



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XD383]

Endangered Species; File No. 27686

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 Hudson River Sloop Clearwater, Incorporated (hereinafter 'Clearwater') has applied in due form to renew a permit pursuant to the Endangered Species Act of 1973, as amended (ESA). The renewal permit application is for the incidental take of Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) and shortnose sturgeon (*A. brevirostrum*) associated with the otherwise lawful environmental education program conducted on the Hudson River, New York. The education program uses small otter trawls and beach seines to collect fish and invertebrate specimens that are held onboard the vessels for educational purposes. 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 <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 on this document, identified by NOAA-NMFS-2023-0111 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-2023-0111 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 <https://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: Steven Hughes, (301) 427-8576, steven.hughes@noaa.gov; Celeste Stout, (301) 427- 9436, 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 governing regulations for permits for incidental taking of threatened and endangered species are promulgated at 50 CFR 222.307.

Background

On July 10, 2023, Clearwater Inc. sent a permit renewal request before permit number 18600 expires December 31, 2023. On August 28, 2023, NMFS met with Clearwater Inc. to discuss reducing the number of requested takes for the permit from 20 to 10 sturgeon over the course of the 10-year project.

Over the course of the 10-year project two sturgeons were captured during the proposed action. The species affected were two Atlantic sturgeon. The two sturgeon were released back into the Hudson River immediately after they were brought up to the boat. The Clearwater applicant has submitted end of year reports every year. There were no compliance issues throughout the permit that would prevent the application from being renewed for another 10 years.

Conservation Plan

Clearwater's conservation plan describes measures to minimize, monitor, and mitigate the incidental take of ESA-listed Atlantic and shortnose sturgeon. Clearwater will regularly communicate with New York State Department of Environmental Conservation to avoid known sturgeon habitat and spawning grounds. Clearwater will use small otter trawls (95.52 by 45.72 centimeter doors and weigh less than 0.45 kilograms) and short tow times ($= \leq 5$ minutes). Beach seines, which allow for targeted catch, will be used where practicable (*e.g.*, away from urban areas and where tides allow). If Clearwater incidentally captures a sturgeon in its sets, it will follow protocols for safe handling and immediately release any sturgeon caught. Clearwater will maintain a detailed log of all gear sets and will submit to NMFS incident and annual reports of incidental capture, if any, of listed sturgeon.

National Environmental Policy Act

In compliance with the National Environmental Policy Act of 1969 (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), 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.

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: September 26, 2023.

Catherine G. Marzin,

Deputy Director,

Office of Protected Resources.

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