

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Diana Hynek  
Departmental Paperwork Clearance Officer  
Office of the Chief Information Officer  
14th and Constitution Ave. NW.  
Room 6625  
Washington, DC 20230

09/15/2005

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for the extension of approval of an information collection received on 06/15/2005.

TITLE: Permits for Incidental Taking of Endangered or Threatened Species

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITH CHANGE  
OMB NO.: 0648-0230  
EXPIRATION DATE: 09/30/2008

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	24	1,048	1
New	24	1,048	1
Difference	0	0	0
Program Change		0	0
Adjustment		0	0

TERMS OF CLEARANCE: None

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OMB Authorizing Official	Title
Donald R. Arbuckle	Deputy Administrator, Office of Information and Regulatory Affairs

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# PAPERWORK REDUCTION ACT SUBMISSION

**Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.**

1. Agency/Subagency originating request	2. OMB control number <span style="float: right;">b. <input type="checkbox"/> None</span> a. _____ - _____
3. Type of information collection ( <i>check one</i> ) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested ( <i>check one</i> ) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
7. Title	
8. Agency form number(s) ( <i>if applicable</i> )	
9. Keywords	
10. Abstract	
11. Affected public ( <i>Mark primary with "P" and all others that apply with "x"</i> ) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond ( <i>check one</i> ) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden ( <i>in thousands of dollars</i> ) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection ( <i>Mark primary with "P" and all others that apply with "X"</i> ) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting ( <i>check all that apply</i> ) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission)  Name: _____ Phone: _____

## 19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

**NOTE:** The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
  - (i) Why the information is being collected;
  - (ii) Use of information;
  - (iii) Burden estimate;
  - (iv) Nature of response (voluntary, required for a benefit, mandatory);
  - (v) Nature and extent of confidentiality; and
  - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING 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.**

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. The information collection 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 (2000 edition attached) 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 contains three sets of information collections: (1) applications for incidental take permits under §222.307(b) and transfer of permits under §222.305 (see attached 2004 edition); (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 NMFS for review against guidelines that meet the standards of §223.204(a)(5) (2004 edition attached). 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 annual reports, the required 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. Each information collection is unique and is not duplicated by NOAA.

**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. See the attached application instructions (2 sets). The instructions for sea turtles were made more specific, and include more explanation, to make it clearer for the applicants. The information required by both sets of instructions follow the regulations and are essentially the same.

I - III. 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 take 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. 1. General incidental take permit under which the applicant wants coverage (self-explanatory).
2. 2. Applicant's name, address and telephone number (if the applicant is a partnership or corporate entity, then the applicable details) (self-explanatory).
3. 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. 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 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.

As explained in the preceding paragraphs, the information gathered has utility. NOAA Fisheries 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 #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. The reports may be submitted electronically (over email), but NMFS must receive a signed paper copy of applications.

**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.

**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.**

The collection will be consistent with OMB guidelines.

**8. Provide a copy of 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 (copy attached) solicited public comment on this renewal. No comments were received.

The application instructions were put on the Internet in response to applicants' requests. Feedback received on the application instructions is applied if possible (i.e., if it is consistent with the ESA regulations).

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



No payments or gifts are given.

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

2. **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 confidentiality is promised. The information supplied is a matter of public record. No sensitive questions are asked.

**12. Provide an estimate in hours of the burden of the collection of information.**

See table below. Note: No watershed plans or certificates of inclusions were submitted during the year 2000.

<b>Burden Hours and Labor Costs to the Public</b>						
	<b>Permit Applications (once per permit)</b>	<b>Certificates of Inclusion</b>	<b>Permit Reports (annually)</b>	<b>Watershed Plans (once per plan)</b>	<b>Transfer of Incidental take permits</b>	<b>TOTAL</b>
<b>Annual # of Respondents</b>	11	0	11		2	13
<b>Number of Hours per Response</b>	80	0	8		40	
<b>Total Hours (Annually)</b>	880	0	88	0	80	1048
<b>Cost per Response (@ \$18/hr)</b>	\$1,440	\$0	\$144	\$0	\$720	\$2,304
<b>Total Cost (Annually)</b>	<b>\$15,840</b>	<b>\$0</b>	<b>\$1,584</b>	<b>\$0</b>	<b>\$1,440</b>	<b>\$18,864</b>
<b>Cost to Government</b>						
<b>Processing: Federal Government Hours per Response</b>	120	0	4		80	

<b>Total Hours (Annually)</b>	1320	0	44	0	160	1524
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<b>Cost per Response (@ \$18/hr)</b>	\$2,160	\$0	\$0	\$0	\$1,440	\$3,600
<b>Total Cost (Annually)</b>	<b>\$23,760</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$2,880</b>	<b>\$26,640</b>

**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 #12 above).**

We estimate annual costs of \$660 for copying and mailing. For each permit application and annual report submission, these would average \$20 for reproduction of package. Assuming a mailing cost of \$10 per package, the 11 submissions for permit applications and 11 annual reports would total \$660.

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

See table above.

**15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.**

There are no changes to Items 13 or 14 of OMB 83-I.

**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.**

N/A.

**18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.**

There are no exceptions.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL**

## **METHODS**

This collection does not employ statistical methods.

**NATIONAL MARINE FISHERIES SERVICE  
APPLICATION INSTRUCTIONS FOR PERMITS FOR THE INCIDENTAL TAKE  
OF ENDANGERED OR THREATENED SPECIES UNDER THE ENDANGERED  
SPECIES ACT**

**In coordination with, but not substituting for 50 CFR 222.22**

**OMB control number (0648-0230) Expiration date for clearance: xx/xx/xxxx**

**Information Required in the Application**

The Assistant Administrator may issue permits to take endangered or threatened marine species incidentally to an otherwise lawful activity under section 10(a)(1)(B) of the Endangered Species Act of 1973 (ESA). The information collection associated with the following application instructions is required for the purpose of obtaining such a permit. The information provided will be used to process the incidental take permit in accordance with the ESA, including the solicitation of public comments on the justification of the take of ESA-listed species incidental to proposed activities. The information provided by an applicant in accordance with these instructions is not confidential and is subject to public exposure for comments. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. Public reporting burden for this collection of information is estimated to average 80 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the address below.

