

SUPPORTING STATEMENT
U.S. Department of Commerce
National Oceanic & Atmospheric Administration
Permits for Incidental Taking of Endangered or Threatened Species
OMB Control No. 0648-0230

Abstract

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

The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et. seq.) imposed prohibitions against the taking of endangered species. In 1982, Congress revised the ESA to allow permits authorizing the taking of endangered species incidental to otherwise lawful activities. The corresponding regulations (50 CFR part 222.222) established procedures for persons to apply for such a permit. In addition, the regulations set forth specific reporting requirements for such permit holders.

The regulations contain three sets of information collections: (1) applications for incidental take permits, (2) applications for certificates of inclusion, and (3) reporting requirements for permits issued. Certificates of inclusion are only required if a general permit is issued to a representative of a group of potential permit applicants, rather than requiring each entity to apply for and receive a permit.

The required information is used to evaluate the impacts of the proposed activity on endangered species, to make the determinations required by the ESA prior to issuing a permit, and to establish appropriate permit conditions.

When a species is listed as threatened, section 4(d) of the ESA requires the Secretary to issue whatever regulations are deemed necessary or advisable to provide for conservation of the species. In many cases those regulations reflect blanket application of the section 9 take prohibition. However, the National Marine Fisheries Service (NMFS) recognizes certain exceptions to that prohibition, including habitat restoration actions taken in accord with approved state watershed action plans. While watershed plans are prepared for other purposes in coordination with or fulfillment of various state programs, a watershed group wishing to take advantage of the exception for restoration activities (rather than obtaining a section 10 permit) would have to submit the plan for NMFS review.

Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

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 to determine whether we can issue an incidental take permit. For the

annual reporting requirement, information is used to evaluate ongoing activities to insure that permit holders are in compliance with the terms and conditions of the permit and are following the guidelines specified in their corresponding conservation plans or watershed plans. All of the information is necessary for NMFS to ensure the conservation of endangered species under the ESA.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

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 an incidental take permit, and to establish appropriate permit conditions. The analysis involved in making these determinations requires detailed information on the activity, the ESA 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-VI. 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.

VII. 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 avoid, minimize or mitigate 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 does not appreciably reduce the likelihood of the survival and recovery of the species and to determine 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 collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.

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 the original application. The small volume of responses does not justify designing a system for allowing e-signatures.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Question 2

Because the information required is for the receipt of benefits (exemption from the ESA take prohibitions), reporting on specific permit activity, the information collection is unique.

5. If the collection of information impacts small businesses or other small entities, describe any 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 consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

If the information was 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 would cause an information collection to be conducted in a manner inconsistent with OMB guidelines.

The only time NMFS may require additional reporting are in instances of a documented take of an endangered species. It is important that NMFS is aware of any documented take as it occurs as it is necessary for NMFS to ensure the conservation of endangered species under the ESA.

8. If applicable, provide a copy and identify the date and page number of publications in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

A Federal Register Notice published on May 25, 2021 (86 FR 28061) solicited public comment on this

renewal. NMFS received no comments.

NMFS reached out to several permit holders in an effort 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. No responses were received.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payments or gifts are given.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. If the collection requires a systems of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.

No confidentiality is promised. The information supplied is a matter of public record.

The information is collected in accordance with system of records notice [COMMERCE/NOAA-12](#), Marine Mammals, Endangered and Threatened Species, Permits and Authorizations Applicants.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

No sensitive questions are asked.

12. Provide estimates of the hour burden of the collection of information.

See table below. There are 37 unduplicated respondents (6 new applicants over a three-year period, annualized to 2) and 31 submitting annual reports), 33 responses and 408 hours.

Note: No watershed plans, certificates of inclusions, or Transfers are expected because none have been received in the past few years (2014-2021).

Information Collection	Type of Respondent (e.g., Occupational Title)	# of Respondents/year (a)	Annual # of Responses / Respondent (b)	Total # of Annual Responses (c) = (a) x (b)	Burden Hrs / Response (d)	Total Annual Burden Hrs (e) = (c) x (d)	Hourly Wage Rate (for Type of Respondent) (f)	Total Annual Wage Burden Costs (g) = (e) x (f)
Permit Applications (once per permit)	Potential Permit Holder	2	1	2	80	160	\$18/hr	\$2,880
Certificates of Inclusion	Potential Permit Holder	0	0	0	0	0	0	0
Permit Reports (annually)	Permit Holder	31	1	31	8	248	\$18/hr	\$4,464
Watershed Plans (once per plan)	Potential Permit Holder	0	0	0	0	0	0	0
Transfer of Incidental Take Permits	Potential Permit Holder	0	0	0	0	0	0	0
Totals				33		408		\$7,344

13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

We estimate annual costs of \$990 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 6 submissions for permit applications $\$180/3=\60 and 31 annual reports \$930 would total \$990 annually. However, as we are now accommodating electronic submission of reports the total will likely fall below \$990.

Information Collection	# of Respondents (a)	Annual # of Responses / Respondent (b)	Total # of Annual Responses (c) = (a) x (b)	Cost Burden / Respondent (h)	Total Annual Cost Burden (i) = (c) x (h)
Permit Applications	2	1	2	\$30	\$60
Permit Reports	31	1	31	\$30	\$930
TOTALS			33		\$990

14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

Cost Descriptions	Grade/Step	Loaded Salary /Cost	% of Effort	Fringe (if Applicable)	Total Cost to Government
Federal Oversight	GS-11	\$72,750	12.5%		\$9,100
Other Federal Positions					
Contractor Cost					
Travel					
Other Costs:					
TOTAL					\$9,100

15. Explain the reasons for any program changes or adjustments reported in ROCIS.

Adjustments: As applicants need to voluntarily apply, it is difficult to anticipate the number of applications we will receive on an annual basis. For the past three years we had anticipated an increase in applications, as the Clean Water Act (CWA) Sections 316(a) and (b) required sampling plans related to impacts of such environmental changes at power plants, of which there is an increasing number of:

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.

However, as our application numbers show this was not the case over (2019-2021). We still anticipate an increase in applications from the last three years for the same reasons stated above and thus, we would expect levels to stay steady or return to the levels reported in the previous three-year period (2017-2019).

We are not including burden for permit transfers or watershed plans as there have been none for several years.

Information Collection	Respondents		Responses		Burden Hours		Reason for change or adjustment
	Current Renewal / Revision	Previous Renewal / Revision	Current Renewal / Revision	Previous Renewal / Revision	Current Renewal / Revision	Previous Renewal / Revision	
Permit Applications	2	22	2	7	160	560	Updates estimates based on previous years' data.
Permit Reports	31	26	31	26	248	208	
Total for Collection	33	48	33	33	408	768	
Difference	-15		0		-360		

Information Collection	Labor Costs		Miscellaneous Costs		Reason for change or adjustment
	Current	Previous	Current	Previous	
Permit Applications	\$2,880	n/a	60	210	Updates estimates based on previous years' data.
Permit Reports	\$4,464	n/a	930	780	
Total for Collection	\$7,344	n/a	\$990	\$990	
Difference	+\$7,344		0		

16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

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 that display would be inappropriate.

The agency plans to display the expiration date for OMB approval of the information collection on all instruments.

18. Explain each exception to the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

The agency certifies compliance with [5 CFR 1320.9](#) and the related provisions of [5 CFR 1320.8\(b\)\(3\)](#).