

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

07/12/2006

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for the extension of approval of an information collection received on 05/05/2006.

TITLE: Limits on Application of Take Prohibitions

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITHOUT CHANGE

OMB NO.: 0648-0399

EXPIRATION DATE: 07/31/2009

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	547	4,235	2
New	401	1,705	1
Difference	-146	-2,530	-1
Program Change		0	-1
Adjustment		-2,530	0

TERMS OF CLEARANCE: None

NOTE: The agency is required to display the OMB control number and inform respondents of its legal significance (see 5 CFR 1320.5(b)).

OMB Authorizing Official Title

John F. Morrall III Acting Deputy Administrator, Office of
Information and Regulatory Affairs

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.

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

19. Certification for Paperwork Reduction Act Submissions

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

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

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

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

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

Signature of Senior Official or designee

Date

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

Signature

Date

Signature of NOAA Clearance Officer

Signature

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

A. JUSTIFICATION

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

Section 4(d)¹ of the Endangered Species Act of 1973 (ESA) requires the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) to adopt such regulations as it “deems necessary and advisable to provide for the conservation of” threatened species. Those regulations may include any or all of the prohibitions provided in section 9(a)(1) of the ESA, which specifically prohibits “take” of any endangered species (“take” includes actions that harass, harm, pursue, kill, or capture). There are presently 21 separate Evolutionarily Significant Units (ESUs) of west coast salmonids listed as threatened, covering a large percentage of the land base in California, Oregon, Washington and Idaho. On June 28, 2005 (70 FR 37160) and February 1, 2006 (71 FR 5178), NOAA Fisheries issued final regulations which makes ESA section 9 prohibitions generally applicable to these threatened ESUs except in 14 programs and circumstances.

The final regulations (attached) describe 14 programs or circumstances that contribute to the conservation of, or are being conducted in a way that adequately limits impacts on, listed salmonids. Certain of these 14 “limits” on the take prohibitions entail voluntary submission of a plan(s) to NOAA Fisheries and require annual or occasional reports by entities wishing to take advantage of these limits, or continue within them.

Each of the 14 limits applies to a different sector of activity, and to different potential populations of responders. The sectors include: Tribal Resource Management Plans (Joint State and Tribal Resource Management Plans); Fishery Harvest and Hatchery Plans; Scientific Research Activities; Diversion Screening; Routine Road Maintenance (in which any city, state, county or port or regional government therein may adopt the Oregon Department of Transportation (ODOT’s) program or submit an equally protective program); Urban Development; Reports of Salmonids Assisted, Disposed of, or Salvaged; Artificial Propagation; and Annual Reports. A brief description of the Limits that may involve the collection of information follows, and the burdens associated with each of these is discussed below (see #s 12-14).

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

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

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

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

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

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

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

Diversion Screening Limit: Water diversion structures (gravity flow or pumps) that have not been screened to prevent fish from being injured or diverted into fields are a significant source of injury and mortality to listed salmonids, particularly to juveniles. State laws and Federal

programs have long recognized these problems in varying ways, and encouraged or required adequate screening of diversion ditches, structures, and pumps to prevent much of the anadromous fish loss attributable to this cause. Nonetheless, large numbers of diversions are not adequately screened and elimination of that source of injury or death is vital to conservation of listed salmonids. This limit (Limit 9) should prompt diverters to move quickly to provide adequate screening or other protections for their diversions, because once so screened, take prohibitions would not apply. The diversion must be screened in accord with NOAA Fisheries' Southwest Region "Fish Screening Criteria for Anadromous Salmonids, January 1997" or any subsequent revision (available by contacting NOAA Fisheries). The operator would need to provide documentation for the screening installed, including plans, for a written acknowledgment from NOAA Fisheries' engineering staff or designated agent that the screens are in compliance with the above criteria.

Routine Road Maintenance: This limit (Limit 10) is available to any city, state, county or port or regional government therein, provided that: (1) they are conducted by the employees or agents of the state or any county, city, or port under a program that is substantially similar to that contained in the ODOT Guide or under a program that has been determined by NOAA Fisheries to meet or exceed the protections provided by the ODOT guide, or that (2) they are conducted by employees or agents of the State or any county, city, or port in a manner that has been found by NOAA Fisheries to contribute to properly functioning habitat conditions for the threatened salmonid ESUs considered in the rule. The city or county would need to prepare an agreement detailing how it will assure adequate training and compliance with the ODOT or equivalent guidance, and describing any dust abatement practices it wishes to be within the limit. The ODOT guide governs the manner in which crews should proceed on a wide variety of routine maintenance activities, including surface and shoulder work, ditch, bridge, and culvert maintenance, snow and ice removal, emergency maintenance, mowing, brush control and other vegetation management. The program directs activity toward favorable weather conditions, increases attention to erosion control, prescribes appropriate equipment use, governs disposal of vegetation or sediment removed from roadsides or ditches, and includes other improved protections for listed salmonids, as well as improving habitat conditions generally. Routine road maintenance conducted in compliance with the ODOT program or an equivalent program will adequately address the problems potentially associated with such activity.

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

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

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

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

Many plans/programs have been submitted to NOAA Fisheries since the rules first became effective (July 10, 2000, 65 FR 42422, and January 9, 2002, 67 FR 68725.). NOAA Fisheries expects more programs to be submitted in the future. Reports are required for limits each year. The practical utility of these submissions is that, assuming a plan or program is found to meet the criteria associated with the particular limit in the 4(d) rule, the state or other entity submitting the plan, and individuals acting in compliance with the plan, can carry on with their activity knowing that they are in full compliance with the ESA and need not be concerned with any possibility of ESA enforcement.