An application for a permit should provide all of the following information. The information needed in the application should be presented in the same structure and format shown below to increase processing efficiency. When a question does not apply, do not overlook the category, but indicate Not Applicable (N.A.). In some cases, a brief explanation as to why the category is not applicable may expedite processing. Please note that for the title and closing statement of the application, specific wording is required.

If the applicant represents an individual or a single entity, such as a corporation, the application should be for an individual incidental take permit. If the applicant represents a group or organization whose members conduct the same or a similar activity in the same geographical area with similar impacts on endangered or threatened marine species, the application should be for a general incidental take permit. To be covered by a general incidental take permit, each individual conducting the activity must have a certificate of inclusion issued under paragraph (f) of 50 CFR 222.22. NMFS estimates a public reporting burden of .5 hour for each certificate of inclusion. The sufficiency of applications will be determined by the Assistant Administrator in accordance with the requirements of 50 CFR 222.22.

## **Where to Send the Application**

Applications, except those involving Pacific salmonids, may be submitted electronically, if possible (either by email or by mailing a disk), but one signed original of the complete application must be sent to:

Chief, Endangered Species Division  
National Marine Fisheries Service, F/PR3  
1315 East-West Highway  
Silver Spring, Maryland 20910  
Telephone (301) 713-1401, Fax (301) 713-0376

For Pacific salmonids, applications may be submitted electronically, if possible (either by email or by mailing a disk), but one signed original of the complete application must be sent to the appropriate Regional Office:

Regional Administrator  
Southwest Regional Office  
501 West Ocean Boulevard, Suite 4200  
Long Beach, CA 90802-4213  
Telephone (562) 980-4005  
Fax (562) 980-4018

Regional Administrator  
Northwest Regional Office  
7600 Sand Point Way, NE  
Seattle, WA 98115-6349  
Telephone (206) 526-6150  
Fax (206) 526-6426

## **Modifications to Permits**

Requests for modifications to incidental take permits should address all applicable sections of these instructions, including a detailed description of the proposed changes. Appropriate changes should also be made to the Conservation Plan. Modification requests involving an increased number of animals, additional species, an increased risk to the animals, or a significant change in the location of incidental take are subject to the 30-day public review and are granted or denied at the discretion of the Assistant Administrator for Fisheries.

## **Application Requirements**

- I. One of the titles below as appropriate:
  - A. Application for an Individual Incidental Take Permit under the Endangered Species Act of 1973.
  - B. Application for a General Incidental Take Permit under the Endangered Species Act of 1973.
- II. Date of the application.

- III. The name, address, telephone, and fax number of the applicant. If the applicant is a partnership, corporate entity or is representing a group or organization, include applicable details.
- IV. A description of the endangered or threatened species, by common and scientific name, and a description of the status, distribution, seasonal distribution, habitat needs, feeding habits and other biological requirements of the affected species.
- V. A detailed description of the proposed activity, including, but not limited to:
  - A. The anticipated dates and duration of the activity.
  - B. The specific location of the activity. Please include latitude/longitude coordinates if possible.
  - C. For a general incidental take application, include an estimate of the total level of activity expected to be conducted.
- VI. The application must include a conservation plan based on the best scientific and commercial data, which specifies:
  - A. The anticipated impact of the proposed activity on the listed species, including:
    - 1. The estimated number of animals of the listed species and, if applicable, the subspecies or population group, and range.
    - 2. The type of anticipated taking, such as harassment, predation, competition for space and food, etc.
    - 3. The effects of the take on the listed species, such as descaling, altered spawning activities, potential for mortality, etc.
  - B. The anticipated impact of the proposed activity on the habitat of the species and the likelihood of restoration of the affected habitat.
  - C. The steps that will be taken to monitor, minimize, and mitigate such impacts, including:
    - 1. Specialized equipment, methods of conducting activities, or other means.
    - 2. Detailed monitoring plans.
    - 3. Funding available to implement measures taken to monitor, minimize and mitigate impacts.
  - D. The alternative actions to such taking that were considered and the reasons why

those alternatives are not being used.

- E. A list of all sources of data used in preparation of the plan, including reference reports, environmental assessments and impact statements, and personal communications with recognized experts on the species or activity who may have access to data not published in current literature.

An application for a certificate of inclusion must include the following:

1. General incidental take permit under which the applicant wants coverage;
2. Applicant's name, address and telephone number (if the applicant is a partnership or corporate entity, then the applicable details);
3. Description of the activity the applicant wants covered under the general permit, including anticipated geographic range and season; and
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.

**Endangered Species Act Section 10  
Incidental Take Permit Program for Sea Turtles  
In coordination with, but not substituting for 50 CFR 222.22  
OMB control number (0648-0230) Expiration date for clearance: xx/xx/xxxx**

This document provides guidance on implementation of the Endangered Species Act (ESA) Section 10 incidental take permit program for endangered and threatened sea turtles.

**Introduction**

Section 10(a)(1)(B) of the ESA authorizes the National Marine Fisheries Service (NMFS), under some circumstances, to permit the taking of fish and wildlife otherwise prohibited pursuant to Section 9 of the ESA if such taking is "incidental to, and not the purpose of carrying out otherwise lawful activities." Under NMFS regulations (50 CFR 217-222) non-federal parties may apply for a Section 10 incidental take permit to incidentally take threatened or endangered species of sea turtles. As a condition for issuance of a permit, the permit applicant must develop a conservation plan. This plan must specify actions to minimize negative impacts to the species of concern, must identify funding for mitigation efforts, illustrate that there will be no appreciable reduction in the survival of the species and contain adequate assurances that the plan will be fully implemented.

