

**SUPPORTING STATEMENT
LIMITS OF APPLICATION OF THE TAKE PROHIBITIONS
OMB CONTROL NO. 0648-0399**

A. JUSTIFICATION

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

Section 4(d)¹ of the Endangered Species Act of 1973 (ESA) requires the National Marine Fisheries Service (NMFS) to adopt such regulations as it “deems necessary and advisable to provide for the conservation of” threatened species. Those regulations may include any or all of the prohibitions provided in section 9(a)(1) of the ESA, which specifically prohibits “take” of any endangered species (“take” includes actions that harass, harm, pursue, kill, or capture). There are presently 22 separate Evolutionarily Significant Units (ESUs) of west coast salmonids listed as threatened, covering a large percentage of the land base in California, Oregon, Washington, and Idaho. On June 28, 2005 (70 FR 37160), February 1, 2006 (71 FR 5178), and September 25, 2008 (73 FR 55451), NMFS issued final regulations which makes ESA section 9 prohibitions generally applicable to these threatened ESUs except in 13 programs and circumstances.

The final regulations at 50 CFR 223.203, as well as online information posted at https://www.westcoast.fisheries.noaa.gov/permits/section_4d.html, describe 13 programs or circumstances that contribute to the conservation of, or are being conducted in a way that adequately limits impacts on, listed salmonids. Certain of these 13 “Limits” on the take prohibitions entail voluntary submission of a plan(s) to NMFS and require annual or occasional reports by entities wishing to take advantage of these Limits, or continue within them.

Each of the 13 Limits applies to a different sector of activity, and to different potential populations of responders. The sectors include: Tribal Resource Management Plans (Joint State and Tribal Resource Management Plans); Fishery Harvest and Hatchery Plans; Scientific Research Activities; Diversion Screening; Routine Road Maintenance (in which any city, state, county or port or regional government therein may adopt the Oregon Department of Transportation (ODOT’s) program or submit an equally protective program); Urban Development; Reports of Salmonids Assisted, Disposed of, or Salvaged; Artificial Propagation; and Annual Reports. A brief description of the Limits that may involve the collection of information follows.

Reports of Salmonids Assisted, Disposed of, or Salvaged: This Limit (Limit 3) relieves certain agency (including tribes) and official personnel (or their designees) from the take prohibitions when they are acting to: (1) aid a sick, injured, or stranded salmonid, (2) to dispose of a dead

¹ Section 4(d) of the Endangered Species Act, 16 U.S.C. et seq., states: “Whenever any species is listed as a threatened species pursuant to subsection (c) of this section, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1)”

salmonid, or (3) to salvage a dead salmonid for scientific study. Each agency acting under this Limit on the take prohibition must annually report to NMFS on the numbers of fish handled and their status.

Fishery Management (Harvest/Hatchery) Plans: These plans (Limits 4 and 5) are mainly used by states. The state would prepare a plan that addresses fishery harvest and submit it to NMFS. NMFS evaluates the plan for its completeness and impact on the listed species and agrees or disagrees with the action. If NMFS disagrees, the plan is returned to the state for revision. If NMFS agrees, the plan is approved.

Artificial Propagation: The artificial propagation section (Limit 5) of the 4(d) rule provides a way to continue to conserve listed species while implementing a variety of hatchery purposes. To qualify for limitation on take prohibitions under Limit 5, a state or Federal hatchery management agency must develop a Hatchery and Genetics Management Plan (HGMP) that meets the criteria of Limit 5 and seek NMFS' approval of the plan. Some of the benefits of the HGMP approach are long-term management planning, more public involvement, and less government paperwork.

Tribal Resource Management Plans and Joint State and Tribal Resource Management Plans: This (Limit 6) is available to any tribe, tribal member, tribal permittee, tribal employee, or tribal agent provided the Secretary determines their action will not appreciably reduce the likelihood of survival and recovery of that species. The applicant would prepare a plan that addresses fishery harvest, artificial propagation, research, or water or land management and submit it to NMFS. NMFS evaluates the plan for its completeness and impact on the listed species and agrees or disagrees with the action. If NMFS disagrees, the plan is returned to the applicant for revision.

