



**Billing Code: 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**0648-XR015**

**Endangered Species; File No. 23148**

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

**ACTION:** Notice; receipt of application

**SUMMARY:** Notice is hereby given that Eddystone Generating Station 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 ESA-listed shortnose (*Acipenser brevirostrum*) and Atlantic sturgeon (*A. oxyrinchus*) associated with the otherwise lawful operation and maintenance of the facility. The duration of the proposed permit is 10 years. NMFS is furnishing 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 <https://www.fisheries.noaa.gov/action/incidental-take-permit-eddystone-generating-station> 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 13752, Silver Spring, MD 20910; phone (301) 427-8402; fax (301) 713-4060.

You may submit comments, identified by NOAA-NMFS-2019-0076, 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-2019-0076](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-0076) click the “Comment Now” icon, complete the required fields, and enter or attach your comments.
- *Fax:* (301) 713-4060; Attn: Celeste Stout.
- *Mail:* Submit written comments to Endangered Species Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13631, Silver Spring, MD 20910; Attn: Celeste Stout.

*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).

**FOR FURTHER INFORMATION CONTACT:** Celeste Stout, Phone: (301) 427-8436 or E-mail: [celeste.stout@noaa.gov](mailto:celeste.stout@noaa.gov).

**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 regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

## **Background**

NMFS received a draft permit application from Eddystone Generating Station (“Eddystone”) on June 28, 2018. Based on our review of the draft application, we requested further information and clarification. On December 21, 2018, Eddystone submitted an application. Based on review of the application, NMFS and Eddystone held further discussions regarding what needed to be incorporated in the Habitat Conservation Plan (HCP). On June 21, 2019, Eddystone submitted a revised and complete application for the take of ESA-listed shortnose sturgeon and Atlantic sturgeon (New York Bight Distinct Population Segments) due to the operation of the cooling water intake structure (CWIS) and vessel activity associated with fuel delivery to the station.

Eddystone is requesting a total annual incidental take of shortnose and Atlantic sturgeon as follows:

Entrainment - An annual take limit of 3 Atlantic sturgeon larvae in entrainment sampling, commensurate with an annual take estimate of 3 age-1 equivalents;

Impingement - An annual take limit of three young-of-the-year (YOY) or older Atlantic sturgeon collected in impingement sampling, commensurate with an annual take estimate of seven YOY or older Atlantic sturgeon. And an annual take limit of three YOY or older shortnose sturgeon collected in impingement sampling, commensurate with an annual take estimate of

seven YOY or older shortnose sturgeon; and

Interactions with Vessel Activity due to Oil Deliveries - A ten-year take limit for vessel activity of one Atlantic sturgeon. The first three-years of monitoring data collected under the permit will be analyzed to verify the requested total annual incidental take. As data are gathered and analyzed through monitoring, NMFS will amend the permit to reflect any changes in the take estimate, if appropriate.

### *Conservation Plan*

Section 10 of the ESA specifies that no permit may be issued unless an applicant submits an adequate conservation plan. The conservation plan prepared by Eddystone describes measures designed to minimize and mitigate the impacts of any incidental take of ESA-listed shortnose and Atlantic sturgeon. To avoid and minimize take of sturgeon, Exelon will only operate Eddystone's circulating water pumps (CWPs): (1) when the station is generating electricity; and (2) for incidental maintenance or testing (generally once per month) (referred to collectively as "Essential Station Operations"); or as required by a governmental agency or other entity with jurisdiction to require operations. Depending on station generation and ambient water temperatures, Exelon will also limit operations to one CWP per unit when possible. In addition, Exelon will rely on the river water pumps (RWPs) to provide cooling water for other critical station operations outside of Essential Station Operations. These measures will avoid and minimize the incidental take of sturgeon due to entrainment or impingement by eliminating or reducing water withdrawals at times when such withdrawals are not specifically required for Essential Station Operations or for governmental agency-mandated use. Additionally, Exelon will make all reasonable efforts to schedule fuel oil deliveries outside March 15-July 15.

Eddystone considered and rejected six alternatives: (1) Closed-Cycle Cooling; (2) Fine-

Mesh Modified Ristroph Traveling Screens; (3) Cylindrical Wedgewire Screens; (4) Variable Speed Pumps; (5) Modified Ristroph Traveling Screens with a Fish Handling and Return System; and (6) Rail or Tanker Truck Delivery of Fuel Oil. The alternatives considered were determined to either be unfeasible, or to have no significant impact, or would result in an increase in adverse effects compared to the activity as proposed.

Eddystone is an existing facility and there are no construction activities planned, nor additional funding. Continued monitoring related to the take of shortnose and Atlantic sturgeon will be ongoing and funding will be provided through the facility's annual operating budget.

#### *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 11, 2019.

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Angela Somma,

Chief, Endangered Species Conservation Division,

Office of Protected Resources, National Marine Fisheries Service.

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