It is anticipated that the information collected will be disseminated to the public or used to support publicly disseminated information. As explained in the preceding paragraphs, the information gathered has utility. NOAA Fisheries will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

The rule does not require any particular method of submission of plans or reports. However, NOAA Fisheries, in conjunction with the state of Oregon, has developed a web-based system for applicants to use in applying for a scientific research permit (Limit 7) – see attached. The states of Washington and Idaho have recently begun using this system as well and are expected to increase their usage in the near future. Historically, researcher applications varied considerably

in quality and level of detail. The web-based system has helped streamline the application and authorization processes for researchers and the review process for NOAA biologists.

4. Describe efforts to identify duplication.

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

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

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

None of these collections will have a significant economic impact on small entities. Any economic impact of these rules flows from the application of the take prohibition in the first instance, which has no associated collection of information.

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

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

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

This collection is consistent with OMB guidelines.

8. Provide 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 (and none received) in a *Federal Register* Notice dated January 23, 2006 (see attached).

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

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

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

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

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

No sensitive questions are asked.

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

The number of hours per response varies depending on the particular limit, ranging from 5 hours for reports involving salmon rescue/salvage to 2 hours for packages developed under the research limit, and 2 hours for an annual report. Based on recent activity, we expect a total of 301 respondents to make 401 requests annually (some respondents will submit more than one request). This would result in a total annual burden of 1,705 hours (see Table #1 at the end of this section).

The annual labor costs, at \$18 per hour, vary depending on the particular limit, ranging from \$360 for salmon rescue/salvage to \$7,200 for packages developed under the research limit (see Table #1).

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).

Miscellaneous costs for the expected burden total \$580 annually (see Table #1).

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

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

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

Corrections have been made to the previous PRA submission based on new calculations and revised respondent estimates as a result of agency implementation of the ESA limits. Annually, 2,530 fewer burden hours are expected, with several request types having decreased. The bulk of the recordkeeping and reporting cost decrease, from \$1,820 to \$580, is due to the availability of the web-based application for research permits.

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

There are no plans to publish the data.

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

Not seeking such approval.

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

There are no exceptions to the certification requirement. The submission does not indicate the retention period for record keeping requirements, since the rules do not specify any retention period.

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

Cost to Public										
	Diversion Screens	Road Maint. Agreemt.	Urban Dev. Ordinance Pkgs.	Tribal Plans & Joint State/Tribe Plans	Fishery Harvest & Hatchery Plans	Report Aided/Rescued Salmon	Research Permits	Art. Prop.	Annual Reports	TOTAL
Annual # Responses	50	10	10	10	10	4	200	7	100 ²	401 ³
# Hours per Response	5	20	30	20	10	5	2	5	2	
Total Annual Hours	250	200	300	200	100	20	400	35	200	1,705
Labor Cost per Response (@18/hr)	\$90	\$360	\$540	\$360	\$180	\$90	\$36	\$90	\$36	
Labor Costs (Annual)	\$4,500	\$3,600	\$5,400	\$3,600	\$1,800	\$360	\$7,200	\$630	\$3,600	\$30,690
O&M Costs (Annual) ⁴	\$50	\$50	\$70	\$50	\$80	\$20	\$40	\$20	\$200	\$580
Cost to Government										
Processing: Federal Government Hours per Response	15	20	70	40	20	5	3	15	8	
Total Annual Hours	750	200	700	400	200	20	600	105	800	5,351
Cost Per Response (@ \$18/hr)	\$270	\$360	\$1,260	\$720	\$360	\$90	\$54	\$270	\$144	
Total Annual Cost	\$13,500	\$3,600	\$12,600	\$7,200	\$3,600	\$360	\$10,8000	\$1,890	\$14,400	\$67,950

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable. The collection will not employ statistical methods.

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

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

⁴ Incidentals = materials, printing, mailing, etc.



Scientific Research and Take Authorizations



Alert: Federal 4(d) applications will not be automatically considered if submitted after November 18, 2005.

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The National Marine Fisheries Service (NOAA Fisheries) is pleased to provide this site for researchers to apply for approval to take NOAA Fisheries listed species as well as Oregon Department of Fish and Wildlife state scientific taking permits (STP). One application can be used to obtain both federal approval and Oregon STP.

Currently only Oregon STP applications are being accepted. You may apply for an Oregon STP at any time, but please allow at least six weeks for processing. Applications for approval to take NOAA Fisheries listed species are not being accepted at this time.

If this is your first visit to this site and you wish to create an account, click on the **New Researcher** button below. If you already have an account, click on the **Registered User** button.

SEARCH FEATURE: To search the database, click on the **Registered User** button, enter **guest** in the User ID box and click on the Logon button.

PUBLIC REPORTING BURDEN STATEMENT - This collection of information is estimated to average 2 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments regarding this burden estimate (including suggestions for reducing it) or any other aspect of this collection of information to NOAA Fisheries, Attn: Chief, Protected Species Branch, 1201 NE Lloyd Blvd. Suite 1100, Portland, Oregon, 97232. OMB Control # 0648-0399. Expiration Date: June 30, 2006.

[Registered User](#)

[New Researcher](#)



Scientific Research and Take Authorizations

Welcome Leslie Schaeffer
Project: OR2006-3356
Application Date: 03/24/06

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- [Project Info](#)
- Project Outline**
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[Hydrologic Unit Map](#)

Alert: Federal 4(d) applications will not be automatically considered if submitted after November 18, 2005.

Project Outline

[< Back](#) [Clear](#) [Next >](#)

*** Project Type:**

To select more than one entry, hold down the control (CTRL) key and use the mouse to click on each entry you want.

