



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC711

Endangered Species; File No. 18102

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the North Carolina Department of Environment and Natural Resources, Division of Marine Fisheries (NCDMF) has applied in due form for a permit pursuant to the Endangered Species Act of 1973, as amended (ESA). The permit application is for the incidental take of Atlantic sturgeon (*A. oxyrinchus*) associated with the otherwise lawful commercial and recreational fisheries operating in estuarine waters and deploying anchored gill nets (i.e., passive gill net sets deployed with an anchor or stake at one or both ends of the nets). The duration of the proposed permit is 10 years. NMFS is providing this notice in order to allow other agencies and the public an opportunity to review and comment on the application materials. All comments received will become part of the public record and will be available for review.

DATES: Written comments must be received at the appropriate address or fax number (see ADDRESSES) on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: The application is available for download and review at

[http://www.nmfs.noaa.gov/pr/permits/esa\\_review.htm](http://www.nmfs.noaa.gov/pr/permits/esa_review.htm) under the section heading ESA Section

10(a)(1)(B) Permits and Applications. The application is also available upon written request or by appointment in the following office: Endangered Species Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13535, Silver Spring, MD 20910; phone (301)427-8403; fax (301)713-4060.

You may submit comments, identified by the following document number, NOAA-NMFS-2013-0104, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0104](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0104). click the “Comment Now” icon, complete the required fields, and enter or attach your comments.
- Fax: (301)713-4060; Attn: Therese Conant or Angela Somma.
- Mail: Submit written comments to Endangered Species Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13535, Silver Spring, MD 20910; Attn: Therese Conant or Angela Somma.

Instructions: You must submit comments by one of the above methods to ensure that we receive, document, and consider them. Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.) confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Therese Conant or Angela Somma, (301)427-8403.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the ‘taking’ of a species listed as endangered or threatened. The ESA defines “take” to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

#### Background

NMFS received a draft permit application from NCDMF on April 5, 2012. Based on our review of the draft application, we requested further information and clarification. On December 19, 2012, NCDMF submitted an updated draft application. Based on review of the updated draft, NMFS and NCDMF held further discussions on a monitoring program to gather improved estimates of Atlantic sturgeon bycatch and a better understanding of population impacts. On June 28, 2013, NCDMF submitted a revised complete application for the take of ESA-listed Atlantic sturgeon Gulf of Maine, New York Bight, Chesapeake, Carolina, and South Atlantic Distinct Population Segments that may be caught in gill net fisheries operating in estuarine waters and deploying anchored gill nets (i.e., passive gill net sets deployed with an anchor or stake at one or both ends of the nets).

NCDMF is requesting a total annual incidental take of Atlantic sturgeon in gillnet fisheries as follows: large mesh ( $\geq 5.0$  ISM) = 2,203 (of which 101 are lethal); small mesh ( $\leq 5.0$  ISM) = 724 (of which 68 are lethal). NCDMF and NMFS agreed to enter an Implementing

Agreement, which would allow for the first three-years of monitoring data collected under the permit to be analyzed to verify the requested total annual incidental take. As data are gathered and analyzed through the monitoring program, NMFS will amend the permit to reflect any changes in the take estimate, if appropriate.

#### Conservation Plan

NCDMF's conservation plan describes measures to minimize, monitor, and mitigate the incidental take of ESA-listed Atlantic sturgeon. The conservation plan includes commercial and recreational gill net fisheries operating in estuarine waters and deploying anchored gill nets as regulated through fisheries rules adopted by the North Carolina Marine Fisheries Commission and proclamations issued by the NCDMF director. Regulations include mandatory attendance, yardage limits, mesh size restrictions, minimum distance between fishing operations, gear marking requirements, soak-time restrictions, net shot limits, net height tie down requirements, closed areas, and monitoring and reporting requirements. The conservation plan includes an adaptive management and monitoring program, fisheries reduction, extensive outreach, additional Atlantic sturgeon research, and timely response to "hotspots" where Atlantic sturgeon interactions are unusually high. NCDMF's monitoring program largely is funded through state appropriations and is supplemented through other sources such as the Atlantic Coastal Cooperative Statistics Program and the National Fish and Wildlife Foundation.

NCDMF considered and rejected five other alternatives: (1) No change to anchored gill net operations; (2) statewide closure of fisheries; (3) statewide reduction in large mesh gill net operations; (4) statewide reduction in gill net effort through weekly closures; and (5) statewide reduction in small mesh gill net operations.

#### National Environmental Policy Act

Issuing an ESA section 10(a)(1)(B) permit constitutes a Federal action requiring NMFS to comply with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) as implemented by 40 CFR parts 1500-1508 and NOAA Administrative Order 216-6, Environmental Review Procedures for Implementing the National Policy Act (1999). NMFS intends to prepare an Environmental Assessment to consider a range of reasonable alternatives and fully evaluate the direct, indirect, and cumulative impacts likely to result from issuing a permit.

#### Next Steps

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments received during the comment period to determine whether the application meets the requirements of section 10(a) of the ESA. If NMFS determines that the requirements are met, a permit will be issued for incidental takes of ESA-listed sturgeon. The final NEPA and permit determinations will not be made until after the end of the comment period. NMFS will publish a record of its final action in the Federal Register.

Dated: July 2, 2013.

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Angela Somma, Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

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