

Permit No. 18600  
Expiration Date: December 31, 2023  
Reports 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), Dave Conover, in his 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), the regulations governing listed species permits (50 CFR Parts 222), and the conditions of this permit.

### II. ABSTRACT

On December 23, 2013, Clearwater submitted a complete application for an 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 January 6, 2014, the National Marine Fisheries Service (NMFS) published a notice of receipt of the Clearwater application (File No. 18600) in the *Federal Register* (79 FR 637). The comment period ended February 5, 2014. No comments were received.

Clearwater requested incidental take of two sturgeon (any 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. Their 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 20 takes over 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 from 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 20 individual sturgeon anticipated to be taken over the duration of the permit, Clearwater does not anticipate lethal takes, but applied for 2 lethal takes over 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 monitor, minimize, and mitigate the incidental take of ESA-listed Atlantic and shortnose sturgeon. Clearwater will regularly communicate with New York State Department of Environmental Conservation officials to avoid known sturgeon habitat and spawning grounds. Clearwater will use small otter trawls (with 95.52 cm by 45.72 cm doors and weighing 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 immediately release the sturgeon. 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.

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

*Threatened:*           Atlantic sturgeon Gulf of Maine Distinct Population Segment

#### Take Authorized:

A total of 20 sturgeon (any combination of Atlantic and shortnose sturgeon) over the duration of the 10-year permit, of which up to four sturgeon (any combination of Atlantic and shortnose sturgeon) may be taken in any year. Of the 20 authorized takes, one may be lethal, over the duration of the 10-year permit.

### IV. 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.3.

#### 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, Clearwater must submit an incident report as described in Condition C.3. If practicable, Clearwater may retain the dead sturgeon and, upon submission of the incident report, the Endangered Species Conservation Division will direct Clearwater on the final disposition of the dead sturgeon. If retaining dead sturgeon is not practicable, the sturgeon should immediately be returned to the waters from which it was retrieved.
3. Throughout the duration of this permit, 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.
5. If Clearwater reaches or exceeds the take authorized by this permit, it must immediately stop its permitted activities and submit an incident report as described in Condition C.3.

### 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 of each year the permit is in effect. The annual report must include a report of the total sturgeon takes during that calendar year and information on each take event, including 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. The report must be submitted to the address in Condition C.1.
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, or after any event involving a dead sturgeon, as specified in Section IV.B.2. Reports must be submitted to the address in Condition C.1.
  - a. The incident report must include a complete description of the event that triggered the report and identification of steps that will be taken to either reduce the potential for

exceeding authorized take in the future, if the report was triggered by reaching or exceeding authorized takes, or avoid a sturgeon death in the future, if the report was triggered by an event involving a dead sturgeon.

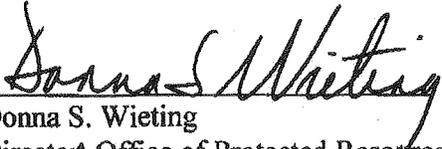
b. In addition to submitting the written report, the Permit Holder must contact the Endangered Species Conservation Division by phone (301-427-8403) as soon as possible, but no later than two business days after the event triggering the incident report. The Permit Holder must also contact NMFS Office of Protected Resources, Greater Atlantic Regional Fisheries Office, (978) 281-9300, in the same timeframe.

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.

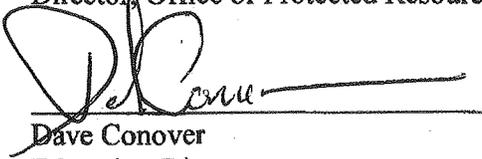
#### D. General Permit Conditions

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.1. 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 regulations at 50 CFR Part 222, 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.



Donna S. Wieting  
Director, Office of Protected Resources



Dave Conover  
Education Director  
Hudson River Sloop Clearwater, Inc.

AUG 15 2014

Date

8/18/2014

Date