- Academic Research
- Education - School/College
- Management/Applied Research
- Monitoring
- Public Display (zoo, aquarium)

*** Project Purpose:**

(400 characters max)

*** Project Description:**

(2,000 characters max)

[\[Attach file\]](#)

*** Actions taken to minimize impacts to listed fish:**

(800 characters max)

*** District Biologist Comments:**

Required unless applicant is an employee of IDFG, ODFW or WDFW.

New Comment:

Date:

Name: FIRST NAME LAST NAME

Comment:

[\[ADD\]](#)

Date From Response/Suggestions

No Comments

Code of Federal Regulations, Title 50, Chapter II

PART 223_THREATENED MARINE AND ANADROMOUS SPECIES Subpart B_Restrictions Applicable to Threatened Marine and Anadromous Species

Sec. 223.203 Anadromous fish.

§ 223.203 **Anadromous fish.** Available guidance documents cited in the regulatory text are listed in Appendix A to this section.

(a) *Prohibitions.* The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to anadromous fish with an intact adipose fin that are part of the threatened species of salmonids listed in § 223.102(a).

(b) *Limits on the prohibitions.* The limits to the prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a) are described in the following paragraphs (b)(1) through (b)(13):

[Limit 1] (1) The exceptions of section 10 of the ESA (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, including regulations in part 222 of this chapter implementing such exceptions, also apply to the threatened species of salmonids listed in § 223.102(a).

[Limit 2] (2) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a) do not apply to activities specified in an application for 4(d) authorization for scientific purposes or to enhance the conservation or survival of the species, provided that the application has been received by the Assistant Administrator for Fisheries, NOAA (AA), no later than August 29, 2005. The prohibitions of this section apply to these activities upon the AA's rejection of the application as insufficient, upon issuance or denial of authorization, or December 28, 2005, whichever occurs earliest.

[Limit 3] (3) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a) do not apply to any employee or designee of NMFS, the United States Fish and Wildlife Service, any Federal land management agency, the Idaho Department of Fish and Game (IDFG), Washington Department of Fish and Wildlife (WDFW), the Oregon Department of Fish and Wildlife (ODFW), California Department of Fish and Game (CDFG), or of any other governmental entity that has co-management authority for the listed salmonids, when the employee or designee, acting in the course of his or her official duties, takes a threatened salmonid without a permit if such action is necessary to: (i) Aid a sick, injured, or stranded salmonid, (ii) Dispose of a dead salmonid, or (iii) Salvage a dead salmonid which may be useful for scientific study. (iv) Each agency acting under this limit on the take prohibitions of paragraph (a) of this section is to report to NMFS the numbers of fish handled and their status, on an annual basis. A designee of the listed entities is any individual the Federal or state fishery agency or other co-manager has authorized in writing to perform the listed functions.

[Limit 4] (4) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a) do not apply to fishery harvest activities provided that: (i) Fisheries are managed in accordance with a NMFS-approved Fishery Management and Evaluation Plan (FMEP) and implemented in accordance with a letter of concurrence from NMFS. NMFS will approve a FMEP only if it clearly defines its intended scope and area of impact and sets forth the management objectives and performance indicators for the plan. The plan must adequately address the following criteria: (A) Define populations within affected listed ESUs, taking into account spatial and temporal distribution, genetic and phenotypic diversity, and other appropriate identifiable unique biological and life history traits. Populations may be aggregated for management purposes when dictated by information scarcity, if consistent with survival and recovery of the listed ESU. In identifying management units, the plan shall describe the reasons for using such units in lieu of population units, describe how the management units are defined, given biological and life history traits, so as to maximize consideration of the important biological diversity contained within the listed ESU, respond to the scale and complexity of the ESU, and help ensure consistent treatment of listed salmonids across a diverse geographic and jurisdictional range. (B) Utilize the concepts of "viable" and "critical" salmonid population thresholds, consistent with the concepts contained in the technical document entitled "Viable Salmonid Populations (NMFS, 2000b)." The VSP paper provides a framework for identifying the biological requirements of listed salmonids, assessing the effects of management and conservation actions, and ensuring that such actions provide for the survival and recovery of listed species. Proposed management actions must recognize the significant differences in risk associated with viable and critical population threshold states and respond accordingly to minimize the long-term risks to population persistence. Harvest actions impacting populations that are functioning at or above the viable threshold must be designed to maintain the population or management unit at or above that level. For populations shown with a high degree of confidence to be above critical levels but not yet at viable levels, harvest management must not appreciably slow the population's achievement of viable function. Harvest actions impacting populations that are functioning at or below critical threshold must not be allowed to appreciably increase genetic and demographic risks facing the population and must be designed to permit the population's achievement of viable function, unless the plan demonstrates that the likelihood of survival and recovery of the entire ESU in the wild would not be appreciably reduced by greater risks to that individual population. (C) Set escapement objectives or maximum exploitation rates for each management unit or population based on its status and on a harvest program that assures that those rates or objectives are not exceeded. Maximum exploitation rates must not appreciably reduce the likelihood of survival and recovery of the ESU. Management of fisheries where artificially propagated fish predominate must not compromise the management objectives for commingled naturally spawned populations. (D) Display a biologically based rationale demonstrating that the harvest management strategy will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild, over the entire period of time the proposed harvest management strategy affects the population, including effects reasonably certain to occur after the proposed actions cease. (E) Include effective monitoring and evaluation programs to assess compliance, effectiveness, and parameter validation. At a minimum, harvest monitoring programs must collect catch and effort data, information on escapements, and information on biological characteristics, such as age, fecundity, size and sex data, and migration timing. (F) Provide for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed. (G) Provide for effective enforcement and education. Coordination among involved jurisdictions is an important element in ensuring regulatory effectiveness and coverage. (H) Include restrictions on resident and anadromous species fisheries that minimize any take of listed species, including time, size, gear, and area restrictions. (I) Be consistent with plans and conditions established within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations. (ii) The state monitors the amount of take of listed salmonids occurring in its fisheries and provides to NMFS on a regular basis, as defined in NMFS' letter of concurrence for the FMEP, a report summarizing this information, as well as the implementation and effectiveness of the FMEP. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the FMEP. (iii) The state confers with NMFS on its fishing regulation changes affecting listed ESUs to ensure consistency with the approved FMEP. Prior to approving a new or amended FMEP, NMFS will publish notification in the FEDERAL REGISTER announcing its availability for public review and comment. Such an announcement will provide for a comment period on the draft FMEP of not less than 30 days. (iv) NMFS provides written concurrence of the FMEP which specifies the implementation and reporting requirements. NMFS' approval of a plan shall be a written approval by NMFS Southwest or Northwest Regional Administrator, as appropriate. On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving a level of

