

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 08/20/2009

Department of Commerce
National Oceanic and Atmospheric Administration
FOR CERTIFYING OFFICIAL: Suzanne Hilding
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 02/09/2009

ACTION REQUESTED: Extension without change of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 200901-0648-009
AGENCY ICR TRACKING NUMBER:
TITLE: Application and Reports for Scientific Research and Enhancement Permits Under the Endangered Species Act
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0402
The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 08/31/2012 DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	146	2,280	2,000
New	170	1,400	105
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	0	0	0
Change due to Agency Adjustment	24	-880	-1,895
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Kevin F. Neyland
Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Application for Scientific Research and Enhancement Permits Under the Endangered Species Act	NA	Application Instructions for a Permit for Scientific Purposes or to Enhance the Propagation and Survival of Endangered and Threatened Species	
Modification Requests from Permit Holders			50 CFR 220.308
Annual Reports			50 CFR 222.308
Final Reports			50 CFR 222.308

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 b. <input type="checkbox"/> None 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, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

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

A. JUSTIFICATION

This request is for renewal of this information collection.

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

National Oceanic and Atmospheric Administration (NOAA)'s National Marine Fisheries Service (NMFS) 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 (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 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 NMFS Service should grant the permit. NMFS 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 NMFS 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 NMFS to improve the species management.

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.

NMFS 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 NMFS to ensure that the terms and conditions of the permit are being complied with, as required by section (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.

As explained in the preceding paragraphs, the information gathered has utility. NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response to Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Although the information collected is not expected to be disseminated directly to the public, results may be used in scientific, management, technical or general informational publications. Should NMFS decide to disseminate the information, it will be subject to the quality control measures and pre-dissemination review pursuant to Section 515 of Public Law 106-554.

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.

NMFS developed, and began to use in 2007, an on-line application system known as Authorizations and Permits for Protected Species (APPS) at <http://www.nmfs.noaa.gov/pr/permits/apps.htm>, for application instructions for research and enhancement permits for marine mammals, Pacific salmon, and other threatened and endangered species under the Marine Mammal Protection Act and ESA. The intent of the APPS on-line system is to provide a user-friendly and efficient electronic format for the public to apply for ESA scientific research and enhancement permits for protected species, in addition to the paper applications. Applicants are able to submit applications and reports electronically, thus substantially reducing the need to submit paper applications and hopefully reducing the time spent filling out the paper applications. The public is also able to search the APPS database and obtain information available to the public more efficiently and in an electronic format.

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, NMFS 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, NMFS cannot legally grant such a permit.

A reporting period of less than annually will not allow NMFS 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 NMFS 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 Office of Management and Budget (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 NMFS 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 information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A Federal Register Notice published on October 17, 2008 (73 FR 61784) solicited public comments. No comments were received.

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 of 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 below Question 14. The number of responses is expected to be approximately 170 and the total hours, 1,400.

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 Question 12 above).

Total recordkeeping/reporting costs for materials, printing, mailing, etc. are \$105: \$2 to fax the last page of each of the 30 application to NMFS, totaling \$60, plus an average of \$5 in postage for the 5% of the responses (9) that are expected to be mailed rather than submitted via the Web, totaling \$45.

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

See the table below. The total government cost, including labor, overhead and incidental costs, is \$133,620.

	Permit Applications (once per permit)	Modification Requests from Permit Holder	Annual Reports *	Final Reports (once per permit)*	Totals
Respondent Burden and Labor Cost					
Annual # of Responses	30	20	100	20	170
Hours per Response	20	5	5	10	
Total Hours (Annually)	600	100	500	200	1,400
Labor Cost per Response @\$20/hr	\$400	\$100	\$100	\$200	
Total Labor Costs to all Respondents	\$12,000	\$2,000	\$10,000	\$4,000	\$28,000
Federal Government Burden and Costs					
Govt. Hrs. per Response	120	80	10	10	
Labor Cost per Response @\$20/hr	\$2,400	\$1,600	\$200	\$200	
Overhead per Response	\$60	\$40	\$5	\$5	
Incidental Cost per Response	\$56	\$28	\$1.50	\$1.50	
Total Cost to Govt. per Response	\$2,516	\$1,668	\$207	\$207	
Total Cost to Fed. Govt.	\$75,480	\$33,360	\$20,650	\$4,130	\$133,620

* Based on an average permit length of 3 years.

15. Explain the reasons for any program changes or adjustments.

Adjustments:

A change request for the new APPS on-line system was approved on September 21, 2007. The on-line system provides a user-friendly and efficient electronic format for the public to apply for permits, submit modification requests, and fill out annual reports. The efficiency of this on-line system is expected to lower the total incidental costs to the public and reduce the hours per response.

For applicants using the on-line system, the time per response is expected to be 25% lower. The rest of the reduction in time per response is based on a downward adjustment of the previous estimates by 25%, as the previous estimates appear to have been too high. The reduction of hours, based on current responses, would be 1,000.

However, the number of responses per year is expected to increase. NMFS is currently reviewing the status of several new species and a listing decision is expected to be made in the coming months. If these new species are listed under the ESA, NMFS would expect to see more requests for permits (2 more new applications per year) as well as related modification requests, annual reports, and final reports, for a total annual increase of 24 responses (170, up from 146). The estimated increase in hours from these additional responses is 120. Therefore, the net reduction in hours is estimated to be 880 (1,000 – 120).

Total recordkeeping/reporting costs have been adjusted downward by \$2,075 due to a much lesser expected postage cost based on the estimated 95% on-line submission. In addition to \$5 per document mailed if an applicant cannot access APPS (5% of 170 responses or 9 responses

per year, or \$45), there will still continue to be a \$2 cost to fax the signature page for new applications (30 applications per year, or \$60).

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

Although NMFS uses the data, NMFS does not have plans to publish it. Typically, the researcher will publish at the end of his/her project. During the project, NMFS 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 NMFS Science Centers to better manage the species.

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. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.

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

Authority

Under section 10(a)(1)(A) of the Endangered Species Act of 1973 (ESA), National Oceanic and Atmospheric Administration (NOAA)'s National Marine Fisheries Service (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

Section 4(d) authorizations are available for research and monitoring that may affect **threatened** Pacific marine and anadromous fish (<http://www.nwr.noaa.gov/ESA-Salmon-Listings>). State agencies screen all research applications and then work with NMFS to ensure authorized research does not over utilize the resource. You can find more information on how to apply for a section 4(d) permit at the following NMFS web site: <http://www.nwr.noaa.gov/ESA-Salmon-Regulations-Permits/4d-Rules/Index.cfm>.

Other state issued collecting permits are available that vary by their restrictions and qualifications. To determine whether your activities can be covered by one of these permits go to your state agencies website below:

The Oregon Department of Fish and Wildlife (ODFW) has requirements for Scientific Collecting Permits and Incidental Take Permits. Information regarding these requirements and the application process is available at the following web site:

http://www.dfw.state.or.us/fish/license_permits_apps/.

The California Department of Fish and Game (CDFG) has requirements for Scientific Collecting Permits and Incidental Take Permits. Information regarding these requirements and the application process is available at the following web site:

http://www.dfg.ca.gov/wildlife/research_permit/.

The Idaho Department of Fish and Game (IDFG) require a permit for scientific collecting. The application for this permit can be acquired at the following web site:

http://fishandgame.idaho.gov/cms/licenses/apps/collect_permit.pdf.

The Washington Department of Fish and Wildlife (WDFW) has requirements for Scientific Collection Permits. Information about these requirements and the application are available at the following web site: <http://wdfw.wa.gov/scp/>.

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

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/endangered/permits/permitscontacts.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, however 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 indicate this by including a header for that section followed by 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 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 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: 503-736-4721
Fax: 503-230-5441

Permits for marine and anadromous species in California:

Protected Resources Division
National Marine Fisheries Service
Santa Rosa Area Office
777 Sonoma Avenue, Room 325
Santa Rosa, California 95404-6515
Phone: 707-575-6097
Fax: 707-578-3435

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 Resources 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 re-consultation 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 (Office of Management and Budget) OMB 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 20 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?*

Complete all fields in the following tables. After you have completed the tables, read the certification statement and sign and date the certification page. If you require more than what is provided, please make copies of the table and attach them to the application. Instructions are found at the end of the document.

A. Project Contacts Information

Applicant/Holder	
First Name	
Last Name	
Title:	
Organization:	
Division:	
Mailing Address:	
City:	
State:	
Zip:	
Primary Phone:	
Secondary Phone:	
Title:	
Email:	
Degrees Earned	

Responsible Party	
First Name	
Last Name	
Title:	
Organization:	
Division:	
Mailing Address:	
City:	
State:	
Zip:	
Primary Phone:	
Secondary Phone:	
Title:	
Email:	
Degrees Earned	

Principal Investigator	
First Name	
Last Name	
Title:	
Organization:	
Division:	
Mailing Address:	
City:	
State:	
Zip:	
Primary Phone:	
Secondary Phone:	
Title:	
Email:	
Degrees Earned	

Primary Contact	
First Name	
Last Name	
Title:	
Organization:	
Division:	
Mailing Address:	
City:	
State:	
Zip:	
Primary Phone:	
Secondary Phone:	
Title:	
Email:	
Degrees Earned	

Co-investigator	
First Name	
Last Name	
Title:	
Organization:	
Division:	
Mailing Address:	
City:	
State:	
Zip:	
Primary Phone:	
Secondary Phone:	
Title:	
Email:	
Degrees Earned	

Co-investigator	
First Name	
Last Name	
Title:	
Organization:	
Division:	
Mailing Address:	
City:	
State:	
Zip:	
Primary Phone:	
Secondary Phone:	
Title:	
Email:	
Degrees Earned	

Co-investigator	
First Name	
Last Name	
Title:	
Organization:	
Division:	
Mailing Address:	
City:	
State:	
Zip:	
Primary Phone:	
Secondary Phone:	
Title:	
Email:	
Degrees Earned	

Co-investigator	
First Name	
Last Name	
Title:	
Organization:	
Division:	
Mailing Address:	
City:	
State:	
Zip:	
Primary Phone:	
Secondary Phone:	
Title:	
Email:	
Degrees Earned	

Co-investigator	
First Name	
Last Name	
Title:	
Organization:	
Division:	
Mailing Address:	
City:	
State:	
Zip:	
Primary Phone:	
Secondary Phone:	
Title:	
Email:	
Degrees Earned	

Co-investigator	
First Name	
Last Name	
Title:	
Organization:	
Division:	
Mailing Address:	
City:	
State:	
Zip:	
Primary Phone:	
Secondary Phone:	
Title:	
Email:	
Degrees Earned	

B. Project Information

Project Title:	
Application Date	
Project Status:	
Previous Federal:	
Permit Requested:	
Where will activities occur?	

