

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

02/22/2006

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for approval of a revision of an information collection received on 10/26/2005.

TITLE: Application and Reports for Scientific Research  
and Enhancement Permits Under the Endangered  
Species Act

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE

OMB NO.: 0648-0402

EXPIRATION DATE: 02/28/2009

BURDEN:	RESPONSES	HOURS	COSTS(\$ ,000)
Previous	318	6,310	4
New	146	2,280	2
Difference	-172	-4,030	-2
Program Change		-4,030	-2
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
7. Title	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
8. Agency form number(s) ( <i>if applicable</i> )	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
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 or head of MB staff for L.O.s, or of the Director of a Program or Staff Office)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT  
APPLICATIONS AND REPORTS FOR SCIENTIFIC RESEARCH AND  
ENHANCEMENT PERMITS UNDER THE ENDANGERED SPECIES ACT  
OMB CONTROL NO.: 0648-0402**

**A. JUSTIFICATION**

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

National Oceanic & Atmospheric Administration's (NOAA), National Marine Fisheries Service (NOAA Fisheries Service) is responsible for the conservation and recovery of marine and anadromous species listed as threatened or endangered under the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et seq.). The ESA prohibits, with some exceptions, "take" of listed species. Take is defined by the ESA as: "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Section 10(a)(1)(A) of the ESA allows the issuance of permits which authorize take of listed species for scientific purposes or to enhance the propagation or survival of the affected listed species. The regulations implementing the authority to issue permits for scientific research or enhancement are found at 50 CFR §222.308.

The regulations (Attachment 1) contain two sets of information collections: (1) §222.308(b) – applications for scientific research/enhancement permits; (2) §222.308(d)(5) – reporting requirements for permits issued under §222.308. The specific reporting requirements may vary depending on the nature of the activity, but consist of specific information on any listed species taken (species, dates, location, numbers of individuals taken, biological information and procedures performed, condition of animal, any preliminary analysis of data).

A permit applicant who wishes to obtain an exemption to the take prohibitions of the ESA must provide justification as to why NOAA Fisheries Service should grant them the permit. NOAA Fisheries Service needs the information provided in the permit application to make an informed decision as to whether to grant or deny the permit. Without a permit, any taking of a listed species would be subject to prosecution as a violation of section 9 of the ESA. Anyone requesting an additional permit must submit a new application.

The reports required by an issued permit help NOAA Fisheries Service determine: (1) whether or not the conditions of the permit are being followed, (2) the impact of the permitted activities on the listed species, and (3) new information about the species which may then help NOAA Fisheries Service better manage it.

**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 all applicable Information Quality Guidelines.**

Application instructions are attached (Attachment 2). Justification for each section is also attached (Attachment 3). NOAA Fisheries Service uses the information provided to determine the sufficiency of the application and whether the activity proposed meets the goals and

objectives of the ESA. This determination is the basis for a decision on issuance or denial of the permit.

The reports required by the permits (§222.308(d)(5)) are used by NOAA Fisheries Service to ensure that the terms and conditions of the permit are being complied with, as required by section 10(a)(2)(C) of the ESA, and that the taking of the affected species is not appreciably reducing the likelihood of the survival and recovery of the species.

It is not anticipated that the information collected will be disseminated to the public or used to support publicly disseminated information. However, if it is, the information gathered has utility. NOAA Fisheries Service 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 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.**

Since it is required by the regulations §222.308(b)(13) that the application be signed, it must be submitted in hard copy. NOAA Fisheries Service is in the process of developing an electronic form with electronic signing capability but it is not available at this time. The reason this has not been done in the past is due to the lack of budget, resources and staff availability.

Currently NOAA Fisheries Service provides the following: (1) the application instructions are available electronically from NOAA Fisheries Service Office Protected Resources home page. Downloading the instructions electronically allows the applicant to “fill in the blanks”, to cut and paste from other documents as necessary, and to take the time to compile the information according to their own schedule without being limited by the space or time constraints of an electronic or online form; (2) the applicant is encouraged to submit an electronic copy in addition to the hard copy, which helps speed processing; (3) during the application processing, NOAA Fisheries Service corresponds electronically with the applicant as much as possible.

As an application can be quite lengthy, it would be quite cumbersome to post to the Internet all of the information received in every application. However, as required by the regulations at §222.303(b), a summary of each application is published in the Federal Register (which is available online on a real-time basis), and from that anyone from the interested public may contact NOAA Fisheries Service for the complete application.

**4. Describe efforts to identify duplication.**

The type of information requested is not typically available from any other source, as each project for which an applicant requests a permit is unique. However, if the applicant already has a proposal (for example, to obtain funding for the project), they may submit it as an attachment inasmuch as it covers the information requested in the application.

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

There should not be a significant impact. The information is submitted one time for each permit, unless the applicant requests a modification to the permit. Since some projects may take several years to complete, NOAA Fisheries Service has discretion to issue long-term permits to provide continuity, and avoid the need to apply for a permit each year.

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

Permit applications are initiated by an applicant who wishes the privilege of protection from the prohibitions of ESA section 9. Without a permit application which follows the requirements at §222.308, NOAA Fisheries Service cannot legally grant such a permit.

A reporting period of less than annually will not allow NOAA Fisheries to adequately monitor the permit activities and compliance with permit conditions. Additionally, the information gained from the annual reports is used in making management decisions to aid in the recovery of listed species. Therefore, if this information is not available, it may negatively affect the recovery of listed species, and NOAA Fisheries Service may be viewed as unresponsive to the Congressional mandates expressed in the ESA.

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

The collection is consistent with OMB guidelines except for the requirement of notification when significant events take place (e.g., mortality or injury of an animal, exceeding the authorized take, or the taking of a species not authorized by the permit). Notification for these events must take place typically within two days after the event, to allow for quick response by NOAA Fisheries Service and the Permit Holder to incidents with a significant impact on listed species and that were not authorized by the permit and therefore not anticipated.

**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.**

Public comment was solicited in a Federal Register Notice (Attachment 4). No comments were received.

NOAA Fisheries Service staff who issue scientific research/enhancement permits are always available to assist applicants with the application instructions, and accept comments on the clarity, burden, frequency, etc. The application instructions are a “user-friendly” version of the regulations at §222.308(b), and have just been revised to provide more clarity and guidance.

NOAA Fisheries Service staff attend professional meetings and gives seminars on the permit process.

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

No payment or gifts have been provided to any respondents. However, the fee to the applicant allowed for by the regulations at §222.308(d)(8), is waived.

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

No assurance of confidentiality is given. A notice of receipt of permit applications is required by statute to be published in the Federal Register. Applications and supporting documentation are available for review by the public at every stage of processing and throughout the duration of the permit. This is explained in the application instructions. Even after the permit expires, the documents remain open as historical information as long as the file is maintained. The information collection is a matter of public record and no confidential material is required. All permit documentation including reports is subject to the Freedom of Information Act.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.**

No sensitive questions are asked.

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

See Table I below under #14. This is a revision; however, the table information describes the entire burden for the data collection. There is a reduction because the data collection covers only Pacific salmonids as explained above. The manner of collection and the way in which the information will be used has not changed.

**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).**

See Table I below under #14.

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



**TABLE I**

<b>Annual Burden Hour and Cost Estimations</b>					
	<b>Permit Applications (once per permit)</b>	<b>Modification Requests (as requested by permit holder)</b>	<b>Annual Reports *</b>	<b>Final Reports (once per permit) *</b>	<b>Totals</b>
<b>RESPONDENT BURDEN AND COSTS:</b>					
Annual # of Responses	28	15	77	26	146
Hours per Response	30	10	10	20	
Total Hours (Annually)	840	150	770	520	2,280
Cost per Response @ \$20/hr	\$600	\$200	\$200	\$400	
Total Personnel Costs to all Respondents	\$16,800	\$3,000	\$15,400	\$10,400	\$45,600
Incidental Cost per Response **	\$30.00	\$7.33	\$8.00	\$16.67	
Total Incidental Costs (Annually) to all Respondents	\$840.00	\$110.00	\$616.00	\$433.33	\$1,999
<b>FEDERAL GOVERNMENT BURDEN AND COSTS:</b>					
Govt. Hrs. per Response	120	80	10	10	
Cost per Response @ \$20/hr	\$2,400	\$1,600	\$200	\$200	
Overhead per Response	\$60	\$40	\$5	\$5	
Incidental Cost per Response	\$56.00	\$28.00	\$1.50	\$1.50	
Total Cost to Govt. per Response	\$2,516	\$1,668	\$207	\$207	
Total Cost to Federal Govt.	\$70,448	\$25,020	\$15,901	\$5,369	

\* Based on an average permit length of 3 years.

\*\* Incidentals = materials, printing, mailing, etc.