salmonid productivity commensurate with conservation of the listed salmonids. If it is not, NMFS will identify ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit for activities associated with that FMEP. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that the prohibitions would then apply to those fishery harvest activities. A template for developing FMEPs is available from NMFS Northwest Region's website (www.nwr.noaa.gov). (v) The prohibitions of paragraph (a) of this section relating to threatened species of steelhead listed in § 223.102 (a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to fisheries managed solely by the states of Oregon, Washington, Idaho, and California until January 8, 2001.

[Limit 5] (5) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a) do not apply to activity associated with artificial propagation programs provided that: (i) A state or Federal Hatchery and Genetics Management Plan (HGMP) has been approved by NMFS as meeting the following criteria: (A) The HGMP has clearly stated goals, performance objectives, and performance indicators that indicate the purpose of the program, its intended results, and measurements of its performance in meeting those results. Goals shall address whether the program is intended to meet conservation objectives, contribute to the ultimate sustainability of natural spawning populations, and/or intended to augment tribal, recreational, or commercial fisheries. Objectives should enumerate the results desired from the program that will be used to measure the program's success or failure. (B) The HGMP utilizes the concepts of viable and critical salmonid population threshold, consistent with the concepts contained in the technical document entitled "Viable Salmonid Populations" (NMFS, 2000b). Listed salmonids may be purposefully taken for broodstock purposes only if the donor population is currently at or above the viable threshold and the collection will not impair its function; if the donor population is not currently viable but the sole objective of the current collection program is to enhance the propagation or survival of the listed ESU; or if the donor population is shown with a high degree of confidence to be above critical threshold although not yet functioning at viable levels, and the collection will not appreciably slow the attainment of viable status for that population. (C) Taking into account health, abundances, and trends in the donor population, broodstock collection programs reflect appropriate priorities. The primary purpose of broodstock collection programs of listed species is to reestablish indigenous salmonid populations for conservation purposes. Such programs include restoration of similar, at-risk populations within the same ESU, and reintroduction of at-risk populations to underseeded habitat. After the species' conservation needs are met and when consistent with survival and recovery of the ESU, broodstock collection programs may be authorized by NMFS such for secondary purposes, as to sustain tribal, recreational, and commercial fisheries. (D) The HGMP includes protocols to address fish health, broodstock collection, broodstock spawning, rearing and release of juveniles, deposition of hatchery adults, and catastrophic risk management. (E) The HGMP evaluates, minimizes, and accounts for the propagation program's genetic and ecological effects on natural populations, including disease transfer, competition, predation, and genetic introgression caused by the straying of hatchery fish. (F) The HGMP describes interrelationships and interdependencies with fisheries management. The combination of artificial propagation programs and harvest management must be designed to provide as many benefits and as few biological risks as possible for the listed species. For programs whose purpose is to sustain fisheries, HGMPs must not compromise the ability of FMEPs or other management plans to conserve listed salmonids. (G) Adequate artificial propagation facilities exist to properly rear progeny of naturally spawned broodstock, to maintain population health and diversity, and to avoid hatchery-influenced selection or domestication. (H) Adequate monitoring and evaluation exist to detect and evaluate the success of the hatchery program and any risks potentially impairing the recovery of the listed ESU. (I) The HGMP provides for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed; (J) NMFS provides written concurrence of the HGMP which specifies the implementation and reporting requirements. For Federally operated or funded hatcheries, the ESA section 7 consultation will achieve this purpose. (K) The HGMP is consistent with plans and conditions set within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations. (ii) The state monitors the amount of take of listed salmonids occurring in its hatchery program and provides to NMFS on a regular basis a report summarizing this information, and the implementation and effectiveness of the HGMP as defined in NMFS' letter of concurrence. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the HGMP. (iii) The state confers with NMFS on a regular basis regarding intended collections of listed broodstock to ensure congruity with the approved HGMP. (iv) Prior to final approval of an HGMP, NMFS will publish notification in the FEDERAL REGISTER announcing its availability for public review and comment for a period of at least 30 days. (v) NMFS' approval of a plan shall be a written approval by NMFS Southwest or Northwest Regional Administrator, as appropriate. (vi) On a regular basis, NMFS will evaluate the effectiveness of the HGMP in protecting and achieving a level of salmonid productivity commensurate with the conservation of the listed salmonids. If the HGMP is not effective, the NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit on activities associated with that program. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that take prohibitions, likeall other activity not within a limit, would then apply to that program. A template for developing HGMPs is available from NMFS Northwest Region's website (www.nwr.noaa.gov).

