

**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**

**SUPPORTING STATEMENT PART A**

**Abstract**

This request is for an extension of a current 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) 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 contain a blanket application of the ESA's 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 regarding 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 prohibition on incidental take of an endangered species, 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. These regulations were finalized on September 13, 2002 (67 FR 57970), because there were two occasions when permit holders wanted to sell their property to new owners. Before 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.**

The collection of information now extensively utilizes automated and electronic methods. NMFS is working on a redesign of an online system known as APPS (Authorizations and Permits for Protected Species), which facilitates the submission and processing of permit applications. This system allows applicants to submit their applications electronically, streamlining the process and improving efficiency. As a result, NMFS no longer requires hard paper copies of applications. All submissions are handled through a dedicated email account, which serves as an interim solution until the APPS system is fully operational. This transition to electronic submission aligns with our goal of leveraging technological techniques to enhance information management and reduce paper usage.

**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 Section 9), and reporting on 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 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 would cause an information collection to be conducted in a manner inconsistent with OMB guidelines.**

**OMB guidelines**

- requiring respondents to report information to the agency more often than quarterly;

Yes, respondents may be required to report the incidental take of an ESA-listed species within 24 hours of the take being observed. This expedited reporting is essential for NMFS to effectively conserve listed species and ensure timely intervention if needed.

- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

No, respondents are not required to prepare a written response to a collection of information in fewer than 30 days after receipt. The timeframe for responses is in accordance with OMB guidelines.

- requiring respondents to submit more than an original and two copies of any document;

No, respondents are not required to submit more than an original and two copies of any document. The document submission requirements adhere to standard practices without exceeding these limits.

- requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;

No, respondents are not required to retain records for more than three years, with the exception of records related to health, medical, government contracts, grant-in-aid, or tax matters. The record retention policies comply with OMB guidelines.

- in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

N/A. There are no statistical surveys involved in this information collection that would be designed in a manner inconsistent with producing valid and reliable results.

- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

No, the information collection does not involve the use of a statistical data classification that has not been reviewed and approved by OMB. All data classifications are in compliance with OMB requirements.

- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

No confidentiality is promised in this information collection. The information supplied is considered a matter of public record and is not subject to special confidentiality protections or disclosure and data security policies.

- requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

No, the information collection does not require respondents to submit proprietary trade secrets or other confidential information. As such, there are no additional procedures necessary to protect this type of information.

**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 June 6, 2024 (89 FR 48398) solicited public comment on this renewal. We received no comments.

NOAA consulted with Hudson River Sloop Clearwater, Inc and Georgia Department of Natural Resources to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format, and on the data elements to be recorded, disclosed, or reported, as they have most recently completed the process. Neither Hudson River Sloop Clearwater, Inc or Georgia Department of Natural Resources provided comment.

**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 35.33 unduplicated respondents (6 new applicants over a three-year period, annualized to 2 in ROCIS), 33 submitting annual reports and a single permit transfer), 35 responses and 427 hours.

Note: No watershed plans, or certificates of inclusions are expected because none have been received in the past decade (2014-2024).

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)
<b>Permit Application</b>		<b>2</b>	<b>1</b>	<b>2</b>	<b>81.32</b>	<b>163</b>	\$20.27	\$416.41
Permit Applications (once per permit)	(45-0000*)	2(6 over a three-year period)		2	80	160	\$20.27	\$363.20
Transfer of Incidental Take Permits (Part 5 of app)	(45-0000*)	.33		.33	8	2.64	\$20.27	\$53.51
Permit Reports (annually)	(45-0000*)	33	1	33	8	264	\$20.27	\$5,351.28
Certificates of Inclusion	(45-0000*)	0	1	0	0	0	0	0
Watershed Plans (once per plan)	(45-0000*)	0	1	0	0	0	0	0
<b>Totals</b>				<b>35</b>		<b>427</b>		<b>\$5,767.69</b>

\*<https://www.bls.gov/bls/blswage.htm> ; Mean hourly wage increased since last reporting in 2023.

**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).**

There are no capital/start-up or ongoing operation/maintenance costs associated with this information collection.