Scientific Research Activities: Research activities involving listed salmonids have typically been authorized solely in the context of the ESA's section 7 and section 10 processes. While these processes remain valid (and in many cases necessary) pathways for researchers, the new "Research Limit" is significant in that it provides both NMFS and the state fishery agencies with a way to streamline the ESA's traditional authorization processes in a manner that allows the state fishery agencies to maintain key oversight and coordination roles. Specifically, coverage under the Limit (Limit 7) requires that the state fishery agencies either conduct or oversee research/monitoring efforts, or become involved in coordinating those efforts. In addition, compliance with the Limit will require that the state fishery agencies submit annual reports describing research-related take for each of the affected ESUs. These provisions have intentionally been crafted to provide state fishery agencies with considerable discretion in determining eligibility under the Research Limit. However, they also underscore the fact that NMFS and the state fishery agencies will share the responsibility of ensuring that authorized research involving listed salmonids is both coordinated and conducted in a manner that prevents overutilization of the resource. NMFS works closely with the state fishery agencies to develop a 4(d) research review process that adapts existing state permit processes to the ESA's accountability requirement for research-related take of listed species.

Diversion Screening Limit: Water diversion structures (gravity flow or pumps) that have not been screened to prevent fish from being injured or diverted into fields are a significant source of injury and mortality to listed salmonids, particularly to juveniles. State laws and Federal programs have long recognized these problems in varying ways, and encouraged or required adequate screening of diversion ditches, structures, and pumps to prevent much of the anadromous fish loss attributable to this cause. Nonetheless, large numbers of diversions are not

adequately screened and elimination of that source of injury or death is vital to conservation of listed salmonids. This Limit (Limit 9) should prompt diverters to move quickly to provide adequate screening or other protections for their diversions, because once so screened, take prohibitions would not apply. The diversion must be screened in accord with NMFS' Southwest Region "Fish Screening Criteria for Anadromous Salmonids, January 1997" or any subsequent revision (available by contacting NMFS). The operator would need to provide documentation for the screening installed, including plans, for a written acknowledgment from NMFS' engineering staff or designated agent that the screens are in compliance with the above criteria.

Routine Road Maintenance: This Limit (Limit 10) is available to any city, state, county or port or regional government therein, provided that: (1) maintenance activities are conducted by the employees or agents of the state or any county, city, or port under a program that is substantially similar to that contained in the ODOT Guide or under a program that has been determined by NMFS to meet or exceed the protections provided by the ODOT guide, or that (2) maintenance activities are conducted by employees or agents of the State or any county, city, or port in a manner that has been found by NMFS to contribute to properly functioning habitat conditions for the threatened salmonid ESUs considered in the rule. The city or county would need to prepare an agreement detailing how it will assure adequate training and compliance with the ODOT or equivalent guidance, and describing any dust abatement practices it wishes to be within the Limit.

The ODOT guide governs the manner in which crews should proceed on a wide variety of routine maintenance activities, including surface and shoulder work, ditch, bridge, and culvert maintenance, snow and ice removal, emergency maintenance, mowing, brush control and other vegetation management. The program directs activity toward favorable weather conditions, increases attention to erosion control, prescribes appropriate equipment use, governs disposal of vegetation or sediment removed from roadsides or ditches, and includes other improved protections for listed salmonids, as well as improving habitat conditions generally. Routine road maintenance conducted in compliance with the ODOT program or an equivalent program will adequately address the problems potentially associated with such activity.

Urban Development: This Limit (Limit 12) would be available to any city or county affected by the take prohibitions, if it has land development ordinances in a sufficiently comprehensive form that they could satisfy the criteria set out in the regulation. The jurisdiction would need to provide NMFS with copies of those comprehensive ordinances, and provide any necessary explanatory materials showing how the ordinances meet those standards.

Note: Limits 8 and 13 are inactive; Limit 11 had a one time limit.

Annual Reports: Some form of a reporting requirement is built into all programs or Limits that are approved by NMFS. These reports help NMFS to determine: (1) that the conditions or activities under that Limit are being followed, (2) the impact of the activities on the listed species, and (3) new information about the species which may then help NMFS to better manage it.

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.

NMFS will review plans submitted to determine whether they provide sufficient biological protections to warrant not applying the take prohibitions to activities governed by that plan. NMFS' biologists will review the plans against the criteria associated with the applicable Limit on take prohibitions. Those criteria have been carefully crafted to assure that plans meeting them will adequately limit impacts on threatened salmonids, such that additional protections in the form of a federal take prohibition are not necessary or advisable.

The annual reporting associated with approved Limits would aid NMFS in understanding the cumulative impacts of each action on listed ESUs, and to determine whether additional protections are required to provide for the conservation of the species (or, alternatively, whether some additional limits on federal protections may be warranted). Annual reporting also provides NMFS with the numbers of threatened salmonids being affected by such actions. This information is necessary as part of the tracking of the status of the affected threatened species.

Many plans/programs have been submitted to NMFS since the rules first became effective (July 10, 2000, 65 FR 42422, and January 9, 2002, 67 FR 68725,). NMFS expects more programs to be submitted in the future. Reports are required for Limits each year.