Research Timeframe	
Start:	
End:	
Sampling Season/ Project Duration:	
Abstract:	

C. Project Description

Project Purpose:	
Project Description:	

D. Supplemental Information

Status of the Species:	
Methods:	

Lethal Take:	
Anticipated Effects on Animals:	
Measures to Minimize Effects to Listed Species:	

Resources Needed to Accomplish Objectives:	
Disposition of Tissues:	

E. Federal Information

Federal Agency	
Type	
Number and Title	
Date Signed	
Expiration Date	
Listing Units/Stocks covered	
Comments	

Federal Agency	
Type	
Number and Title	
Date Signed	
Expiration Date	
Listing Units/Stocks covered	
Comments	

Federal Agency	
Type	
Number and Title	
Date Signed	
Expiration Date	
Listing Units/Stocks covered	
Comments	

Federal Agency	
Type	
Number and Title	
Date Signed	
Expiration Date	
Listing Units/Stocks covered	
Comments	

F. Location/Take Information

Location #1 Description	
State/Territory:	
Basin (4th Field HUC):	
Estuary:	
Marine Zone:	
Ocean Area:	
Waterbody:	
Begin Mile:	
End Mile:	
Township, Range, Section, Latitude, Longitude, UTM Northing, and UTM Easting:	
Location Description:	

Location #2 Description	
State/Territory:	
Basin (4th Field HUC):	
Estuary:	
Marine Zone:	
Ocean Area:	
Waterbody:	
Begin Mile:	
End Mile:	
Township, Range, Section, Latitude, Longitude, UTM Northing, and UTM Easting:	
Location Description:	

Location #3 Description	
State/Territory:	
Basin (4th Field HUC):	
Estuary:	
Marine Zone:	
Ocean Area:	
Waterbody:	
Begin Mile:	
End Mile:	
Township, Range, Section, Latitude, Longitude, UTM Northing, and UTM Easting:	
Location Description:	

G. National Environmental Policy Act (NEPA) Considerations

Question #	Answer
Experimental or Controversial Techniques?	
Infectious Agents or Pathogens	
Unique Geographic Areas	
National Register of Historic Places	
Transport of Materials	

H. Certification

The applicant or responsible party must read the following paragraph and provide a 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)

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 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.

Application Instructions

A. Contacts Information:

Complete all fields using the instructions below. If you require more than what is provided, please make copies of the table and attach them to the application.

Applicant/Permit Holder – The person, institution, or agency that is ultimately responsible for all activities of any individual who is operating under the authority of the permit. Where the Permit Holder is an institution or agency, the **Responsible Party** is the official who has the legal authority to bind the organization (see definition below).

Note: The Applicant becomes the Permit Holder once a permit is issued. There can be only one Applicant/Permit Holder. Permits are not transferable from one Permit Holder to another and the Applicant/Permit Holder cannot be changed. In many cases, the Applicant/Permit Holder may be the same as the Principal Investigator (PI) and/or Primary Contact. All requests related to the permit must be submitted in writing (email accepted) by the Permit Holder or Principal Investigator. The request may come from the PI if the PI has signed the application and permit.

Responsible Party – This role is only used if the **Applicant/Permit Holder** is designated as an agency or organization. The Responsible Party is an official who has the legal authority to bind the organization, institution, or agency that is ultimately responsible for all activities of any individual who is operating under the authority of the permit.

Note: Where an applicant for a permit is an organization, institution, or agency rather than an individual, the application and permit must be signed by the Responsible Party. An example is that the Responsible Party for a National Marine Fisheries Service (NMFS) Science Center is the Center Director. The Responsible Party can change with approval from the agency issuing the permit.

Principal Investigator (PI) – The individual primarily responsible for the taking, importation, exportation, and any related activities conducted under a permit issued for scientific research or enhancement purposes. The PI must have qualifications, knowledge and experience relevant to the type of research activities authorized by the permit.

Note: The PI must be on site during any activities conducted under the permit unless a **Co-Investigator** is present to act in place of the PI. There can be only one PI on a permit. The PI may also be the Applicant/Permit Holder and Primary Contact. Because the PI supervises the research, NMFS requires that the **PI submit a CV/resume**.

Co-Investigator (CI) – Individuals who are qualified and authorized to conduct or directly supervise activities conducted under a permit issued for scientific research or enhancement purposes without the on-site supervision of the **PI**.

Note: CIs assume the role and responsibility of the PI in the PI's absence. There can be numerous CIs designated under a single permit. The CI is authorized to work independently in the field or lead a field crew. For example, there could be separate CIs in charge of distinct activities/projects under a permit, or responsible for distinct geographic areas under a permit. Because a CI can supervise research, NMFS requires that a CV/resume be provided

for each CI (for ESA Section 10(a)(1)(A) permits and all MMPA permits). There can be only one PI per application. If a project has multiple principals, one person must be assigned the PI role and the others assigned CI roles.

Primary Contact – The person primarily responsible for correspondence during the permit review process and after a permit is issued.

Note: The Primary Contact may be separate from or hold any other role on the permit (Applicant/Permit Holder, PI, etc.). While the Primary Contact may engage in correspondence on behalf of the Applicant/Permit Holder (such as providing minor clarifications for information in the application, making inquiries as to the status of an application and the application process, and submitting reports on behalf of the Applicant/Permit Holder), any substantive changes or requests for modifications must be submitted by the Applicant/Permit Holder or PI.

Please attach résumés for PIs and CIs, or submit them as a separate document.

B. Project Information:

Complete all fields using the instructions below. If you require more than what is provided, please make copies of the table and attach them to the application.

Project Title: Describe the project as concisely and descriptively as possible. Include the study's geographic range and purpose.

For example: "Seasonal habitat selection by westslope cutthroat trout in headwater tributaries of the John Day River." Or "Use of restored estuarine marsh channels/habitats by juvenile salmonids in the Siletz River Basin."

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.

Project Status: Project status indicates whether or not the project is new. If you are requesting a renewal of an existing permit, indicate this in the "Previous Federal Permit Section" below.

Previous Federal Permit #: If you are renewing or modifying a permit, please indicate the previous permit number here.

Permit Requested: Indicate what type of section 10(a)(1)(A) permit you are applying for:

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.

Where will the activities occur? Please indicate where the activities will occur: California, Idaho, Oregon (including the Columbia River and offshore waters), Washington (including the Columbia River and offshore waters), International waters (including Antarctica and high seas), Foreign countries, including territorial waters of those countries

Research Timeframe: Provide the start and end dates of your activities for which you are seeking a permit. The start date must not be prior to the date that you submit the application. The end date should be within five years of the start date. If your research extends beyond these dates, please provide that information under “Sampling Season/Project Duration.”

Please provide realistic dates so that permit issuance can be prioritized to ensure all researchers receive authorization in time for their field work. For example, do not give a start date of January 1 and an end date of December 31 if you will not be conducting an activity throughout the entire year. However, the dates listed should allow some flexibility for unanticipated events.

Sampling Season/Project Duration: Describe the sampling season and the duration of the project. Your description should include the months of the year and frequency of samples. If your research extends beyond five years or your research is a continuation of previously authorized research, provide information here about when the research began and when you expect it to end.

Abstract: Provide a brief summary, not more than 2,000 characters, of the proposed research and/or enhancement project. This summary will be published in the Federal Register Notice of Receipt for a 30-day public comment period, and therefore should be understandable to a lay reader. The summary should include concise statements of the following information:

- Identify the ESA listed species that would be affected by the research;
- Describe the duration, purpose, goals, and location of the research;
- Describe how the study would benefit the affected species;
- Describe the type and manner of take (*e.g.*, observe/harass; capture/handle/release; capture/tag, tissues sample/release; or intentional mortality);
- Describe the capture methods and gear that would be used;
- Describe any samples or measurements that would be taken; and
- Describe how the species will be cared for after capture (*e.g.*, fish will be placed in an aerated bucket).

C. Project Description:

Complete all fields using the instructions below. If you require more than what is provided, please make copies of the table and attach them to the application.

Project Purpose (Hypothesis/Objectives): This should be a brief description of the overall objective of the project. Indicate if this project fulfills requirements or recommendations of federal or state agencies. Also, if applicable, describe how this project fits into a larger series of projects or research plan. Please include a justification for the project especially if listed fish may be taken and an account of how the project might benefit the listed fish (if applicable). There will be space for a more complete description of your project in the next section.

Project Description: Please include a thorough description of your project. Include all methods used to capture fish and describe how fish will be handled. Include details such as sampling locations and dates. Describe any intrusive procedures such as tagging or taking tissue samples and explain the purpose of them (e.g. fin tissue will be collected from a portion of fish sampled for genetic analysis). A project proposal may be attached to supplement the project description (see below). However, a brief summary of the attached files should be included in this field.

D. Supplemental Information:

Complete all fields using the instructions below. If you require more than what is provided, please make copies of the table and attach them to the application.

Status of Species: Describe the recent status and trends of each listed Evolutionarily Significant Unit (ESU), Distinct Population Segment (DPS), or species proposed to be taken (include citations where possible). NMFS already possesses information at the ESU/DPS 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.

