



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[0648-XD226]

#### Notice of Availability of Draft Environmental Assessment on the Effects of Issuing an Incidental Take Permit No. 27106

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

**ACTION:** Notice; availability of a Draft Environmental Assessment; request for comments.

**SUMMARY:** NMFS announces the availability of the Draft Environmental Assessment (EA) on the effects of issuing an Incidental Take Permit (ITP) (No. 27106) to North Carolina Department of Environment and Natural Resources, Division of Marine Fisheries (NCDMF), pursuant to the Endangered Species Act (ESA) of 1973, as amended, for the incidental take of ESA-listed sea turtles and sturgeon associated with the otherwise lawful gill net fisheries operating in the inshore waters of North Carolina. The duration of the requested permit is 10 years. NMFS is requesting comment on the draft EA.

**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 EA is available for download and review at <https://www.fisheries.noaa.gov/national/endangered-species-conservation/incidental-take-permits> under the section heading Related Documents for the Incidental Take Permit to North Carolina Division of Marine Fisheries (Sea Turtles and Sturgeon). The draft EA is also available upon written request (see **FOR FURTHER INFORMATION**

## **CONTACT).**

You may submit comments on this document, identified by NOAA-NMFS-2023-0098, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2023-0098 in the Search box. Click on the “Comment” 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 [www.regulations.gov](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. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Celeste Stout, NMFS, Office of Protected Resources at [celeste.stout@noaa.gov](mailto:celeste.stout@noaa.gov), 301-427-8403; Wendy Piniak, NMFS, Office of Protected Resources at [wendy.piniak@noaa.gov](mailto:wendy.piniak@noaa.gov), 301-427-8402.

**SUPPLEMENTARY INFORMATION:** Publication of this notice begins the official public comment period for this draft EA. Per the National Environmental Policy Act (NEPA), the purpose of the draft EA is to evaluate the potential direct, indirect, and cumulative impacts caused by the issuance of Permit No. 27106 to NCDMF for the incidental take of ESA-listed sea turtles and sturgeon associated with the otherwise lawful anchored small and large-mesh gill net fisheries operating in the inshore waters of North Carolina. All comments received will become part of the public record and will be available for review.

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 a mechanism 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 EA: North Atlantic and South Atlantic Distinct Population Segments (DPSs) of green (*Chelonia mydas*), Kemp’s ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), leatherback (*Dermochelys coriacea*), and Northwest Atlantic Ocean DPS of loggerhead (*Caretta caretta*) sea turtles, Gulf of Maine, New York Bight, Chesapeake, Carolina, and South Atlantic DPSs of Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*), and shortnose sturgeon (*Acipenser brevirostrum*).

### **Background**

NMFS received a draft permit application and conservation plan from NCDMF on June 22, 2022. Based on our review of the draft application, we requested further information and clarification on their mitigation measures and take requests. After several draft submissions and reviews, on December 2, 2022, NCDMF submitted a complete revised application for the incidental take of ESA-listed sea turtles and sturgeon. On December 22, 2022, we published a notice of receipt (87 FR 78659) of application and conservation plan from NCDMF for an incidental take permit. In that notice, we made the ITP application and associated conservation plan available for public comment. Subsequently, we received a request to extend the public comment period. NMFS

provided a 30-day extension (88 FR 3971) to the comment period which closed on February 22, 2023. We received 231 comments on the application and conservation plan and responses to these comments are available in the draft EA.

### **National Environmental Policy Act**

This notice is provided pursuant to section 10(c) of the ESA and the National Environmental Policy Act (NEPA) regulations (40 CFR 1506.6). The draft EA was prepared in accordance with NEPA (42 USC 4321, *et seq.*), 40 CFR 1500-1508 and NOAA policy and procedures (NOAA Administrative Order [NAO] 216-6A and the Companion Manual for the NAO 216-6A).

### **Alternatives Considered**

NMFS' proposed action is issuance of an ITP to NCDMF, which would authorize take of threatened and endangered sea turtle and sturgeon species associated with the otherwise lawful operation of NC commercial inshore large and small-mesh anchored gill net fisheries and require implementation of a conservation plan, in accordance with the requirements of the ESA. In preparing the draft EA, NMFS considered the following two alternatives for the proposed action.

*Alternative 1: No Action.* In accordance with the NOAA Companion Manual (CM) for NAO 216-6A, Section 6.B.i, NMFS is defining the no action alternative as not authorizing the requested incidental take of ESA-listed sea turtles and sturgeon. This is consistent with our statutory obligation under section 10(a)(1)(B) of the ESA to either: (1) deny the requested ITP or (2) grant the requested ITP and prescribe mitigation, monitoring, and reporting requirements. Under the no action alternative, NMFS would not issue the ITP, in which case, we assume NCDMF would continue to operate the fishery as described in the application without implementing the full suite of specific mitigation measures, monitoring, reporting explained in the Conservation Plan. The Council on Environmental Quality (CEQ) Regulations and the Companion Manual for

NAO 216-6A require consideration and analysis of a no action alternative for the purposes of presenting a comparative analysis to the action alternatives. The no action alternative, serves as a baseline against which the impacts of the action alternatives will be compared and contrasted.

*Alternative 2: Issue Permit as Requested in Application (Preferred alternative):*

Under Alternative 2, an ITP would be issued to exempt NCDMF from the ESA prohibition on taking sturgeon and sea turtles during operation of the otherwise lawful NC commercial inshore anchored gill net fisheries. As required under Section 10(a)(1)(B), the ITP would require NCDMF to operate as described in the application and conservation plan to avoid, minimize, and mitigate take of ESA-listed sea turtles and sturgeon.

Final permit determinations will not be completed until after the end of the 30-day comment period and will fully consider all public comments received during the comment period. NMFS will publish a record of its final action in the **Federal Register**.

**Dated:** August 7, 2023.

**Angela Somma,**

*Chief, Endangered Species Conservation Division,*

*Office of Protected Resources, National Marine Fisheries Service.*

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