

**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

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 when 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.

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](#)

### **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 <https://www.fisheries.noaa.gov/node/21866>. 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 businesses and only two non-profit institutions.

**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 February 27, 2018 (83 FR 8436) solicited public comment on this renewal. We received no comments.

We contacted two non-NOAA stakeholders, Barney M. Davis, LP and Gulf Specimens Marine Lab, Inc. Barney Davis provided "no comment." Gulf Specimens Marine Lab provided the following:

**Comment:** One full year to renew a simple permit that we previously had and there was no trouble with it? **NOAA Response:** We typically suggest that applicants submit an application and a Conservation Plan one year prior to the start of their proposed activity. When an application has been submitted, it is then reviewed and we may suggest the applicant make edits. Once the application package is considered complete, it is officially accepted and we publish a notice in the Federal Register soliciting public comment for a 30-day period. We review all comments and give the applicant the opportunity to provide responses to substantive comments.

We then prepare draft NEPA documents and a draft permit that go out for a 30-day comment period. A Section 7 analysis of the species is initiated and must be completed before issuance of the permit to ensure that the action is not likely to jeopardize the species' continued existence or destroy or adversely modify critical habitat. When all documents have been finalized, the decision to issue or deny a permit is made.

**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 48 unduplicated respondents (22 new applicants over a three-year period, annualized to 7.34 – rounded to 7 in ROCIS)) and 26 submitting annual reports), 33.34 responses and 795 hours.

Note: No watershed plans, certificates of inclusions, or Transfers are expected because none have been received in the past few years (2014-2017).

<b>Burden Hours and Labor Costs to the Public</b>						
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	7 (22 over a three-year period)	0	26	0	0	48
Hours per response	80	0	8	0	0	
Total hours (annually)	560	0	208	0	0	768
Labor cost per response (@ \$18/hr.)	\$1,440	\$0	\$144	\$0	\$0	
Total labor cost(annually)	\$31,680/3=\$10,560	\$0	\$3,744	\$0	\$0	\$13,800
<b>Cost to Government</b>						
Processing: Federal government hours per	120	0	4	0	0	

response						
Total hours (annually)	2,640/3=880	0	104	0	0	984
Cost per response (@ \$25/hr.)	\$3,000	\$0	\$100	\$0	\$0	
Total cost (annually)	\$66,000/3=\$22,000	\$0	\$2,600	\$0	\$0	\$24,600

**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 \$1,000 for copying and mailing. For each permit application and annual report, submission 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 22 submissions for permit applications  $\$660/3=\$220$  and 26 annual reports \$780 would total \$1,000 annually.

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

Cost to the Federal government is \$24,600 (see table above).

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

Adjustments: We are anticipating an increase in applications, as the Clean Water Act (CWA) [Sections 316\(a\) and \(b\)](#) would necessitate sampling plans related to impacts of such environmental changes as power plants, of which there is an increasing number:

Section 316(a) allows for a variance from applicable thermal limitations to surface water if the permittee can demonstrate that the balanced indigenous community of aquatic organisms is protected and maintained.

Section 316(b) requires the determination of whether the withdrawal of cooling water causes or has the potential to cause adverse environmental impacts on aquatic populations and communities.

Thus, we would expect an increase from 12 to 22 applications over a three-year period (annualized, from 4 to 7, annualized burden from 320 to 560, and a corresponding increase in annual reports.

We are not including burden for permit transfers as there have been none for several years. This removes two responses, two hours and \$60 in recordkeeping/reporting costs.

**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.