Methods: Include all methods used to capture fish and describe how fish will be handled. Include details such as capture methods, anesthesia to be used, and sampling locations and dates. Describe any invasive procedures such as marking, tagging or taking tissue samples and explain the purpose of them.

Note: You may not anesthetize any fish that may be taken in a legal fishery unless you are using a Federal Drug Administration approved anesthetic and protocols. For information about approved anesthetics please see the Federal Joint Subcommittee on Aquaculture's Guide to Drug, Vaccine, and Pesticide Use in Aquaculture (<http://aquanic.org/jsa/wgqaap/drugguide/drugguide.htm>).

Lethal Take: You must provide a description of the lethal take you are requesting and why it is important to your project. Please include an adequate justification for killing listed fish. If you do not expect to intentionally kill any listed species, please indicate this in the methods section above.

Anticipated Effects on Animals: Describe the effects of the research on the behavior and physiology of the fish. Include a description of the probability of mortality.

Measures to Minimize Effects to Listed Species: Describe what adjustments have been made to the sampling plan to minimize impacts to listed fish (*e.g.*, reduced sample size; modified sampling times, locations, or methods; or non-lethal tissue collection). If your application includes electrofishing, you must indicate in this box that you will follow the NMFS 2000 Electrofishing Guidelines.

Resources Needed to Accomplish Objectives: Explain how your expertise, facilities, and resources are adequate to successfully accomplish the objectives and activities stated in your application. Include the name and address of sponsors, cooperating institutions/researchers, or contractors, if not listed as Co-investigators on the application. 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. Attach copies of any relevant formal research proposals, contracts, or letters of agreement that would demonstrate the financial or logistical resources available to you to conduct and complete the proposed activities.

Disposition of Tissues: Provide a description of the disposition of any parts or samples remaining after the research or enhancement activities are complete. If you have made arrangements with a museum or other institutional collection to ensure that remaining tissues will be available for scientific research or enhancement purposes, include information on where the samples will be stored, transferred, and how/when/where they will be disposed. Include contact information for each of researchers, laboratories, museums, and/or institutional collections that would receive these tissue samples or specimens. If you will not retain samples, state whether samples/dead carcasses will be returned to their capture site, or that samples will be consumed in analysis or will be destroyed.

Public availability of product/publications: Identify the anticipated or known availability of progress reports, publications, articles, etc. related to the project. For example, the URL for a web site hosting annual progress reports for a multi-year project.

E. Federal Information:

Using the instructions below, Enter information about any Federal authorizations (other than the ones you are applying for here) in the table in Appendix III. More federal information charts are attached to this application. If you need more than are provided, please make a copy of the chart in Appendix III and attach it to this application. Enter information about Federal agencies who fund the work, issue permits to allow the work, cooperate with the work, or provide any other authorizations so the research can be done.

Note: Permits may include Corps 404 permits. Authorizations may include USFWS section 6 agreements, or USFWS or NMFS section 7 consultations. Attach a copy of the authorization if you have one, or you may be required to mail or Fax a copy if requested.

Federal Agency: Include the name of the Federal agency.

Type: Identify the type of Federal action or permit.

Number and Title: Indicate the reference number of the authorization and its title. The title can be abbreviated if necessary.

Date Signed: Enter the month, day and year that the authorization or activity (*e.g.*, grant, MOU) became effective. If the action is pending, use the comments section to describe the expected date of completion.

Expiration Date: The date the Federal agreement expires. While not required, this is an important field for authorizations with an expiration date.

Listing Units/Stocks covered: Identify the listing units or stocks covered by the authorization.

Comments: Include information, as described above, for authorizations pending. This field may also be used to provide details such as if only a portion of a project is covered by the authorization.

F. Take/Location Information:

Record take estimates for all activities using the Take Table. You must use a separate take table for each 4th field HUC. If you need more Take Tables you can make copies and attach them to the application. The Take Table spreadsheet has two sections: The location information for the associated take table located directly below; and the take table.

For each line in the take table you must include the species or species group to be taken, the quantity of each species, method of capture, intrusive procedures, and sample dates. The information must be specific to the location listed at the top of the page. For a list of the data options for the take table categories please see the tables below.

i. Take Location(s)

State/Territory: Identify the state in which the take will occur.

Basin: Identify the subbasin you will be working in. A separate location entry is required for each subbasin you will be working in. List subbasins that are at the scale of 4th field hydrologic units (sometimes called 4th field HUCs). If you wish to see more detailed sub-basin maps for the Northwest Region you can use the Streamnet Interactive Mapping tools located at <http://map.streamnet.org/>. This site includes sub-basin and species distribution maps for Oregon, Idaho, and Washington. Alternatively, you can use the search tool at United States Environmental Protection Agencies Surf Your Watershed web page (<http://cfpub.epa.gov/surf/locate/index.cfm>).

Estuary: If you will be working in the estuarine zone, include the appropriate estuarine region. However, if your research location is the Pacific Ocean or the marine waters of the Puget Sound, **do not** select a subbasin. The next item below is used for Puget Sound marine habitats.

Marine Zone: If you will be working in the marine portion of the Puget Sound, you must identify the marine zone(s). Contact Gary Rule for a map of the marine zones (gary.rule@noaa.gov or 503-230-5424):

Shoreline: If your proposed project would occur in marine waters of Oregon, you must identify a shoreline zone.

Ocean Area: If your proposed project would occur in marine waters of Oregon, you identify an ocean area.

Waterbody: Include the name(s) of the lake(s), river(s), or estuary(s) where you will be conducting your research. If you wish to list the waterbodies, you may include a detailed stream with your application. Specific stream names must be supplied when they are available. You may also enter a subwatershed

Begin Mile: For projects that would occur within stream habitats, you may provide the beginning river mile for your project.

End Mile: For projects that would occur within stream habitats, you may provide the ending river mile for your project.

Township, Range, Section, Latitude, Longitude, UTM Northing, and UTM Easting: If you have this information, you may provide it.

Location Description: You may describe any landmark or geographic reference to where the project would be conducted. If sites have not yet been selected you can explain how they will be selected. Specific sites must be supplied when they are available. For example, if you provided a sub-basin name you should provide the names of the specific streams that will be sampled.

Note: You may include attachments (i.e. maps, charts etc...) detailing specific survey sites within a sub-basin. However, you must still complete a take estimate for every sub-basin in which you will be collecting.

ii. Take Information:

You will include a separate record for each unique combination of species, production type, life stage, take action, and capture method. For example, if you will take both artificially propagated and naturally produced Chinook salmon, you will need at least two records. If you will also take tissue samples from a portion of the catch, you will have four records: one for capture, handle, and release of hatchery Chinook salmon; one for capture handle and release of natural Chinook salmon; one for capture/mark, tag, sample tissue/release hatchery Chinook salmon; and one for capture/mark, tag, sample tissue/release natural Chinook salmon.

Species: The common and/or scientific name of the listed marine or anadromous fish. NOAA Fisheries maintains a list of species on its' web site at https://apps.nmfs.noaa.gov/docs_cfm/species_lists.cfm. If you are unsure about the species, you can request assistance by contacting the appropriate NMFS Office (see the section "Where Do I Send the Application?" section above to find the NMFS Office contact information).

Listing Unit/Stock: Choose the listing unit/stock of the take species in your study region. Listed populations of salmon, steelhead, and other marine fishes can be found on the Northwest Regional Office's web site at <http://www.nwr.noaa.gov/>.

Production/Origin: The categories are: naturally produced; listed hatchery with a clipped adipose fin; listed hatchery with an intact adipose fin; and unlisted hatchery. If you will take more than one category, you will need to enter a separate row for each one. For more information on the listing status of hatchery fish, visit <http://www.nwr.noaa.gov/ESA-Salmon-Listings/Salmon-Populations/Index.cfm>.

Life Stage: If you will take more than one life stage (*e.g.*, adult and juvenile) you will need to enter a separate row for each life stage you will encounter. The options are juvenile, smolt, adult, or spawned adult/carcass.

Sex: If your activity is targeting one sex indicate which sex is targeted. Otherwise, select "Male and Female."

Expected Take: Enter the number of individual animals you expect to capture, observe, etc. (depending on the "Take Action" you selected). If you are entering take for a location representing multiple sites in a sub-basin, the expected take should equal the total take for all sites in that sub-basin. You are not required to estimate expected take for "Observe/Harass." For "Intentional (Directed) Mortality," enter the number of individuals you will purposely kill.

Indirect Mort: Enter the number of individual animals you expect will be unintentionally killed as a result of your activities. If the take action is "Intentional (Directed) Mortality," then enter zero for the indirect mortality. When the action is intentional mortality, there are no indirect mortalities.

Note: Acceptable **Indirect Mortality** rates are up to 5% of the total per species for electrofishing and gill netting and up to 1% of the total per species for other methods. If you expect higher indirect mortality rates you must provide justification in the "Anticipated Effects on Animals" section of your application.

Take Action: If more than one action is proposed, you must enter them separately. For example, if 100 fish are captured of which 50 will be fin clipped, you must request 50 fish "Capture, Handle, Release" and 50 "Capture/Mark, Tag, Sample Tissue/Release Live Animal."

- 1. Capture/Handle/Release Fish:** Select this method when fish are captured during the activity. Fish can be examined during handling, including measuring, weighing, sexing, checking for marks, scars, etc., and released. This category of take includes fish shocked during boat or backpack electrofishing activities, even if the fish swim away and are not netted.

NOTE: If you are **electrofishing** you must state in the Minimize Impacts section on your application that you will follow the "NMFS 2000 Electrofishing Guidelines." Visit <http://www.nwr.noaa.gov/ESA-Salmon-Regulations-Permits/4d-rules/upload/electro2000.pdf> for a copy of the guidelines.

2. **Capture/Mark, Tag, Sample Tissue/Release Live Animal:** Select this method when fish are captured and are marked, tagged, or tissue samples are taken using a variety of techniques including fin clips, coded wire tags, passive integrated transponders, radio tags, etc. Fish can also be examined during handling, including measuring, weighing, sexing, checking for marks, scars, etc., and then released.