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

The instructions will be used only for Pacific salmonids. Previously the instructions were used also for marine mammals. Instructions for marine mammals have been written separately and are no longer a part of this collection. Thus we expect fewer applicants and a lesser burden under this collection. However, the number of Pacific salmonids listed under the ESA has been increasing, thus requests for permits for take of Pacific salmonids have increased, and are

expected to continue to increase. Therefore it is expected that a few more salmonid applications will be received, more permits will be issued, and more reports will be required than previously. The net effect of these two changes is expected to be a decrease in burden hours of 4030, with a related decrease in recordkeeping and reporting cost of \$2,000.

**16. For collections whose results will be published, outline the plans for tabulation and publication.**

Although NOAA Fisheries Service uses the data, NOAA Fisheries Service does not have plans to publish it. Typically, the researcher will publish at the end of his/her project. Partway through the project, NOAA Fisheries Service uses information from permit reports to monitor activities authorized by permits, and to monitor requirements under the ESA Biological Opinions that are associated with the permits. In addition, information such as run estimates for salmonids are used by the NOAA Fisheries Service Science Centers to better manage the species. Although the capacity doesn't currently exist to post all documents associated with permit applications, the Northwest Region does post applications that are available for public comment on their homepage. In the future, NOAA Fisheries Service plans to allow the public Internet access to information on all applications, permits, and required reports.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.**

Not applicable.

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

There are no exceptions to the certification statement.

**B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not employ statistical methods.

**Attachment 2- Application Instructions & Reporting Form (see separate files)**

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
  - (ii) Application for permit for the enhancement of the propagation or survival of the endangered species Under the Act.
- (2) The date of the application.
- (3) The identity of the applicant including complete name, address, and telephone number. If the applicant is a

partnership or a corporate entity, set forth the details. If the endangered species is to be utilized by a person other than the applicant, set forth the name of that person and such other information as would be required if such person were an applicant.

(4) A description of the purpose of the proposed acts, including the following:

(i) A detailed justification of the need for the endangered species, including a discussion of possible alternatives, whether or not under the control of the applicant; and

(ii) A detailed description of how the species will be used.

(5) A detailed description of the project, or program, in which the endangered species is to be used, including the following:

(i) The period of time over which the project or program will be conducted;

(ii) A list of the names and addresses of the sponsors or cooperating institutions and the scientists involved;

(iii) A copy of the formal research proposal or contract if one has been prepared;

(iv) A statement of whether the proposed project or program has broader significance than the individual researcher's goals. For example, does the proposed project or program respond directly or indirectly to recommendation of any national or international scientific body charged with research or management of the endangered species? If so, how?; and

(v) A description of the arrangements, if any, for the disposition of any dead specimen or its skeleton or other remains in a museum or other institutional collection for the continued benefit to science.

(6) A description of the endangered species which is the subject of the application, including the following:

(i) A list of each species and the number of each, including the common and scientific name, the subspecies (if applicable), population group, and range;

(ii) A physical description of each animal, including the age, size, and sex;

(iii) A list of the probable dates of capture or other taking, importation, exportation, and other acts which require a permit for each animal and the

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location of capture or other taking, importation, exportation, and other acts which require a permit, as specifically as possible;

(iv) A description of the status of the stock of each species related insofar as possible to the location or area of taking;

(v) A description of the manner of taking for each animal, including the gear to be used;

(vi) The name and qualifications of the persons or entity which will capture or otherwise take the animals; and

(vii) If the capture or other taking is to be done by a contractor, a statement as to whether a qualified member of your staff (include name(s) and qualifications) will supervise or observe the capture or other taking. Accompanying such statement shall be a copy of the proposed contract or a letter from the contractor indicating agreement to capture or otherwise take the animals, should a permit be granted.

(7) A description of the manner of transportation for any live animal taken, imported, exported, or shipped in interstate commerce, including the following:

(i) Mode of transportation;

(ii) Name of transportation company;

(iii) Length of time in transit for the transfer of the animal(s) from the capture site to the holding facility;

(iv) Length of time in transit for any planned future move or transfer of the animals;

(v) The qualifications of the common carrier or agent used for transportation of the animals;

(vi) A description of the pen, tank, container, cage, cradle, or other devices used to hold the animal at both the capture site and during transportation;

(vii) Special care before and during transportation, such as salves, antibiotics, moisture; and

(viii) A statement as to whether the animals will be accompanied by a veterinarian or by another similarly qualified person, and the qualifications of such person.

(8) Describe the contemplated care and maintenance of any live animals sought, including a complete descrip-

tion of the facilities where any such animals will be maintained including:

(i) The dimensions of the pools or other holding facilities and the number, sex, and age of animals by species to be held in each;

(ii) The water supply, amount, and quality;

(iii) The diet, amount and type, for all animals;

(iv) Sanitation practices used;

(v) Qualifications and experience of the staff;

(vi) A written certification from a licensed veterinarian or from a recognized expert who are knowledgeable on the species (or related species) or group covered in the application. The certificate shall verify that the veterinarian has personally reviewed the amendments for transporting and maintaining the animal(s) and that, in the veterinarian's opinion, they are adequate to provide for the well-being of the animal; and

(vii) The availability in the future of a consulting expert or veterinarian meeting paragraph requirements of (b)(8)(vi) in this section.

(9) A statement of willingness to participate in a cooperative breeding program and maintain or contribute data to a stud book.

(10) A statement of how the applicant's proposed project or program will enhance or benefit the wild population.

(11) For the 5 years preceding the date of application, the applicant shall provide a detailed description of all mortalities involving species under the control of or utilized by the applicant and are either presently listed as endangered species or are taxonomically related within the Order to the species which is the subject of this application, including:

(i) A list of all endangered species and related species that are the subject of this application that have been captured, transported, maintained, or utilized by the applicant for scientific purposes or for the enhancement of propagation or survival of the affected species, and/or of related species that are captured, transported, maintained, or utilized by the applicant for scientific purposes or for enhancement of propagation or survival of the affected species;

(ii) The numbers of mortalities among such animals by species, by date, by location of capture, i.e., from which population, and the location of such mortalities;

(iii) The cause(s) of any such mortality; and

(iv) The steps which have been taken by applicant to avoid or decrease any such mortality.

(12) A certification in the following language: I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Endangered Species Act, as amended, and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Act.

(13) The applicant and/or an officer thereof must sign the application.

(14) Assistance in completing this application may be obtained by writing Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 or calling the Office of Protected Resources at 301-713-1401. Allow at least 90 days for processing.

(c) *Issuance criteria.* In determining whether to issue a permit for scientific purposes or to enhance the propagation or survival of the affected endangered species, the Assistant Administrator shall specifically consider, among other application criteria, the following:

(1) Whether the permit was applied for in good faith;

(2) Whether the permit, if granted and exercised, will not operate to the disadvantage of the endangered species;

(3) Whether the permit would be consistent with the purposes and policy set forth in section 2 of the Act;

(4) Whether the permit would further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered species, taking into account the benefits anticipated to be derived on behalf of the endangered species;

(5) The status of the population of the requested species and the effect of

the proposed action on the population, both direct and indirect;

(6) If a live animal is to be taken, transported, or held in captivity, the applicant's qualifications for the proper care and maintenance of the species and the adequacy of the applicant's facilities;

(7) Whether alternative non-endangered species or population stocks can and should be used;

(8) Whether the animal was born in captivity or was (or will be) taken from the wild;

(9) Provision for disposition of the species if and when the applicant's project or program terminates;

(10) How the applicant's needs, program, and facilities compare and relate to proposed and ongoing projects and programs;

(11) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application; and

(12) Opinions or views of scientists or other persons or organizations knowledgeable about the species which is the subject of the application or of other matters germane to the application.

(d) *Terms and conditions.* Permits applied for under this section shall contain terms and conditions as the Assistant Administrator may deem appropriate, including but not limited to the following:

(1) The number and kind of species covered;

(2) The location and manner of taking;

(3) Port of entry or export;

(4) The methods of transportation, care, and maintenance to be used with live species;

(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the permit;

(6) The transferability or assignability of the permit;

(7) The sale or other disposition of the species, its progeny, or the species product; and

(8) A reasonable fee covering the costs of issuance of such permit, including reasonable inspections and an appropriate apportionment of overhead

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and administrative expenses of the Department of Commerce. All such fees will be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the service.

### § 222.309 Permits for listed species of sea turtles involving the Fish and Wildlife Service.

(a) This section establishes specific procedures for issuance of the following permits: scientific purposes or to enhance the propagation or survival of endangered or threatened species of sea turtles; zoological exhibition or educational purposes for threatened species of sea turtles; and permits that requires coordination with the Fish and Wildlife Service. The National Marine Fisheries Service maintains jurisdiction for such species in the marine environment. The Fish and Wildlife Service maintains jurisdiction for such species of sea turtles in the land environment.

