery also allows NMFS to conduct research cooperatively with commercial shark fishermen. This research allows testing of novel fishing gear and methods; the acquisition of data from some portion of the historical Atlantic shark fishery; and/or investigating means of reducing bycatch, economic discards, or regulatory discards as well as any appropriate research objectives identified by NMFS. Without such research, data collection from commercial shark fishermen for future stock assessments would not occur, modifications to fishing gears to reduce bycatch would not occur, and increased post-release survival of bycatch could not be investigated.

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

Interim reports (required within five days of the conclusion of a fishing trip) and “no catch” reports (required each month no fishing is conducted) are necessary for the management of different fisheries through quota monitoring.

Commercial fishermen carrying a shark research permit do not need to submit an interim or annual report. Participants in the shark research fishery must carry a scientific observer at all times when fishing within the shark research fishery, so catch reports equivalent to interim reports, regarding all catch during these trips, will be submitted by scientific observers. Fishermen with a shark research permit, however, must report their commercial catch in the appropriate logbook for quota monitoring of other species.

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 on January 11, 2011 (76 FR 1602) solicited public comments. There were no comments received.

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

NMFS does not make 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.

As stated on the forms, generally, the information collected is confidential under section 402(b) of the Magnuson-Stevens Act, as amended in 2006. It is also confidential under [NOAA Administrative Order 216.100](#), which sets forth procedures to protect confidentiality of fishery statistics. However, applicants for experimental fishing permits and exempted educational activities may be required to waive confidentiality of information as a condition of a permit. The terms and conditions of the permit are regulated under [50 CFR part 635.32 \(h\)](#) which requires permit holders to complete interim and annual report forms containing confidential information. Whenever data are requested, the Agency ensures that information identifying the pecuniary business activity of a particular vessel operator is not identified.

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 information of a sensitive nature is requested.

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

An application for an EFP, SRP, Display Permit, and LOA must contain all the information required for an EFP application found at [50 CFR part 600.745\(b\)\(2\)](#). Information for a shark research permit must contain all the information governing the issuance of a Federal shark research fishery permit at 50 CFR Part 635. An application for a SRP and a LOA must include a research plan and/or all the information required for an EFP application. Based on recent information on the number of EFP, SRP, display, and LOA applications, NMFS estimates: 2 hours for a scientific research plan; 40 minutes for an application for an EFP, display, SRP, or LOA for Highly Migratory Species and 40 minutes for a shark research permit application; 1 hour for an interim report; 40 minutes for an annual fishing report; 15 minutes for an application for an amendment to an EFP; 5 minutes for notification of departure phone calls to NMFS Enforcement; 2 minutes for “no-catch” reports; and 2 minutes for tag applications. NMFS has updated the burden hours estimates based on past participation in the shark research fishery and in the exempted fishing program. The maximum number of participants/responses was used to update the burden estimates based on participation over the past three years.

11 scientific research plans @ 2 hours = 22 hours

30 shark research permit applications @ 40 minutes = 20 hours

45 EFP, SRP, LOA, and display permit applications @ 40 minutes = 30 hours

24 amendments to exempted fishing permits @ 15 minutes = 6 hours

95 interim reports @ 1 hour = 95 hours

30 “no catch” reports @ 2 minutes = 1 hour

45 annual reports @ 40 minutes = 30 hours

10 departure notifications to enforcement for collection of display animals @ 5 minutes = 50 minutes (rounded up to 1 hour)

180 notification calls to the Southeast Fisheries Science Center for observer coverage @ 10 minutes = 30 hours

15 tag applications @ 2 minutes = 30 minutes (0.5 hours)

Total annual burden for applying, notifying, tagging and reporting for HMS exempted fishing permits: 236 hours (rounded up from 235.5 hours).

Total respondents: 75 (45 EFP, SRP, LOA, and display permit applications + 30 shark research permit applications).

Total responses: 485 (11 research plans + 75 applications + 24 amendments + 95 interim reports + 45 annual reports + 30 “no-catch” reports + 10 departure notifications + 180 notification calls + 15 tag applications).