NOTE: If you select this action you must also include the Procedure(s) that will occur. Include one or more methods from the Procedures listed in Appendix II.

3. **Collect and Transport Live Animal:** Select this method when fish will be transferred live from the point of collection to another site, usually to a facility, but also for fish being relocated to another stream, sub-basin, etc. Do not use for fish being moved within a stream (*e.g.*, trap efficiencies). If you select “Collect and Transport Live Animal” as the take action, include the following information in your project methods section labeled Transport Info:

Mode(s) of transportation: Describe the mode of transportation. Include a description of the vehicle used to transport animals and the name of the transportation company, if applicable, and the qualifications of the common carrier to transport live animals. Specify whether a contractor will do the transportation, and include any relevant information.

Transport time: Estimate the maximum amount of time an animal may be in transport.

Qualified transport personnel: Give the name, affiliation, contact information for each person.

Destination: If the animals will be taken to a laboratory, classroom, or aquarium, provide details of the location. If the animals will be released in another waterbody, provide details of the location.

Containment methods: Describe the containment system for the animals, quarantine procedures, and effluent treatment. Description of the container (*e.g.*, cage, tank) used to hold the animal during transit, including the material of the container and its dimensions. Include any special care procedures (*e.g.*, moisture, medicines, aeration) to be administered during transport. The final disposition of the animals Describe, for example, whether the fish will be released, sacrificed, or deposited in a museum collection (*e.g.*, “Retain alive for six months, then release”; “Sacrifice for tissue analysis.”).

4. **Intentional (Directed) Mortality:** These are fish that will be purposely killed (*e.g.*, for otolith analysis). You must describe in the “Project Description” why you wish to purposely kill these fish.

NOTE: For entries that are **direct mortality**, enter **zero** for the indirect mortality!

5. **Observe/Harass:** Select this method when no fish will be handled or captured in any way. You do not have to estimate expected take for this activity.

- 6. Observe/Sample Tissue Dead Animal:** Select this method when information on dead fish is recorded or tissues are sampled from dead fish.

Observe/Collect Method: List the method of observation or capture. You may only select one observe/collect method per take. If you will be using various methods, you must use a separate row for each observe/capture method. Chose from the following list:

- CaptureMethod
- Benthic Core < 10" diameter
- Benthic Core > 30" diameter
- Benthic Core 10-30" diameter
- Crab traps or rings
- Dam bypass, gatewell, orifice, etc. (only if associated with fish handling)
- Electrofishing, Backpack
- Electrofishing, Boat
- Fish Ladder (only if associated with fish handling)
- Fish Screens, e.g., at diversions (only if associated with fish handling)
- Gaff
- Hand and/or Dip Net
- Hand held-spatula/knife
- Hook and line/angler/rod and reel
- Longline
- Net, Cast
- Net, Fyke
- Net, Gill
- Net, Hoop
- Net, Kick
- Net, Neuston
- Net, Pop
- Net, Tangle
- Net, Tooth
- Net, Trammel
- Net, Zooplankton
- Plankton Pump
- Seine, Beach
- Seine, Lampara
- Seine, Purse
- Shovel
- Throwbox
- Trap, Buckley
- Trap, Light
- Trap, Minnow
- Net, Trap
- Trap, Screw
- Trawl, Beam
- Trawl, Bottom
- Trawl, Midwater

- Trawl, Nordic Surface
- Trawl, Otter
- Weir (only if associated with fish handling)
- Seine, Boat
- Fish Pot
- Trap, Incline Plane
- Trap, Not listed here

Procedure: If you intend to “Capture/Mark, Tag, Sample Tissue/Release Live Fish” you are required to select at least one intrusive method. List all intrusive methods you intend to use for each associated take action. Chose from the following list:

- IntrusiveMethod
- Anesthetize
- Dye Injection (tattoo, photonic)
- Finclip
- Freeze Brand
- Maxillary Clip
- Paint, Stain or Dye Immersion
- Punch (opercle, caudal, etc.)
- Stomach pump (non-lethal)
- Tag, Acoustic or Sonic
- Tag, Balloon
- Tag, Coded-Wire
- Tag, Elastomer
- Tag, Floy
- Tag, PIT
- Tag, Radio (External)
- Tag, Radio (Internal)
- Tissue sample (other internal tissues)
- Tissue Sample Fin or Opercle
- Tissue Sample Otolith
- Tissue Sample Scale

Run: Select the run timing for each listing stock/unit. Chose from the following list:

- Spring
- Summer
- Spring/Summer
- Fall
- Upriver Bright Fall
- Winter
- Tule Fall
- Odd Year
- Even Year
- Mixed
- N/A
- Unknown

Begin/End Date: These dates should reflect the timing of the associated take activity for each line.

G. National Environmental Policy Act (NEPA) Considerations:

Please provide a detailed response to each question; a simple "yes" or "no" is not sufficient. Your responses to the questions below will be used, along with the information you have provided on the types of activities proposed and their effects, in determining the potential impacts your research may have on the environment.

1. Will your activities involve equipment (*e.g.*, scientific instruments) or techniques that are new or may be considered experimental or controversial? If yes, are they likely to be adopted by other researchers in the future?
2. Do your activities involve collecting, handling, or transporting potentially infectious agents or pathogens (*e.g.*, biological specimens such as blood)? Do your activities involve using or transporting hazardous substances (*e.g.*, toxic chemicals)? If yes, provide a description of protocols you will use to ensure humans are not infected or injured.
3. Do any of your activities occur in or near unique geographic areas such as state or National Marine Sanctuaries, Marine Protected Areas, Parks or Wilderness Areas, Wildlife Refuges, Wild and Scenic Rivers, designated Critical Habitat for endangered or threatened species, Essential Fish Habitat, etc.? If yes, would any aspect of your activities impact the physical environment, such as by direct alteration of substrate (*e.g.*, by bottom trawling, net setting, anchoring vessels or buoys, erecting blinds or other structures, disrupting nesting bird habitat)?
4. Could your work affect sites listed in or eligible for listing in the National Register of Historic Places? Could your work cause loss or destruction of scientific, cultural, or historic resources (*e.g.*, archeological resources)? If yes, list the sites and explain how they might be affected or why they would not be affected.
5. Could any of your activities, intentionally or not, involve the transport any materials, biological or otherwise, from one area to another (*e.g.*, transporting animals or tissues, discharging ballast water, working in sensitive remote areas)? If yes, explain the types of activities. Describe all measures you would take to prevent the possible introduction or spread of nonindigenous or invasive species (including plants, animals, microbes, or other biological agents).

The Freedom of Information Act, 5 U.S.C. § 552
As Amended By
Public Law No. 110-175, 121 Stat. 2524

Below is the full text of the Freedom of Information Act in a form showing all amendments to the statute made by the "Openness Promotes Effectiveness in our National Government Act of 2007." All newly enacted provisions are in boldface type.

§ 552. Public information; agency rules, opinions, orders, records, and proceedings (a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

- (A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;
- (B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;
- (C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;
- (D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and
- (E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

- (A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
- (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;
- (C) administrative staff manuals and instructions to staff that affect a member of the public;
- (D) copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and
- (E) a general index of the records referred to under subparagraph (D);

unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of an index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

- (i) it has been indexed and either made available or published as provided by this paragraph; or
- (ii) the party has actual and timely notice of the terms thereof.

(3)(A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the

time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system.

(D) For purposes of this paragraph, the term "search" means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.

(E) An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) shall not make any record available under this paragraph to—

(i) any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof; or

(ii) a representative of a government entity described in clause (i).

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that—

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

In this clause, the term 'a representative of the news media' means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term 'news' means information that is about current events or that would be of current interest to the public. Examples of news media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of 'news') who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed \$250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: Provided, That the court's review of the matter shall be limited to the record before the agency.

(viii) An agency shall not assess search fees (or in the case of a requester described under clause (ii)(II), duplication fees) under this subparagraph if the agency fails to comply with any time limit under paragraph (6), if no unusual or exceptional circumstances (as those terms are defined for purposes of paragraphs (6)(B) and (C), respectively) apply to the processing of the request. [Effective one year from date of enactment]

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has

jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause is shown.

[(D) Repealed. Pub. L. 98-620, title IV, Sec. 402(2), Nov. 8, 1984, 98 Stat. 3357.]

(E)(i) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(ii) For purposes of this subparagraph, a complainant has substantially prevailed if the complainant has obtained relief through either—

(I) a judicial order, or an enforceable written agreement or consent decree; or

(II) a voluntary or unilateral change in position by the agency, if the complainant's claim is not insubstantial.

(F)(i) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned

and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(ii) The Attorney General shall—

(I) notify the Special Counsel of each civil action described under the first sentence of clause (i); and

(II) annually submit a report to Congress on the number of such civil actions in the preceding year.

(iii) The Special Counsel shall annually submit a report to Congress on the actions taken by the Special Counsel under clause (i).

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

The 20-day period under clause (i) shall commence on the date on which the request is first received by the appropriate component of the agency, but in any event not later than ten days after the request is first received by any component of

the agency that is designated in the agency's regulations under this section to receive requests under this section. The 20-day period shall not be tolled by the agency except—

(I) that the agency may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester under this section; or

(II) if necessary to clarify with the requester issues regarding fee assessment. In either case, the agency's receipt of the requester's response to the agency's request for information or clarification ends the tolling period.

[Effective one year from date of enactment]

(B)(i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. **To aid the requester, each agency shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and the agency. [Effective one year from date of enactment].** Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

(iii) As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular requests—

(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(C)(i) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(ii) For purposes of this subparagraph, the term "exceptional circumstances" does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(iii) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing a

request (or a modified request) under clause (ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.

(D)(i) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.

(ii) Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.

(iii) This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.

(E)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records—

(I) in cases in which the person requesting the records demonstrates a compelling need; and

(II) in other cases determined by the agency.

(ii) Notwithstanding clause (i), regulations under this subparagraph must ensure—

(I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and

(II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

(iii) An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.

(iv) A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.