The practical utility of these submissions is that, assuming a plan or program is found to meet the criteria associated with the particular Limit in the 4(d) rule, the state or other entity submitting the plan, and individuals acting in compliance with the plan, can carry on with its activity knowing that it is in full compliance with the ESA and need not be concerned with any possibility of ESA enforcement of take prohibitions.

It is anticipated that the information collected will be disseminated to the public or used to support publicly disseminated information. 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. 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.

The regulations do not require any particular method of submission of plans or reports. However, NMFS, in conjunction with the state of Oregon, has developed a Web-based system for applicants to use in applying for a scientific research permit (Limit 7). Historically researcher applications varied considerably in quality and level of detail. The Web-based system has helped streamline the application and authorization processes for researchers and the review process for NOAA biologists (<https://apps.nmfs.noaa.gov/>).

4. Describe efforts to identify duplication.

NMFS has not identified any examples where the 4(d) rule involves duplication with other collections of information. This information collection is unique. As NMFS gains experience with this approach to 4(d) protections, it is likely that many of the plans or reports submitted may serve to relieve the take prohibitions for an even broader range of listed species.

In the absence of 4(d) rules, NMFS provides ESA coverage through section 10 research, enhancement, and incidental take permits with private entities, or through section 7 consultation with Federal agencies. The section 7 and section 10 processes have their own specific reporting requirements associated with them.

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

This collection will not have a significant economic impact or burden on small entities. Any economic impact of these rules flows from the application of the take prohibition in the first instance, which has no associated collection of information. To minimize any burden, NMFS has made information readily available online and has designated staff experts who can assist small businesses or other small entities interested in determining whether a particular ESA Limit may be applicable in their situation. Online resources available at https://www.westcoast.fisheries.noaa.gov/permits/section_4d.html include the following: 4(d) Rule Implementation Binder; A Citizen's Guide to the NMFS 4(d) Rules; and agency contacts (including names, phone numbers, and geographic areas of expertise). Also, the agency has posted guidelines and instructions online, and continues to develop online applications (e.g., the APPS - Authorizations and Permits for Protected Species - online system for scientific research) to reduce the burden on small businesses and entities affected by this collection.

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

If NMFS were not to provide the opportunity for entities to seek a limit on take prohibitions, those entities would in all cases remain subject to the take prohibitions. Before embarking on activity that may impact threatened salmonids, those entities would need to assess the risk of actual take, and determine whether to seek an ESA section 10 permit. Unless the entity procured a section 10 permit or a completed ESA section 7 consultation, the entity would remain at risk of ESA enforcement for violation of the take prohibitions. Less than annual reporting would hinder NMFS' ability to monitor and conserve listed species.

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

This collection is consistent with OMB guidelines.

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 December 10, 2018 (83 FR 63483) solicited public comments. No comments were received.

The West Coast Regional office solicited comments directly from some of our constituents. A few of them responded. Comments were received from the Idaho Department of Fish and Game, Oregon Department of Fish and Wildlife, and Washington Department of Fish and Wildlife.

Idaho Department of Fish and Game:

1. Are the forms and/or applications easily available? *Yes.*
2. What is your impression of the frequency of collection? *The annual reporting requirements under 4(d) state research are sufficient to allow us to monitor the program and to make changes as necessary to future applications.*
3. What is your impression of the clarity of instructions and record keeping, disclosure, or reporting format (if any)? *The Staff at IDFG have found the electronic reporting to be very efficient.*
4. What is your impression of the information/data elements to be recorded, disclosed, or reported? *My impression is that the information is relevant to the permits being issued.*
5. What is your impression of the accuracy of estimated burden listed below? *Given the staff administering these permits the cost of reporting (\$18/hour) is too low. Probably closer to the \$25-\$30 /hour salary only exclusive of benefit rate which would subsequently increase reporting cost. I think for our 4(d) state research permits the estimated hours per response is probably reasonable given the diversity of projects.*

Response: Thanks for taking the time to respond. We will add your estimates into the formula.

Washington Department Fish and Wildlife:

1. Are the forms and/or applications easily available? *Yes.*
2. What is your impression of the frequency of collection? *Appropriate.*
3. What is your impression of the clarity of instructions and record keeping, disclosure, or reporting format (if any)? *Good, perhaps an improvement to clarity of instructions would be to provide suggestions on incidental take values (%s) for specific capture method/procedures. As well as a guide towards what to expect in water bodies with respect to the ratio of hatchery to*

natural, including ad-clipped vs adipose intact if applicable—an annual table would be useful. I believe these tables are available on request, but it would be more straightforward if it was available within the apps system for reference.