NMFS authorized incidental take permits for sea turtles would generally be for activities that often relate to the taking of individuals, such as by fishing, rather than by habitat degradation. Most marine habitat degradation is subject to Section 7 of the ESA and is not the purview of a Section 10 permit. Habitat degradation on turtle nesting beaches is the jurisdiction of the U.S. Fish and Wildlife Service, who administers the ESA for those areas.

The Assistant Administrator may issue permits to take endangered or threatened marine species incidentally to an otherwise lawful activity under section 10(a)(1)(B) of the Endangered Species Act of 1973 (ESA). The information collection associated with the following application instructions is required for the purpose of obtaining such a permit. The information provided will be used to process the incidental take permit in accordance with the ESA, including the solicitation of public comments on the justification of the take of ESA-listed species incidental to proposed activities. The information provided by an applicant in accordance with these instructions is not confidential and is subject to public exposure for comments. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. Public reporting burden for this collection of information is estimated to average 80 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the address below.

**Who May Apply**



Any non-federal entity may apply for a Section 10 incidental take permit. A non-federal entity includes, but is not limited to an individual, business, municipality, fishery organization, or state agency. State agencies, which regulate state fisheries, should apply for individual permits to cover specific fisheries that incidentally take listed species of sea turtles. Although individuals, businesses, municipalities and fishery organizations are eligible to apply for an incidental take permit, state agencies have the appropriate resources to develop conservation plans to institute actions that minimize negative impacts to the species of concern.

*Individual Incidental Take Permit.* If the applicant represents an individual or a single entity, such as a state or corporation, the application would be for an individual incidental take permit.

*General Incidental Take Permit.* If the applicant represents a group or organization whose members conduct similar activities in the same geographical area with similar impacts on endangered or threatened sea turtles, the application would be for a general incidental take permit. To be covered by a general incidental take permit, each individual conducting the activity would have to have a certificate of inclusion (described later).

### **Where to Send Application**

The application may be submitted electronically, if possible (either by email or by mailing a disk), but one signed original of the complete application must be sent to:

Chief, Endangered Species Division  
National Marine Fisheries Service, F/PR3  
1315 East-West Highway  
Silver Spring, Maryland 20910  
Telephone (301) 713-1401, Fax (301) 713-0376

### **Application Requirements**

#### Cover Letter

Include the Following Information:

1. Type of Permit.
  - A. Application for an Individual Incidental Take Permit under the Endangered Species Act of 1973.
  - B. Application for a General Incidental Take Permit under the Endangered Species Act of 1973.
2. Date of the application.
3. Name, address and telephone number of the applicant. If the applicant is a partnership, corporate entity or is representing a group or organization, include

applicable address details.

4. Description of each species of “endangered or threatened” sea turtle impacted by the activity, by common and scientific name; description of the status, geographical distribution, seasonal distribution, habitat needs, feeding habits and other biological requirements of each species.
5. Detailed description of the activity (fishery season):
  - A. Anticipated dates and duration of the activity.
  - B. Specific location of the activity and fishery effort in that area.
  - C. For a general incidental take application, an estimate of the total level of expected fishery effort.
  - D. Other relevant information (e.g. gear description).

### Conservation Plan

NMFS regulations require that a Conservation Plan be based on the best scientific and commercial data. Accordingly, a Conservation Plan must emphasize techniques, gear-types, and general practices to mitigate takes. The Conservation Plan may involve development of new gear-types or modification of fishing practices.

Include the Following Information:

1. Anticipated impact of the activity on the listed species of sea turtle(s), including:
  - A. The estimated number of animals impacted, their geographic range and, if applicable, the subspecies or population group.
  - B. Type of anticipated impact, such as capture, harassment, predation, competition for space and food, nature of injury, etc.
  - C. Effects of impact on the listed species, such as descaling, altered reproductive activities, potential for mortality, effects of repeated submergence, etc.
2. Anticipated impact of the activity on the habitat of the species and the likelihood of restoration of the affected habitat.
3. Steps that will be taken to monitor, minimize, and mitigate such impacts, including:

- A. Detailed monitoring plans (e.g. observer programs).
  - B. Detailed enforcement plans (e.g. monitoring Turtle Excluder Device compliance).
  - C. Specialized equipment, methods of conducting activities, or other mitigation techniques.
  - D. Detailed funding plan to implement measures taken to monitor, minimize and mitigate impacts.
4. Alternatives to the activity considered and reasons why those alternatives are not being used.
  5. A list of all sources of data used in preparation of the plan, including reference reports, environmental assessments and impact statements, and personal communications with recognized experts on the species or activity who may have access to data not published in current literature.
  6. Other measures the Assistant Administrator of NMFS may require as necessary or appropriate for the purposes of the plan (Section 10(a)(2)(A)).

### **Permit Issuance Criteria**

In order to issue a permit, NMFS must find that the applicant will effectively monitor the activity and institute means to minimize and mitigate the impact on sea turtles, and that the incidental taking will not reduce the likelihood of survival of the species or hinder its recovery. NMFS also requires assurance that the conservation plan will be implemented and that any other required measures will be implemented.

The following criteria are considered for issuance:

1. Status of the stock and/or species to be incidentally taken;
2. Likely direct and indirect impacts of the activity on sea turtles;
3. Availability and effectiveness of monitoring and enforcement programs;
4. Use of the best available technology to minimize and mitigate impacts; and
5. Public comments received during the 30-day public notice and comment period.
6. Adequate funding for the Conservation Plan.
7. Taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild.

An issued permit would:

1. Require regular reporting and rights of inspection;
2. Identify species and number of animals allowed to be incidentally taken;
3. Specify the authorized method of incidental taking;
4. Require procedures for captured sea turtles (i.e. resuscitation techniques, disposal);
5. Potentially impose administrative fees;
6. Establish duration of the permit; and
7. Specify any other terms or conditions that the Assistant Administrator of NMFS identifies necessary and appropriate.

