

EPA will maintain a docket system, available to the public, identifying the applicable water quality standards for purposes of the Act.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office Of The Secretary

45 CFR Part 5b

Privacy Act; Implementation

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services proposes to exempt a new system of records, 09-25-0213, "Administration: Investigative Records, HHS/NIH/OM/OA/OMA," from certain requirements of the Privacy Act to protect records compiled in the course of an inquiry and/or investigation and to protect the identity of confidential sources who furnish information to the Government under an express promise that the identity of such source would be held in confidence.

DATES: Comments on the proposed amendment must be received on or before August 9, 1999.

ADDRESS: Written comments should be sent to: NIH Privacy Act Officer, 6011 Executive Boulevard, Room 601, Rockville, MD 20852.

Comments will be available for public inspection at this address on Monday through Friday of each week from 9 am to 3 pm.

FOR FURTHER INFORMATION CONTACT: NIH Privacy Act Officer, 6011 Executive Boulevard, Room 601, Rockville, MD 20852, 301-496-2832. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Office of Management Assessment (OMA) assumes the lead responsibility on cases received through the DHHS Office of Inspector General (OIG) hotline that are referred to NIH for action. OMA serves as NIH's central liaison on matters involving the Office of Audit Services, OIG; General Accounting Office; Federal Bureau of Investigation; congressional staff members; etc., related to management controls and audits. OMA also has overall responsibility for all matters related to management controls to prevent fraud, waste, abuse, and conflict of interest or the appearance of these, including the development and implementation of policy and the Annual Management Control Plan and the development of a planned

management oversight activity that focuses on early identification and prevention of such occurrences.

To perform these responsibilities, OMA compiles and maintains administrative and investigative records related to alleged or suspected violations of statutes, regulations, and policies governing the conduct of Federal employees, recipients of Federal funding, and others who transact, or seek to transact business with the NIH.

These records contain information related to complaints of incidents, inquiries and investigative findings, administrative and other matters involving complainants, suspects and witnesses, and court dispositions.

The administrative and investigation records are located in the OMA and constitute a "system of records" as defined by the Privacy Act. Concurrent with this notice of proposed rulemaking, the National Institutes of Health is publishing a notice for this new system in the **Federal Register**.

Under the Privacy Act, individuals have a right of access to information pertaining to them which is contained in a system of records. At the same time, the Act permits certain types of systems to be exempt from some of the Privacy Act requirements. Subsection (k)(2) allows agency heads to exempt a system of records containing investigatory material compiled for enforcement purposes. This exemption is qualified in that if the material results in denial of any right, privilege, or benefit to an individual to which that individual would be entitled by Federal law, the individual must be granted access to the material, unless the access would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. In addition, paragraph (k)(5) permits an agency to exempt material from the individual access, notification, and correction and amendment provisions of the Act where investigatory material is compiled for the purpose of determining suitability, eligibility, or qualification for federal employment or financial assistance if release of the material would cause the identity of a confidential source to be revealed.

Because the administrative and investigative records are compiled by a distinct component of the agency whose principal function is investigations which compile material for law enforcement purposes, the specific exemption (k)(2) requirements are met and the exemption is justified.

Investigations compiled for the purpose of determining suitability, eligibility, or qualification for federal employment or financial assistance may be undertaken

when the investigations result from a direct allegation or through suspected violations of statutes, regulations and policies uncovered during an administrative management control review or audit. Determinations that applicants are not suitable, eligible or qualified would justify the need to invoke the paragraph (k)(5) exemption.

The system contains sensitive investigative records. The release of these records to the subject of the investigation could have a chilling effect on the willingness of informants to provide information freely, not only because of fear of retribution, but because they might hesitate to provide any information other than that of which they are entirely certain. Disclosure could impede ongoing investigations and violate the privacy rights of individuals other than the subject of the investigation, thereby diminishing the ability of the OMA to conduct a thorough and accurate investigation. Disclosure of information from these records might also reveal to the subjects of the investigation that their actions are being scrutinized, allowing them the opportunity to prevent detection of illegal activities. Finally, disclosure of information from the records might reveal investigative techniques and thereby jeopardize the integrity of the investigation.

Sources may be reluctant to provide sensitive information unless they can be assured that their identities will not be revealed. These exemptions are proposed to ensure that: (1) Efforts to obtain accurate and objective information will not be hindered; (2) investigative records will not be disclosed inappropriately; and (3) identities of confidential sources and OMA investigators will be protected. Accordingly, the Department proposes to exempt this system under paragraphs (k)(2) and (k)(5) of the Privacy Act from the notification, access, correction, and amendment provisions of the Privacy Act (paragraphs (c)(3), (d)(1)-(4), (e)(1), (e)(4)-(G) and (H) and (f)).

