

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC711

Notice of Availability of Draft Environmental Assessment on the Effects of Issuing an Incidental Take Permit No. 18102

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

ACTION: Notice of 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 (No. 18102) to the North Carolina Division of Marine Fisheries for the Incidental Take of Atlantic Sturgeon Distinct Population Segments in the North Carolina Inshore Gillnet Fishery." 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. 18102 to the North Carolina Division of Marine Fisheries (NCDMF) for the incidental take of Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) Gulf of Maine, New York Bight, Chesapeake, Carolina, and South Atlantic Distinct Population Segments (DPSs) associated with the otherwise lawful commercial and recreational fisheries operating in estuarine waters and deploying anchored gill nets (i.e., passive gill net sets deployed with an anchor or stake at one or both ends of the nets). All comments received will become part of the public record and will be available for review. An electronic copy of the revised application and proposed conservation plan may be obtained by contacting NMFS Office of Protected Resources (see **FOR FURTHER INFORMATION CONTACT**) or visiting the Internet at www.nmfs.noaa.gov/pr/permits/esa_review.htm.

DATES: Written comments must be received at the appropriate address or fax number (see **ADDRESSES**) on or before September 20, 2013.

ADDRESSES: The EA is available for download and review at 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 "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-2013-0104. Click the "Comment Now" icon, complete the required fields, and enter or attach your comments.
- **Fax:** (301) 713-4060; Attn: Therese Conant or Angela Somma.

- **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 or Angela Somma.

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 or Angela Somma, (301) 427-8403.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibits 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. The regulations for issuing incidental take permits for threatened

and endangered species are promulgated at 50 CFR 222.307.

NMFS received a draft permit application from NCDMF on April 5, 2012. Based on our review of the draft application, we requested further information and clarification. On December 19, 2012, NCDMF submitted an updated draft application. Based on review of the updated draft, NMFS and NCDMF held further discussions on a monitoring program to gather improved estimates of Atlantic sturgeon bycatch and a better understanding of population impacts. On June 28, 2013, NCDMF submitted a revised complete application for the take of ESA-listed Atlantic sturgeon Gulf of Maine, New York Bight, Chesapeake, Carolina, and South Atlantic DPSs that may be caught in gill net fisheries operating in estuarine waters and deploying anchored gill nets (i.e., passive gill net sets deployed with an anchor or stake at one or both ends of the nets).

On July 9, 2013, we published a notice of application receipt and requested review and comment on the application and conservation plan in the **Federal Register** (78 FR 41034, July 9, 2013). The public comment period for the application and conservation plan ends August 8, 2013.

Through this notice, we are making the Draft EA available for comment and review. The EA analyzes the effects to the human and natural environment caused by the issuance of ITP No. 18102 to NCDMF for the incidental take of Atlantic sturgeon Gulf of Maine, New York Bight, Chesapeake, Carolina, and South Atlantic DPSs during management of North Carolina inshore gillnet fisheries. As required by regulations implementing section 10(a)(1)(B) of the ESA, the conservation plan must specify, based on the best scientific and commercial data available:

- The impact which will likely result from the taking;
- How the applicant will minimize and mitigate those impacts, and the funding available to implement;
- What alternative actions the applicant considered, and why those actions are not being pursued;
- Other measures the Secretary of Commerce may require; and
- All sources of data relied on in preparing the plan.

The conservation plan prepared by NCDMF describes measures designed to monitor, minimize, and mitigate the incidental take of ESA-listed Atlantic Sturgeon. The conservation plan includes managing inshore gill net fisheries by dividing estuarine waters into 5 management units. Each of the

management units would be monitored seasonally and by fishery (i.e., large mesh and small mesh gillnet).

Alternatives Considered

In preparing the Draft EA, NMFS considered the following 3 alternatives for the action.

Alternative 1—No Action. Under the No Action alternative no ITP would be issued for the incidental take of Atlantic sturgeon Gulf of Maine, New York Bight, Chesapeake, Carolina, and South Atlantic DPSs. NCDMF would not receive an exemption for the commercial inshore gillnet fishery from the ESA prohibitions against take.

Alternative 2—(Proposed) Issue ITP as Requested in Application. Under Alternative 2, an ITP would be issued to exempt NCDMF from the ESA prohibition on taking Atlantic sturgeon Gulf of Maine, New York Bight, Chesapeake, Carolina, and South Atlantic DPSs during the otherwise lawful recreational and commercial inshore gillnet fishery.

Alternative 3—Issue Permit with Reductions in Large and Small Mesh (Alternatives 3 and 5 in the Conservation Plan) and Expansion of Weekly Closures (Alternative 4 in the Conservation Plan). Under Alternative 3, a permit would be issued to exempt NCDMF from the ESA prohibition on taking Atlantic sturgeon Gulf of Maine, New York Bight, Chesapeake, Carolina, and South Atlantic DPSs during the otherwise lawful recreational and commercial gill net fishery operating in inshore waters and deploying anchored gill nets. But it would require further reductions in large and small mesh gill net effort and expand the soak time prohibitions to all inshore waters.