Incidental take permits are subject to the requirements of the National Environmental Policy Act. Because issuance of the permit is a Federal action, NMFS will conduct a consultation for each permit as required by section 7 of the Endangered Species Act.

### **Certificates of Inclusion**

When NMFS authorizes a general incidental take permit, individuals conducting the activity covered by the general permit must obtain certificates of inclusion. For example, if NMFS issues a general incidental take permit to a fishery organization for a coastal gillnet fishery, the owner or operator of a gillnet vessel who wishes to operate under that permit must apply to NMFS for a certificate of inclusion. NMFS estimates a public reporting burden of .5 hour for each certificate of inclusion.

An application for a certificate of inclusion must include the following:

1. General incidental take permit under which the applicant wants coverage;
2. Applicant's name, address and telephone number (if the applicant is a partnership or corporate entity, then the applicable details);
3. Description of the activity the applicant wants covered under the general permit, including anticipated geographic range and season; and
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.

### **Permit Modifications**

Requests for modifications to incidental take permits must address all applicable sections of these instructions, including a detailed description of all proposed changes. Appropriate changes must also be made to the Conservation Plan. Modification requests involving an increased number of animals, additional species, an increased risk to the animals, or a significant change in the location of the activity are subject to the 30-day public review and may be granted or denied the permit modification at the discretion of the Assistant Administrator for Fisheries.

### **Permit Violations, Suspensions, and Revocations**

If a permit or certificate holder is not complying with the terms and conditions of the permit, NMFS may suspend or revoke the permit or certificate. If a permit is revoked, then the permitted activity that incidentally takes threatened or endangered species, would lose authorization. In some cases, the state itself would be the permittee and would be in violation of the ESA in the event that individual vessels do not comply with the terms of the permit.

### **Coordination with Section 6 Agreements**

NMFS anticipates that most of the Section 10 incidental take permits will address activities that occur on a state-wide basis. NMFS will coordinate activities between state Section 10 permit applications and state Section 6 cooperative agreements. Both Conservation Plans and cooperative agreements seek to establish effective mechanisms outside the federal government for conservation of listed and even non-listed species. It is possible that Conservation Plans could be incorporated into cooperative agreements of those states.

corporation, the Assistant Administrator will issue an individual incidental take permit. If the applicant represents a group or organization whose members conduct the same or a similar activity in the same geographical area with similar impacts on listed species for which a permit is required, the Assistant Administrator will issue a general incidental take permit. To be covered by a general incidental take permit, each individual conducting the activity must have a certificate of inclusion issued under paragraph (f) of this section.

(b) *Permit application procedures.* Applications should be sent to the Assistant Administrator. The Assistant Administrator shall determine the sufficiency of the application in accordance with the requirements of this section. At least 120 days should be allowed for processing. Each application must be signed and dated and must include the following:

- (1) The type of application, either:
  - (i) Application for an Individual Incidental Take Permit under the Act; or
  - (ii) Application for a General Incidental Take Permit under the Act;
- (2) The name, address, and telephone number of the applicant. If the applicant is a partnership or a corporate entity or is representing a group or an organization, the applicable details;
- (3) The species or stocks, by common and scientific name, and a description of the status, distribution, seasonal distribution, habitat needs, feeding habits and other biological requirements of the affected species or stocks;
- (4) A detailed description of the proposed activity, including the anticipated dates, duration, and specific location. If the request is for a general incidental take permit, an estimate of the total level of activity expected to be conducted;
- (5) A conservation plan, based on the best scientific and commercial data available, which specifies the following:
  - (i) The anticipated impact (i.e., amount, extent, and type of anticipated taking) of the proposed activity on the species or stocks;
  - (ii) The anticipated impact of the proposed activity on the habitat of the

species or stocks and the likelihood of restoration of the affected habitat;

(iii) The steps (specialized equipment, methods of conducting activities, or other means) that will be taken to monitor, minimize, and mitigate such impacts, and the funding available to implement such measures;

(iv) The alternative actions to such taking that were considered and the reasons why those alternatives are not being used; and

(v) A list of all sources of data used in preparation of the plan, including reference reports, environmental assessments and impact statements, and personal communications with recognized experts on the species or activity who may have access to data not published in current literature.

(c) *Issuance criteria.* (1) In determining whether to issue a permit, the Assistant Administrator will consider the following:

- (i) The status of the affected species or stocks;
  - (ii) The potential severity of direct, indirect, and cumulative impacts on the species or stocks and habitat as a result of the proposed activity;
  - (iii) The availability of effective monitoring techniques;
  - (iv) The use of the best available technology for minimizing or mitigating impacts; 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.
- (2) To issue the permit, the Assistant Administrator must find that—
- (i) The taking will be incidental;
  - (ii) The applicant will, to the maximum extent practicable, monitor, minimize, and mitigate the impacts of such taking;
  - (iii) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;
  - (iv) The applicant has amended the conservation plan to include any measures (not originally proposed by the applicant) that the Assistant Administrator determines are necessary or appropriate; and
  - (v) There are adequate assurances that the conservation plan will be funded and implemented, including any

§ 222.307

50 CFR Ch. II (10–1–00 Edition)

measures required by the Assistant Administrator.

(d) *Permit conditions.* In addition to the general conditions set forth in this part, every permit issued under this section will contain such terms and conditions as the Assistant Administrator deems necessary and appropriate, including, but not limited to the following:

(1) Reporting requirements or rights of inspection for determining whether the terms and conditions are being complied with;

(2) The species and number of animals covered;

(3) The authorized method of taking;

(4) The procedures to be used to handle or dispose of any animals taken; and

(5) The payment of an adequate fee to the National Marine Fisheries Service to process the application.