(b) For permits relating to any activity in the marine environment exclusively, permit applicants and permittees must comply with the regulations in parts 222, 223, and 224 of this chapter.

(c) For permits relating to any activity in the land environment exclusively, permit applicants must submit applications to the Wildlife Permit Office (WPO) of the U.S. Fish and Wildlife Service in accordance with either 50 CFR 17.22(a), if the species is endangered, or 50 CFR 17.32(a), if the species is threatened.

(d) For permits relating to any activity in both the land and marine environments, applicants must submit applications to the WPO. WPO will forward the application to NMFS for review and processing of those activities under its jurisdiction. Based on this review and processing, WPO will issue either a permit or a letter of denial in accordance with its own regulations.

(e) For permits relating to any activity in a marine environment and that also requires a permit under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (TIAS 8249, July 1, 1975) (50 CFR part 23), applicants must submit applications to the WPO. WPO will forward the application to NMFS for

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review and processing, after which WPO will issue a combination ESA/CITES permit or a letter of denial.

### PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

#### Subpart A—General Provisions

Sec.

- 223.101 Purpose and scope.
- 223.102 Enumeration of threatened marine and anadromous species.

#### Subpart B—Restrictions Applicable to Threatened Marine and Anadromous Species

- 223.201 Guadalupe fur seal.
- 223.202 Steller sea lion.
- 223.203 Anadromous fish.
- 223.204 Exceptions to prohibitions relating to anadromous fish.
- 223.205 Sea turtles.
- 223.206 Exceptions to prohibitions relating to sea turtles.
- 223.207 Approved TEDs.
- 223.209 Tribal plans.

- FIGURE 1 TO PART 223—NMFS TED
- FIGURE 2 TO PART 223—CAMERON TED
- FIGURE 3 TO PART 223—MATAGORDA TED
- FIGURE 4 TO PART 223—GEORGIA TED
- FIGURE 5 TO PART 223—NET DIAGRAM FOR THE EXCLUDER PANEL OF THE PARKER SOFT TED
- FIGURE 6 TO PART 223—TED EXTENSION IN SUMMER FLOUNDER TRAWL
- FIGURES 7–9b TO PART 223 [RESERVED]
- FIGURE 10 TO PART 223—FLOUNDER TED
- FIGURE 11 TO PART 223—JONES TED
- FIGURE 12a TO PART 223—ATTACHMENT OF THE EXIT HOLE COVER
- FIGURE 12b TO PART 223—GRID TED LEATHERBACK MODIFICATION
- FIGURE 13 TO PART 223—SINGLE GRID HARD TED ESCAPE OPENING
- FIGURE 14a TO PART 223—MAXIMUM ANGLE OF DEFLECTOR BARS WITH STRAIGHT BARS ATTACHED TO THE BOTTOM OF THE FRAME
- FIGURE 14b TO PART 223—MAXIMUM ANGLE OF DEFLECTOR BARS WITH BENT BARS ATTACHED TO THE BOTTOM OF THE FRAME
- FIGURE 15 TO PART 223—MAXIMUM ANGLE OF DEFLECTOR BARS WITH BARS UNATTACHED TO THE BOTTOM OF THE FRAME
- FIGURE 16 TO PART 223—ESCAPE OPENING AND FLAP DIMENSIONS FOR THE DOUBLE COVER FLAP TED

AUTHORITY: 16 U.S.C. 1531-1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

SOURCE: 43 FR 32809, July 28, 1978, unless otherwise noted. Redesignated at 64 FR 14068, Mar. 23, 1999.

## ATTACHMENT 2

### National Marine Fisheries Service (NMFS) Application Instructions for a Permit for Scientific Purposes or to Enhance the Propagation or Survival of Threatened and Endangered Species

OMB control number: 0648-0402

Expires: xx/xx/xxxx

#### Authority

Under section 10(a)(1)(A) of the Endangered Species Act of 1973 (ESA), NMFS may issue permits for scientific research purposes or to enhance the propagation or survival of species listed as threatened or endangered under the ESA. The authorization provided by these permits exempts the permit holder from the prohibitions of ESA section 9, in particular those dealing with take. *Take* is defined by the ESA as: "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Permitted activities must not operate to the disadvantage of the listed species and must provide a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the listed species. NMFS traditionally issues permits for up to five years, although permits for longer periods of time have been issued. Permits include any conditions necessary to mitigate and monitor the impacts of the proposed activities. These application instructions are drawn from, but do not substitute for, the ESA section 10 regulations at 50 CFR §222.308. Applicable state laws or regulations prevail in all cases where they are more restrictive. Possession of a section 10(a)(1)(A) permit should be regarded as a privilege in that NMFS must balance permit issuance with its duties to protect and recover listed species.

#### Do I Need to Apply for a Permit?

If you determine that your proposed activity would *directly take* a listed species (i.e., the listed species is the subject of your proposed activity, and conducting it would likely result in the species being harassed, captured, harmed, possessed, or killed) and your planned activity is otherwise lawful, a section 10 (a)(1)(A) permit is required. Examples of activities that may require a section 10 (a)(1)(A) permit include: surveys, genetic research, hatchery operations, relocations, capture and marking, and telemetric monitoring. Under certain circumstances, a section 10(a)(1)(A) permit may also be required for you to possess listed species' tissues or body parts.

If you are engaged in an otherwise lawful activity where a listed species may be adversely affected, and the purpose of your activity is not scientific research or species enhancement, you may need to obtain a section 10(a)(1)(B) permit (*Incidental Take Permit*). Examples of activities that may require a section 10(a)(1)(B) permit include: state sportfishing programs, non-listed fish stocking programs, and other instream or watershed activities which may affect listed species. If your proposed activities require an incidental take permit, you will need to use the

section 10(a)(1)(B) instructions. These are available at the addresses listed below under *Where Do I Send the Application?* and at the NMFS Office of Protected Resources web site, [http://www.nmfs.noaa.gov/pr/permits/esa\\_permits.htm](http://www.nmfs.noaa.gov/pr/permits/esa_permits.htm)

If you still have questions, you may want to consult the Pre-Application Guide (PAG) on the Authorizations and Permits for Protected Species website. The PAG will walk you through a series of questions to help you determine what type of permit you need and whom you should contact. The PAG can be found at <http://apps.nmfs.noaa.gov/>.

Before applying for an individual permit, you should determine if your proposed project is a part of another authorized activity. To minimize duplication—and the impact on listed species—you are strongly encouraged to coordinate with others doing similar work. If two investigators are collaborating on the same activities, they should apply for a single permit. Also, if you are conducting your proposed activities in response to a Federal Agency requirement, you may not need a section 10 (a)(1)(A) permit. For example, fish surveys required by an ESA section 7 biological opinion may be authorized in the opinion's Incidental Take Statement and no section 10 permit would be needed.

### **Am I Using the Appropriate Application Instructions?**

These instructions are for permits for research and/or enhancement activities involving listed Pacific salmon and steelhead. They can be downloaded from: [http://www.nmfs.noaa.gov/pr/permits/esa\\_permits.htm](http://www.nmfs.noaa.gov/pr/permits/esa_permits.htm)

Permits for marine mammal species and non-salmonid threatened and endangered species (e.g., shortnose sturgeon, sea turtles, white abalone), please use the application instructions available at: <http://www.nmfs.noaa.gov/pr/permits/>

For terrestrial or freshwater species, or land-based sea turtle activities, please contact the appropriate regional office of the U.S. Fish and Wildlife Service: <http://www.fws.gov/r9irmtsb/regional.html>

### **When Should I Apply?**

To allow for processing time, you are urged to apply at least six months before you need to start your proposed activities, though certain permit actions may take even longer to process.

### **What Should I Include in the Application?**



A permit application should provide all of the information requested below and, for processing efficiency, it should be displayed in the same structure and format. We will use the information that you provide to determine whether your application is complete and whether to issue a permit for the proposed activities. If a section does not apply to your activities, please do not skip the section, simply mark it "not applicable" or "N/A." Applicable information should be detailed enough to provide a complete picture of your proposed activities. Incomplete or vague information will delay processing. Please note that specific wording is required for the title and closing statement. If you already have a project proposal, you may attach the proposal and reference the appropriate sections of it when filling out your application.

### **Should I Send a Review Draft?**

It is often helpful to draft an application and send it to us for review before mailing your final application. Send the draft electronically (contact the appropriate office for a current email address). Our staff will review your application and help you if there are any difficulties. Once the application is complete, you must send a signed copy to the appropriate office.

### **Where Do I Send the Application?**

Mail one signed original of the complete, final application to the appropriate address below. You should also submit a copy electronically (on disk or by e-mail) to help speed processing. If you need help completing your application, submit a draft to the appropriate office or contact them directly.