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 cost to applicants is minimal, with only a letter, landing report forms, or local telephone call needed to apply, notify, or report. NMFS estimates that the total annual cost burden at \$119 (rounded down from \$119.24) with the average cost per EFP, SRP, LOA, or Display, or shark research permit application applicant at \$1.60 (rounded up from \$1.58).

NMFS typically receives amendments via e-mail, so there would be no cost associated with submitting these requests. In addition, departure notification calls are done via telephone to local enforcement offices, so there is no charge associated with these responses. *Therefore, the number of responses that would require mailing a form to NMFS include:*

Total EFP/SRP/LOA/Display/Shark Research applications (75), research plans (11), and tag applications (15) = 101

Total EFP/SRP/LOA/Display/ reports (95 interim reports+ 45 annual reports + 30 “no-catch” reports) = 170

Total Responses: = 101 + 170 = 271 responses

Total EFP/SRP/LOA/Display/Shark Research applications, research plans, tag applications, and EFP/SRP/LOA/ and Display reports = 271 x \$0.44 postage per application, interim, and annual report = \$119.24.

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

Costs for printing and supplying EFP collection information cards are expected to be minimal. The information cards have been produced with a word processor and can be faxed or mailed to EFP recipients. No new overhead costs will be incurred for these collections because NMFS will be using existing staff and equipment to conduct duplication, distribution, collection, and data entry. Costs of dart and PIT tags (microchips) for use by applicants will be incurred by NMFS; however, as inspection operations will be conducted by existing staff, no new personnel costs will be incurred. NMFS has

already purchased PIT tag readers (10 @ \$475 each for a total of \$4,750) and has already purchased a supply of dart tags that will last the duration of three years. The annual cost for PIT tags is estimated to be \$600 (100 tags @ \$6 per tag). Therefore, for the annual total cost to the Government is expected to be \$600.

The overall level of observer coverage due to the shark research fishery has not changed. There has not been an increase in the cost to the Government due to 100 percent observer coverage in the shark research fishery. There has been a NMFS scientific observer program in place for the current shark fishery. Approximately 10 shark vessels have been operating in the shark research fishery each year with 100 percent observer coverage. The NMFS observer program has been able to put scientific observers on vessels fishing within and outside the shark research fishery since the inception of the shark research fishery. This is expected to continue in the future as long as the observer program continues to be funded.

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

Adjustment: NMFS has updated the burden hour estimates for the shark research fishery and the exempted fishing program based on realized participation in both the shark research fishery and the exempted fishing program over the past three years. When the shark research fishery began, NMFS was unsure of the number of applications the Agency would receive for participation in the research fishery. A decrease of 333 hours is due to these revised estimates.

However, there were increases in the estimates associated with the number of scientific research plans submitted (up from 4 to 11 research plans submitted), increased number of applicants under the exempted fishing permit program (and associated annual and interim reports; an increase of, on average, 3 applicants per year), an increase in the amount of time associated with calling the SEFSC for NMFS observer coverage (an increase from 92 calls to 180 calls), and an increase in the number of amendments requested each year (up from 14 amendments to 24). An increase of approximately 39 hours is due to these revised estimates.

The net change in burden hours due to adjustments is 294 fewer burden hours.

Program change: The exempted fishing program requirements have changed, based on a 2009 rule (August 25, 2009, [74 FR 42786](#)), which changed some aspects of the exempted fishing program. For this collection, the change resulted in NMFS scientific observers (*i.e.*, the bottom longline observer, the pelagic longline observer, and the Northeast observer programs) no longer having to obtain an EFP in order to conduct authorized research activities. This results in three fewer applicants and associated interim and annual reports or a decrease of 7 burden hours.

Based on the adjustments and program change, there is a net decrease to the burden hours from 537 to 236 (a difference of 301) and the annual cost burden has decreased from \$310 to \$119 (a difference of \$191).

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

No publication is planned.

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.

The expiration date will be displayed.

18. Explain each exception to the certification statement.

No exceptions are requested.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.