(e) *Duration of permits.* The duration of permits issued under this section will be such as to provide adequate assurances to the permit holder to commit funding necessary for the activities authorized by the permit, including conservation activities. In determining the duration of a permit, the Assistant Administrator will consider the duration of the proposed activities, as well as the possible positive and negative effects on listed species associated with issuing a permit of the proposed duration, including the extent to which the conservation plan is likely to enhance the habitat of the endangered species or to increase the long-term survivability of the species.

(f) *Certificates of inclusion.* (1) Any individual who wishes to conduct an activity covered by a general incidental take permit must apply to the Assistant Administrator for a Certificate of Inclusion. Each application must be signed and dated and must include the following:

(i) The general incidental take permit under which the applicant wants coverage;

(ii) The name, address, and telephone number of the applicant. If the applicant is a partnership or a corporate entity, the applicable details;

(iii) A description of the activity the applicant seeks to have covered under the general incidental take permit, in-

cluding the anticipated dates, duration, and specific location; and

(iv) A signed certification that the applicant has read and understands the general incidental take permit and the conservation plan, will comply with their terms and conditions, and will fund and implement applicable measures of the conservation plan.

(2) To issue a Certificate of Inclusion, the Assistant Administrator must find that:

(i) The applicant will be engaged in the activity covered by the general permit, and

(ii) The applicant has made adequate assurances that the applicable measures of the conservation plan will be funded and implemented.

(g) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (g) apply only to incidental take permits issued in accordance with paragraph (c) of this section where the conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998, remain in effect, and those permits will not be revised as a result of this rulemaking.

(1) *Changed circumstances provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan's operating conservation program, the permittee will implement the measures specified in the plan.

(2) *Changed circumstances not provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the plan's operating conservation program, NMFS will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

(3) *Unforeseen circumstances.* (i) In negotiating unforeseen circumstances, NMFS will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(ii) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, NMFS may require additional measures of the permittee where the conservation plan is being properly implemented. However, such additional measures are limited to modifications within any conserved habitat areas or to the conservation plan's operating conservation program for the affected species. The original terms of the conservation plan will be maintained to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the permittee.

(iii) NMFS has the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. NMFS will consider, but not be limited to, the following factors:

(A) Size of the current range of the affected species;

(B) Percentage of range adversely affected by the conservation plan;

(C) Percentage of range conserved by the conservation plan;

(D) Ecological significance of that portion of the range affected by the conservation plan;

(E) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and

(F) Whether failure to adopt additional conservation measures would ap-

preciably reduce the likelihood of survival and recovery of the affected species in the wild.

(h) Nothing in this rule will be construed to limit or constrain the Assistant Administrator, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at his or her own expense to protect or conserve a species included in a conservation plan.

**§ 222.308 Permits for scientific purposes or for the enhancement of propagation or survival of species.**

(a) *Scope.* The Assistant Administrator may issue permits for scientific purposes or for the enhancement of the propagation or survival of the affected endangered or threatened species in accordance with the regulations in parts 222, 223, and 224 of this chapter and under such terms and conditions as the Assistant Administrator may prescribe, authorizing the taking, importation, or other acts otherwise prohibited by section 9 of the Act. Within the jurisdiction of a State, more restrictive state laws or regulations in regard to endangered species shall prevail in regard to taking. Proof of compliance with applicable state laws will be required before a permit will be issued.

(b) *Application procedures.* Any person desiring to obtain such a permit may make application therefor to the Assistant Administrator. Permits for marine mammals shall be issued in accordance with the provisions of part 216, subpart D of this chapter. Permits relating to sea turtles may involve the Fish and Wildlife Service, in which case the applicant shall follow the procedures set out in § 222.309. The following information will be used as the basis for determining whether an application is complete and whether a permit for scientific purposes or for enhancement of propagation or survival of the affected species should be issued by the Assistant Administrator. An application for a permit shall provide the following information and such other information that the Assistant Administrator may require:

(1) Title, as applicable, either—

(i) Application for permit for scientific purposes under the Act; or



(2) The applicant shall be notified in writing of the denial of any permit request, and the reasons thereof. If authorized in the notice of denial, the applicant may submit further information or reasons why the permit should not be denied. Such further information shall not be considered a new application. The final action by the Assistant Administrator shall be considered the final administrative decision of the Department of Commerce.

(f) If a permit is issued under § 222.308, the Assistant Administrator shall publish notice thereof in the FEDERAL REGISTER, including the Assistant Administrator's finding that such permit—

- (1) Was applied for in good faith;
- (2) Will not operate to the disadvantage of such endangered species; and
- (3) Will be consistent with the purposes and policy set forth in section 2 of the Act.

(g) The Assistant Administrator may waive the 30-day period in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published by the Assistant Administrator in the FEDERAL REGISTER within 10 days following the issuance of the permit.

#### § 222.304 Renewal of permits.

When the permit is renewable and a permittee intends to continue the activity described in the permit during any portion of the year ensuing its expiration, the permittee shall, unless otherwise notified in writing by the Assistant Administrator, file a request for permit renewal, together with a certified statement, verifying that the information in the original application is still currently correct. If the information is incorrect the permittee shall file a statement of all changes in the original application, accompanied by any required fee at least 30 days prior to the expiration of the permit. Any person holding a valid renewable permit, who has complied with the foregoing provision of this section, may continue such activities as were authorized by the expired permit until the renewal application is acted upon.

#### § 222.305 Rights of succession and transfer of permits.

(a)(1) Except as otherwise provided in this section, permits issued pursuant to parts 222, 223, and 224 of this chapter are not transferable or assignable. In the event that a permit authorizes certain business activities in connection with a business or commercial enterprise, which is then subject to any subsequent lease, sale or transfer, the successor to that enterprise must obtain a permit prior to continuing the permitted activity, with the exceptions provided in paragraphs (a)(2) and (a)(3) of this section.