Response: Thanks for the input. The incidental take values depend not only on the method but also on whether or not there are any procedures conducted on listed species (e.g. fin clipping, radio tagging, tissue sampling). With the diverse methods used to capture listed species and the range of procedures it is difficult to develop preset incidental take limits. Our annual meetings with your office allow us to review individual projects and discuss appropriate incidental take limits.

4. What is your impression of the information/data elements to be recorded, disclosed, or reported? *Good.*

5. What is your impression of the accuracy of estimated burden listed below? *The cost per response is based on \$18/hour--that seems low. It should be at least \$20.*

Response: Thanks for taking the time to respond. We will add your estimates into the formula.

Oregon Department of Fish and Wildlife:

1. Are the forms and/or applications easily available? *Yes, very easy to use online APPS site for 4(d) permits.*

2. What is your impression of the frequency of collection? *I'm not sure what this means? If it means having to fill out annual permit, then it is fine and necessary to run the program.*

3. What is your impression of the clarity of instructions and record keeping, disclosure, or reporting format (if any)? *When you send information about our 4(d) permits you are very clear with your instructions.*

4. What is your impression of the information/data elements to be recorded, disclosed, or reported? *All the elements related to 4(d) permits seem to be appropriate and necessary to run the permit program and report fish take.*

5. What is your impression of the accuracy of estimated burden listed below? *If it takes 2 hrs to review permit and report I would think labor cost would be closer to \$50-\$100 per permit depending on wages and OPE. I might also estimate that it is closer to 3 hours per 4d permit for review, follow up emails, and issuing the permits.*

Response: Thanks for taking the time to respond. We will add your estimates into the formula.

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

No payments, gifts or remuneration are associated with these voluntary collections of information.

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

There are no assurances of confidentiality associated with these voluntary collections of information. The information supplied would be 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.

The number of hours varies depending on the particular Limit, ranging from 20 hours for reports involving salmon rescue/salvage to 400 hours for packages developed under the Research Permit Limit (see Table 1 at the end of this section). Total estimated annual responses are 331, and hours, 935. The annual labor costs to respondents vary depending on the particular Limit, ranging from \$50 for a research permit to \$750 for an Urban Development Ordinance Package (see Table 1 at the end of this section).

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).

Total estimated annual recordkeeping/reporting costs are \$580 (see Table 1 at the end of this section).

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

The annual costs to the Federal government vary depending on the particular Limit, ranging from \$360 for salmon rescue/salvage to \$13,500 for packages developed under the Diversion Screening Limit (see Table 1 at the end of this section).

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

Adjustments were made to reflect the most recent numbers of submissions.

We also made adjustments to the labor cost. We based our new labor costs on comments from the state fisheries agencies. We also recalculated the cost to government based on current salaries.

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

Table 1. Burden and Costs to Public and Government Relating to Information Collection for NMFS' Limits on ESA Take Prohibitions

Cost to Public										
	Diversion Screens	Road Maint. Agreement	Urban Dev. Ordinance Pkgs.	Tribal Plans & Joint State/Tribal Plans	Fishery Harvest & Hatchery Plans	Report Aided/Rescued Salmon	Research Permits	Artificial Prop.	Annual Reports ²	TOTAL
Annual # Responses	2	2	1	5	10	4	200	7	100	331 ³
# Hours per Response	5	20	30	20	10	5	2	5	2	
Total Annual Hours	10	40	30	100	100	20	400	35	200	935
Labor Cost per Response (@25/hr)	\$125	\$500	\$750	\$500	\$250	\$125	\$50	\$125	\$50	
Burden Hour Costs (Annual)	\$250	\$1,000	\$750	\$2,500	\$2,500	\$500	\$10,000	\$875	\$5,000	\$23,375
O&M Costs - Printing, Mailing (Annual)	\$50	\$50	\$70	\$50	\$80	\$20	\$40	\$20	\$200	\$580
Cost to Government										
Processing: Federal Government Hours per Response	5	20	70	40	20	2	3	15	4	
Total Annual Hours	10	40	700	200	200	8	600	105	400	1,553
Cost Per Response (@ \$35/hr)	\$175	\$700	\$1,260	\$1,400	\$700	\$70	\$105	\$525	\$140	
Total Annual Cost	\$350	\$1,400	\$12,600	\$7,000	\$7,000	\$280	\$21,000	\$3,675	\$14,000	\$54,355

² Does not include reports related to aided/rescued salmon which are recorded separately in this table.

³ The actual number of respondents is expected to be approximately 301 (i.e., each can submit multiple responses).

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.