#### Permits for marine and anadromous species in the Pacific Northwest:

Chief, Protected Resources Division  
National Marine Fisheries Service - F/NWO3  
1201 NE Lloyd Boulevard, Suite 1100  
Portland, Oregon 97232-1274  
Phone: 503-230-5400  
Fax: 503-230-5441

#### Permits for marine and anadromous species in California:

- NMFS Northern California Coast Salmon Supervisor, Protected Resources Division  
National Marine Fisheries Service  
1655 Heindon Road  
Arcata, CA 95521  
Phone: (707) 825-5163 Fax: (707) 825-4840
- NMFS Central California Coast Salmon Supervisor, Protected Resources Division

National Marine Fisheries Service  
777 Sonoma Ave., Room 325  
Santa Rosa, CA 95404  
Phone: (707) 575-6050 Fax: (707) 578-3435

- NMFS California Central Valley Salmon  
Supervisor, Protected Resources Division  
National Marine Fisheries Service  
650 Capitol Mall, Suite 8-300  
Sacramento, CA 95819  
Phone: (916) 930-3600 Fax: (916) 930-3629
- NMFS Southern California Salmon  
Supervisor, Protected Resources Division  
National Marine Fisheries Service  
501 West Ocean Blvd  
Long Beach, CA 90802-4250  
Phone: (562) 980-4020 Fax: (562) 980-4027

### **What is Involved in Processing a Permit Application?**

Once we receive a *complete* permit application, it is subject to a 30-day public comment period. The 30-day public comment period begins when a "notice of receipt" is published in the *Federal Register* (required by regulations). We may also distribute the application for review by scientific and technical experts, resource managers, and/or other Permit Holders. After the 30-day public comment period, we will forward a summary of the comments for the applicant to address. The applicant must submit a written response.

We must then conduct an ESA section 7 consultation on the proposed activity. This, in turn, results in a biological opinion on the activity. To issue a section 10(a)(1)(A) permit for any activity, NMFS' biological opinion must conclude that the proposed activity is not likely to jeopardize the continued existence of any ESA-listed species nor destroy nor adversely modify any species' designated critical habitat.

In addition, we may be required to conduct the following consultations on the potential effects of the activity proposed in the application: (1) Consultation with U.S. Fish and Wildlife Service regarding potential effects on species under their jurisdiction, (2) consultation between NMFS' Protected Species Division and NMFS' Habitat Conservation Division regarding any activities taking place in Essential Fish Habitat (EFH), and (3) consultation with the National Ocean Service if the action takes place in a National Marine Sanctuary. Any issues that arise during these consultations may delay the permit process.

Finally, we may be required to conduct an analysis under the National Environmental Policy Act (NEPA) if a proposed activity is one designed to enhance the propagation and/or survival of an ESA-listed species (e.g., hatchery supplementation programs or fish salvage operations). That analysis usually consists of an Environmental Assessment (EA) on the action of issuing a section 10(a)(1)(A) permit with conditions. In general, scientific research permits are categorically excluded from the need to conduct an analysis under NEPA.

After we receive responses from the applicant to the public comments and complete a biological opinion (and any other required consultations), we will decide whether or not to issue the permit. In order to issue such a permit, we must find that it: (1) Was applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of listed species subject to the permit, and (3) will be consistent with the purposes and policies set forth in the ESA. We will then notify the applicant of the decision and publish a notice about the decision in the *Federal Register* (required by regulations).

### **How Do I Modify an Existing Permit?**

A request to modify an existing permit should address all sections of these instructions relevant to the requested change and include a detailed description and justification of the proposed changes. Modification requests involving an increased number of animals, increased risk to the species, additional listed species, or significant changes in the nature or location of activities may be subject to a 30-day public review period and reconsultation on the effects of issuing the modified permit.

### **Paperwork Reduction Act and Confidentiality Information**

An applicant must submit the information requested in the following instructions to obtain an ESA section 10(a)(1)(A) permit. We will use that information to process the permit request in accordance with the ESA. The information provided is not confidential and is subject to public review and comment.

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 (Office of Management and Budget) Control Number. In addition, persons are not required to retain records for more than three years unless those records are health, medical, government contract, grant-in-aid, or tax records.

NMFS estimates that the average time to compile an application in accordance with these instructions is 30 hours. This includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the application. For annual permit reports, NMFS estimates average response time at 10 hours per report. You may

send comments regarding these estimates or any other aspect of this information collection, including suggestions for reducing this burden, to the addresses under *Where Do I Send the Application?*

## Information to Include in the Application

- A. **Title:** Use one of the titles below, exactly as worded, and provide a brief Project Name.

### Title

1. Application for Permit for Scientific Purposes under the Endangered Species Act of 1973. (If the proposal is for field surveys, genetics research, etc.)
2. Application for Permit to Enhance the Propagation or Survival of Listed Species under the Endangered Species Act of 1973. (If the proposal is for fish hatchery operations, etc.)
3. Application for Permit for Scientific Purposes and to Enhance the Propagation or Survival of Listed Species Under the Endangered Species Act of 1973. (If the proposal is for activities that fall under both categories 1 and 2 above)
4. Application for Modification of Existing Permit.

### Project Name

Describe the project in 20 words or less (e.g., Salmonid Use of Restored Estuarine Wetlands: Regional Application of the Salmon River, Oregon, Estuary Study).

- B. **Species:** List all species and Evolutionarily Significant Units (ESUs) and/or populations for which you request take authority.
- C. **Date of Permit Application:** Date you are sending the application. If you submit subsequent versions of the application (after you receive guidance from NMFS) update the dates to reflect the date the updated version is sent.
- D. **Applicant Identity:** The applicant is the individual and/or agency responsible for ensuring compliance with permit conditions, and may represent a group of individuals actually performing the activities (e.g., employees, partners, agents, and/or contractors). Please include the following information about the permit applicant:
1. Applicant's name and position title
  2. Institution or agency name
  3. Mailing address
  4. Telephone number
  5. Fax number
  6. Email address

If NMFS should be coordinating with a contact person different from the applicant, also include the same information (1-6 above) for the principal contact. Attach résumés, if any, at the end of the application or provide them in a separate document.

E. **Information on Personnel, Cooperators, and Sponsors:** If the same person or entity will hold several roles, you may state their address information once and refer back to it.

1. If the applicant will not be the sole person conducting the proposed activities, provide the names, email addresses, phone numbers, and résumés for each Principal Investigator and Field Supervisor. A Principal Investigator is ultimately responsible for the project and compliance with the permit conditions. A Field Supervisor (who may also be the Principal Investigator), is anyone who supervises or carries out the activities in the field without supervision, and will also be responsible for compliance with the permit conditions. Attach résumés, if any, at the end of the application or provide them in a separate document.
2. To the extent possible, provide a list of field personnel.
3. Provide the name, title, agency, phone number, and any other appropriate contact information for all sponsors, cooperating institutions, etc.
4. If the proposed activities will be conducted by a contractor, provide a statement that a qualified member of your staff (include name(s) and qualifications) will supervise or observe the taking. Include a copy of the proposed contract or a letter from the contractor indicating agreement to operate under any and all permit conditions, should a permit be granted.
5. Provide a description of the arrangements for the disposition of any tissue samples, dead specimens, or other remains. If you will not retain samples, state that samples will be returned to their capture site (see section H.2.). If you are going to retain tissue samples (including whole fish), either in a museum or other institution for the continued benefit to science, include information on where the samples will be stored, transferred, and how/when/where they will be disposed. Include the list of researchers, laboratories, museums, and/or institutional collections that would receive these tissue samples or specimens. Please include name, address, contact, and phone number for each.
6. For transport and long-term holding of listed species (see Section I), provide the qualifications and experience of all staff responsible for care without supervision, including a written certification from a licensed veterinarian knowledgeable about the requested species (or similar species), or from a recognized expert on the species (or similar species) that he/she has personally reviewed the criteria for transporting and maintaining the animal(s) and that in his/her opinion they are adequate to provide for the well-being of the animal. Include the name, address, email, and phone number of this veterinarian, consulting expert, or equivalent who will be available during the proposed activities.

F. **Project Description, Purpose, and Significance:** Describe the purpose of your study or project. If available, attach a copy of the formal project proposal or contract, including the contract number, to your application. You may reference the appropriate section of the proposal/contract in response to a particular question.

1. A justification of the objective(s): motivation, history, goals, etc. State how the listed species will benefit from the proposed activities. Begin with a brief description of the purpose of the research (30 words or less). *For example: The purposes of the research are to assess watershed conditions and factors limiting salmonid health and production, and evaluate watershed health under the Northwest Forest Plan.*
2. A statement of whether or not the proposed project or program responds directly or indirectly to a recommendation or requirement of a Federal agency (Include citations if applicable). Identify any secured or proposed Federal funding source(s) for the proposed activities, including names, addresses, and phone numbers of the sponsors, cooperating institutions, etc.;
3. A statement of whether or not the proposed project or program has broader significance than the individual project's goals, or is part of a larger scale research management or restoration plan (Include citations if applicable);
4. A description of any relationships or similarities of the proposed activities to other proposed or ongoing projects and programs, and whether the potential exists to cooperate and coordinate with other similar studies or activities. (Include citations if applicable); and
5. A justification for using listed species in the study or activities, and a discussion of possible alternatives to using listed species.