(2) Certain persons, other than the permittee, are granted the right to carry on a permitted activity for the remainder of the term of a current permit, provided that they furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity. Such persons are the following:

- (i) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee, and
- (ii) The receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(3) Incidental take permits issued under § 222.307, and enhancement permits issued under § 222.308, as part of a Safe Harbor Agreement with Assurances or Candidate Conservation Agreement with Assurances, may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permittee, the deceased permittee's legal representative and the proposed transferee, provided NMFS determines in writing that:

- (i) The proposed transferee meets all of the qualifications under parts 222, 223, or 224 (as applicable) for holding a permit;
- (ii) The proposed transferee has provided adequate written assurances that it will provide sufficient funding for the conservation plan or other agreement or plan associated with the permit and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

## § 222.306

(iii) The proposed transferee has provided such other information as NMFS determines is relevant to process the transfer.

(b) Except as otherwise stated on the face of the permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for purposes authorized by the permit, may carry out the activity authorized by the permit.

EFFECTIVE DATE NOTE: At 64 FR 14054, Mar. 23, 1999, part 222 was revised, effective Mar. 23, 1999, with the exception of § 222.305, paragraph (a), which contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

[64 FR 14054, Mar. 23, 1999, as amended at 67 FR 57973, Sept. 13, 2002]

### **§ 222.306 Modification, amendment, suspension, cancellation, and revocation of permits.**

(a) When circumstances have changed so that an applicant or a permittee desires to have any term or condition of the application or permit modified, the applicant or permittee must submit in writing full justification and supporting information in conformance with the provisions of this part and the part under which the permit has been issued or requested. Such applications for modification are subject to the same issuance criteria as original applications.

(b) Notwithstanding the requirements of paragraph (a) of this section, a permittee may change the mailing address or trade name under which business is conducted without obtaining a new permit or being subject to the same issuance criteria as original permits. The permittee must notify the Assistant Administrator, in writing within 30 days, of any change in address or of any change in the trade name for the business or activity specified in the permit. The permit with the change of address or in trade name must be endorsed by the Assistant Administrator, who shall provide an amended permit to the person to whom it was issued.

(c) All permits are issued subject to the condition that the National Marine

## 50 CFR Ch. II (10–1–04 Edition)

Fisheries Service reserves the right to amend the provisions of a permit for just cause at any time during its term. Such amendments take effect on the date of notification, unless otherwise specified.

(d) When any permittee discontinues the permitted activity, the permittee shall, within 30 days thereof, mail the permit and a request for cancellation to the issuing officer, and the permit shall be deemed void upon receipt. No refund of any part of an amount paid as a permit fee shall be made when the operations of the permittee are, for any reason, discontinued during the tenure of an issued permit.

(e) Any violation of the applicable provisions of parts 222, 223, or 224 of this chapter, or of the Act, or of a term or condition of the permit may subject the permittee to both the penalties provided in the Act and suspension, revocation, or amendment of the permit, as provided in subpart D to 15 CFR part 904.

### **§ 222.307 Permits for incidental taking of species.**

(a) *Scope.* (1) The Assistant Administrator may issue permits to take endangered and threatened species incidentally to an otherwise lawful activity under section 10(a)(1)(B) of the Act. The regulations in this section apply to all endangered species, and those threatened species for which the prohibitions of section 9(a)(1) of the Act, under the jurisdiction of the Secretary of Commerce, apply.

(2) If the applicant represents an individual or a single entity, such as a corporation, the Assistant Administrator will issue an individual incidental take permit. If the applicant represents a group or organization whose members conduct the same or a similar activity in the same geographical area with similar impacts on listed species for which a permit is required, the Assistant Administrator will issue a general incidental take permit. To be covered by a general incidental take permit, each individual conducting the activity must have a certificate of inclusion issued under paragraph (f) of this section.

§ 223.204

properly functioning habitat conditions. Periodically, NMFS will evaluate an approved program for its effectiveness in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the threatened species. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than 1 year, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit so that take prohibitions would then apply to the program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

(iv) Prior to approving any city, county, or regional government ordinances or plans as being within this limit, or approving any substantive change in an ordinance or plan as being within this limit, NMFS will publish notification in the FEDERAL REGISTER announcing the availability of the ordinance or plan or the draft changes for public review and comment. Such an announcement will provide for a comment period of not less than 30 days.

(c) *Affirmative Defense.* In connection with any action alleging a violation of the prohibitions of paragraph (a) of this section with respect to the threatened species of salmonids listed in § 223.102 (a)(3), (a)(5) through (a)(10) and (a)(12) through (a)(22), any person claiming the benefit of any limit listed in paragraph (b) of this section or § 223.209(a) shall have a defense where the person can demonstrate that the limit is applicable and was in force, and that the person fully complied with the limit at the time of the alleged violation. This defense is an af-

50 CFR Ch. II (10-1-04 Edition)

firmative defense that must be raised, pleaded, and proven by the proponent. If proven, this defense will be an absolute defense to liability under section 9(a)(1)(G) of the ESA with respect to the alleged violation.

(d) *Severability.* The provisions of this section and the various applications thereof are distinct and severable from one another. If any provision or the application thereof to any person or circumstances is stayed or determined to be invalid, such stay or invalidity shall not affect other provisions, or the application of such provisions to other persons or circumstances, which can be given effect without the stayed or invalid provision or application.

APPENDIX A TO § 223.203—LIST OF GUIDANCE DOCUMENTS

The following is a list of documents cited in the regulatory text. Copies of these documents may be obtained upon request from the Northwest or Southwest Regional Administrators (see Table 1 in § 600.502 of this title).

1. Oregon Department of Transportation (ODOT) Maintenance Management System Water Quality and Habitat Guide (July, 1999).
2. Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act.
3. Fish Screening Criteria for Anadromous Salmonids, National Marine Fisheries Service, Southwest Region, 1997.
4. Viable Salmonid Populations and the Recovery of Evolutionarily Significant Units. (June 2000).

[65 FR 42475, July 10, 2000, as amended at 67 FR 1129, Jan. 9, 2002; 67 FR 68725, Nov. 12, 2002]

§ 223.204 Exceptions to prohibitions relating to anadromous fish.

