

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 request is for revision and extension of this information collection. The EFP program includes not only EFPs but also scientific research permits (SRPs), display permits, letters of acknowledgement (LOAs), and shark research permits, which are issued to participants in the Shark Research Fishery.

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 statutes, and the differences in those statutes are responsible for the variations in the requirements applying to different species as discussed below.

Applications for and reports on archival tags are no longer required, due to a 2016 final rule (see citation in A15).

The [Magnuson-Stevens Fishery Conservation and Management Act](#) (16 U.S.C. 1801 et seq.) (Magnuson-Stevens Act) governs domestic fisheries and is the primary authority for management of fishing activities for Atlantic sharks (for which there is little international management, at this time). 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 as necessary and appropriate to implement binding recommendations 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. Note that while ICCAT currently focuses on tunas, swordfish, and billfish, it has a few recommendations regarding some shark species, and is currently considering adding some species of sharks to its Convention.

Under both the Magnuson-Stevens Act and ATCA, non-scientific activities, including collection for education or display, may be authorized under the EFP Program. NMFS issues a variety of permits depending on the purpose of the permit and the type of vessel upon which the activity is being conducted. For instance, EFPs are issued to allow research conducted from a commercial or recreational fishing vessel that would otherwise be prohibited by existing regulations, display permits are issued for the collection of HMS for the purpose of public display, and shark research permits are issued annually to a few, selected applicants who have submitted an application in response to NMFS' shark research objectives for a given year.

When shark research permits first began to be issued in 2008, the application to participate in the shark research fishery was combined with the application for all other EFPs. However, because the scientific research implemented within the shark research fishery is specific (e.g., it facilitates limited testing of fishing gear and methods, allows for acquisition of data from some portion of the historical Atlantic shark fishery, and investigates means of reducing bycatch, economic discards, and regulatory discards), combining the applications created confusion for applicants of all permit types. To minimize confusion for applicants, NMFS has created a separate application for the shark research fishery. Though no new information would be collected, having separate applications for the shark research fishery and for other permits under the purview of the exempted fishing program makes the application process more transparent for applicants.

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 fishery management plans (FMPs) (*i.e.*, most species of sharks). To avoid enforcement issues and to ensure the applicant is conducting scientific research, NMFS requests copies of scientific research plans. In such cases, NMFS issues an LOA to researchers to indicate concurrence by NMFS that the proposed activity meets the definition of research and is therefore exempt from regulation.

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

To regulate these fishing and research activities, NMFS needs information to determine the justification of granting an EFP, display permit, LOA, SRP, or shark research permit. The application requirements for an EFP, display permit, LOA, SRP, or shark research permit are detailed at 50 CFR § 600.745(b)(2). NMFS is requesting clearance for the requirements as defined in the 50 CFR § 635.32 regulations. For consistency, the application requirements are the same as for non-HMS permits covered under § 600.745(b).

The specific requirements on the applications for an exempted activity through an EFP, display permit, LOA, SRP, or a shark research permit are outlined below.

EFPs, Display permits, LOAs, and SRPs:

1. purpose for the exempted fishing permit,
2. permit received in previous years and for how many years,
3. advance notification of the fishing or research vessel to be used,
4. a list of authorized samplers,
5. the number and size classes of fish to be caught or retained,
6. anticipated interactions with endangered or protected species, including marine mammals and essential fish habitat,
7. the anticipated locations of fishing activities (possible closed area research)
8. commencement dates and duration of the activities,
9. sources of funding,
- 10.

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

Shark research fishery permits:

1. how the applicant plans to meet the research objectives set forth by the Agency,
2. past participation with the NMFS observer program,
3. ability to carry a NMFS observer,
4. past enforcement actions,
5. past involvement in the commercial shark fishery,
6. advance notification of the fishing or research vessel to be used,
7. the anticipated locations of fishing activities,
8. commencement dates and duration of the activities, and
9. the fishing methods to be employed.

Post-activity reports includes (for all permits except the shark research fishery permits):

1. catch/collection (interim) reports and “no-catch” reporting,
2. year-end (annual) reports of results.

These specific reporting requirements will be identified in each EFP. 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, anticipated bycatch, and the catch disposition in order to effectively manage HMS fisheries, and the other information is needed for enforcement purposes.

2. 1Explain how, by whom, how frequently, and for what purpose the information will be used. 1If 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, NMFS Fisheries Science Centers, and both NMFS and U.S. Coast Guard enforcement use information obtained from submitted research plans and subsequent reports to monitor activities and ensure they are bona fide scientific research activities. NMFS reviews each scientific research plan submitted in order to determine whether the sponsoring organization and personnel involved are recognized scientific investigators, the specific project contemplated appears to be scientific research and not commercial or recreational fishing, and that the vessel(s) 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, NMFS Fisheries Science Centers, and NMFS and U.S. Coast Guard enforcement use EFP and shark research fishery 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 and shark research fishery permit requests to determine their usefulness to the overall goals of the 2006 Consolidated HMS FMP and its amendments; determine their impact on the fishery stocks, protected species, and marine mammals; and evaluate 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 and sell sandbar and other sharks, consistent with the

Agency's shark research objectives for each year. Management and enforcement use the reports from EFPs, SRPs, display permits, LOAs, and shark research fishery permits 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 fishery permit holders do not have to submit interim or annual reports through this program as they must report their commercial catch in the appropriate logbook for quota monitoring of other species. These permit holders are also 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.