G. **Project Methodology:** Provide a detailed description of the project, or program, in which the listed species is to be used, including:

1. The proposed duration of the project or program, including start and end dates. Provide the date the project is scheduled to start. Be realistic. Use a start date, whenever possible, that is at least six months after the application is submitted. Use an end date that covers all possible scenarios, or up to five years from the start date. If the project or program will continue into the foreseeable future, provide the rationale for the extended time frame. Provide times during the year that specific activities will occur. Be specific if multiple activities are proposed (e.g., spawning surveys from October to December; juvenile trapping from April to June).

2. A discussion of the procedures and techniques which will be used during the project. Begin with a BRIEF description of the capture methods (seine, backpack electrofishing, etc.) and a brief description of any Aintrusive methods@ (anesthetic, tagging, marking, tissue samples, etc.). *For example: Listed fish will be captured (using boat electrofishing, fyke nets, and minnow traps), anesthetized, measured, checked for tags, marked, sampled for stomach content, and released.* Follow with more specific descriptions that will allow us to assess the activities. The discussion should include, at a minimum:
  - a. Method(s) of capture and of release;
  - b. The sampling schedule, including locations and dates if available. Be as specific as possible. Locations should be listed from general to most specific, including bodies of water, rivers, tributaries, streams or creeks, and a geographical descriptor (e.g., Columbia River, Snake River, Imnaha River, River Mile 42). Include latitude/longitude coordinates, if possible. Include 4<sup>th</sup> field hydrologic units (HUCs) whenever possible.
  - c. A description of any tags, including the attachment method, location, and special handling/holding associated with the tagging;
  - d. A description of type and dosage of any drugs to be used, purpose of use, and method of application;
  - e. Temporary holding time prior to release of the individual(s) and the manner in which they will be detained. For transport and long-term holding, please fill out section I *Transportation and Holding*; and
  - f. Number and types of samples to be taken from each individual, including sampling protocol.
3. A discussion of possible alternatives to using the proposed methods. If applicable, you should try to anticipate alternative scenarios due to circumstances such as changes in environmental conditions, annual variations in species abundance, necessary changes in proposed procedures, etc. Such scenarios should be addressed in the *Description and Estimates of Take* section below if they affect the nature or amount of potential take of listed species. This planning may avoid the potentially lengthy process of modifying the permit.
4. A discussion of the potential for injury or mortality to the species involved, and the steps that will be taken to minimize adverse effects and to ensure that the species will be taken in a humane manner.



- H. **Description and Estimates of Take:** Issued permits define a specific number of individuals of each species that can be taken under the approved study or project. You must provide sufficient detail in the attached table (see last page) for NMFS to determine the species, population group, and estimated number of individuals to be taken by each activity. You should also describe the specific life stage, and origin, (and sex, if appropriate) of the listed species targeted. Take into account alternative scenarios identified above in the *Project Description, Purpose, and Significance* section.

Provide a separate table for each project, activity, or location, if appropriate. Attach the table at the end of the application. In addition, include:

1. Describe the recent status and trends of each ESU/species proposed to be taken (include citations where possible). NMFS already possesses information at the ESU level (see various NMFS web sites), so there is no need to repeat it in your application. We are seeking new data here—specifically, status and trend data on any distinct populations the proposed action is likely to affect. Such information will help us evaluate the probable impacts of the proposed research.
2. Provide a justification for all potential mortalities by take category. You should explain how you determined the numbers of listed species that would be killed, either intentionally (direct mortality, lethal take) or unintentionally (indirect mortality). You may reference section G.4. in explaining mortality rates.
3. Provide details on how all take estimates, including mortalities, were derived. Include citations when applicable.
4. Include a statement as to whether or not any USFWS listed species would be affected. If any would be, include which species and DPS' and the authority you have to take those species (permit, consultation, agreement).

I. **Transportation and Holding**

1. **Transportation of a Listed Species:** Provide a description of how any live individuals taken from the capture site or other facility (including rescue and relocation activities) will be transported including:
  - a. Mode of transportation and name of transportation company, if applicable.
  - b. Length of time in transit for the transfer of the individual(s) from the capture site to the holding facility or to the target location.

- c. Length of time in transit for any planned future move/transfer of the individual(s).
  - d. The qualifications of the common carrier or agent used for transportation of the individual(s).
  - e. A description of the tank, container, or other devices used both to hold the individual(s) at the capture site and during transportation.
  - f. Special care before, during and after transportation (e.g., use of oxygen, temperature control, anesthetics, antibiotics, etc.)
2. **Holding of a Listed Species:** Describe the plan for care and maintenance of any live individuals, including a complete description of the facilities where any such individuals will be maintained including:
- a. The dimensions of the tank(s) or other holding facilities and the number of individuals, by species, life stage, and origin, to be held in each.
  - b. The water supply, amount, and quality, including controls on temperature and dissolved oxygen.
  - c. The amount and type of diet used for all individuals, and food storage.
  - d. Sanitation practices used.
3. **Emergency contingencies:** Identify emergency contingencies- e.g., backup life support systems, alarm systems, redundant water and oxygen supply, release or destroy decision chains, etc.
- J. **Cooperative Breeding Program:** You MUST include a statement of willingness to participate in a cooperative breeding program and to maintain or contribute data to a breeding program, if such action is requested.
- K. **Previous or Concurrent Activities Involving Listed Species:**
- 1. Identify all previous permits where you were the permit holder or primary investigator working with federally-listed species; identify which species.
  - 2. For the above permits, list all mortality events of listed species that have occurred in the last five years.
    - a. List the ESU/species, life stage, origin, and population where applicable;

- b. Describe the number and causes of mortalities; and
- c. Describe the measures that have been taken to diminish or eliminate such mortalities, and the effectiveness of those measures.

L. **Certification:** You must include the following paragraph, exactly as worded, followed by the applicant or responsible party's signature, name, position title, and date:

"I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand this information is submitted for the purpose of obtaining a permit under the Endangered Species Act of 1973 (ESA) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the ESA."

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Position Title (print)

Attach résumés here or submit it/them as a separate document.

M. **Length of Time and Cost to Prepare Application (Optional):** The public burden of these application instructions is evaluated periodically by the Office of Management and Budget under the Paperwork Reduction Act. Your response will help improve the accuracy of the estimates given for evaluation. You may send comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, to the Chief, Endangered Species Division, at the address under *Where Do I Send the Application?*

1. Please estimate the length of time, in hours, it took to compile this application.
2. Please estimate the cost, in \$US, of compiling this application, excluding the labor hours identified in 1. above. This estimate should include: cost of paper, printing, mailing, photocopying, etc.

## ATTACHMENT 3

### Application & Report Information Collection Justification

Questions are derived from requirements at CFR §222.308(b). NMFS uses the information to determine the merit of a proposed activity to receive authorization to take species listed as threatened or endangered under the ESA.

#### **A. Title and Project Name:**

Identifies the type of permit requested, i.e., scientific research and/or enhancement and provides a brief description of the project. [§222.308(b)(1)]

#### **B. Species:**

Identifies the species/population the activity will impact. [§222.308(b)(6)(i)]

#### **C. Date of Permit Application:**

Self-explanatory. [§222.308(b)(2)]

#### **D. Applicant Identity:**

Needed for identification and contact purposes. Information includes mailing address, telephone, fax and e-mail addresses. A permit holder is ultimately responsible for all activities of individuals operating under the permit. [§222.308(b)(3)]

#### **E. Information on Personnel, Cooperators, and Sponsors.**

Identifies the persons who will be working on/ cooperating on the project. All personnel information is collected in this section, for ease of compiling and reference. NMFS needs assurance that the persons working on the permit are qualified and knowledgeable so that: (1) The health and well-being of the species is guaranteed, (2) the take will be humane, and (3) the research/enhancement activities will be bona fide and necessary. [§222.308(b)(3)]

**1. If the applicant will not be the sole person conducting the proposed activities, provide the names, phone numbers, and résumés for each Principal Investigator and Field Supervisor. A Principal Investigator is ultimately responsible for the project and compliance with the permit conditions. A Field Supervisor (who may also be the Principal Investigator), is anyone who supervises or carries out the activities in the field without supervision, and will also be responsible for compliance with the permit conditions.**

**2. To the extent possible, provide a list of field personnel.**

Should there be a violation or any issue arising from the permit, NMFS needs to know who the responsible parties are. [§222.308(b)(6)(vi)]

For enforcement purposes, NMFS needs a record of who will be performing the authorized activities. [§222.308(b)(6)(vi)]