(a) The following exceptions to the prohibitions of § 223.203(a) of this part apply to the Southern Oregon/Northern California Coast (SONCC) coho salmon.

(1) Take of SONCC coho salmon within 3 miles (approximately 5 km) of the coast, and in the bay, estuarine or freshwater fisheries regulated under the sole authority of the State of Oregon is not prohibited, if the take results from a fisheries harvest program conducted in accordance with the Oregon Coastal Salmon Restoration Initiative of March 1997 (OCSRI). NMFS

must have issued a written concurrence that the fisheries regulations are consistent with the OCSRI, using information provided through the April 1997 Memorandum of Agreement (MOA) between the State of Oregon and NMFS.

(2) Incidental take of SONCC coho salmon in ocean fisheries within 3 miles (approximately 5 km) of the coast that are regulated under the sole authority of the State of California is not prohibited, provided that the ocean salmon fishing regulations adopted by the California Fish and Game Commission and CDFG for recreational and commercial fisheries within 3 miles (approximately 5 km) of the coast are consistent with the Pacific Fishery Management Council's Fishery Management Plan for Ocean Salmon Fisheries and the annual ocean salmon fishing regulations issued by the Secretary of Commerce for the Federal EEZ.

(3) Take of SONCC coho salmon in a hatchery program regulated under the sole authority of the State of Oregon is not prohibited, if the take results from a hatchery program conducted in accordance with the OCSRI, and the take is counted against the total allocation of harvest-related mortality as specified in the OCSRI. NMFS must have issued a written concurrence stating that the hatchery program is consistent with the OCSRI including the hatchery and genetic management plan adopted pursuant to the OCSRI, using information provided through the MOA.

(4) Take of SONCC coho salmon in fisheries research and monitoring activities conducted in California and Oregon is not prohibited provided that:

(i) Research and monitoring involving directed take of coho salmon is conducted by CDFG personnel (in California) and ODFW personnel (in Oregon);

(ii) The CDFG and ODFW, respectively, provide NMFS with a list of all research and monitoring activities involving coho salmon directed take planned for the coming year for NMFS' review and approval. This report shall include an estimate of the total directed take that is anticipated, a description of the study design, including a justification for taking the species

and a description of the techniques to be used, and a point of contact;

(iii) The CDFG and ODFW, respectively, provide NMFS annually with the results of research and monitoring studies directed at SONCC coho salmon, including a report of the directed take resulting from the studies;

(iv) The CDFG and ODFW, provide NMFS annually with a list of all research and monitoring studies permitted that may allow incidental take of listed coho salmon during the coming year and report the level of incidental take of listed coho salmon from the previous year's research and monitoring activities, for NMFS' review and approval.

(v) The research and monitoring activities do not include the use of electrofishing in any body of water known or suspected to contain coho salmon.

(5) Incidental take of the SONCC coho salmon in Oregon resulting from a habitat restoration activity is not prohibited, provided that:

(i) The activity is conducted pursuant to a watershed action or restoration plan that has been affirmed by the state in writing as consistent with NMFS' approved state watershed plan guidelines set forth in §222.307(c) of this chapter. NMFS shall also concur in writing that the plan is consistent with the state watershed plan guidelines; or

(ii) Until a watershed action or restoration plan is approved by both Oregon and NMFS as described in paragraph (a)(5)(i) of this section, or until August 18, 1999, whichever occurs first, the ODFW has made a written finding that the activity is consistent with state restoration activity guidelines that NMFS has agreed, in writing, meet the standards set forth in §222.307(c) of this chapter.

(6) Incidental take of the SONCC coho salmon in California resulting from a habitat restoration activity, as defined in paragraph (a)(6)(iii) of this section, is not prohibited, provided that California has a program in effect that NMFS finds will assure technically supported watershed assessments and coordinated long-term monitoring strategies for watershed protection plans and activities and:

**§ 223.205**

**50 CFR Ch. II (10-1-04 Edition)**

(i) The activity is conducted pursuant to a watershed protection plan that CDFG has affirmed, in writing, is consistent with NMFS' approved state watershed plan guidelines set forth in § 222.307(c) of this chapter for California's Watershed Protection Program. NMFS must concur, in writing, that the plan is consistent with those guidelines; or

(ii) Until a watershed protection or restoration plan is certified by the State of California and NMFS as described in paragraph (a)(6)(i) of this section, or until August 18, 1999, whichever occurs first, when NMFS has made a written finding that the activity is consistent with State of California conservation guidelines previously found to meet the standards set forth in § 222.307(c) of this chapter by NMFS.

[64 FR 14069, Mar. 23, 1999]

**§ 223.205 Sea turtles.**

(a) The prohibitions of section 9 of the Act (16 U.S.C. 1538) relating to endangered species apply to threatened species of sea turtle, except as provided in § 223.206.

(b) Except as provided in § 223.206, it is unlawful for any person subject to the jurisdiction of the United States to do any of the following:

(1) Own, operate, or be on board a vessel, except if that vessel is in compliance with all applicable provisions of § 223.206(d);

(2) Fish for, catch, take, harvest, or possess, fish or wildlife while on board a vessel, except if that vessel is in compliance with all applicable provisions of § 223.206(d);

(3) Fish for, catch, take, harvest, or possess, fish or wildlife contrary to any notice of tow-time or other restriction specified in, or issued under, § 223.206(d)(3) or (d)(4);

(4) Possess fish or wildlife taken in violation of paragraph (b) of this section;

(5) Fail to follow any of the sea turtle handling and resuscitation requirements specified in § 223.206(d)(1);

(6) Possess a sea turtle in any manner contrary to the handling and resuscitation requirements of § 223.206(d)(1);

(7) Fail to comply immediately, in the manner specified at § 600.730 (b) through (d) of this Title, with instruc-

tions and signals specified therein issued by an authorized officer, including instructions and signals to haul back a net for inspection;