Regulatory Impact Statement

Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, requires the Department to prepare an analysis for any rule that meets one of the E. O. 12866 criteria for a significant regulatory action; that is, that may—

Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment,

public health or safety, or State, local, or tribal governments or communities;

Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

In addition, the Department prepares a regulatory flexibility analysis, in accordance with the Regulatory Flexibility Act (5 U.S.C. chapter 6), if the rule is expected to have a significant impact on a substantial number of small entities.

Because the amendment affects only NIH OMA investigatory records, a small subset of Agency records, we do not believe this proposed rule is economically significant nor do we believe that it will have a significant impact on a substantial number of small entities. The proposed rule is not expected to have any significant impact on OMA operations and does not impose any new information collection requirements under the Paperwork Reduction Act. In addition, this proposed rule is not inconsistent with the actions of any other agency.

For these same reasons, the Secretary certifies this proposed rule will not have a significant economic impact on a substantial number of small entities, and that a Regulatory Flexibility Analysis, as defined under the Regulatory Flexibility Act, is not required.

List of Subjects in 45 CFR Part 5b

Privacy.

Dated: October 13, 1998.

Harold Varmus,

Director, National Institutes of Health.

Approved: March 11, 1999.

Donna E. Shalala,

Secretary.

For the reasons set out in the preamble, 45 CFR part 5b is proposed to be amended as set forth below:

PART 5b—PRIVACY ACT REGULATIONS

1. The authority citation for part 5b would continue to read:

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

2. Section 5b.11(b)(2)(vii) would be amended by designating the paragraph after the colon as paragraph (b)(2)(vii)(A) and republishing it and by adding paragraph (b)(2)(vii)(B) to read as follows:

§ 5b.11 Exempt systems.

* * * * *

(b) * * *

(2) * * *

(vii) Pursuant to subsections (k)(2) and (k)(5) of the Act:

(A) Public Health Service Records Related to Investigations of Scientific Misconduct, HHS/OASH/ORI.

(B) Administration: Investigative Records, HHS/NIH/OM/OA/OMA.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622 and 640

[Docket No. 990621165-9165-01; I.D. 022599A]

RIN: 0648-AL43

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Essential Fish Habitat (EFH) for Species in the South Atlantic; Amendment 4 to the Fishery Management Plan for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region (Coral FMP)

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes to increase the size of the Oculina Bank Habitat Area of Particular Concern (HAPC) and to incorporate two adjacent areas within the Oculina Bank HAPC. NMFS also proposes regulatory changes to reflect the South Atlantic Fishery Management Council's proposed framework procedure for all its fishery management plans (FMPs) that would allow for timely modification of definitions of EFH and establishment or modification of EFH-HAPCs and Coral HAPCs. The intended effect is to protect, conserve, and enhance EFH.

DATES: Written comments on this proposed rule must be received on or before August 23, 1999.

ADDRESSES: Copies of the Habitat Plan for the South Atlantic Region (Habitat Plan) and the EFH Amendment, which includes Amendment 4 to the Coral FMP, a final supplemental environmental impact statement (FSEIS), a regulatory impact review (RIR), and a social impact assessment/

fishery impact assessment may be obtained from the South Atlantic Fishery Management Council (Council), One Southpark Circle, Suite 306, Charleston, SC 29407-4699; telephone: 843-571-4366; fax: 843-769-4520. Copies of the initial regulatory flexibility analysis (IRFA) prepared by NMFS may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Written comments on the proposed rule or the IRFA may be submitted to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727-570-5305.

SUPPLEMENTARY INFORMATION: The fisheries for shrimp, red drum, snapper-grouper, coastal migratory pelagics, golden crab, spiny lobster, and coral, coral reefs, and live/hard bottom habitat of the South Atlantic are managed under the Council's FMPs, as approved and implemented by NMFS. These FMPs were prepared solely by the Council, except for the FMPs for coastal migratory pelagics and spiny lobster that were prepared jointly by the Council and the Gulf of Mexico Fishery Management Council. These FMPs are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622, except for the FMP for spiny lobster that is implemented by regulations at 50 CFR part 640.

The Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act, requires the Council to describe and identify EFH in all its FMPs, including identification of adverse impacts from both fishing and non-fishing activities on EFH and identification of actions required to conserve and enhance EFH. This requirement is intended to provide a basis for the Council and NMFS to protect, conserve, and enhance EFH under management measures that are proposed, approved, and implemented through amendments to FMPs or other means provided by the Magnuson-Stevens Act, if appropriate, and for the Council and NMFS to fulfill their consulting and commenting responsibilities regarding Federal and state actions that may adversely affect EFH.

50 CFR 600.10 defines EFH as follows:

Essential fish habitat (EFH) means those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. For the purpose of interpreting the