(v) For purposes of this subparagraph, the term "compelling need" means—

(I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(vi) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person's knowledge and belief.

(F) In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made.

(7) Each agency shall—

(A) establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request; and

(B) establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including—

(i) the date on which the agency originally received the request; and

(ii) an estimated date on which the agency will complete action on the request.

[Effective one year from date of enactment] (b) This section does not apply to matters that are—

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence

investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted, **and the exemption under which the deletion is made**, shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted, **and the exemption under which the deletion is made**, shall be indicated at the place in the record where such deletion is made.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize the withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e)(1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States a report which shall cover the preceding fiscal year and which shall include—

(A) the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(B)(i) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

(ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), **the number of occasions on which each statute was relied upon**, a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

(C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median **and average** number of days that such requests had been pending before the agency as of that date;

(D) the number of requests for records received by the agency and the number of requests which the agency processed;

(E) the median number of days taken by the agency to process different types of requests, **based on the date on which the requests were received by the agency**;

(F) **the average number of days for the agency to respond to a request beginning on the date on which the request was received by the agency, the median number of days for the agency to respond to such requests, and the range in number of days for the agency to respond to such requests**;

(G) **based on the number of business days that have elapsed since each request was originally received by the agency—**

(i) **the number of requests for records to which the agency has responded with a determination within a period up to and including 20 days, and in 20-day increments up to and including 200 days;**

(ii) **the number of requests for records to which the agency has responded with a determination within a period greater than 200 days and less than 301 days;**

(iii) **the number of requests for records to which the agency has responded with a determination within a period**

greater than 300 days and less than 401 days; and

(iv) the number of requests for records to which the agency has responded with a determination within a period greater than 400 days;

(H) the average number of days for the agency to provide the granted information beginning on the date on which the request was originally filed, the median number of days for the agency to provide the granted information, and the range in number of days for the agency to provide the granted information;

(I) the median and average number of days for the agency to respond to administrative appeals based on the date on which the appeals originally were received by the agency, the highest number of business days taken by the agency to respond to an administrative appeal, and the lowest number of business days taken by the agency to respond to an administrative appeal;

(J) data on the 10 active requests with the earliest filing dates pending at each agency, including the amount of time that has elapsed since each request was originally received by the agency;

(K) data on the 10 active administrative appeals with the earliest filing dates pending before the agency as of September 30 of the preceding year, including the number of business days that have elapsed since the requests were originally received by the agency;

(L) the number of expedited review requests that are granted and denied, the average and median number of days for adjudicating expedited review requests, and the number adjudicated within the required 10 days;

(M) the number of fee waiver requests that are granted and denied, and the average and median number of days for adjudicating fee waiver determinations;

(F) (N) the total amount of fees collected by the agency for processing requests; and

(G) (O) the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

(2) Information in each report submitted under paragraph (1) shall be expressed in terms of each principal component of the agency and for the agency overall.

(2) (3) Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means. In addition, each agency shall make the raw statistical data used in its reports available electronically to the public upon request.

(3) (4) The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on Government Reform and Oversight of the House of Representatives and the Chairman and ranking minority member of the Committees on Governmental Affairs and the Judiciary of the Senate, no later than April 1 of the year in which each such report is issued, that such reports are available by electronic means.

(4) (5) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.

(5) (6) The Attorney General of the United States shall submit an annual report on or before April 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term—

(1) "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

(2) 'record' and any other term used in this section in reference to information includes—

(A) any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format; and

(B) any information described under subparagraph (A) that is maintained for an agency by an entity under Government contract, for the purposes of records management.

(g) The head of each agency shall prepare and make publicly available upon request, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including—

- (1) an index of all major information systems of the agency;
- (2) a description of major information and record locator systems maintained by the agency; and
- (3) a handbook for obtaining various types and categories of public information from the agency pursuant to chapter 35 of title 44, and under this section.

(h)(1) There is established the Office of Government Information Services within the National Archives and Records Administration.

(2) The Office of Government Information Services shall—

- (A) review policies and procedures of administrative agencies under this section;**
- (B) review compliance with this section by administrative agencies; and**
- (C) recommend policy changes to Congress and the President to improve the administration of this section.**

(3) The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section and administrative agencies as a non-exclusive alternative to litigation and, at the discretion of the Office, may issue advisory opinions if mediation has not resolved the dispute.

(i) The Government Accountability Office shall conduct audits of administrative agencies on the implementation of this section and issue reports detailing the results of such audits.

(j) Each agency shall designate a Chief FOIA Officer who shall be a senior official of such agency (at the Assistant Secretary or equivalent level).

(k) The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency—

- (1) have agency-wide responsibility for efficient and appropriate compliance with this section;**
- (2) monitor implementation of this section throughout the agency and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency's performance in implementing this section;**
- (3) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of this section;**
- (4) review and report to the Attorney General, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing this section;**
- (5) facilitate public understanding of the purposes of the statutory exemptions of this section by including concise descriptions of the exemptions in both the agency's handbook issued under subsection (g), and the agency's annual report on this section, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply; and**
- (6) designate one or more FOIA Public Liaisons.**

(l) FOIA Public Liaisons shall report to the agency Chief FOIA Officer and shall serve as supervisory officials to whom a requester under this section can raise concerns about the service the requester has received from the FOIA Requester Center, following an initial response from the FOIA Requester Center Staff. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

TITLE 16 - CONSERVATION

CHAPTER 35 - ENDANGERED SPECIES

§ 1531 - Congressional findings and declaration of purposes and policy

(a) Findings

The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements; and

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.

(b) Purposes

The purposes of this chapter are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) Policy

(1) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this chapter.

(2) It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.

TITLE 16 - CONSERVATION

CHAPTER 35 - ENDANGERED SPECIES

§ 1532. Definitions

For the purpose of this chapter—

- (1) The term “alternative courses of action” means all alternatives and thus is not limited to original project objectives and agency jurisdiction.
- (2) The term “commercial activity” means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: Provided, however, That it does not include exhibition of commodities by museums or similar cultural or historical organizations.
- (3) The terms “conserve”, “conserving”, and “conservation” mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.
- (4) The term “Convention” means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed on March 3, 1973, and the appendices thereto.
- (5)
- (A) The term “critical habitat” for a threatened or endangered species means—
- (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 1533 of this title, on which are found those physical or biological features
- (I) essential to the conservation of the species and
- (II) which may require special management considerations or protection; and
- (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 1533 of this title, upon a determination by the Secretary that such areas are essential for the conservation of the species.
- (B) Critical habitat may be established for those species now listed as threatened or endangered species for which no critical habitat has heretofore been established as set forth in subparagraph (A) of this paragraph.
- (C) Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species.
- (6) The term “endangered species” means any species which is in danger of extinction throughout all or a significant portion of its range other than a species of the Class Insecta determined by the Secretary to constitute a pest whose protection under the provisions of this chapter would present an overwhelming and overriding risk to man.
- (7) The term “Federal agency” means any department, agency, or instrumentality of the United States.
- (8) The term “fish or wildlife” means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.
- (9) The term “foreign commerce” includes, among other things, any transaction—
- (A) between persons within one foreign country;
- (B) between persons in two or more foreign countries;
- (C) between a person within the United States and a person in a foreign country; or
- (D) between persons within the United States, where the fish and wildlife in question are moving in any country or countries outside the United States.
- (10) The term “import” means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.
- (11) Repealed. Pub. L. 97–304, § 4(b), Oct. 13, 1982, 96 Stat. 1420.
- (12) The term “permit or license applicant” means, when used with respect to an action of a Federal agency for which exemption is sought under section 1536 of this title, any person whose application to such agency for a permit or license has been denied primarily because of the application of section 1536 (a) of this title to such agency action.

(13) The term “person” means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States.

(14) The term “plant” means any member of the plant kingdom, including seeds, roots and other parts thereof.

(15) The term “Secretary” means, except as otherwise herein provided, the Secretary of the Interior or the Secretary of Commerce as program responsibilities are vested pursuant to the provisions of Reorganization Plan Numbered 4 of 1970; except that with respect to the enforcement of the provisions of this chapter and the Convention which pertain to the importation or exportation of terrestrial plants, the term also means the Secretary of Agriculture.

(16) The term “species” includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.

(17) The term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(18) The term “State agency” means any State agency, department, board, commission, or other governmental entity which is responsible for the management and conservation of fish, plant, or wildlife resources within a State.

(19) The term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

(20) The term “threatened species” means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

(21) The term “United States”, when used in a geographical context, includes all States.

TITLE 16 - CONSERVATION

CHAPTER 35 - ENDANGERED SPECIES

§ 1533. Determination of endangered species and threatened species

(a) Generally

(1) The Secretary shall by regulation promulgated in accordance with subsection (b) of this section determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (A) the present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) overutilization for commercial, recreational, scientific, or educational purposes;
- (C) disease or predation;
- (D) the inadequacy of existing regulatory mechanisms; or
- (E) other natural or manmade factors affecting its continued existence.

(2) With respect to any species over which program responsibilities have been vested in the Secretary of Commerce pursuant to Reorganization Plan Numbered 4 of 1970—

(A) in any case in which the Secretary of Commerce determines that such species should—

- (i) be listed as an endangered species or a threatened species, or
- (ii) be changed in status from a threatened species to an endangered species,

he shall so inform the Secretary of the Interior; who shall list such species in accordance with this section;

(B) in any case in which the Secretary of Commerce determines that such species should—

- (i) be removed from any list published pursuant to subsection (c) of this section, or
- (ii) be changed in status from an endangered species to a threatened species,

he shall recommend such action to the Secretary of the Interior, and the Secretary of the Interior, if he concurs in the recommendation, shall implement such action; and

(C) the Secretary of the Interior may not list or remove from any list any such species, and may not change the status of any such species which are listed, without a prior favorable determination made pursuant to this section by the Secretary of Commerce.