[Limit 6] (6) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a) do not apply to actions undertaken in compliance with a resource management plan developed jointly by the States of Washington, Oregon and/or Idaho and the Tribes (joint plan) within the continuing jurisdiction of *United States v. Washington* or *United States v. Oregon*, the on-going Federal court proceedings to enforce and implement reserved treaty fishing rights, provided that: (i) The Secretary has determined pursuant to 50 CFR 223.209 and the government-to-government processes therein that implementing and enforcing the joint tribal/state plan will not appreciably reduce the likelihood of survival and recovery of affected threatened ESUs. (ii) The joint plan will be implemented and enforced within the parameters set forth in *United States v. Washington* or *United States v. Oregon*. (iii) In making that determination for a joint plan, the Secretary has taken comment on how any fishery management plan addresses the criteria in § 223.203(b)(4), or on how any hatchery and genetic management plan addresses the criteria in § 223.203(b)(5). (iv) The Secretary shall publish notice in the FEDERAL REGISTER of any determination whether or not a joint plan, will appreciably reduce the likelihood of survival and recovery of affected threatened ESUs, together with a discussion of the biological analysis underlying that determination. (v) On a regular basis, NMFS will evaluate the effectiveness of the joint plan in protecting and achieving a level of salmonid productivity commensurate with conservation of the listed salmonids. If the plan is not effective, then NMFS will identify to the jurisdiction ways in which the joint plan needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit on activities associated with that joint plan. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to withdraw the limit so that take prohibitions would then apply to that joint plan as to all other activity not within a limit.

[Limit 7] (7) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a) do not apply to scientific research activities provided that: (i) Scientific research activities involving purposeful take is conducted by employees or contractors of the ODFW, WDFW (Agencies), IDFG, or CDFG (Agencies), or as a part of a monitoring and research program overseen by or coordinated with that Agency. (ii) The Agencies provide for NMFS' review and approval a list of all scientific research activities involving direct take planned for the coming year, including an estimate of the total direct take that is anticipated, a description of the study design, including a justification for taking the species and a description of the techniques to be used, and a point of contact. (iii) The Agencies annually provide to NMFS the results

of scientific research activities directed at threatened salmonids, including a report of the direct take resulting from the studies and a summary of the results of such studies. (iv) Scientific research activities that may incidentally take threatened salmonids are either conducted by agency personnel, or are in accord with a permit issued by the Agency. (v) The Agencies provide NMFS annually, for its review and approval, a report listing all scientific research activities it conducts or permits that may incidentally take threatened salmonids during the coming year. Such reports shall also contain the amount of incidental take of threatened salmonids occurring in the previous year's scientific research activities and a summary of the results of such research. (vi) Electrofishing in any body of water known or suspected to contain threatened salmonids is conducted in accordance with NMFS "Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act" (NMFS, 2000a). (vii) NMFS' approval of a research program shall be a written approval by NMFS Northwest or Southwest Regional Administrator.

{Limit 8} (8) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a) do not apply to habitat restoration activities, as defined in paragraph (b)(8)(iv) of this section, provided that the activity is part of a watershed conservation plan, and: (i) The watershed conservation plan has been certified by the State of Washington, Oregon, Idaho, or California (State) to be consistent with the state's watershed conservation plan guidelines. (ii) The State's watershed conservation plan guidelines have been found by NMFS to provide for plans that: (A) Take into account the potential severity of direct, indirect, and cumulative impacts of proposed activities in light of the status of affected species and populations. (B) Will not reduce the likelihood of either survival or recovery of listed species in the wild. (C) Ensure that any taking will be incidental. (D) Minimize and mitigate any adverse impacts. (E) Provide for effective monitoring and adaptive management. (F) Use the best available science and technology, including watershed analysis. (G) Provide for public and scientific review and input. (H) Include any measures that NMFS determines are necessary or appropriate. (I) Include provisions that clearly identify those activities that are part of plan implementation. (J) Control risk to listed species by ensuring funding and implementation of the above plan components. (iii) NMFS will periodically review state certifications of Watershed Conservation Plans to ensure adherence to approved watershed conservation plan guidelines. (iv) "Habitat restoration activity" is defined as an activity whose primary purpose is to restore natural aquatic or riparian habitat conditions or processes. "Primary purpose" means the activity would not be undertaken but for its restoration purpose. (v) Prior to approving watershed conservation plan guidelines under paragraph (b)(8)(ii) of this section, NMFS will publish notification in the FEDERAL REGISTER announcing the availability of the proposed guidelines for public review and comment. Such an announcement will provide for a comment period on the draft guidelines of no less than 30 days.

{Limit 9} (9) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a) do not apply to the physical diversion of water from a stream or lake, provided that: (i) NMFS' engineering staff or any resource agency or tribe NMFS designates (authorized officer) has agreed in writing that the diversion facility is screened, maintained, and operated in compliance with Juvenile Fish Screen Criteria, National Marine Fisheries Service, Northwest Region, Revised February 16, 1995, with Addendum of May 9, 1996, or in California with NMFS' Southwest Region "Fish Screening Criteria for Anadromous Salmonids, January 1997" or with any subsequent revision. (ii) The owner or manager of the diversion allows any NMFS engineer or authorized officer access to the diversion facility for purposes of inspection and determination of continued compliance with the criteria. (iii) On a case by case basis, NMFS or an Authorized Officer will review and approve a juvenile fish screen design and construction plan and schedule that the water diverter proposes for screen installation. The plan and schedule will describe interim operation measures to avoid take of threatened salmonids. NMFS may require a commitment of compensatory mitigation if implementation of the plan and schedule is terminated prior to completion. If the plan and schedule are not met, or if a schedule modification is made that is not approved by NMFS or Authorized Officer, or if the screen installation deviates from the approved design, the water diversion will be subject to take prohibitions and mitigation. (iv) This limit on the prohibitions of paragraph (a) of this section does not encompass any impacts of reduced flows resulting from the diversion or impacts caused during installation of the diversion device. These impacts are subject to the prohibition on take of listed salmonids.

