

Permit No. 27686

Expiration Date: August 31, 2034

Report Due: December 31 annually

PERMIT TO INCIDENTALLY TAKE ENDANGERED/THREATENED SPECIES

I. AUTHORIZATION

This permit is issued to the Hudson River Sloop Clearwater, Incorporated (hereinafter Clearwater), Ruthie Gold, in her capacity as Education Director of Clearwater (hereinafter “Permit Holder”), 724 Wolcott Avenue, Beacon, New York, 12508. This permit is subject to the provisions of Section 10 of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531-1543); and the regulations governing listed species permits (50 CFR Parts 222), and conditions of this permit.

II. ABSTRACT

On July 10, 2023, Clearwater submitted a completed renewal application a ESA Section 10(a)(1)(B) permit, including a conservation plan for the operation of their education program on the Hudson River, New York, to further monitor, minimize, and mitigate the impacts of incidental take of Atlantic sturgeon and shortnose sturgeon to the maximum extent practicable. On September 00, 2023 NMFS published a notice of receipt of the Clearwater renewal application (File No. 27687) in the *Federal Register* (88 FR 67249). The comment period ended October 30, 2023.

Clearwater requested incidental take of four sturgeon (either or combination of Atlantic and shortnose sturgeon) each year from 2024 through 2034 that may be caught in trawl or seine gear used to collect fish and invertebrate specimens from the Hudson River, New York. Its request was based on historical catch data, which indicated an average catch of two sturgeon per year. However, the historical data show that more than two sturgeon were sometimes taken in a sailing season. Thus, NMFS is authorizing a total of 10 takes for the duration of the permit, with no more than 4 takes in any given year. The take of ESA-listed Atlantic sturgeon is largely anticipated to be the New York Bight Distinct Population Segment (96 percent), but individuals may also originate from the Gulf of Maine (3 percent), and Chesapeake Bay (1 percent) Distinct Population Segments. Of the total 10 individual sturgeon anticipated to be taken for the duration of the permit, Clearwater does not anticipate lethal takes, but applied for 2 lethal takes for the duration of the permit in the event that encounter conditions would lead to mortality. However, NMFS analyzed the historical data and other information on sturgeon in the action area and determined that no more than one lethal take was likely to occur over the duration of the permit.

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, it will immediately release any sturgeon caught.

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.

III. INCIDENTAL TAKE AUTHORIZATION

Listed Species Affected:

Endangered: Atlantic sturgeon Chesapeake Bay Distinct Population Segment
Atlantic sturgeon New York Bight Distinct Population Segment
Shortnose sturgeon

Threatened: Atlantic sturgeon Gulf of Maine Distinct Population Segment

Take Authorized:

A total of 10 sturgeon (either or combination of Atlantic and shortnose sturgeon) for the duration of the 10-year permit, of which up to two sturgeon (either or combination of Atlantic and shortnose sturgeon) may be taken in any year. Of these, one may be lethal for the duration of the 10-year permit.

III. TERMS AND CONDITIONS OF THE PERMIT

The incidental take of Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) Gulf of Maine, New York Bight, and Chesapeake Bay Distinct Population Segments and shortnose sturgeon (*Acipenser brevirostrum*), associated with the otherwise lawful trawl and beach seine sets for educational purposes operating in the Hudson River, New York is authorized as described in the application, Conservation Plan, and supporting documents and subject to both the provisions of the Conservation Plan and the conditions of this permit. The monitoring, minimization and mitigation measures are incorporated as conditions of this permit. NMFS has included additional conditions determined necessary or appropriate to minimize the impacts of incidental take to the covered species.

