



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD056

Endangered Species; File No. 18600

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 Hudson River Sloop Clearwater, Incorporated (hereinafter 'Clearwater') 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 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 [http://www.nmfs.noaa.gov/pr/permits/esa\\_review.htm](http://www.nmfs.noaa.gov/pr/permits/esa_review.htm) 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 13535, Silver Spring, MD 20910; phone (301)427-8403; fax (301)713-4060.

You may submit comments, identified by the following document number, NOAA-NMFS-2013-0104, 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-2013-0182](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0182). click the “Comment Now” icon, complete the required fields, and enter or attach your comments.
- Fax: (301)713-4060; Attn: Therese Conant.
- Mail: Submit written comments to Endangered Species Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13535, Silver Spring, MD 20910; Attn: Therese Conant.

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). Attachments

to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Therese Conant, (301)427-856.

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

#### Background

NMFS received a draft permit application from Clearwater on April 16, 2013. Based on our review of the draft application, we requested further information and clarification. On December 18, 2013, Clearwater submitted an updated draft application. Based on review of the updated draft, NMFS requested clarification on lethal take and alternatives considered. On December 23, 2013, Clearwater submitted a redraft, and based on review of the draft, NMFS determined that the application contained sufficient information for review and consideration under section 10(a)(1)(B) of the ESA.

Clearwater is requesting incidental take of two sturgeon (either or combination of Atlantic and shortnose sturgeon) each year from 2014 through 2023 that may be caught in trawl or seine gear used to collect fish and invertebrate specimens from the Hudson River, New York. The take of ESA-listed Atlantic sturgeon is largely anticipated to be the New York Bight Distinct Population Segment (98 percent), but individuals may also originate from the Gulf of Maine,

Chesapeake, Carolina, and South Atlantic Distinct Population Segments. Of the total 20 individual sturgeon anticipated to be taken for the duration of the permit, Clearwater does not anticipate lethal takes, but has applied for 2 lethal takes for the duration of the permit in the event that encounter conditions that lead to a mortality.

#### 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 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 cm doors and weigh less than 0.45 kg) 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 their sets, they will follow protocols for safe handling ([http://www.nmfs.noaa.gov/pr/pdfs/species/kahn\\_mohead\\_2010.pdf](http://www.nmfs.noaa.gov/pr/pdfs/species/kahn_mohead_2010.pdf)), and immediately release any sturgeon caught. Clearwater will maintain a detailed log of all gear sets and will submit to the NMFS incident and annual reports of incidental capture, if any, of listed sturgeon.

Clearwater considered and rejected the use of beach seines only. Beach seines are not always practicable in areas of high urban use and strong currents.

#### National Environmental Policy Act

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (NEPA), 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: December 31, 2013

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Angela Somma, Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

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