{Limit 10} (10) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a) do not apply to routine road maintenance activities provided that: (i) The activity results from routine road maintenance activity conducted by ODOT employees or agents that complies with ODOT's Transportation Maintenance Management System Water Quality and Habitat Guide (July, 1999); or by employees or agents of a state, county, city or port that complies with a program substantially similar to that contained in the ODOT Guide that is determined to meet or exceed the protections provided by the ODOT Guide; or by employees or agents of a state, county, city or port that complies with a routine road maintenance program that meets proper functioning habitat conditions as described further in subparagraph (ii) following. NMFS' approval of state, city, county, or port programs that are equivalent to the ODOT program, or of any amendments, shall be a written approval by NMFS Northwest or Southwest Regional Administrator, whichever is appropriate. Any jurisdiction desiring its routine road maintenance activities to be within this limit must first commit in writing to apply management practices that result in protections equivalent to or better than those provided by the ODOT Guide, detailing how it will assure adequate training, tracking, and reporting, and describing in detail any dust abatement practices it requests to be covered. (ii) NMFS finds the routine road maintenance activities of any state, county, or port to be consistent with the conservation of listed salmonids' habitat when it contributes, as does the ODOT Guide, to the attainment and maintenance of properly functioning condition (PFC). NMFS defines PFC as the sustained presence of natural habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate an approved program for its effectiveness in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than one year, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit so that take prohibitions would then apply to the program as to all other activity not within a limit. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions. (iii) Prior to implementing any changes to a program within this limit the jurisdiction provides NMFS a copy of the proposed change for review and approval as within this limit. (iv) Prior to approving any state, city, county, or port program as within this limit, or approving any substantive change in a program within this limit, NMFS will publish notification in the FEDERAL REGISTER announcing the availability of the program or the draft changes for public review and comment. Such an announcement will provide for a comment period of not less than 30 days. (v) Pesticide and herbicide spraying is not included within this limit, even if in accord with the ODOT guidance.

{Limit 11} (11) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a) do not apply to activities within the City of Portland, Oregon Parks and Recreation Department's (PP&R) Pest Management Program (March 1997), including its Waterways Pest Management Policy updated December 1, 1999, provided that: (i) Use of only the following chemicals is included within this limit on the take prohibitions: Round Up, Rodeo, Garlon 3A, Surfactant LI-700, Napropamide, Cutrine Plus, and Aquashade. (ii) Any chemical use is initiated in accord with the priorities and decision processes of the Department's Pest Management Policy, including the Waterways Pest Management Policy, updated December 1, 1999. (iii) Any chemical use within a 25 ft. (7.5 m) buffer complies with the buffer application

constraints contained in PP&R's Waterways Pest Management Policy (update December 1, 1999). (iv) Prior to implementing any changes to this limit, the PP&R provides NMFS with a copy of the proposed change for review and approval as within this limit. (v) Prior to approving any substantive change in a program within this limit, NMFS will publish notification in the FEDERAL REGISTER announcing the availability of the program or the draft changes for public review and comment. Such an announcement will provide for a comment period of no less than 30 days. (vi) NMFS' approval of amendments shall be a written approval by NMFS Northwest Regional Administrator. (vii) NMFS finds the PP&R Pest Management Program activities to be consistent with the conservation of listed salmonids' habitat by contributing to the attainment and maintenance of properly functioning condition (PFC). NMFS defines PFC as the sustained presence of a watershed's natural habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate the effectiveness of an approved program in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than 1 year, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit so that take prohibitions would then apply to the program as to all other activity not within a limit. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions.

