



# Center for Regulatory Effectiveness

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**TRANSMITTED BY US MAIL AND ELECTRONIC MAIL**

Diana Hynek  
Departmental Paperwork Clearance Officer  
Department of Commerce, Room 6616  
14<sup>th</sup> and Constitution Avenue NW  
Washington, DC 20230

Re: OMB Control Number: 0648-0141—Propose Information Collection; Comment Request; National Marine Sanctuary Permits

Dear Sir or Madam:

The Center for Regulatory Effectiveness (CRE) is pleased to submit these comments to the Office of Information and Regulatory Affairs (OIRA) regarding the National Oceanic and Atmospheric Administration's (NOAA) proposed Information Collection Request (ICR) for the National Marine Sanctuaries' permit program. The proposed ICR is not compliant with the Paperwork Reduction Act (PRA), because there is no objective basis for the estimate of the burden and there is no plan for the efficient and effective use of the information to be collected. CRE recommends that NOAA cure the PRA defects by providing a more accurate and detailed estimate of the burden and provide a plan for efficient and effective use of the collected information.

***I. There is no Objective Basis for the Estimate of the Burden***

For an information collection request, the agency must provide a "specific, objectively supported estimate of burden, which shall include, in the case of an existing collection of

information, an evaluation of the burden that has been imposed by such collection.”<sup>1</sup> In addition, information collection requests must comply with OMB data quality guidelines.<sup>2</sup> Data quality guidelines require that the data used by agencies must be objective.<sup>3</sup> “Objectivity involves a focus on ensuring accurate, reliable, and unbiased information. In a...financial, or statistical context, the original and supporting data shall be developed, using sound statistical and research methods.”<sup>4</sup> The data “shall include a *high degree of transparency about data and methods* to facilitate the reproducibility of such information by qualified third parties.”<sup>5</sup>

In the proposed ICR, NOAA estimates that it will require 1.5 hours to complete an application for a general permit, 8 hours for a special permit, 24 hours for appeals, and it estimates the number of respondents as 634. This will result in an *estimated total annual burden hours* to be 1,873 and the *estimate total annual cost to public* of \$1,034 in reporting and record keeping costs. This unsupported estimate of the burden violates the PRA on two grounds: (1) there is no basis for the estimate and (2) it is an inaccurate estimate.

NOAA does not provide any basis for its estimate of the total annual burden of hour on respondents or the estimate total cost to the public with NOAA’s requests to applicants for additional information. Without any support, NOAA’s estimate of the burden fails to provide the high degree of transparency about data and methods required by the Data Quality Act and the PRA. In addition, it is evident that the estimate lacks any basis, because this ICR is the second upward modification from the initial estimate by NOAA that has been necessary to accurately reflect the actual burden imposed on the public.

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<sup>1</sup> 31 U.S.C. 1320.8(a)(4)

<sup>2</sup> John D. Graham, *Memorandum for the President’s Management Council*, p. 12, June 10, 2002 (In this light, we note that each agency is already required to demonstrate the practical utility of a proposed collection of information in its PRA submission, i.e., for draft information collections designed to gather information that the agency plans to disseminate. Thus, we think it important that each agency should declare in its guidelines that it will demonstrate in its PRA clearance packages that each such draft information collection will result in information that will be collected, maintained, and used in a way consistent with the OMB and agency information quality standards. It is important that we make use of the PRA clearance process to help improve the quality of information that agencies collect and disseminate. Thus, OMB will approve only those information collections that are likely to obtain data that will comply with the OMB and agency information quality guidelines) available at [http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/iqg\\_comments.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/iqg_comments.pdf).

<sup>3</sup> Office of Management and Budget, *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Notice; Republication*, p. 8, available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002\\_register&docid=R2-59-filed.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002_register&docid=R2-59-filed.pdf).

<sup>4</sup> *Id.* at 9.

<sup>5</sup> *Id.* at 10 (emphasis added).

For instance, the 2005 ICR previously approved estimated the total number of hours for the public to comply with the permit application requirements as 1,138. This estimate was then adjusted upward to 1,436 hours. Now the present ICR estimates the total annual burden on the public at 1,873 hours. The table below reflects NOAA’s underestimation in the previous ICRs, which amounts to over a 60% increase.

	2005 Estimate	2008 Estimate	Sept 2011 ICR Estimate
<b>Time Burden (hours)</b>	1,138	1,436	1,873

Thus, NOAA’s unsupported estimate of 1,873 annual hours for the public to comply with the National Marine Sanctuary Permit program violates both the PRA and the Data Quality Act. Accordingly, in order for OMB to approve this ICR, NOAA must provide some support for its estimated burden of 1,873 hours and provide an explanation for failing to accurately estimate the actual burden previously.

**II. *There is no Plan for the Efficient and Effective Use of the Collected Information***

To properly collect information an agency must have, “a plan for the efficient and effective management and use of the information to be collected, including necessary resources.”<sup>6</sup> Under the ICR, NOAA does not have a plan for the efficient and effective use of the information to be collected. Specifically, NOAA does not provide any details on when the agency will seek additional information from respondents, what type of information it will require on follow up inquiries, the basis for approval, and when an appeal is appropriate. Under the permit program, the type of activities that qualify for a permit vary from sanctuary to sanctuary and “the amount of depth of information given in an application depends on the complexity of the proposed activity...[and] more or less information may be required for certain permit types.”<sup>7</sup> Yet there is one general application for all sanctuaries. This uncertainty increases the burden on the respondent while determining if his/her proposed activity requires a permit in

<sup>6</sup> 31 U.S.C. 1320.8

<sup>7</sup> National Oceanic and Atmospheric Administration, *Supporting Statement National Marine Sanctuary Permits*, OMB Control No. 0648-0141 (2008).

the specific sanctuary and accordingly the depth of information that is necessary for the specific activity in the specific sanctuaries. This lack of planning and heightened uncertainty for the information collection is the very thing the PRA is aimed to prevent.

Thus, NOAA's lack of a plan for the information to be collected violates the PRA. NOAA must provide OMB and the public with a much more detailed plan on how the collected information will be used efficient and effectively.

### III. *Conclusion*

CRE appreciates the opportunity to highlight the deficiencies in NOAA's ICR concerning the substantial equivalence exemption process. CRE requests that NOAA cure these defects by providing a detailed basis of its estimated burden and creating a plan for the effective use of the information. If you need further information regarding any issue discussed in this comment letter, please do not hesitate to contact me at [secretary1@mbsdc.com](mailto:secretary1@mbsdc.com) or (202) 265-2383.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jim Tozzi". The signature is stylized with a large initial "J" and a long horizontal stroke.

Jim Tozzi  
Member, Board of Advisors