



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD090]

Endangered Species; File No. 27490

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 University of Massachusetts Dartmouth School for Marine Science and Technology 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 sturgeon and sea turtles associated with the otherwise lawful fisheries survey activities within and adjacent to the Massachusetts/Rhode Island Wind Energy Area. 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 (see

ADDRESSES) on or before [*INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: The application is available for download and review at

<https://www.fisheries.noaa.gov/national/endangered-species-conservation/incidental-take-permits> and at <https://www.regulations.gov>. The application is also available upon request (see **FOR FURTHER INFORMATION CONTACT**).

You may submit comments, identified by NOAA-NMFS-2023-0090, by Electronic Submission: Submit all electronic public comments via the Federal eRulemaking Portal <https://www.regulations.gov> and enter [NOAA-NMFS-2023-0090] in the Search box. Click on the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

Instructions: 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 by NMFS. 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.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. We will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Alison Verkade, (301) 427–8074, alison.verkade@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.

Species Covered in this Notice

The following species are included in the conservation plan and permit application: loggerhead (*Caretta caretta*), green (*Chelonia mydas*), leatherback

(*Dermochelys coriacea*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles, and Atlantic sturgeon (*Acipenser oxyrinchus*).

Background

NMFS received a draft permit application from University of Massachusetts Dartmouth School for Marine Science and Technology (SMAST) on September 29, 2022. Based on our review of the draft application, we requested further information and clarification. On November 29, 2022, SMAST submitted a revised application. Based on review of the application, NMFS and SMAST held further discussions regarding what needed to be incorporated in the application and Habitat Conservation Plan. On June 13, 2023, SMAST submitted a revised and complete application for the take of ESA-listed sturgeon and sea turtles during the operation of fisheries survey operations in and around the Massachusetts/Rhode Island Wind Energy Area (WEA). The proposed fisheries survey is intended to sample non-ESA listed wild fish populations to provide baseline fisheries data prior to the construction of five offshore wind farms within the WEA in order to better understand the effects on wild fish populations from offshore wind development. SMAST is requesting a 2-year rolling take interval (*i.e.*, take that occurs over any 2 consecutive years) for sturgeon and sea turtles. The total 2-year rolling incidental take of Atlantic sturgeon (*Acipenser oxyrinchus*) requested is 10, based on an estimated 5 takes per year. The total 2-year rolling incidental take of ESA-listed sea turtles requested is 8, based on an estimated 1 take per year of each of the following species: loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempii*), green (*Chelonia mydas*), and leatherback (*Dermochelys coriacea*).

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 SMAST describes measures designed to minimize and mitigate the impacts of any incidental take

of ESA-listed sturgeon and sea turtles. To avoid and minimize take of sturgeon, SMAST will only operate the trawl survey with at least one survey staff onboard trained within the last 5 years in accordance with the Northeast Fisheries Observer Program in protected species identification and safe handling (inclusive of taking genetic samples from Atlantic sturgeon). Additionally, reference materials for identification, disentanglement, safe handling, and genetic sampling procedures will be available on board each survey vessel. To avoid and minimize take of sea turtles, between June 1 and November 30, SMAST will have a trained lookout posted on all vessel transits during all phases of the project to observe for protected species and communicate with the captain to take avoidance measures as soon as possible if one is sighted. Further, SMAST will implement the following avoidance measures between June 1 and November 30: 1) The trained lookout will monitor <https://seaturtlesightings.org> prior to each trip and report any observations of sea turtles in the vicinity of the planned transit to all vessel operators/captains and lookouts on duty that day; 2) If a sea turtle is sighted within 100 m of the operating vessel's forward path, the vessel operator must slow down to 4 knots (unless unsafe to do so) and may resume normal vessel operations once the vessel has passed the sea turtle. If a sea turtle is sighted within 50 m of the forward path of the operating vessel, the vessel operator must shift to neutral when safe to do so and then proceed away from the turtle at a speed of 4 knots or less until there is a separation distance of at least 100 m at which time normal vessel operations may be resumed; 3) The vessel will spend 15 minutes prior to each tow at the sampling station looking out for sea turtles. If a sea turtle is sighted during transit to a sampling station, during scouting, or while the gear is being prepared and deployed, the vessel will immediately proceed to an alternative tow station away from where the animal was observed; 4) Between June 1 and November 30, vessels will avoid transiting through areas of visible jellyfish aggregations or floating sargassum lines or mats. In the event that operational safety

prevents avoidance of such areas, vessels will slow to 4 knots while transiting through such areas; and 5) All vessel crew members will be briefed in the identification of sea turtles and in regulations and best practices for avoiding vessel collisions. Reference materials will be available aboard all project vessels for identification of sea turtles. The expectation and process for reporting of sea turtles (including live, entangled, and dead individuals) will be clearly communicated and posted in highly visible locations aboard all project vessels, so that there is an expectation for reporting to the designated vessel contact (such as the lookout or the vessel captain), as well as a communication channel and process for crew members to do so.

These measures will avoid and minimize the incidental take of sturgeon and sea turtles due to incidental capture or vessel interactions. The alternatives considered were determined by SMAST to either: 1) substantially reduce the ability of the survey to detect changes; 2) result in significant impact delays to the initiation of the surveys, thus jeopardizing the ability to collect pre-construction baseline data that is necessary to understand the response of wild fish populations to offshore wind development; or 3) rely upon unproven methods. Funding for the proposed conservation measures will be provided by the five offshore wind developers directly to SMAST.

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: June 29, 2023.

Angela Somma,

Chief, Endangered Species Conservation Division,

Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023-14236 Filed: 7/5/2023 8:45 am; Publication Date: 7/6/2023]