



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD247]

Endangered Species; File No. 27551

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

ACTION: Notice; receipt of application and conservation plan for renewal of an incidental take permit.

SUMMARY: Notice is hereby given that the Georgia Department of Natural Resources (GA DNR) 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 commercial shad fishery in Georgia. 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 (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 <http://www.regulations.gov>. The application is also available upon request (see **FOR FURTHER INFORMATION CONTACT**).

You may submit comments on this document, identified by NOAA-NMFS-2023-

0100, 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 NOAA-NMFS-2023-0100 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 <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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Celeste Stout, NMFS, Office of Protected Resources at celeste.stout@noaa.gov or (301) 427-8436; Alison Verkade, NMFS, Office of Protected Resources at 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: Atlantic (*Acipenser oxyrinchus*) and shortnose (*A. brevirostrum*) sturgeon.

Background

NMFS received a draft permit application from GA DNR on January 4, 2023. Based on a review of the application, NMFS requested further information. The applicant submitted a complete application on June 15, 2023 for take of ESA-listed shortnose and Atlantic sturgeon that may be caught incidental to the Georgia shad fishery. The State of Georgia has amended their commercial fishing regulations for the Georgia shad fishery to minimize the incidental capture of ESA-listed shortnose and Atlantic sturgeon.

Regulations include the closure of upstream waters in the Altamaha and Savannah rivers, as well as the closure of Ogeechee River to commercial shad harvest. Additional regulations include closing portions of each river for 2 days each week and restricting the length of nets used which prevents nets from extending more than ½ way across a river.

The Georgia shad fishery is open from January 1 to as late as April 30 each year, but typically ends March 31. Georgia regulations require that sturgeon captured in shad nets be released unharmed into the waters from which they were taken. GA DNR requests 3-year running averages for takes to account for the potential for a high-take year before or after low-take years. GA DNR estimates that incidental bycatch would not exceed 60 shortnose sturgeon per year (no more than 180 in a 3-year period) and 40 Atlantic sturgeon per year (no more than 120 in a 3-year period) in the Altamaha River, 5 shortnose sturgeon per year (no more than 15 in a 3-year period) and 25 Atlantic sturgeon per year (no more than 75 in a 3-year period) in the Savannah River. A mortality rate of approximately 2.3 percent is anticipated based on the best available data.

GA DNR would use a combination of a trip ticket system (self-reporting by fishermen) and direct observations to monitor the number of sturgeon incidentally

captured each month in the commercial shad fishery. Since 2013, the GADNR has conducted fishery-dependent efforts to observe a minimum of 10 percent of the commercial shad trips occurring annually in both the Altamaha and Savannah rivers.

Conservation Plan

GA DNR's conservation plan describes measures designed to minimize, monitor, and mitigate the incidental take of ESA-listed sturgeon. The conservation plan includes Georgia's amended commercial fishing regulations for the Georgia shad fishery, which are expected to minimize the bycatch of sturgeon by closing to shad fishing sections of the rivers that previously had the highest bycatch rates. These closures would also protect known and suspected sturgeon spawning sites. Georgia regulations require that sturgeon captured in shad nets be released unharmed into the waters from which they were taken. GA DNR would use a combination of a trip ticket system (self-reporting by fishermen) and direct observations to observe a minimum of 10 percent of the commercial shad trips occurring annually in both the Altamaha and Savannah rivers for the incidental take of sturgeon in the commercial shad fishery. In these efforts, GADNR staff observe active fishing efforts and record information on captured sturgeon. Information collected on captured sturgeon include species identification; lengths (total and fork); and condition of the fish. Additional monitoring and mitigation actions include having GA DNR staff scan the fish for the presence of a Passive Integrated Transponders (PIT) tag, and if one is not found, GA DNR staff would insert a PIT tag into the fish. They will also collect a fin-clip from captured sturgeon to provide to the U.S. Geological Survey (USGS) for genetic study. Under current collaborative efforts, GA DNR provides fin-clips and outside funding sources are used to process said fin-clips. Should outside funds not be available for processing GA DNR would provide fin-clips and fund the processing of up to 15 samples/year. These fin-clips aid in better studying and understanding the genetic diversity and conservation of sturgeon found within Georgia and other states. Additional

mitigation efforts include the education and outreach efforts conducted annually by GA DNR through materials presented to commercial shad fishermen. These materials, including detailed identification aids and specific instructions on properly handling captured sturgeon, provide needed information critical for helping fishermen better understand how they can help protect and sustain these endangered species. Additionally, GA DNR Law Enforcement continues to routinely and randomly patrol both the open and closed sections of both rivers.

GA DNR considered and rejected two other alternatives: (1) No change to commercial shad regulations, and (2) establish new upper boundaries for commercial shad fishing on the Altamaha, Ogeechee, and Savannah rivers and close the Satilla and St. Mary's rivers to commercial shad fishing.

Funding

Monitoring would be funded by GA DNR's Annual Operating Budget.

National Environmental Policy Act

Issuing a permit would constitute 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 Environmental Policy Act (1999), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement, however, the final NEPA and permit determinations will not be made until after the end of the comment period.

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. NMFS will publish a record of its final action in the **Federal Register**.

Dated: August 15, 2023.

Angela Somma,

Chief, Endangered Species Conservation Division,

Office of Protected Resources, National Marine Fisheries Service.

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