**3. Provide the name title, agency, address, phone number, and any other appropriate contact information for all sponsors, cooperating institutions, etc.**

Again, NMFS needs to know who the responsible parties are, who is carrying out the authorized activities, and to ensure that they will abide by the permit conditions. [§222.308(b)(6)(vii)]

**4. If the proposed activities will be conducted by a contractor, provide a statement that a qualified member of your staff (include name(s) and qualifications) will supervise or observe the taking. Include a copy of the proposed contract or a letter from the contractor indicating agreement to operate under any and all permit conditions, should a permit be granted.**

Again, NMFS needs to know who the responsible parties are, who is carrying out the authorized activities, and to ensure that they will abide by the permit conditions. [§222.308(b)(6)(vii)]

**5. Provide a description of the arrangements for the disposition of any tissue samples, dead specimens, or other remains. If you will not retain samples, state that samples will be returned to their capture site. If you are going to retain tissue samples (including whole fish), either in a museum or other institution, for the continued benefit to science, include information on where the samples will be stored, transferred, and how/when/where they will be disposed. Include the list of researchers, laboratories, museums, and/or institutional collections that would receive these tissue samples or specimens. Please include name, address, contact, and phone number for each.**

NMFS needs the applicant to ensure (1) that there is a reasonable record kept of where listed species parts are kept, and (2) that the authorized taking (especially lethal taking) of listed species results in maximum benefit to the species. [§222.308(b)(5)(v)]

**6. For transport and long-term holding of listed species, please provide the qualifications and experience of all staff responsible for care without supervision, including a written certification from a licensed veterinarian knowledgeable about the requested species (or similar species), or from a recognized expert on the species (or similar species) that he/she has personally reviewed the criteria for transporting and maintaining the animal(s) and that in his/her opinion they are**

**adequate to provide for the well-being of the animal. Include the name and phone number of this veterinarian, consulting expert, or equivalent who will be available during the proposed activities.**

NMFS has a stewardship responsibility for listed marine and anadromous species, and needs the applicant to ensure that the species will be maintained in appropriate facilities and will be cared for in a safe, humane, and acceptable manner, by qualified personnel. [§222.308(b)(7)(viii),§222.308(b)(8)(v-vii)]

#### **F. Project Description, Purpose, and Significance:**

Necessary to determine the whether or not the proposed research/enhancement is bona fide and will enhance the survival of the subject listed species. Also, will be used to determine the authorization needed by the applicant. [§222.308(b)(4), §222.308(b)(5)(iii)]

##### **1. A justification of the objective(s): motivation, history, goals, etc., and how the wild populations of the species will benefit from the proposed activities;**

Necessary to ensure the research/enhancement activities are bona fide and will be useful for the conservation and management of the species in the wild.

##### **2. A statement of whether the proposed project or program responds directly or indirectly to a recommendation or requirement of a Federal agency (Include citations if applicable). Identify any secured or proposed Federal funding source(s) for the proposed activities, including names, addresses, and phone numbers of the sponsors, cooperating institutions, etc.**

It is in the applicant's interest to provide this information, as it may increase the likelihood that NMFS will issue the permit. [§222.308(b)(5)(iv)] To ensure that sufficient resources are available to complete the project, NMFS needs the applicant to identify funding sources. [§222.308(b)(5)(ii)]

##### **3. A statement of whether or not the proposed project or program has broader significance than the individual project's goals, or is part of a larger scale research management or restoration plan (Include citations if applicable);**

Research that has broad significance will be of greater benefit to the species. Therefore, it is in the applicant's interest to provide this information. [§222.308(b)(5)(iv)]

##### **4. A description of any relationships or similarities of the proposed activities to other proposed or ongoing projects and programs, and whether the potential exists to cooperate and coordinate with other similar studies or activities. (Include**

**citations if applicable); and**

Avoiding unnecessary duplication of effort means lessening the impact to listed species. The applicant should be aware of other similar efforts that are proposed or ongoing. This can also benefit the applicant by encouraging them to work collaboratively with others doing similar work.

**5. A justification for using listed species in the study or activities, and a discussion of possible alternatives to using listed species.**

NMFS has a stewardship responsibility for listed marine and anadromous species, and needs the applicant to justify why the proposed activity must take a listed species rather than a similar, non-listed species.

**G. Project Methodology: Provide a detailed description of the project, or program, in which the listed species is to be used, including:**

NMFS needs to ensure that the research/enhancement activities will be bona fide and necessary, carried out in a humane manner, and will not be unnecessarily duplicative of others' research/enhancement activities. In addition, this information is necessary to ensure that standard and safe protocol is being followed in the handling of the listed species. [§222.308(b)(4)(ii), §222.308(b)(5)]

**1. The proposed duration of the project or program, including start and end dates.**

Necessary to (1) Anticipate when the permit will be needed by the applicant, and (2) ensure coordination with NOAA and other scientists and Enforcement. [§222.308(b)(5)(i)]

**2. A discussion of the procedures and techniques which will be used during the project.**

See justification under G. above. [§222.308(b)(6)(v)]

**3. A discussion of the possible alternatives to using the proposed methods.**

See justification under G. above. [§222.308(b)(6)(ii)]

**4. A discussion of the potential for injury or mortality to the species involved, and the steps that will be taken to minimize adverse effects and to ensure that the species will be taken in a humane manner.**

See justification under G. above. [§222.308(b)(6)(ii)] In addition, NMFS asks the applicant to plan ahead for possible changes in the project structure which may result in a modification to the permit. Since modifications are often as lengthy as the permit

application process, NMFS wishes to help the applicant avoid that burden.  
[§222.308(b)(4)(i)]

**H. Description and Estimates of Take: Issued permits define a specific number of species that can be taken within the approved study or project. You must provide sufficient detail in the attached table for NMFS to determine the species, population group, and estimated number of species to be taken by each activity. You should also describe the specific life stage and origin, (and sex, if appropriate) of the listed species targeted. Take into account alternative scenarios identified above in Project Description, Purpose, and Significance section.**

Species occupying different locations, or different life stages of a listed species, may have different vulnerabilities. In addition, the same activity may have a different impact depending on season (because of spawning activities, seasonal abundance, harshness of weather, etc.). Therefore, NMFS needs this information to properly evaluate the potential impacts of the proposed activities on the listed species. [§222.308(b)(6)]

**Provide a separate table for each project, activity, or location, if appropriate. Attach the table at the end of the application. In addition:**

**1. Describe the recent status and trends of each ESU/species proposed to be taken (include citations where possible).**

As the applicant is requesting the privilege of an exemption to the ESA section 9 take prohibitions, NMFS needs their cooperation in conserving, and needs to ensure they have knowledge about, the species they are requesting to impact. Often, the applicant may have more information at this detail level than NMFS. If not, however, NMFS may assist the applicant with this information. [§222.308(b)(6)(iv)]

**2. Provide a justification for all potential mortalities by take category. You should explain how you determined the numbers of listed species that would be killed, either intentionally (direct mortality, lethal take) or unintentionally (indirect mortality). You may reference section G.4. in explaining mortality rates.**

Necessary to ensure that there will not be unnecessary injury or mortality to the species, and to measure impacts of any activity which might cause injury/mortality.  
[§222.308(b)(6)(ii)]

**3. Provide details on how all take estimates, including mortalities, were derived. Include citations when applicable.**

NMFS must be able to review estimation methods to ensure that they are scientifically valid and repeatable by experts and reviewers. This justification will assist permit analysts and reviewers determine if the estimates are accurate.

**4. Include a statement as to whether or not any USFWS listed species would be**



**affected. If any would be, include which species and DPS' and the authority you have to take those species (permit, consultation, agreement).**

NMFS cooperates with the USFWS to consider the effects of the actions it permits on USFWS listed species. This is of benefit to the applicant and both agencies by encouraging all to collaborate on the activities.

### **I. Transportation and Holding**

**1. Transportation of a Listed Species: Provide a description of how any live species taken from the capture site or other facility (including rescue and relocation activities) will be transported.**

NMFS needs the applicant to ensure that listed species will be transported with appropriate facilities according to established protocols. [§222.308(b)(7)]

**2. Holding of a Listed Species: Describe the plan for care and maintenance of any live individuals, including a complete description of the facilities where any such individuals will be maintained.**

NMFS needs the applicant to ensure that any listed species to be held in captivity will be maintained at appropriate facilities and will be cared for in a safe, humane, and acceptable manner. [§222.308(b)(8)]

**3. Emergency contingencies: Identify emergency contingencies- e.g., backup life support systems, alarm systems, redundant water and oxygen supply, release or destroy decision chains, etc.**

NMFS needs to ensure the applicant has plans for handling emergency situations, to minimize the impact to listed species. In addition, if the applicant has and follows such plans, it may circumvent the need to stop research/enhancement activities in the event of such an emergency.