{Limit 12} (12) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a) do not apply to municipal, residential, commercial, and industrial (MRCI) development (including redevelopment) activities provided that: (i) Such development occurs pursuant to city, county, or regional government ordinances or plans that NMFS has determined are adequately protective of listed species; or within the jurisdiction of the Metro regional government in Oregon and pursuant to ordinances that Metro has found comply with its Urban Growth Management Functional Plan (Functional Plan) following a determination by NMFS that the Functional Plan is adequately protective. NMFS approval or determinations about any MRCI development ordinances or plans, including the Functional Plan, shall be a written approval by NMFS Northwest or Southwest Regional Administrator, whichever is appropriate. NMFS will apply the following 12 evaluation considerations when reviewing MRCI development ordinances or plans to assess whether they adequately conserve listed salmonids by maintaining and restoring properly functioning habitat conditions: (A) MRCI development ordinance or plan ensures that development will avoid inappropriate areas such as unstable slopes, wetlands, areas of high habitat value, and similarly constrained sites. (B) MRCI development ordinance or plan adequately avoids stormwater discharge impacts to water quality and quantity or to the hydrograph of the watershed, including peak and base flows of perennial streams. (C) MRCI development ordinance or plan provides adequately protective riparian area management requirements to attain or maintain PFC around all rivers, estuaries, streams, lakes, deepwater habitats, and intermittent streams. Compensatory mitigation is provided, where necessary, to offset unavoidable damage to PFC due to MRCI development impacts to riparian management areas. (D) MRCI development ordinance or plan avoids stream crossings by roads, utilities, and other linear development wherever possible, and, where crossings must be provided, minimize impacts through choice of mode, sizing, and placement. (E) MRCI development ordinance or plan adequately protects historical stream meander patterns and channel migration zones and avoids hardening of stream banks and shorelines. (F) MRCI development ordinance or plan adequately protects wetlands and wetland functions, including isolated wetlands. (G) MRCI development ordinance or plan adequately preserves the hydrologic capacity of permanent and intermittent streams to pass peak flows. (H) MRCI development ordinance or plan includes adequate provisions for landscaping with native vegetation to reduce need for watering and application of herbicides, pesticides, and fertilizer. (I) MRCI development ordinance or plan includes adequate provisions to prevent erosion and sediment run-off during construction. (J) MRCI development ordinance or plan ensures that water supply demands can be met without impacting flows needed for threatened salmonids either directly or through groundwater withdrawals and that any new water diversions are positioned and screened in a way that prevents injury or death of salmonids. (K) MRCI development ordinance or plan provides necessary enforcement, funding, reporting, and implementation mechanisms and formal plan evaluations at intervals that do not exceed 5 years. (L) MRCI development ordinance and plan complies with all other state and Federal environmental and natural resource laws and permits. (ii) The city, county or regional government provides NMFS with annual reports regarding implementation and effectiveness of the ordinances, including: any water quality monitoring information the jurisdiction has available; aerial photography (or some other graphic display) of each MRCI development or MRCI expansion area at sufficient detail to demonstrate the width and vegetation condition of riparian set-backs; information to demonstrate the success of stormwater management and other conservation measures; and a summary of any flood damage, maintenance problems, or other issues. (iii) NMFS finds the MRCI development activity to be consistent with the conservation of listed salmonids' habitat when it contributes to the attainment and maintenance of PFC. NMFS defines PFC as the sustained presence of a watershed's habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Periodically, NMFS will evaluate an approved program for its effectiveness in maintaining and achieving habitat function that provides for conservation of the listed salmonids. Whenever warranted, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If any jurisdiction within the limit does not make changes to respond adequately to the new information in the shortest amount of time feasible, but not longer than 1 year, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit so that take prohibitions would then apply to the program as to all other activity not within a limit. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) prohibitions. (iv) Prior to approving any city, county, or regional government ordinances or plans as within this limit, or approving any substantive change in an ordinance or plan within this limit, NMFS will publish notification in the FEDERAL REGISTER announcing the availability of the ordinance or plan or the draft changes for public review and comment. Such an announcement will provide for a comment period of no less than 30 days.

{Limit 13} (13) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a) do not apply to non-Federal forest management activities conducted in the State of Washington provided that: (i) The action is in compliance with forest practice regulations adopted and implemented by the Washington Forest Practices Board that NMFS has found are at least as protective of habitat functions as are the regulatory elements of the Forests and Fish Report dated April 29, 1999, and submitted to the Forest Practices Board by a consortium of landowners, tribes, and state and Federal agencies. (ii) All non-regulatory elements of the Forests and Fish Report are being implemented. (iii) Actions involving use of herbicides, pesticides, or fungicides are not included within this limit. (iv) Actions taken under alternative plans are included in this limit provided that the Washington Department of Natural Resources (WDNR) finds that the alternate plans protect physical and biological processes at least as well as the state forest practices rules and provided that NMFS, or any resource agency or tribe NMFS designates, has the opportunity to review the plan at every stage of the development and implementation. A plan may be excluded from this limit if, after such review, WDNR determines that the plan is not likely to adequately protect listed salmon. (v) Prior to determining that regulations adopted by the Forest Practice Board are at least as protective as the elements of the Forests and Fish Report, NMFS will publish

notification in the FEDERAL REGISTER announcing the availability of the Report and regulations for public review and comment. (vi) NMFS finds the activities to be consistent with the conservation of listed salmonids' habitat by contributing to the attainment and maintenance of PFC. NMFS defines PFC as the sustained presence of a watershed's natural habitat-forming processes that are necessary for the long-term survival of salmonids through the full range of environmental variation. Actions that affect salmonid habitat must not impair properly functioning habitat, appreciably reduce the functioning of already impaired habitat, or retard the long-term progress of impaired habitat toward PFC. Programs must meet this biological standard in order for NMFS to find they qualify for a habitat-related limit. NMFS uses the best available science to make these determinations. NMFS may review and revise previous findings as new scientific information becomes available. NMFS will evaluate the effectiveness of the program in maintaining and achieving habitat function that provides for conservation of the listed salmonids. If the program is not adequate, NMFS will identify to the jurisdiction ways in which the program needs to be altered or strengthened. Changes may be identified if the program is not protecting desired habitat functions or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If Washington does not make changes to respond adequately to the new information, NMFS will publish notification in the FEDERAL REGISTER announcing its intention to withdraw the limit on activities associated with the program. Such an announcement will provide for a comment period of no less than 30 days, after which NMFS will make a final determination whether to subject the activities to the ESA section 9(a)(1) take prohibitions. (vii) NMFS approval of regulations shall be a written approval by NMFS Northwest Regional Administrator.

(c) *Affirmative Defense.* In connection with any action alleging a violation of the prohibitions of paragraph (a) of this section with respect to the threatened species of salmonids listed in § 223.102 (a), any person claiming the benefit of any limit listed in paragraph (b) of this section or § 223.204(a) shall have a defense where the person can demonstrate that the limit is applicable and was in force, and that the person fully complied with the limit at the time of the alleged violation. This defense is an affirmative defense that must be raised, pleaded, and proven by the proponent. If proven, this defense will be an absolute defense to liability under section 9(a)(1)(G) of the ESA with respect to the alleged violation.