(3)

(A) The Secretary, by regulation promulgated in accordance with subsection (b) of this section and to the maximum extent prudent and determinable—

(i) shall, concurrently with making a determination under paragraph (1) that a species is an endangered species or a threatened species, designate any habitat of such species which is then considered to be critical habitat; and

(ii) may, from time-to-time thereafter as appropriate, revise such designation.

(B)

(i) The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 670a of this title, if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

(ii) Nothing in this paragraph affects the requirement to consult under section 1536 (a)(2) of this title with respect to an agency action (as that term is defined in that section).

(iii) Nothing in this paragraph affects the obligation of the Department of Defense to comply with section 1538 of this title, including the prohibition preventing extinction and taking of endangered species and threatened species.

(b) Basis for determinations

(1)

(A) The Secretary shall make determinations required by subsection (a)(1) of this section solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices, within any area under its jurisdiction; or on the high seas.

(B) In carrying out this section, the Secretary shall give consideration to species which have been—

(i) designated as requiring protection from unrestricted commerce by any foreign nation, or pursuant to any international agreement; or

(ii) identified as in danger of extinction, or likely to become so within the foreseeable future, by any State agency or by any agency of a foreign nation that is responsible for the conservation of fish or wildlife or plants.

(2) The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) of this section on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.

(3)

(A) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553 (e) of title 5, to add a species to, or to remove a species from, either of the lists published under subsection (c) of this section, the

Secretary shall make a finding as to whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. If such a petition is found to present such information, the Secretary shall promptly commence a review of the status of the species concerned. The Secretary shall promptly publish each finding made under this subparagraph in the Federal Register.

(B) Within 12 months after receiving a petition that is found under subparagraph (A) to present substantial information indicating that the petitioned action may be warranted, the Secretary shall make one of the following findings:

(i) The petitioned action is not warranted, in which case the Secretary shall promptly publish such finding in the Federal Register.

(ii) The petitioned action is warranted, in which case the Secretary shall promptly publish in the Federal Register a general notice and the complete text of a proposed regulation to implement such action in accordance with paragraph (5).

(iii) The petitioned action is warranted, but that—

(I) the immediate proposal and timely promulgation of a final regulation implementing the petitioned action in accordance with paragraphs (5) and (6) is precluded by pending proposals to determine whether any species is an endangered species or a threatened species, and

(II) expeditious progress is being made to add qualified species to either of the lists published under subsection (c) of this section and to remove from such lists species for which the protections of this chapter are no longer necessary,

in which case the Secretary shall promptly publish such finding in the Federal Register, together with a description and evaluation of the reasons and data on which the finding is based.

(C)

(i) A petition with respect to which a finding is made under subparagraph (B)(iii) shall be treated as a petition that is resubmitted to the Secretary under subparagraph (A) on the date of such finding and that presents substantial scientific or commercial information that the petitioned action may be warranted.

(ii) Any negative finding described in subparagraph (A) and any finding described in subparagraph (B)(i) or (iii) shall be subject to judicial review.

(iii) The Secretary shall implement a system to monitor effectively the status of all species with respect to which a finding is made under subparagraph (B)(iii) and shall make prompt use of the authority under paragraph 7⁽¹⁾ to prevent a significant risk to the well being of any such species.

(D)

(i) To the maximum extent practicable, within 90 days after receiving the petition of an interested person under section 553 (e) of title 5, to revise a critical habitat designation, the Secretary shall make a finding as to whether the petition presents substantial scientific information indicating that the revision may be warranted. The Secretary shall promptly publish such finding in the Federal Register.

(ii) Within 12 months after receiving a petition that is found under clause (i) to present substantial information indicating that the requested revision may be warranted, the Secretary shall determine how he intends to proceed with the requested revision, and shall promptly publish notice of such intention in the Federal Register.

(4) Except as provided in paragraphs (5) and (6) of this subsection, the provisions of section 553 of title 5 (relating to rulemaking procedures), shall apply to any regulation promulgated to carry out the purposes of this chapter.

(5) With respect to any regulation proposed by the Secretary to implement a determination, designation, or revision referred to in subsection (a)(1) or (3) of this section, the Secretary shall—

(A) not less than 90 days before the effective date of the regulation—

(i) publish a general notice and the complete text of the proposed regulation in the Federal Register, and

(ii) give actual notice of the proposed regulation (including the complete text of the regulation) to the State agency in each State in which the species is believed to occur, and to each county, or equivalent jurisdiction in which the species is believed to occur, and invite the comment of such agency, and each such jurisdiction, thereon;

(B) insofar as practical, and in cooperation with the Secretary of State, give notice of the proposed regulation to each foreign nation in which the species is believed to occur or whose citizens harvest the species on the high seas, and invite the comment of such nation thereon;

(C) give notice of the proposed regulation to such professional scientific organizations as he deems appropriate;

(D) publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur; and

(E) promptly hold one public hearing on the proposed regulation if any person files a request for such a hearing within 45 days after the date of publication of general notice.

(6)

(A) Within the one-year period beginning on the date on which general notice is published in accordance with paragraph (5)(A)(i) regarding a proposed regulation, the Secretary shall publish in the Federal Register—

(i) if a determination as to whether a species is an endangered species or a threatened species, or a revision of critical habitat, is involved, either—

(I) a final regulation to implement such determination,

(II) a final regulation to implement such revision or a finding that such revision should not be made,

(III) notice that such one-year period is being extended under subparagraph (B)(i), or

(IV) notice that the proposed regulation is being withdrawn under subparagraph (B)(ii), together with the finding on which such withdrawal is based; or

(ii) subject to subparagraph (C), if a designation of critical habitat is involved, either—

(I) a final regulation to implement such designation, or

(11) notice that such one-year period is being extended under such subparagraph.

(B)

(i) If the Secretary finds with respect to a proposed regulation referred to in subparagraph (A)(i) that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination or revision concerned, the Secretary may extend the one-year period specified in subparagraph (A) for not more than six months for purposes of soliciting additional data.

(ii) If a proposed regulation referred to in subparagraph (A)(i) is not promulgated as a final regulation within such one-year period (or longer period if extension under clause (i) applies) because the Secretary finds that there is not sufficient evidence to justify the action proposed by the regulation, the Secretary shall immediately withdraw the regulation. The finding on which a withdrawal is based shall be subject to judicial review. The Secretary may not propose a regulation that has previously been withdrawn under this clause unless he determines that sufficient new information is available to warrant such proposal.

(iii) If the one-year period specified in subparagraph (A) is extended under clause (i) with respect to a proposed regulation, then before the close of such extended period the Secretary shall publish in the Federal Register either a final regulation to implement the determination or revision concerned, a finding that the revision should not be made, or a notice of withdrawal of the regulation under clause (ii), together with the finding on which the withdrawal is based.

(C) A final regulation designating critical habitat of an endangered species or a threatened species shall be published concurrently with the final regulation implementing the determination that such species is endangered or threatened, unless the Secretary deems that—

(i) it is essential to the conservation of such species that the regulation implementing such determination be promptly published; or

(ii) critical habitat of such species is not then determinable, in which case the Secretary, with respect to the proposed regulation to designate such habitat, may extend the one-year period specified in subparagraph (A) by not more than one additional year, but not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at that time, designating, to the maximum extent prudent, such habitat.

(7) Neither paragraph (4), (5), or (6) of this subsection nor section 553 of title 5 shall apply to any regulation issued by the Secretary in regard to any emergency posing a significant risk to the well-being of any species of fish or wildlife or plants, but only if—

(A) at the time of publication of the regulation in the Federal Register the Secretary publishes therein detailed reasons why such regulation is necessary; and

(B) in the case such regulation applies to resident species of fish or wildlife, or plants, the Secretary gives actual notice of such regulation to the State agency in each State in which such species is believed to occur.

Such regulation shall, at the discretion of the Secretary, take effect immediately upon the publication of the regulation in the Federal Register. Any regulation promulgated under the authority of this paragraph shall cease to have force and effect at the close of the 240-day period following the date of publication unless, during such 240-day period, the rulemaking procedures which would apply to such regulation without regard to this paragraph are complied with. If at any time after issuing an emergency regulation the Secretary determines, on the basis of the best appropriate data available to him, that substantial evidence does not exist to warrant such regulation, he shall withdraw it.

(8) The publication in the Federal Register of any proposed or final regulation which is necessary or appropriate to carry out the purposes of this chapter shall include a summary by the Secretary of the data on which such regulation is based and shall show the relationship of such data to such regulation; and if such regulation designates or revises critical habitat, such summary shall, to the maximum extent practicable, also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify such habitat, or may be affected by such designation.

(c) Lists

(1) The Secretary of the Interior shall publish in the Federal Register a list of all species determined by him or the Secretary of Commerce to be endangered species and a list of all species determined by him or the Secretary of Commerce to be threatened species. Each list shall refer to the species contained therein by scientific and common name or names, if any, specify with respect to each such species over what portion of its range it is endangered or threatened, and specify any critical habitat within such range. The Secretary shall from time to time revise each list published under the authority of this subsection to reflect recent determinations, designations, and revisions made in accordance with subsections (a) and (b) of this section.

(2) The Secretary shall—

(A) conduct, at least once every five years, a review of all species included in a list which is published pursuant to paragraph (1) and which is in effect at the time of such review; and

(B) determine on the basis of such review whether any such species should—

(i) be removed from such list;

(ii) be changed in status from an endangered species to a threatened species; or

(iii) be changed in status from a threatened species to an endangered species.

Each determination under subparagraph (B) shall be made in accordance with the provisions of subsections (a) and (b) of this section.

(d) Protective regulations

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 1538 (a)(1) of this title, in the case of fish or wildlife, or section 1538 (a)(2) of this title, in the case of plants, with respect to endangered species; except that with respect to the taking of resident species of fish or wildlife, such regulations shall apply in any State which has entered into a cooperative agreement pursuant to section 1535 (c) of this title only to the extent that such regulations have also been adopted by such State.

(e) Similarity of appearance cases

The Secretary may, by regulation of commerce or taking, and to the extent he deems advisable, treat any species as an endangered species or threatened species even though it is not listed pursuant to this section if he finds that—

(A) such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species;

(B) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and

(C) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this chapter.