(8) Refuse to allow an authorized officer to board a vessel, or to enter an area where fish or wildlife may be found, for the purpose of conducting a boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(9) Destroy, stave, damage, or dispose of in any manner, fish or wildlife, gear, cargo, or any other matter after a communication or signal from an authorized officer, or upon the approach of such an officer or of an enforcement vessel or aircraft, before the officer has an opportunity to inspect same, or in contravention of directions from the officer;

(10) Assault, resist, oppose, impede, intimidate, threaten, obstruct, delay, prevent, or interfere with an authorized officer in the conduct of any boarding, search, inspection, seizure, investigation, or arrest in connection with enforcement of this section;

(11) Interfere with, delay, or prevent by any means, the apprehension of another person, knowing that such person committed an act prohibited by this section;

(12) Resist a lawful arrest for an act prohibited by this section;

(13) Make a false statement, oral or written, to an authorized officer or to the agency concerning the fishing for, catching, taking, harvesting, landing, purchasing, selling, or transferring fish or wildlife, or concerning any other matter subject to investigation under this section by such officer, or required to be submitted under this part 223;

(14) Sell, barter, trade or offer to sell, barter, or trade, a TED that is not an approved TED;

(15) Fail to comply with the restrictions set forth in § 223.206(d)(10) regarding pound net leaders; or

(16) Attempt to do, solicit another to do, or cause to be done, any of the foregoing.

(c) In connection with any action alleging a violation of this section, any person claiming the benefit of any exemption, exception, or permit under this subpart B has the burden of proving that the exemption, exception, or

**DEPARTMENT OF COMMERCE****International Trade Administration****Application for Duty-Free Entry of Scientific Instruments**

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

*Docket Number:* 05-002.

*Applicant:* Cornell University, 123 Day Hall, Ithaca, NY 14853.

*Instrument:* KB Mirror System.

*Manufacturer:* Kohzu Precision Co., Ltd., Japan.

*Intended Use:* The instrument is intended to be used by a group of universities to study the molecular structure of macro-molecules of importance in the life sciences including proteins, viruses, enzymes and other related entities by the scattering of monoenergetic x-rays from single crystals of these materials utilizing the intense beams of x-rays provided by the Advanced Photon Source at Argonne National Laboratory to determine the molecular structure of these entities. The mirror system is needed to focus the intense x-ray beam onto sub-millimeter sized crystals.

*Application accepted by Commissioner of Customs:* January 24, 2005.

**Gerald A. Zerdy,**

*Program Manager, Statutory Import Programs Staff.*

[FR Doc. E5-478 Filed 2-4-05; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[I.D. 020105F]

**Proposed Information Collection; Comment Request; Permits for Incidental Taking of Endangered or Threatened Species**

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before April 8, 2005.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Susan Pultz, F/PR3Room 13661, 1315 East-West Highway, Silver Spring MD 20910-3282 (phone 301-713-1401, ext. 116).

**SUPPLEMENTARY INFORMATION:****I. Abstract**

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, 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.

**II. Method of Collection**

Currently, most information is collected on paper, but in some instances, there is electronic access and capability.

**III. Data**

*OMB Number:* 0648-0230.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Individuals or households; business or other for-profit organizations; not-for-profit institutions; and state, local, or tribal government.

*Estimated Number of Respondents:* 11.

*Estimated Time Per Response:* 80 hours for a permit application (including Habitat Conservation Plans); 30 minutes for an application for a Certificate of Inclusion; 8 hours for a permit report; and 10 hours for a watershed plan.

*Estimated Total Annual Burden Hours:* 880.

*Estimated Total Annual Cost to Public:* \$15,840.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the

burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 27, 2005.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 05-2283 Filed 2-4-05; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[I.D. 020105J]

**Proposed Information Collection; Comment Request; Fisheries Finance Program Requirements**

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before April 8, 2005.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Charles L. Cooper, Financial Services Division, Office of Management and Budget, 1315 East-West Highway, Silver Spring, MD 20910 (phone 301-713-2396).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

NOAA operates a direct loan program, Fisheries Finance Program (FFP), to assist in financing certain actions relating to commercial fishing vessels, shoreside fishery facilities, aquaculture

operations, and individual fishing quotas (IFQ). The application information is required to determine eligibility pursuant to 50 CFR Part 253, and to determine the type and amount of assistance requested by the applicant. An annual financial statement is required to collect information necessary to monitor the financial status of the loan.

**II. Method of Collection**

Forms submitted in paper format.

**III. Data**

*OMB Number:* 0648-0012.

*Form Number:* NOAA Form 88-1.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations.

Estimated Number of Respondents: 1,250.

*Estimated Time Per Response:* 8 hours for a traditional FFP application; 4 hours for an IFQ loan application; and 8 hours for an annual financial statement.

*Estimated Total Annual Burden Hours:* 10,000.

*Estimated Total Annual Cost to Public:* \$5,375.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 27, 2005.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 05-2284 Filed 2-4-05; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[I.D. 020105J]

**Proposed Information Collection; Comment Request; Coastal Impact Assistance Program: Project Review Checklist**

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before April 8, 2005.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to John R. King, N/ORM3, Room 11357, 1305 East-West Highway, Silver Spring, MD 20910-3282 (phone 301-713-3155, ext. 188).

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The Coastal Impact Assistance Program (CIAP) recognizes that impacts from Outer Continental Shelf oil and gas activities fall disproportionately on coastal states and localities nearest to where the activities occur. The program provides funds to seven states and 147 local governments to conduct a variety of related projects, including construction and land acquisition. NOAA must review the projects in accordance with the CIAP legislation before disbursing funds. To expedite review, NOAA developed the CIAP Project Checklist for the construction and land acquisition projects. The Checklist, whose use is voluntary, requests applicants to provide project information to allow NOAA to determine their eligibility under the CIAP as well as eligibility under other relevant statutes (NEPA, etc.).