**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.**

The Commerce Alternative Personnel System pay tables, Rest of U.S. locality, were used to determine the base salary. The Rest of U.S. location was used as NOAA personnel are geographically dispersed and the employees could be located throughout the U.S. A multiplier of 1.5 was used to calculate the loaded salary. ([https://www.commerce.gov/sites/default/files/2024-01/CAPS\\_rpStandard\\_2024.pdf](https://www.commerce.gov/sites/default/files/2024-01/CAPS_rpStandard_2024.pdf))

The annualized cost to the Federal government for this information collection is estimated as follows:

**Review and Processing of Applications and Permit Transfers:** A federal employee at the ZP3 level is estimated to spend approximately 120 hours per application. This employee's time includes reviewing and processing each application submitted. A federal employee at the ZP3 level is estimated to spend approximately 4 hours on a permit transfer document.

**Review of Reports:** Additionally, the same ZP3 level employee is expected to spend about 4 hours per report submitted by permit holders.

**Review and Clearance of Complete Applications:** When an application is deemed complete, a federal employee at the ZP4 level reviews and clears the package. It is estimated that the ZP4 employee would spend about 2 hours per application and less than 1 hour per permit transfer.

**Method Used to Estimate Costs:**

**Quantification of Hours:** We calculated the total hours required based on the estimated time needed for each employee to perform their respective duties. For a ZP3 level employee, this includes 120 hours per application, 4 hours for a permit transfer and 4 hours per report. For a ZP4 level employee, the time is 2 hours per application and less than 1 hour per permit transfer.

**Operational Expenses:** The cost estimation includes the hourly salary of the federal employees involved. The ZP3 level employee's and ZP4 level employee's time is valued according to their respective salary rates. Additional operational expenses such as equipment, overhead, and support staff are considered minimal in this case, given that the primary cost driver is personnel time.

**Other Expenses:** Any other expenses incurred are primarily associated with the personnel involved in the review and processing tasks, as the collection does not involve significant additional costs for printing or other operational expenses.

By aggregating these estimates, we can provide a comprehensive view of the total annualized cost to the Federal government associated with this information collection (please see table below).



Cost Descriptions	Grade/Step	Loaded Salary /Cost	% of Effort	Fringe (if Applicable)	Total Cost to Government
Federal Oversight	ZP4	\$238,290	0.20%		\$476.58
Other Federal Positions	ZP3	\$169,570.50	18%		\$30,522.69
Contractor Cost					
Travel					
Other Costs:					
<b>TOTAL</b>					<b>\$30,999.27</b>

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

There are anticipated increases in the volume of permit applications due to several factors:

**Increased Non-Compliance Cases:** More state fisheries are receiving Notices of Intent (NOIs) due to non-compliance with the Endangered Species Act (ESA). As a result, these states are required to apply for Incidental Take Permits, leading to a higher number of permit applications.

**Growth in Survey Projects:** There has been a rise in survey projects related to Offshore Wind (OSW) development. These projects require permits, contributing to the increased application volume.

**Increased Permit Transfers:** Although transfer requests have not been prevalent in the past, we expect to see more requests as the number of issued permits rises. These permits typically have long durations, leading to an increased likelihood of permit transfers over time.

These factors are expected to impact the number of applicants seeking permits, though the information collection process itself remains unchanged.

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	2	2	2	163	160	Increased number of respondents added to the total burden hours and responses.
Permit Reports	33	31	33	31	264	248	
<b>Total for Collection</b>	<b>35</b>	<b>33</b>	<b>35</b>	<b>33</b>	<b>427</b>	<b>408</b>	
<b>Difference</b>	<b>2</b>		<b>2</b>		<b>19</b>		

Information Collection	Labor Costs		Miscellaneous Costs		Reason for change or adjustment
	Current	Previous	Current	Previous	
Permit Applications	\$416.41	\$2,880	0	60	Due to the complete submission of online applications, permits, and reporting our misc. cost no longer exist.
Permit Reports	\$5,351.28	\$4,464	0	930	
<b>Total for Collection</b>	<b>\$5,768</b>	<b>\$7,344</b>	<b>\$0</b>	<b>\$990</b>	
<b>Difference</b>	<b>-\$1,576</b>		<b>-990</b>		

**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.**

NOAA Office of Protected Resources 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 NOAA *Office of Protected Resources* 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.

**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\(b\)\(3\)](#).