(f) Recovery plans

(1) The Secretary shall develop and implement plans (hereinafter in this subsection referred to as "recovery plans") for the conservation and survival of endangered species and threatened species listed pursuant to this section, unless he finds that such a plan will not promote the conservation of the species. The Secretary, in developing and implementing recovery plans, shall, to the maximum extent practicable—

(A) give priority to those endangered species or threatened species, without regard to taxonomic classification, that are most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity;

(B) incorporate in each plan—

(i) a description of such site-specific management actions as may be necessary to achieve the plan's goal for the conservation and survival of the species;

(ii) objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of this section, that the species be removed from the list; and

(iii) estimates of the time required and the cost to carry out those measures needed to achieve the plan's goal and to achieve intermediate steps toward that goal.

(2) The Secretary, in developing and implementing recovery plans, may procure the services of appropriate public and private agencies and institutions, and other qualified persons. Recovery teams appointed pursuant to this subsection shall not be subject to the Federal Advisory Committee Act.

(3) The Secretary shall report every two years to the Committee on Environment and Public Works of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives on the status of efforts to develop and implement recovery plans for all species listed pursuant to this section and on the status of all species for which such plans have been developed.

(4) The Secretary shall, prior to final approval of a new or revised recovery plan, provide public notice and an opportunity for public review and comment on such plan. The Secretary shall consider all information presented during the public comment period prior to approval of the plan.

(5) Each Federal agency shall, prior to implementation of a new or revised recovery plan, consider all information presented during the public comment period under paragraph (4).

(g) Monitoring

(1) The Secretary shall implement a system in cooperation with the States to monitor effectively for not less than five years the status of all species which have recovered to the point at which the measures provided pursuant to this chapter are no longer necessary and which, in accordance with the provisions of this section, have been removed from either of the lists published under subsection (c) of this section.

(2) The Secretary shall make prompt use of the authority under paragraph 7 ^[2] of subsection (b) of this section to prevent a significant risk to the well being of any such recovered species.

(h) Agency guidelines; publication in Federal Register; scope; proposals and amendments: notice and opportunity for comments

The Secretary shall establish, and publish in the Federal Register, agency guidelines to insure that the purposes of this section are achieved efficiently and effectively. Such guidelines shall include, but are not limited to—

(1) procedures for recording the receipt and the disposition of petitions submitted under subsection (b)(3) of this section;

(2) criteria for making the findings required under such subsection with respect to petitions;

(3) a ranking system to assist in the identification of species that should receive priority review under subsection (a)(1) of this section; and

(4) a system for developing and implementing, on a priority basis, recovery plans under subsection (f) of this section.

The Secretary shall provide to the public notice of, and opportunity to submit written comments on, any guideline (including any amendment thereto) proposed to be established under this subsection.

(i) Submission to State agency of justification for regulations inconsistent with State agency's comments or petition

If, in the case of any regulation proposed by the Secretary under the authority of this section, a State agency to which notice thereof was given in accordance with subsection (b)(5)(A)(ii) of this section files comments disagreeing with all or part of the proposed regulation, and the Secretary issues a final regulation which is in conflict with such comments, or if the Secretary fails to adopt a regulation pursuant to an action petitioned by a State agency under subsection (b)(3) of this section, the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.

TITLE 16 - CONSERVATION

CHAPTER 35 - ENDANGERED SPECIES

§ 1539 - Exceptions

(a) Permits

(1) The Secretary may permit, under such terms and conditions as he shall prescribe—

(A) any act otherwise prohibited by section 1538 of this title for scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant to subsection (j) of this section; or

(B) any taking otherwise prohibited by section 1538 (a)(1)(B) of this title if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

(2)

(A) No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefor submits to the Secretary a conservation plan that specifies—

(i) the impact which will likely result from such taking;

(ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;

(iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and

(iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.

(B) If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that—

(i) the taking will be incidental;

(ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;

(iii) the applicant will ensure that adequate funding for the plan will be provided;

(iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(v) the measures, if any, required under subparagraph (A)(iv) will be met;

and he has received such other assurances as he may require that the plan will be implemented, the Secretary shall issue the permit. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to, such reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.

(C) The Secretary shall revoke a permit issued under this paragraph if he finds that the permittee is not complying with the terms and conditions of the permit.

(b) Hardship exemptions

(1) If any person enters into a contract with respect to a species of fish or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 1533 of this title will cause undue economic hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 1538 (a) of this title to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove such hardship; except that

(A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary;

(B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to December 28, 1973, shall expire in accordance with the terms of section 668cc-3⁽¹⁾ of this title; and

(C) no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used in a commercial activity.

(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

(A) substantial economic loss resulting from inability caused by this chapter to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species;

(B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income from the lawful taking of any listed species, which taking would be made unlawful under this chapter; or

(C) curtailment of subsistence taking made unlawful under this chapter by persons

(i) not reasonably able to secure other sources of subsistence; and

(ii) dependent to a substantial extent upon hunting and fishing for subsistence; and

(iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) Notice and review

The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this subsection. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit. Information received by the Secretary as a part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(d) Permit and exemption policy

The Secretary may grant exceptions under subsections (a)(1)(A) and (b) of this section only if he finds and publishes his finding in the Federal Register 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 1531 of this title.

(e) Alaska natives

(1) Except as provided in paragraph (4) of this subsection the provisions of this chapter shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by—

- (A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or
- (B) any non-native permanent resident of an Alaskan native village;

if such taking is primarily for subsistence purposes. Non-edible byproducts of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

- (2) Any taking under this subsection may not be accomplished in a wasteful manner.
- (3) As used in this subsection—

(i) The term “subsistence” includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

(ii) The term “authentic native articles of handicrafts and clothing” means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-Native Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this chapter. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 1373 of this title, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

(f) Pre-Act endangered species parts exemption; application and certification; regulation; validity of sales contract; separability; renewal of exemption; expiration of renewal certification

(1) As used in this subsection—

(A) The term “pre-Act endangered species part” means—

(i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

(B) The term “scrimshaw product” means any art form which involves the substantial etching or engraving of designs upon, or the substantial carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea. For purposes of this subsection, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving, or carving.

(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

(A) The prohibition on exportation from the United States set forth in section 1538 (a)(1)(A) of this title.

(B) Any prohibition set forth in section 1538 (a)(1)(E) or (F) of this title.

(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

(A) any prohibition in section 1538 (a) of this title which is exempted;

(B) the pre-Act endangered species parts to which the exemption applies;

(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate unless such exemption is renewed under paragraph (8); and

(D) any term or condition prescribed pursuant to paragraph (5)(A) or (B), or both, which the Secretary deems necessary or appropriate.

(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection;

to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this chapter. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 1533 (f)(2)(A)(i) of this title.

(6)

(A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 1538 (a)(1)(F) of this title.

(B) In the event that this paragraph is held invalid, the validity of the remainder of this chapter, including the remainder of this subsection, shall not be affected.

(7) Nothing in this subsection shall be construed to—

(A) exonerate any person from any act committed in violation of paragraphs (1)(A), (1)(E), or (1)(F) of section 1538 (a) of this title prior to July 12, 1976; or

(B) immunize any person from prosecution for any such act.

(8)

(A)

(i) ^[2] Any valid certificate of exemption which was renewed after October 13, 1982, and was in effect on March 31, 1988, shall be deemed to be renewed for a six-month period beginning on October 7, 1988. Any person holding such a certificate may apply to the Secretary for one additional renewal of such certificate for a period not to exceed 5 years beginning on October 7, 1988.

(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the previous certificate shall remain in effect during the period of the renewal.

(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.

(D) No person may, after January 31, 1984, sell or offer for sale in interstate or foreign commerce, any pre-Act finished scrimshaw product unless such person holds a valid certificate of exemption issued by the Secretary under this subsection, and unless such product or the raw material for such product was held by such person on October 13, 1982.

(g) Burden of proof

In connection with any action alleging a violation of section 1538 of this title, any person claiming the benefit of any exemption or permit under this chapter shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.

(h) Certain antique articles; importation; port designation; application for return of articles

(1) Sections 1533 (d) and 1538 (a) and (c) of this title do not apply to any article which—

(A) is not less than 100 years of age;

(B) is composed in whole or in part of any endangered species or threatened species listed under section 1533 of this title;

(C) has not been repaired or modified with any part of any such species on or after December 28, 1973; and

(D) is entered at a port designated under paragraph (3).

(2) Any person who wishes to import an article under the exception provided by this subsection shall submit to the customs officer concerned at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation with the Secretary of the Interior, shall by regulation require as being necessary to establish that the article meets the requirements set forth in paragraph (1)(A), (B), and (C).

(3) The Secretary of the Treasury, after consultation with the Secretary of the Interior, shall designate one port within each customs region at which articles described in paragraph (1)(A), (B), and (C) must be entered into the customs territory of the United States.

(4) Any person who imported, after December 27, 1973, and on or before November 10, 1978, any article described in paragraph (1) which—

(A) was not repaired or modified after the date of importation with any part of any endangered species or threatened species listed under section 1533 of this title;

(B) was forfeited to the United States before November 10, 1978, or is subject to forfeiture to the United States on such date of enactment, pursuant to the assessment of a civil penalty under section 1540 of this title; and

(C) is in the custody of the United States on November 10, 1978;

may, before the close of the one-year period beginning on November 10, 1978, make application to the Secretary for return of the article. Application shall be made in such form and manner, and contain such documentation, as the Secretary prescribes. If on the basis of any such application which is timely filed, the Secretary is satisfied that the requirements of this paragraph are met with respect to the article concerned, the Secretary shall return the article to the applicant and the importation of such article shall, on and after the date of return, be deemed to be a lawful importation under this chapter.