**J. Cooperative Breeding Program: You must include a statement of willingness to participate in a cooperative breeding program and to maintain or contribute data to a breeding program, if such action is requested.**

Necessary to ensure that the applicant will be willing to contribute to captive breeding should it become necessary for the survival of a severely endangered species. [§222.308(b)(9)]

**K. Previous or Concurrent Activities Involving Listed Species:**

This information provides a track record of the applicant's work with listed or similar species, and how any problems (resulting in death to the species) were handled. [§222.308(b)(11)]

**L. Certification and signature:**

NMFS needs the applicant to certify the information is accurate, under penalties of the ESA. [§222.308(b)(12-13)]

**M. Length of Time and Cost to Prepare Application (Optional): The public burden of these application instructions is evaluated periodically by the Office of Management and Budget under the Paperwork Reduction Act. Your response will help improve the accuracy of the estimates given for evaluation. You may send comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, to the Chief, Endangered Species Division, at the address under Where Do I Send the Application?**

1. **1. Please estimate the length of time, in hours, it took to compile this application, and the cost of those hours.**
2. **2. Please estimate the cost, in \$US, of compiling this application, excluding the labor hours identified in item 1 above. This estimate should include: cost of paper, printing, mailing, photocopying, etc.**

To help improve the accuracy of future estimates for PRA purposes, the optional question has been added to the application instructions regarding hours and cost of compiling the application; this seemed a less burdensome way to find out the information than conducting a separate survey, as it should be fresh in the applicant's mind, and it is optional.

**The Anticipated Annual Take table is used to accurately specify anticipated types and numerical estimates of annual take for listed species during individual research and enhancement activities. It is a useful way to detail the information in section H.**



**ESA Section 10(a)(1)(A) Scientific Research Permit  
Annual Report**

**Date:** \_\_\_\_\_

**Permit Number:** \_\_\_\_\_ **Permit Holder's Name:** \_\_\_\_\_

**Contact Name:** \_\_\_\_\_ **Contact Email:** \_\_\_\_\_ **Contact Phone #:** \_\_\_\_\_  
(Contact = person submitting report)

Study Number and Title (if applicable): \_\_\_\_\_  
Provide separate tables for each study.

**Part I:** This is an example of how to fill out the table. **Replace all red text with the information in the table in your permit.**  
**Replace all blue text with the actual results of your activities.**

ESU/Species and population group if specified in your permit	Life Stage	Origin	Take Activity	Number of Fish Authorized for Take	Actual Number of Listed Fish Taken	Authorized Unintentional Mortality	Actual Unintentional Mortality	Research Location	Research Period
Lower Columbia River (LCR) Chinook	Juvenile	Naturally Produced	Capture, mark, release	100	90	5/100	4/90	Columbia River, Oregon	January - February
LCR Chinook	Adult	Artificially Propagated	Capture, handle, release	10	9	1/10	0/9	Bonneville Dam	June
LCR Chinook	Adult	Naturally Produced	Intentional mortality	20	15	N/A	N/A	Bonneville Dam	June
Oregon Coast Coho	Juvenile	Naturally Produced	Observe / Harass	500	400	N/A	N/A	Nehalem River	October

The above table mirrors the Take Table in the Permit except for two columns: Actual Number of Listed Fish Taken, and Actual Number of Unintentional Mortality. They allow us to compare the number of fish authorized for take with the actual number of fish taken.

**Instructions:**

ESU/Species: Enter the ESU and Species you were permitted to take. Enter by population, if your permit specifies that.

Life Stage: Enter life stage(s) specified in your permit.

Origin: Enter the origins specified in your permit.

Take Activity: Indicate the type of take activity as it is shown in your permit: ACapture, handle release,<sup>1</sup> ACapture, tag [or mark], release,@ AIntentional mortality,@ or other Take Activities listed in your permit. Intentional mortality (i.e., direct mortality, sacrifice) must be accounted for on a separate line (see above). You must account for all Take Activities in your permit. If you did not take any fish or did not conduct the activities, enter zeros in the Actual Take and Actual Mortality columns.

Number of Fish Authorized for Take: State the number of fish authorized for take under each Take Activity (must be the same as the permit).

Actual Number of Listed Fish Taken: State the actual number of fish taken.

Authorized Unintentional Mortality: State the number of fish authorized for unintentional mortality. Enter it as a number OUT OF the Number of Fish Authorized for Take.

Actual Unintentional Mortality: State the actual number of fish you unintentionally killed. Enter it as a number OUT OF the Actual Number of Listed Fish Taken.

Research Location: State where you conducted the activities. Enter hydrologic unit codes (HUC) if available.

Research Period: State when you conducted the activities.

**NOTE: If you conducted activities or took listed fish for which you were not authorized, you must enter them on separate lines of the report and explain exactly what happened (see Part II below).**

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<sup>1</sup> Include fish that were not netted but were shocked during activities.

**Part II:** Briefly Provide the Following Information

1. Measures taken to minimize effects on listed fish and the effectiveness of these measures.

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2. The condition of listed fish taken and used for the research.

--

3. General effects research activities have on fish, including any unforeseen effects.

--

4. How listed fish were injured or killed and how were they disposed of.

--

5. How all take estimates were derived.

--

6. Steps taken to coordinate the research with other researchers.

--

7. Any problems that were encountered during the activities.

--

8. Summary of any preliminary findings (provide an attachment if needed).

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Submit the report electronically to the permit specialist responsible for the permit (see permit cover letter for contact information) or to the appropriate NOAA Fisheries staff person (listed below). If you do not have an electronic version of your electrofishing logbook, please submit a hard copy to the following address or send it to the following fax number (please include your permit number on cover page):

Permit Specialist (see permit for contact information)  
1201 NE Lloyd Blvd., Suite 1100  
Portland, OR 97232-1274  
(503) 230-5441 (FAX)

If you have any questions, please contact the following NOAA Fisheries Service staff:

Lower Columbia, Upper Willamette, and Oregon Coast ESUs	Leslie Schaeffer	Leslie.Schaeffer@noaa.gov	(503) 230-5433
Middle Columbia, Upper Columbia, and Snake Basin ESUs	Rob Clapp	Robert.Clapp@noaa.gov	(503) 231-2314
Puget Sound, Hood Canal, and Ozette Lake ESUs	Gary Rule	Gary.Rule@noaa.gov	(503) 230-5424

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[Document not affected by Public Laws enacted between  
January 2, 2001 and January 28, 2002]  
[CITE: 16USC1538]

TITLE 16--CONSERVATION

CHAPTER 35--**ENDANGERED SPECIES**

Sec. 1538. Prohibited acts

(a) Generally

(1) Except as provided in sections 1535(g)(2) and 1539 of this title, with respect to any **endangered species** of fish or wildlife listed pursuant to section 1533 of this title it is unlawful for any person subject to the jurisdiction of the United States to--

(A) import any such **species** into, or export any such **species** from the United States;

(B) take any such **species** within the United States or the territorial sea of the United States;

(C) take any such **species** upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such **species** taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of commercial activity, any such **species**;

(F) sell or offer for sale in interstate or foreign commerce any such **species**; or

(G) violate any regulation pertaining to such **species** or to any threatened **species** of fish or wildlife listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.

(2) Except as provided in sections 1535(g)(2) and 1539 of this title, with respect to any **endangered species** of plants listed pursuant to section 1533 of this title, it is unlawful for any person subject to the jurisdiction of the United States to--

(A) import any such **species** into, or export any such **species** from, the United States;

(B) remove and reduce to possession any such **species** from areas under Federal jurisdiction; maliciously damage or destroy any such



**species** on any such area; or remove, cut, dig up, or damage or destroy any such **species** on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law;

(C) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such **species**;

(D) sell or offer for sale in interstate or foreign commerce any such **species**; or

(E) violate any regulation pertaining to such **species** or to any threatened **species** of plants listed pursuant to section 1533 of this title and promulgated by the Secretary pursuant to authority provided by this chapter.

(b) **Species** held in captivity or controlled environment

(1) The provisions of subsections (a)(1)(A) and (a)(1)(G) of this section shall not apply to any fish or wildlife which was held in captivity or in a controlled environment on (A) December 28, 1973, or (B) the date of the publication in the Federal Register of a final regulation adding such fish or wildlife **species** to any list published pursuant to subsection (c) of section 1533 of this title: Provided, That such holding and any subsequent holding or use of the fish or wildlife was not in the course of a commercial activity. With respect to any act prohibited by subsections (a)(1)(A) and (a)(1)(G) of this section which occurs after a period of 180 days from (i) December 28, 1973, or (ii) the date of publication in the Federal Register of a final regulation adding such fish or wildlife **species** to any list published pursuant to subsection (c) of section 1533 of this title, there shall be a rebuttable presumption that the fish or wildlife involved in such act is not entitled to the exemption contained in this subsection.

