

**1SUPPORTING STATEMENT
PERMITS FOR INCIDENTAL TAKING OF ENDANGERED OR
THREATENED SPECIES
OMB CONTROL NO. 0648-0230**

A. JUSTIFICATION

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

This request is for extension of a currently approved information collection.

The [Endangered Species Act of 1973](#) (ESA; 16 U.S.C. 1531 et. seq.) prohibits the taking of endangered species, but provides some exceptions under Section 10. An application is required for persons to obtain a permit to take endangered species incidental to an otherwise lawful activity. The regulations at [50 CFR §222.307](#) set out specific requirements on what information must be provided in order to apply for an incidental take permit, or for an exception from needing such a permit. The regulations contain three sets of information collections: (1) applications for incidental take permits under §222.307(b); (2) applications for certificates of inclusion under §222.307(f)(1); and (3) reporting requirements for issued permits under §222.307(d). In addition, under protective regulations for certain listed species, a group may submit a watershed plan to National Marine Fisheries Service (NMFS) for review against guidelines that meet the standards of [§223.204](#). If the plan is adequate, then habitat restoration activities outlined in the plan are exempt from applying for an incidental take permit.

For applications and watershed plans, the required information is used to evaluate the activity proposed in the application. For the annual reporting requirement, information is used to evaluate ongoing activities. All of the information is necessary for NMFS to ensure the conservation of endangered species under the ESA.

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 applicable NOAA Information Quality Guidelines.

All of the required information is used to evaluate the impacts of the proposed activity on endangered species; for example, to make the determinations required by the ESA prior to issuing a permit, and to establish appropriate permit conditions. The analysis involved in making these determinations requires detailed information on the activity, the endangered species and how the activity may affect the animals directly or indirectly through alterations of the habitat.

Incidental Take Permits

The instructions for sea turtles are more specific than those for take of other species, and include more explanation, to make it clearer for the applicants. The information required by both sets of instructions follow the regulations and is essentially the same.

I - III. These sections of the application instructions request the application title and date and the applicant's name, address, and contact information. The purpose and use of this information is self-explanatory.

IV-V. It is important for management purposes to know what species and stock will be affected by the proposed activity. Due to animals' seasonal habits, such as breeding, the dates and locations of the activity are important to determine the impact to the species. NMFS can provide the applicant with any information that the applicant may not have on the biology, distribution, etc.

VI. A. As a requirement to obtain exception to the ESA for incidental takes of an endangered species, there must be a conservation plan developed. The purpose of this plan is to provide some benefit to the species to offset the negative impacts of the incidental take.

B. The ESA also covers habitat for listed species. Animals cannot survive without habitat, so protecting/restoring their habitat is an important part of their conservation and recovery.

C. Because the proposed activity may have an adverse impact on a listed species, NMFS must ensure that all reasonable measures will be taken to minimize that impact. Adequate funding must be available to ensure that the conservation plan can be carried out.

D. NMFS must ensure that alternatives to the proposed action, which would have a lesser/no impact on the species, cannot reasonably be carried out in place of the proposed action. Again, NMFS must ensure that all reasonable measures will be taken to minimize the impact to listed species.

E. NMFS must ensure that the data supplied in the application is valid.

Certificates of Inclusion

An application for a certificate of inclusion, to allow individuals to be included under a general incidental take permit, must include the following:

1. General incidental take permit under which the applicant wants coverage (self-explanatory).
2. Applicant's name, address and telephone number (if the applicant is a partnership or corporate entity, then the applicable details) (self-explanatory).
3. Description of the activity the applicant wants covered under the general permit, including anticipated geographic range and season (See explanation under IV and V above).
4. Signed statement that the applicant has read and understood the general incidental take permit and the conservation plan, will apply with the applicable terms and conditions, and will fund the applicable measures of the conservation plan (Self-explanatory, and see explanation under VI A. and C. above).