Environmental Consequences of Alternatives

The Draft EA presents the scientific and analytic basis for comparison of the direct, indirect, and cumulative effects of the alternatives. Regulations for implementing NEPA (42 U.S.C. 4331 *et seq.*) require considerations of both the context and intensity of a proposed action (40 CFR 1508.27). Each of the alternatives is expected to result in both live captures (non-lethal take) and mortalities (lethal take) of Atlantic sturgeon. Although Alternative 1 is no action, or denial of the ITP request, in this analysis NMFS assumes that the status quo would largely be maintained for the fishery. No take authorization would be provided; however, it is likely that if the state continues to operate the fishery without an ITP, both live captures and mortalities would occur. For Alternatives 2 and 3, incidental take

of Atlantic Sturgeon would be authorized for both live captures and mortalities. Alternative 3 would likely result in fewer live captures and mortalities than Alternatives 1 and 2.

NMFS is currently preparing a biological opinion, pursuant to section 7(b) of the ESA, evaluating the effects of the issuance of the ITP on listed species under NMFS' purview. The biological opinion will assess the potential impacts of the action and determine if the issuance of the ITP is likely to jeopardize the continued existence of Atlantic sturgeon Gulf of Maine, New York Bight, Chesapeake, Carolina, and South Atlantic DPSs.

Incidental Take of Other Species

NMFS determined that the issuance of Permit 18102 to NCDMF is not likely to adversely affect the West Indian manatee, Roseate Tern, Wood Stork, or the loggerhead, green, Kemp's ridley, and leatherback sea turtles (terrestrial life stage) and requested concurrence with the United States Fish and Wildlife Service (FWS) on July 16, 2013. A final determination from FWS will be considered and incorporated in the final permit and EA.

Social and Economic Impacts

NMFS assumes for the No Action Alternative (Alternative 1) that the status quo would largely be maintained for the fishery. Because no incidental take permit would be issued, NCDMF would not receive an exemption from the ESA prohibitions against take; therefore, any incidental takes of Atlantic sturgeon resulting from the recreational and commercial gill net fishery deploying anchored sets and operating in inshore waters would not be exempted. To the extent that this alternative would limit additional burdens on recreational and commercial gill net fishermen (e.g., allowing more yardage, net shots, avoiding additional reporting requirements, education etc.), the No Action Alternative would have less of a socio-economic impact than the two action alternatives.

The issuance of the Permit as Requested in the Application (Alternative 2 Proposed Action) would result in additional burdens to recreational and commercial gill net fishermen deploying anchored sets and operating in inshore waters, NCDMF could potentially close areas or further restrict fisheries practices and effort in areas and times identified as a high potential for Atlantic sturgeon bycatch. This would result in socio-economic costs to the fishing community and ancillary businesses that are greater than the no action alternative (Alternative 1).

The issuance of the Permit with Reductions in Large and Small Mesh and Expansion of Weekly Closures (Alternative 3) would result in additional burdens to recreational and commercial gill net fishermen deploying anchored sets and operating in inshore waters. NCDMF would further limit gill net fishing in all inshore waters to a 3-day closure and limit yardage and soak times and require attendance in certain areas and times. This would result in socio-economic costs to the fishing community and ancillary businesses that are greater than the No Action (Alternative 1) and Proposed Action (Alternative 2) alternatives.

Implementing Agreement

NMFS and NCDMF are developing an implementing agreement to define roles and responsibilities of each party and provide a common understanding of actions to be undertaken to minimize and mitigate the effects of anchored gillnet fishing in inshore waters on Atlantic sturgeon Gulf of Maine, New York Bight, Chesapeake, Carolina, and South Atlantic DPSs. The agreement describes obligations of both parties, including how changed and unforeseen circumstances will be addressed, as well as the responsibilities of each party in implementing the conservation plan. Additionally, the agreement describes the process for initiating and implementing adaptive management as needed to achieve the Plan's biological objectives or respond to new information (e.g., observer data).

Next Steps

This notice is provided pursuant to section 10(c) of the ESA. The application, supporting documents, public comments, and views already received by the agency, as well as those submitted in response to this notice, will be fully considered and evaluated as we prepare the final EA and determine whether to issue a Finding of No Significant Impact. The final NEPA document and ITP determinations will not be completed until after the 30-day comment period ends. NMFS will publish a record of its final action in the **Federal Register**. We will also make any final NEPA documents available to the public.

Dated: August 16, 2013.

Angela Somma,

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

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