(2)(A) The provisions of subsection (a)(1) of this section shall not apply to--

(i) any raptor legally held in captivity or in a controlled environment on November 10, 1978; or

(ii) any progeny of any raptor described in clause (i);

until such time as any such raptor or progeny is intentionally returned to a wild state.

(B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by regulation require as being reasonably appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the

requirements of other rules and regulations promulgated by the Secretary.

(c) Violation of Convention

(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if--

(A) such fish or wildlife is not an **endangered species** listed pursuant to section 1533 of this title but is listed in Appendix II to the Convention,

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied,

(C) the applicable requirements of subsections (d), (e), and (f) of this section have been satisfied, and

(D) such importation is not made in the course of a commercial activity,

be presumed to be an importation not in violation of any provision of this chapter or any regulation issued pursuant to this chapter.

(d) Imports and exports

(1) In general

It is unlawful for any person, without first having obtained permission from the Secretary, to engage in business--

(A) as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (i) are not listed pursuant to section 1533 of this title as **endangered species** or **threatened species**, and (ii) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants; or

(B) as an importer or exporter of any amount of raw or worked African elephant ivory.

(2) Requirements

Any person required to obtain permission under paragraph (1) of this subsection shall--

(A) keep such records as will fully and correctly disclose

each importation or exportation of fish, wildlife, plants, or African elephant ivory made by him and the subsequent disposition made by him with respect to such fish, wildlife, plants, or ivory;

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his place of business, an opportunity to examine his inventory of imported fish, wildlife, plants, or African elephant ivory and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

### (3) Regulations

The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

### (4) Restriction on consideration of value or amount of African elephant ivory imported or exported

In granting permission under this subsection for importation or exportation of African elephant ivory, the Secretary shall not vary the requirements for obtaining such permission on the basis of the value or amount of ivory imported or exported under such permission.

### (e) Reports

It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (1) are not listed pursuant to section 1533 of this title as **endangered** or **threatened species**, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this chapter or to meet the obligations of the Convention.

### (f) Designation of ports

(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 1533 of this title as **endangered species** or **threatened species**, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except

at a port or ports designated by the Secretary of the Interior. For the purpose of facilitating enforcement of this chapter and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons, if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 668cc-4(d) \1\ of this title, shall, if such designation is in effect on December 27, 1973, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

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\1\ See References in Text note below.  
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#### (g) Violations

It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this section.

(Pub. L. 93-205, Sec. 9, Dec. 28, 1973, 87 Stat. 893; Pub. L. 95-632, Sec. 4, Nov. 10, 1978, 92 Stat. 3760; Pub. L. 97-304, Sec. 9(b), Oct. 13, 1982, 96 Stat. 1426; Pub. L. 100-478, title I, Sec. 1006, title II, Sec. 2301, Oct. 7, 1988, 102 Stat. 2308, 2321; Pub. L. 100-653, title IX, Sec. 905, Nov. 14, 1988, 102 Stat. 3835.)

#### References in Text

Section 668cc-4 of this title, referred to in subsec. (f)(2), was repealed by Pub. L. 93-205, Sec. 14, Dec. 28, 1973, 87 Stat. 903.

#### Amendments

1988--Subsec. (a)(2)(B). Pub. L. 100-478, Sec. 1006, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ``remove and reduce to possession any such **species** from areas under Federal jurisdiction;''.

Subsec. (d). Pub. L. 100-478, Sec. 2301, amended subsec. (d) generally, revising and restating as pars. (1) to (4) provisions of former pars. (1) to (3).

Subsec. (d)(1)(A). Pub. L. 100-653 inserted ``or plants'' after ``purposes''.

1982--Subsec. (a)(2)(B) to (E). Pub. L. 97-304, Sec. 9(b)(1), added subpar. (B) and redesignated former subpars. (B), (C), and (D) as (C), (D), and (E), respectively.

Subsec. (b)(1). Pub. L. 97-304, Sec. 9(b)(2), substituted ``The provisions of subsections (a)(1)(A) and (a)(1)(G) of this section shall not apply to any fish or wildlife which was held in captivity or in a controlled environment on (A) December 28, 1973, or (B) the date of the publication in the Federal Register of a final regulation adding such fish or wildlife **species** to any list published pursuant to subsection (c) of section 1533 of this title: Provided, That such holding and any subsequent holding or use of the fish or wildlife was not in the course of a commercial activity. With respect to any act prohibited by subsections (a)(1)(A) and (a)(1)(G) of this section which occurs after a period of 180 days from (i) December 28, 1973, or (ii) the date of publication in the Federal Register of a final regulation adding such fish or wildlife **species** to any list published pursuant to subsection (c) of section 1533 of this title, there shall be a rebuttable presumption that the fish or wildlife involved in such act is not entitled to the exemption contained in this subsection'' for ``The provisions of this section shall not apply to any fish or wildlife held in captivity or in a controlled environment on December 28, 1973, if the purposes of such holding are not contrary to the purposes of this chapter; except that this subsection shall not apply in the case of any fish or wildlife held in the course of a commercial activity. With respect to any act prohibited by this section which occurs after a period of 180 days from December 28, 1973, there shall be a rebuttable presumption that the fish or wildlife involved in such act was not held in captivity or in a controlled environment on December 28, 1973''.

Subsec. (b)(2)(A). Pub. L. 97-304, Sec. 9(b)(3), substituted ``The provisions of subsection (a)(1) of this section shall not apply to'' for ``This section shall not apply to'' in provisions preceding cl. (i).

1978--Subsec. (b). Pub. L. 95-632 designated existing provision as par. (1) and added par. (2).

#### Human Activities Within Proximity of Whales

Pub. L. 103-238, Sec. 17, Apr. 30, 1994, 108 Stat. 559, provided that:

``(a) Lawful Approaches.--In waters of the United States surrounding the State of Hawaii, it is lawful for a person subject to the jurisdiction of the United States to approach, by any means other than an aircraft, no closer than 100 yards to a humpback whale, regardless of whether the approach is made in waters designated under section 222.31

of title 50, Code of Federal Regulations, as cow/calf waters.

``(b) Termination of Legal Effect of Certain Regulations.--  
Subsection (b) of section 222.31 of title 50, Code of Federal  
Regulations, shall cease to be in force and effect.''

#### Territorial Sea of United States

For extension of territorial sea of United States, see Proc. No.  
5928, set out as a note under section 1331 of Title 43, Public Lands.

#### Section Referred to in Other Sections

This section is referred to in sections 1533, 1535, 1536, 1539, 1540  
of this title.

Application accepted by Commissioner of Customs: June 8, 2005.

**Gerald A. Zerdy,**

*Program Manager, Statutory Import Programs Staff.*

[FR Doc. E5-3256 Filed 6-21-05; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Application and Reports for Scientific Research and Enhancement Permits Under the Endangered Species Act

**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 August 22, 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 Leslie Schaeffer, 503-230-5433 or [leslie.schaeffer@noaa.gov](mailto:leslie.schaeffer@noaa.gov).

#### 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. Section 10 of the ESA allows permits authorizing the taking of endangered species for research/enhancement purposes. The corresponding regulations established procedures for persons to apply for such permits. In addition, the regulations set forth specific reporting requirements for such permit holders.

The regulations contain two sets of information collections: (1) Applications for research/enhancement permits, and (2) reporting requirements for permits issued.

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. To issue permits under ESA section 10(a)(1)(A), the National Marine Fisheries Service (NMFS) must determine that (1) such exceptions were applied for in good faith, (2) if granted and exercised 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 ESA.

The currently approved application and reporting requirements are being revised to apply only to Pacific salmon and steelhead, as requirements regarding other species are being addressed in a separate information collection. Clarification of some of the narrative will also be provided, based on previous applicants' responses and submitted applications and reports.

##### II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include e-mail of electronic forms, and mail and facsimile transmission of paper forms.

##### III. Data

*OMB Number:* 0648-0402.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Non-profit institutions; State, local, or tribal government; and businesses or other for-profit organizations.

*Estimated Number of Respondents:* 113.

*Estimated Time Per Response:* 30 hours for permit applications; 10 hours for permit modification requests; 10 hours for annual reports; and 20 hours for final reports.

*Estimated Total Annual Burden Hours:* 2,280.

*Estimated Total Annual Cost to Public:* \$2,000.

##### 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: June 16, 2005.

**Gwellnar Banks,**

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

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**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Report of Whaling Operations.

**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 August 22, 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 Cheri McCarty, Office of Protected Resources, (301) 713-2322 or [Cheri.Mccarty@noaa.gov](mailto:Cheri.Mccarty@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

Native Americans are allowed to conduct certain aboriginal subsistence whaling in accordance with the provisions of the International Whaling Commission (IWC). In order to respond to obligations under the International Convention for the Regulation of Whaling, and the IWC, captains participating in these operations must submit certain information to the