For exempting educational activities requiring 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 2006 Consolidated HMS FMP and its amendments. Management and enforcement use the information to identify the entities and vessels involved, and to 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 NMFS to document catch taken for inclusion in the total catch. Annual reports provide a validation check against the data submitted in interim reports as well as a means for NMFS to determine if all individual reports have been submitted. Additionally, because 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.

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 and both 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/compliance/efp/index.html>. The applications and both 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.

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. EFPs are issued relative to specific requirements determined by NMFS and the applicant.

Shark research fishery 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 may be difficult to prove if a scientific research plan is not obtained and an SRP or an LOAs is not issued. Without an SRP or LOA, legitimate researchers may be inconvenienced and enforcement units may conduct needless and inappropriate boardings of scientific research vessels whose activities are confused with commercial and/or recreational fishing. In addition, if the catch of some scientific activities is large and undocumented, then such activities cannot be managed properly and may contribute to overfishing. Therefore, SRPs and LOAs allow the Agency to more accurately monitor quotas and track landings conducted through research; data are used in future stock assessments.

Exempted fishing and fishing for public display: Issuance of EFPs and display permits 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 and Display permit 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 NMFS to track landings and monitor quotas. 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 fishery permits: Issuance of shark research fishery permits identifies commercial shark fishermen that are participating in the shark research fishery. Without such a permit, these vessels would

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

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 July 17, 2017 (82 FR 32685) solicited public comments. No comments were received during the 60-day comment period.

Comments were also solicited from 3 non-NOAA researchers, who frequently apply for EFPs, LOAs, SRPs, and Display permits. The commenters did not feel that the process for applying or reporting activities related to EFPs were overly burdensome.

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 exempted 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 disclosed.

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 fishery permit must contain all the information governing the issuance of a Federal shark research fishery permit at 50 CFR Part 635.32.

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 fishery 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.** NMFS has updated the burden hours estimates based on past participation in the shark research fishery and in the exempted fishing program. The average number of participants/responses was used to update the burden estimates based on participation over the past three years.

8 scientific research plans @ 2 hours = 16 hours

12 shark research permit applications @ 40 minutes = 8 hours

37 EFP, SRP, LOA, and display permit applications @ 40 minutes = 25 hours

10 amendments to exempted fishing permits @ 15 minutes = 3 hours

50 interim reports @ 1 hour = 50 hours

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

37 annual reports @ 40 minutes = 25 hours.

10 departure notifications to NMFS enforcement for collection of display animals @ 5 minutes = 1 hour

84 notification calls to the Southeast Fisheries Science Center for observer coverage @ 10 minutes = 14 hours

Total respondents: 49 (37 EFP, SRP, LOA, and display permit applications + 12 shark research permit applications). The eight respondents submitting research plans also submit applications.

Total responses: 283 (8 research plans + 49 applications + 10 amendments + 50 interim reports + 37 annual reports + 35 “no-catch” reports + 10 departure notifications + 84 notification calls).

Total annual burden for applying, notifying and reporting for HMS exempted fishing permits: 143 hours.

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 \$9 with the average cost per EFP, SRP, LOA, display, or shark research fishery permit application at \$0.49.

NMFS typically receives reports, applications, and amendments via e-mail (approximately 90 percent of the submissions) so there would be no cost associated with submitting these requests. In addition, departure notification calls are made via telephone to local enforcement offices, so there is no charge associated with these responses. *Therefore, the number of responses that would use the mailing option to submit a form to NMFS include:*

For the responses below, approximately 90 percent of responses are submitted electronically.

Total EFP/SRP/LOA/Display/Shark Research applications (49) and research plans (8), $\times .10 = 6$.

Total EFP/SRP/LOA/Display/ reports (50 interim reports+ 37 annual reports + 35 “no-catch” reports) $\times .10 = 12$.

Total responses mailed: $= 6 + 12 = 18$ responses.

Total EFP/SRP/LOA/Display/Shark Research applications, research plans, and EFP/SRP/LOA/ and Display reports = $18 \times \$0.49$ postage per application, interim, and annual report = \$8.82.

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

The information cards have been produced with a word processor and 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.

NMFS labor cost is 1,040 hours at \$38.28 per hour = \$39,811.

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 5 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.

The annual cost is \$375,000.

Total costs are \$415,070.

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

Program Change: Due to a final rule published on August 19, 2016 (81 FR 55376), the HMS Management Division no longer requires written authorization to deploy archival tags. This no longer requires fishermen and researchers deploying archival tags to complete a tag application or report. This action results in the removal of 15 responses, 1 hour and \$2 in recordkeeping reporting costs.

Adjustments: NMFS has updated the burden hour estimates based on average participation in the EFP program from 2014-2016.

The decreases and minor increases in the estimates associated with the EFP program are as follows: the number of scientific research plans submitted increased (from 7 to 8 research plans submitted), the number of applicants under the EFP program decreased (from 40 to 37 applications submitted), the number of applicants for the shark research fishery decreased (from 17 to 12 applications), the number of interim reports decreased (from 80 to 50 reports), the number of “no catch reports” increased (from 27 to 35), the number of annual reports decreased from (40 to 37), and the number of calls to the Southeast Fisheries Science Center for NMFS observer coverage decreased (from 312 calls to 84 calls).

As a result of these revised estimates, there was a decrease of approximately 73 hours. This net change in burden hours is due in part to a large decrease in the total number of observer notification calls which led to reduction of 38 hours. There were other slight decreases in reporting forms that contributed to the overall decrease in burden hours.

The annual cost burden resulting from adjustments has decreased from \$25 to \$11 (a difference of \$14). NMFS has estimated that most of this cost reduction is due to the increased amount of electronic correspondence between NMFS and respondents.

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.