A. Duration of Permit

1. The permit covers incidental take from the date of issuance for a 10-year period.

2. If incidental captures or mortalities of any species reach or exceed the established levels (Section III), activities authorized under this permit must stop and the Permit Holder must submit an Incident Report as described in Condition C.4

B. Conditions to Monitor, Minimize, and Mitigate Impacts to Listed Species

1. Clearwater must immediately release incidentally captured sturgeon unharmed into the waters from which they were taken.
2. If sturgeon incidentally captured are retrieved dead, if practicable, Clearwater may retain the dead sturgeon and submit an Incident Report as described in Condition C.4. Upon submission of the Incident Report, the Endangered Species Conservation Division will direct Clearwater on the final disposition of dead sturgeon. If retaining dead sturgeon is not practicable, they should immediately be returned to the waters from which they were retrieved.
3. Clearwater must continue to work with New York State Department of Environmental Conservation officials to identify sensitive habitat areas for sturgeon and avoid these areas to the maximum extent practicable.
4. Clearwater must implement the mitigation and monitoring described in the Conservation Plan to remain in compliance with the conditions of this permit. This includes gathering data, to the greatest extent practicable, on post-release injury of sturgeon.

C. Reporting Requirements

1. *Annual Report.* An annual report must be submitted to:

Chief, Endangered Species Conservation Division Office of Protected Resources
National Marine Fisheries Service 1315 East-West Highway Silver Spring, Maryland
20910 Phone: (301) 427-8403; Fax: (301) 713-4060

On or before December 31 each year. The annual report must include:

- a. A report of the total sturgeon takes and information on each event. Reports of the incidental take should include the date of the take, the condition of the sturgeon, the species (if known), the location, soak time, and gear type (i.e., trawl or seine).
2. *Final Report:* The Permit Holder must submit a final report within one hundred eighty (180) days of the expiration of this Permit summarizing the total take that occurred under the permit and the circumstances surrounding it. Reports must be submitted to the address in Condition C.2.

3. *Incident report:* The Permit Holder must submit an incident report as soon as possible after reaching or exceeding authorized takes, as specified in Section III and report on injured or dead sturgeon.

A.2. Reports must be submitted to the address in Condition C.2.

a. The incident report must include a complete description of the events and identification of steps that will be taken to reduce the potential for exceeding authorized take in the future.

b. In addition to the written report, the Permit Holder must contact the Endangered Species Conservation Division by phone (301-427-8403) as soon as possible, but no later than within two business days of the incident involving an injured or dead sturgeon. The Permit Holder should also contact NMFS Office of Protected Resources, Greater Atlantic Regional Fisheries Office, (978) 281-9300.

c. The Endangered Species Conservation Division may grant authorization to resume permitted activities based on review of the incident report and in consideration of the Terms and Conditions of this permit.

D. General Permit Conditions

1. The Permit Holder may not transfer or assign this permit to any other person(s), as person is defined in Section 3(12) of the ESA. This permit is not in force or effective if transferred or assigned to any other person.
2. Upon request by the Director of the Office of Protected Resources, the Permit Holder must permit any employee(s) of NMFS, or any other person(s) duly designated by the Director, to inspect the Permit Holder's records and facilities if such records and facilities pertain to activities for which a take of ESA-listed species is authorized by this permit, relate to ESA-listed species covered by this permit, or pertain to the Director's responsibilities under the ESA.
3. The provisions of this permit may be amended upon reasonable notice by the Director of the Office of Protected Resources.
4. In the event any ESA-listed species not included in this permit is killed, injured, or collected during the course of activities in the action area of this permit, the Permit Holder must notify NMFS as soon as possible, but not later than two days after the event. The Permit Holder must then submit a written report to the Chief of the Endangered Species Conservation Division describing the circumstances of the unauthorized take (see Condition C.2 for contact information). Pending review of these circumstances, NMFS may suspend or amend this permit.

5. The Permit Holder is responsible for the activities of any individual who is operating under the authority of this permit.
6. Under the terms of the regulations, a violation of any of the terms and conditions of this permit will subject the Permit Holder, and/or any individual who is operating under the authority of this permit, to penalties as provided for in the ESA, including suspension or revocation of the permit.
7. 50 CFR Section 222.23(d)(8) provides for a reasonable fee to be charged to cover the costs of issuance of permits under the ESA. The fee for this permit has been waived.

Kim Damon-Randall
Director, Office of Protected Resources

Date

Ruthie Gold
Education Director
Hudson River Sloop Clearwater Inc.

Date