(i) Noncommercial transshipments

Any importation into the United States of fish or wildlife shall, if—

(1) such fish or wildlife was lawfully taken and exported from the country of origin and country of reexport, if any;

(2) such fish or wildlife is in transit or transshipment through any place subject to the jurisdiction of the United States en route to a country where such fish or wildlife may be lawfully imported and received;

(3) the exporter or owner of such fish or wildlife gave explicit instructions not to ship such fish or wildlife through any place subject to the jurisdiction of the United States, or did all that could have reasonably been done to prevent transshipment, and the circumstances leading to the transshipment were beyond the exporter's or owner's control;

(4) the applicable requirements of the Convention have been satisfied; and

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

be an importation not in violation of any provision of this chapter or any regulation issued pursuant to this chapter while such fish or wildlife remains in the control of the United States Customs Service.

(j) Experimental populations

(1) For purposes of this subsection, the term "experimental population" means any population (including any offspring arising solely therefrom) authorized by the Secretary for release under paragraph (2), but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species.

(2)

(A) The Secretary may authorize the release (and the related transportation) of any population (including eggs, propagules, or individuals) of an endangered species or a threatened species outside the current range of such species if the Secretary determines that such release will further the conservation of such species.

(B) Before authorizing the release of any population under subparagraph (A), the Secretary shall by regulation identify the population and determine, on the basis of the best available information, whether or not such population is essential to the continued existence of an endangered species or a threatened species.

(C) For the purposes of this chapter, each member of an experimental population shall be treated as a threatened species; except that—

(i) solely for purposes of section 1536 of this title (other than subsection (a)(1) thereof), an experimental population determined under subparagraph (B) to be not essential to the continued existence of a species shall be treated, except when it occurs in an area within the National Wildlife Refuge System or the National Park System, as a species proposed to be listed under section 1533 of this title; and

(ii) critical habitat shall not be designated under this chapter for any experimental population determined under subparagraph (B) to be not essential to the continued existence of a species.

(3) The Secretary, with respect to populations of endangered species or threatened species that the Secretary authorized, before October 13, 1982, for release in geographical areas separate from the other populations of such species, shall determine by regulation which of such populations are an experimental population for the purposes of this subsection and whether or not each is essential to the continued existence of an endangered species or a threatened species.

Title 50: Wildlife and Fisheries

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

Subpart C—General Permit Procedures

§ 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 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 description 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 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.

(SPs) 800–107 and 800–57, which can be updated in a timely fashion as the technical conditions change.

DATES: The approved changes are effective as of October 17, 2008.

FOR FURTHER INFORMATION CONTACT:

Elaine Barker, (301) 975–2911, National Institute of Standards and Technology, 100 Bureau Drive, STOP 8930, Gaithersburg, MD 20899–8930, e-mail: elaine.barker@nist.gov, or Quynh Dang, (301) 975–3610, e-mail: quynh.dang@nist.gov. FIPS 180–3 is available electronically from the NIST Web site at: <http://csrc.nist.gov/publications/PubsFIPS.html>. NIST Special Publications (SPs) are available electronically from the NIST Web site at: <http://csrc.nist.gov/publications/PubsSPs.html>.

SUPPLEMENTARY INFORMATION: On June 12, 2007, NIST published a notice in the **Federal Register** (72 FR 32282) announcing draft FIPS 180–3, and soliciting comments on the draft standard from the public, research communities, manufacturers, voluntary standards organizations and Federal, State and local government organizations. In addition to being published in the **Federal Register**, the notice was posted on the NIST web pages. Information was provided about the submission of electronic comments, and an email address was provided for the submission of comments.

Comments, responses, and questions were received from two federal government organizations, three private sector organizations and one individual. The comments that were received asked for clarification of the text of the standard, recommended editorial and formatting changes, or raised issues unrelated to the revision of the FIPS. All of the suggestions and recommendations were carefully reviewed, and changes were made to the standard, where appropriate. None of the comments opposed the approval of the revised standard. The following is a summary of the specific comments and NIST's responses to them:

Comment: A number of editorial changes were suggested.

Response: NIST made the appropriate editorial changes such as page numbering style changes for the preface and the main body of the FIPS and adding a page break before the appendix section.

Comment: Was the specification for SHA–1 changed in FIPS 180–3?

Response: The SHA–1 algorithm remains the same in the FIPS 180–3.

Comment: What are the changes between FIPS 180–2 and 180–3?

Response: There are two main technical changes in FIPS 180–3 from FIPS 180–2. The first change is that security strengths of the five secure hash algorithms are not described in the FIPS because they could change. Instead, the security strengths are discussed in NIST Special Publication 800–107. A reference to the NIST Publication 800–107 was added in Appendix A. The second change is that examples of the hash values generated by the five hash algorithms were removed from the FIPS and posted on a Web site so that they can be conveniently updated. The link to the Web site was added in the FIPS under Implementation Notes in the FIPS.

Comment: One commenter preferred having the examples of the five hash algorithms included in the FIPS.

Response: The FIPS contains only the technical specifications for the hash algorithms. NIST will provide examples on its Web site for illustrative purposes only. Since NIST is providing a link to the Web site within the standard, finding the examples should be no more onerous than if they were included in the standard.

Comment: Add a footnote to describe the compromised security status of SHA–1.

Response: This type of information will be provided in NIST Special Publication 800–107; a reference to SP 800–107 is provided in the FIPS.

Authority: In accordance with the Information Technology Management Reform Act of 1996 (Pub. L. 104–106) and the Federal Information Security Management Act (FISMA) of 2002 (Pub. L. 107–347), the Secretary of Commerce is authorized to approve Federal Information Processing Standards (FIPS). NIST activities to develop computer security standards to protect Federal sensitive (unclassified) information systems are undertaken pursuant to specific responsibilities assigned to NIST by section 20 of the National Institute of Standards and Technology Act (5 U.S.C. 278g–3), as amended by section 303 of the Federal Information Security Management Act of 2002.

E.O. 12866: This notice has been determined not to be significant for the purposes of E.O. 12866.

Dated: October 9, 2008.

Patrick Gallagher,

Deputy Director.

[FR Doc. E8–24743 Filed 10–16–08; 8:45 am]

BILLING CODE 3510–13–P

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), Commerce.

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 December 16, 2008.

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 Gary Rule, (503) 230–5424 or Gary.Rule@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 instructions 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 Control Number: 0648-0402.

Form Number: None.

Type of Review: Regular submission.

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

Estimated Number of Respondents: 131.

Estimated Time per Response: Permit applications, 20 hours; permit modification requests and final reports, 10 hours; and annual reports, 5 hours.

Estimated Total Annual Burden Hours: 865.

Estimated Total Annual Cost to Public: \$18,646.

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: October 6, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XJ61

Atlantic Striped Bass Conservation Act; Atlantic Coastal Fisheries Cooperative Management Act; Magnuson-Stevens Fishery Conservation and Management Act; Executive Order 13449; Protection of Striped Bass and Red Drum Populations

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

ACTION: Notice of agency finding.

SUMMARY: This notice announces that NMFS has determined that the regulatory requirements of Executive Order (E.O.) 13449, "Protection of Striped Bass and Red Drum Fish Populations" are fulfilled. The E.O. authorized the Secretary of Commerce to revise regulations as appropriate, to include the prohibition of sale of striped bass and red drum caught within the U.S. exclusive economic zone (EEZ) of the Atlantic Ocean and the Gulf of Mexico. Upon review of existing regulations, NMFS has determined that current prohibitions on the possession and sale of striped bass and red drum caught in the EEZ achieve the intent of the E.O., thus no further action is warranted at this time.

ADDRESSES: Questions regarding this notice may be directed to: Alan Risenhoover, Director, Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910. Mark the outside envelope, "Red Drum and Striped Bass." Copies of the E.O. are available online at: http://www.nmfs.noaa.gov/sfa/state_federal/regulatory_activities.htm.

FOR FURTHER INFORMATION CONTACT: Alan Risenhoover, 301-713-2334.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 2007, the President signed E.O. 13449, which states it is the policy of the United States to conserve striped bass and red drum for the recreational, economic, and

environmental benefit, based on sound science and in cooperation with State, territorial, local, and tribal governments. The E.O. contains a provision calling on the Secretary of Commerce to revise current regulations, as appropriate, to include a prohibition of sale of striped bass and red drum caught within the EEZ of the Atlantic and Gulf of Mexico. Striped bass and red drum are managed under the authorities of Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the provisions of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) and the Atlantic Striped Bass Conservation Act (Striped Bass Act). At present, striped bass regulations at 50 CFR 697.7(b) already prohibit anyone from fishing for, harvesting, or possessing Atlantic striped bass in the EEZ, with the exception for possession of Atlantic striped bass near Block Island Sound, RI, and Montauk Point, NY (§ 697.7(b)(3)). Similarly, red drum regulations at 50 CFR 622.32(b)(2)(iii) (for red drum in the Gulf of Mexico), and § 697.7(f) (for red drum in the Atlantic Ocean, regulations which were formerly located at § 622.32(b)(3) and § 622.32(b)(4)(iii)) also prohibit harvest and possession of red drum from the EEZ. In addition to these species specific prohibitions, the general prohibitions at 50 CFR 600.725(a) state that it is unlawful to offer for sale or sell any fish taken or retained in violation of the Magnuson-Stevens Act or any other statute administered by NOAA.

NMFS published a final rule on October 6, 2008 (73 FR 58059) repealing the Atlantic Coast Red Drum Fishery Management Plan and transferring management authority of Atlantic red drum in the EEZ from the South Atlantic Fishery Management Council, under the Magnuson-Stevens Act to the Atlantic States Marine Fisheries Commission, under the Atlantic Coastal Act. Under this final rule, the current prohibitions remain in effect in a different section of the Code of Federal Regulations. Thus, this notice does not impact the final rule, nor are findings of this notice changed as a result of the final rule.

Findings

NMFS has determined that the current prohibitions on the possession of striped bass and red drum caught in the EEZ, in concert with the prohibition on sale of fish taken in violation of statutes administered by NOAA, constitutes fulfillment of the requirements of E.O. 13449.

Authority: 16 U.S.C. 1801 *et seq.*