Permit Reports

The reports required by the incidental take permits are used by NMFS to monitor the taking, to assess the impacts to the species and its habitat, and to monitor compliance with the terms and conditions of the permit. This information is necessary to ensure that the taking is not appreciably reducing the likelihood of the survival and recovery of the species and for

determining whether the terms and conditions of the permit are being complied with, as required by sections 10(a)(2)(B) and (C) of the ESA. The regulations at §222.307(d)(1) state that permits must contain “Reporting requirements or rights of inspection for determining whether the terms and conditions are being complied with”. The requirements for reports therefore, vary from permit to permit, depending on the permit conditions.

Watershed Plans

There are no formal instructions for Watershed Plans other than the regulations themselves, which state that a Watershed Plan must address the following, taken from 222.307(c):

- (i) The status of the affected species or stocks (See explanation for IV-V above);
- (ii) The potential severity of direct, indirect and cumulative impacts on the species or stocks and habitat as a result of the proposed activity (See explanation for VI B and C above);
- (iii) The availability of effective monitoring techniques (To ensure that the actual impact is not different from the expected impact);
- (iv) The use of the best available technology for minimizing or mitigating impacts (See explanation for VI C above); and
- (v) The views of the public, scientists and other interested parties knowledgeable of the species or stocks or other matters related to the application (NMFS is required by the regulations, when issuing an exemption to ESA prohibitions, to solicit review and comment on the proposed activity from experts and the public).

Transfer of Permits

The regulations at [§222.305](#) allow for transfer of permits associated with Habitat Conservation Plans, Safe Harbor Agreements with Assurances, and Candidate Conservation Agreements with Assurances. NMFS proposed this change to the regulations in 2002, because on two occasions permit holders wanted to sell their property to new owners. Prior to changing the regulations, the new owners would have had to apply for a separate permit to continue implementing actions required from the previous permit. Under the current regulations, NMFS and the new landowners save time and money by transferring permits instead of issuing new permits.

As explained in the preceding paragraphs, the information gathered has utility. NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with National Oceanic and Atmospheric Administration (NOAA) standards for confidentiality, privacy, and electronic information. See response 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](#).¹

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.

Application instructions are available over the Internet at http://www.nmfs.noaa.gov/pr/permits/esa_permits.htm. Reports may be submitted electronically (via email), but NMFS must receive a signed paper copy of applications. The small volume of responses does not justify designing a system for allowing e-signatures.

4. Describe efforts to identify duplication.

Because the information required is for the receipt of benefits (exemption from the ESA Section 10), and reporting on permit activity, the information collection is unique.

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

This collection should not have a significant impact on small entities. There are no small

¹ Also applicable:

1. NMFS' IQA guidelines: [Policy Directive on Policy on the Data Quality Act](#), (See also: [NMFS INSTRUCTION on Data Quality Act, SECTION 515 PRE-DISSEMINATION REVIEW AND DOCUMENTATION GUIDELINES](#))
2. NMFS' [Instruction on NMFS DATA DOCUMENTATION](#), which states at pages 11-12 that all NMFS data disseminations must meet NMFS' IQA guidelines.
3. NMFS' [Instruction on SECTION 515 PRE-DISSEMINATION REVIEW AND DOCUMENTATION FORM](#)
4. NMFS [Instruction on GUIDELINES FOR AGENCY ADMINISTRATIVE RECORDS](#), which states at pages 2-3: The AR [Administrative Record] first must document the process the agency used in reaching its final decision in order to show that the agency followed required procedures. For NOAA actions, procedural requirements include...the Information Quality Act...
5. NMFS' [DIRECTIVE on Data and Information Management](#), which states at page 3 that: "(General Policy and Requirements: A. Data are among the most valuable public assets that NMFS controls, and are an essential enabler of the NMFS mission. The data will be visible, accessible, and understandable to authorized users to support mission objectives, in compliance with OMB guidelines for implementing the "Information Quality Act" (IQA).

businesses and only one non-profit institution.