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

APPENDIX A TO § 223.203—LIST OF GUIDANCE DOCUMENTS The following is a list of documents cited in the regulatory text. Copies of these documents may be obtained upon request from the Northwest or Southwest Regional Administrators (see Table 1 in § 600.502 of this title). 1. Oregon Department of Transportation (ODOT) Maintenance Management System Water Quality and Habitat Guide (July, 1999). 2. Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act. 3. Fish Screening Criteria for Anadromous Salmonids, National Marine Fisheries Service, Southwest Region, 1997. 4. Viable Salmonid Populations and the Recovery of Evolutionarily Significant Units. (June 2000). [65 FR 42475, July 10, 2000, as amended at 67 FR 1129, Jan. 9, 2002; 67 FR 68725, Nov. 12, 2002; 70 FR 37202, 37203, June 28, 2005]

§ 223.204 Tribal plans. {Limit 14} (a) *Limits on the prohibitions.* The prohibitions of § 223.203(a) of this subpart relating to threatened species of salmonids listed in § 223.102 do not apply to any activity undertaken by a tribe, tribal member, tribal permittee, tribal employee, or tribal agent in compliance with a Tribal resource management plan (Tribal Plan), provided that the Secretary determines that implementation of such Tribal Plan will not appreciably reduce the likelihood of survival and recovery of the listed salmonids. In making that determination the Secretary shall use the best available biological data (including any tribal data and analysis) to determine the Tribal Plan's impact on the biological requirements of the species, and will assess the effect of the Tribal Plan on survival and recovery, consistent with legally enforceable tribal rights and with the Secretary's trust responsibilities to tribes. (b) *Consideration of a Tribal Plan.* (1) A Tribal Plan may include but is not limited to plans that address fishery harvest, artificial production, research, or water or land management, and may be developed by one tribe or jointly with other tribes. The Secretary will consult on a government-to-government basis with any tribe that so requests and will provide to the maximum extent practicable technical assistance in examining impacts on listed salmonids and other salmonids as tribes develop Tribal resource management plans that meet the management responsibilities and needs of the tribes. A Tribal Plan must specify the procedures by which the tribe will enforce its provisions. (2) Where there exists a Federal court proceeding with continuing jurisdiction over the subject matter of a Tribal Plan, the plan may be developed and implemented within the ongoing Federal Court proceeding. In such circumstances, compliance with the Tribal Plan's terms shall be determined within that Federal Court proceeding. (3) The Secretary shall seek comment from the public on the Secretary's pending determination whether or not implementation of a Tribal Plan will appreciably reduce the likelihood of survival and recovery of the listed salmonids. (4) The Secretary shall publish notification in the FEDERAL REGISTER of any determination regarding a Tribal Plan and the basis for that determination. [65 FR 42485, July 10, 2000. Redesignated at 70 FR 37203, June 28, 2005].

they also will become a matter of public record.

Dated: January 17, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-671 Filed 1-20-06; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Limits on Applications of Take Prohibitions

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 March 24, 2006.

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).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Steve Stone, at (503) 231-2317, National Marine Fisheries Service, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232-1274 or steve.stone@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 4(d) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires the National Marine Fisheries Service (NMFS) to adopt such regulations as it "deems necessary and advisable to provide for the conservation of" threatened species. Those regulations may include any or all of the prohibitions provided in section 9(a)(1) of the ESA, which specifically prohibits "take" of any endangered species ("take" includes actions that harass, harm, pursue, kill, or capture). The first salmonid species listed by NMFS as threatened were

protected by virtually blanket application of the section 9 take prohibitions. There are now 21 separate Evolutionarily Significant Units (ESUs) of west coast salmonids listed as threatened, covering a large percentage of the land base in California, Oregon, Washington and Idaho. NMFS is obligated to enact necessary and advisable protective regulations. NMFS makes section 9 prohibitions generally applicable to many of those threatened ESUs, but also seeks to respond to requests from states and others to both provide more guidance on how to protect threatened salmonids and avoid take, and to limit the application of take prohibitions wherever warranted (see 70 FR 37160, June 28, 2005, and 71 FR 834, January 5, 2006). The regulations describe programs or circumstances that contribute to the conservation of, or are being conducted in a way that adequately limits impacts on, listed salmonids. The regulations do not apply the take prohibitions to those programs and circumstances. Some of these limits on the take prohibitions entail voluntary submission of a plan to NMFS and/or annual or occasional reports by entities wishing to take advantage of these limits, or continue within them.

II. Method of Collection

Submissions may be in paper or electronic format.

III. Data

OMB Number: 0648-0399.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, local, or tribal government; business or other for-profit organizations.

Estimated Number of Respondents: 201.

Estimated Time per Response: 20 hours for a road maintenance agreement; 5 hours for a diversion screening limit project; 30 hours for an urban development package; 10 hours for an urban development report; 20 hours for a tribal plan; and 5 hours for a report of aided, salvaged, or disposed of salmonids.

Estimated Total Annual Burden Hours: 500.

Estimated Total Annual Cost to Public: \$843.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

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

Dated: January 17, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011806A]

Fisheries of the Exclusive Economic Zone off Alaska; Application for an Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of an application for an exempted fishing permit.

SUMMARY: This notice announces receipt of an application for an exempted fishing permit (EFP) from the Aleut Enterprise Corporation (AEC). If granted, this permit would be used to support a project to investigate the feasibility of using commercial fishing vessels for acoustic surveys of pollock in the Aleutian Islands subarea. The project is intended to promote the objectives of the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI) by improving use of pollock in the Aleutian Islands subarea.

ADDRESSES: Copies of the EFP application and the environmental assessment (EA) are available by writing to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P. O. Box 21668, Juneau, AK 99802, Attn: Lori Durall. The EA also is available from the Alaska Region, NMFS website at <http://www.fakr.noaa.gov/index/analyses/analyses.asp>.