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

If the information were not collected, the incidental taking would not be allowed, and the applicant could not lawfully conduct the activity. Annual reporting on permits is necessary to monitor the activity under the permit and the status of the species. Less than annual reporting would hinder NMFS' ability to conserve listed species.

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 published on November 14, 2011 (76 FR 70417) solicited public comment on this renewal. We received the following two comments:

Comment 1: The commenter stated that permits are given out too easily without rigorous review and there should be a charge for the permit. The commenter also requested copies of the permits.

Response: The information collection requirement for which the National Marine Fisheries Service (NMFS) is requesting approval is the requirement for persons to obtain a permit to take endangered species incidental to an otherwise lawful activity, as set forth in 50 CFR §222.307. Concerns about NMFS permit issuance criteria are not the same as concerns about the general information collection requirement, and are not germane to the question of whether this information required has "practical utility" or to OMB's approval of the requirement. Nevertheless, below is an explanation of NMFS' guidelines for permit approval.

The Endangered Species Act allows the Secretary to permit any taking otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, carrying out of an otherwise lawful activity. If after providing the opportunity for public comment, the Secretary finds with respect to a permit application and related conservation plan that –

- (i) the taking will be incidental;
- (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking ;
- (iii) the applicant will ensure that adequate funding for the plan will be provided;

(iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(v) the measures, if any, required under subparagraph (A)(iv) will be met;

and he has received such other assurances as he may require that the plan will be implemented, the Secretary **shall** issue the permit.

The criteria that is considered in determining whether to issue the permit are laid out in Federal regulation at 50CFR 222.307(c). The NMFS and Fish and Wildlife Service joint Habitat Conservation Plan Handbook provides further guidance in the development of Habitat Conservation Plans. The permit issuance criteria provide for a rigorous evaluation of each incidental take permit application. The public is provided an opportunity to comment on every permit application. All information received during the public comment period is considered when evaluating permit applications against the permit issuance criteria.

Comment 2: The commenter requested some changes in the “Supporting Statement” related to discussion of the Information Collection Request’s compliance with the Information Quality Act and more specific references.

Response: This “Supporting Statement” was updated with more specific references, as requested.

The application instructions were posted on the Internet in response to previous requests by applicants. Feedback received on the application instructions is applied if possible (i.e., if it is consistent with the ESA regulations).

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

No payments or gifts are given.

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

No confidentiality is promised. The information supplied is 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.

See table below. There are 13 unduplicated respondents per year (4 new applicants and 9 submitting annual reports), 15 responses and 472 hours.

Note: No watershed plans or certificates of inclusions are expected because none have been received in the past few years (2008-2011).

Burden Hours and Labor Costs to the Public						
Type of response	Permit Applications (once per permit)	Certificates of Inclusion	Permit Reports (annually)	Watershed Plans (once per plan)	Transfer of Incidental Take Permits	TOTALS
Number received per year	4	0	9	0	2	15
Hours per response	80	0	8	0	40	
Total hours (annually)	320	0	72	0	80	472
Labor cost per response (@ \$18/hr.)	\$1,440	\$0	\$144	\$0	\$720	
Total labor cost (annually)	\$5,760	\$0	\$1,296	\$0	\$1,440	\$8,496
Cost to Government						
Processing: Federal government hours per response	120	0	4	0	80	
Total hours (annually)	480	0	36	0	160	676
Cost per response (@ \$25/hr.)	\$3,000	\$0	\$100	\$0	\$2,000	
Total cost (annually)	\$12,000	\$0	\$900	\$0	\$4,000	\$16,900

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).

We estimate annual costs of \$450 for copying and mailing. For each permit application, annual report submission, and request for transfer of permit, costs would average \$20 for reproduction of the package. Adding a mailing cost of \$10 per package, for a total unit cost of \$30, the cost for 4 submissions for permit applications, 9 annual reports, and 2 requests for transfer of permits (15 submissions) would total \$450.

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

Cost to the Federal government is \$16,900 (see table above).

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

There are no changes or adjustments.

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.

Not Applicable.

18. Explain each exception to the certification statement.

Not Applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.