

Cooperative Agreement Between the
United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
and the New York State Department of Environmental Conservation for the
Conservation of Threatened and Endangered Species

This cooperative agreement is entered into pursuant to section 6(c)(1) of the Endangered Species Act of 1973, as amended (hereinafter referred to as "the Act"), and New York State Environmental Conservation Law, Article 3, Section 3-0301(2)(d)(3) and Article 11, Section 11-0535 by the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, and the New York State Department of Environmental Conservation. Hereinafter, the parties shall be referred to as NMFS and NYSDEC, respectively. All terms contained herein shall be given the same meaning as defined at 50 C.F.R. section 222.102 and section 3 of the Act.

Whereas, the Act authorizes the Secretary of Commerce (hereinafter referred to as "the Secretary") to enter into cooperative agreements in accordance with section 6 with states that establish and maintain adequate and active programs for the conservation of endangered and threatened species;

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Whereas, the State is authorized pursuant to New York State Environmental Conservation Law, Article 3, Section 3-0301(2)(d)(3) to enter into agreements with federal agencies for the conservation of endangered and threatened species;

Whereas the State of New York has the authority to establish a conservation program(s) consistent with the purposes and policies of the Act for the following species of fish and wildlife occurring in the state which have been deemed by the Secretary to be endangered or threatened and under the jurisdiction of NMFS:

Endangered Species

North Atlantic right whales (*Eubalaena glacialis*)

Humpback whales (*Megaptera novaeangliae*)

Fin whales (*Balaenoptera physalus*)

Blue whales (*Balaenoptera musculus*)

Sei whale (*Balaenoptera borealis*)

Sperm whale (*Physeter macrocephalus*)

Leatherback sea turtles (*Dermochelys coriacea*)

Kemp's ridley sea turtles (*Lepidochelys kempii*)

Green sea turtles (*Chelonia mydas*)¹

Shortnose sturgeon (*Acipenser brevirostrum*)

Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) - New York Bight, Chesapeake Bay, Carolina, and South Atlantic Distinct Population Segments

¹ Green sea turtles in U.S. waters are listed as threatened except for the Florida breeding population, which is listed as endangered. Due to the inability to distinguish between the populations away from the nesting beaches, green sea turtles are considered endangered wherever they occur in U.S. waters.

Threatened Species

Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) – Gulf of Maine Distinct Population Segment

Loggerhead sea turtles (*Caretta caretta*) - Northwest Atlantic Distinct Population Segment

Whereas, the purposes of the Act are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, to provide a program for the conservation of such endangered and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection 2(a) of the Act;

Whereas, the Secretary has delegated to the Assistant Administrator for Fisheries of NMFS the authority to enter into cooperative agreements with states for the purpose of supporting programs for endangered and threatened species conservation;

Whereas, the Act requires the Secretary to determine that: (1) the state agency is authorized to establish conservation programs, including the acquisition of land or aquatic habitat, or interests therein, for all resident species of fish and wildlife listed in this agreement; (2) the state agency is authorized to conduct investigations to determine the status and requirements for survival of resident species of fish and wildlife; (3) the state agency has made provision for public participation in designating resident species of fish and wildlife as endangered or threatened; and (4) the species listed in this agreement will be given immediate attention, as

NMFS and NYSDEC agree that those species are most urgently in need of conservation programs;

Whereas, NMFS hereby determines that NYSDEC satisfies the Act's legal requirements for such cooperative agreements as specified in the immediately preceding paragraph;

Whereas, the parties to this agreement are in accord that the programs administered in New York are designed to conserve resident endangered and threatened species, and that it is the mutual desire of NYSDEC and NMFS to cooperate for the common purpose of planning, developing, and conducting programs to protect, manage, and enhance populations of all resident endangered and threatened species covered by this agreement within the State of New York;

Whereas, the Assistant Administrator for Fisheries of NMFS has the administrative authority to establish programs for the conservation of endangered and threatened species; to provide periodic review of the state program at no greater than annual intervals; to provide funding for the development of endangered and threatened species conservation programs or to assist in monitoring candidate and recovered species as such funding is available and in accordance with the terms of the Act; to provide coordination among the programs of various states; and to exchange with states such biological data or other information that may result in the continued conservation of endangered or threatened species;

Whereas, the Assistant Administrator for Fisheries of NMFS authorizes the Greater Atlantic Regional Administrator of NMFS to monitor the implementation of this cooperative agreement;

Therefore the parties agree as follows:

1. Consistent with section 6(d) of the Act, NMFS may provide financial assistance to NYSDEC for the development of endangered and threatened species conservation programs or to assist in monitoring candidate and recovered species. Such projects shall be approved by NMFS in accordance with the Act.

2. NMFS and NYSDEC shall carry out the cooperative program for the conservation of endangered and threatened species, which may involve law enforcement, research, management, and public information and education activities conducted for the benefit of resident endangered and threatened species in the State of New York.

3. Pursuant to section 6(1)(c)(ii) of the Act, entry into this agreement shall in no way effect the applicability of the prohibitions set forth in or authorized pursuant to section 4(d) and section 9 of the Act with respect to the taking of any resident endangered or threatened species of fish or wildlife.

4. Effective Date and Renewal

(a) This agreement shall become effective when signed by the Assistant Administrator for Fisheries of NMFS and the Commissioner of NYSDEC, and may be renewed in the following manner: Not later than June 30 each year NYSDEC shall submit to the Assistant Administrator for Fisheries of NMFS the following: (1) the current list of the state listed resident endangered and threatened fish and wildlife within the jurisdiction of NMFS and a description of all changes

to such list since the date of the previous submission of the list to NMFS; (2) a certification of any amendments in NYSDEC's legal authority or regulatory programs for endangered and threatened fish and wildlife that were made since the date of the previous submission of the program to NMFS; (3) a list of all changes in the endangered and threatened species conservation programs since the date of the previous submission of the program to NMFS; (4) a report on the status of all projects funded pursuant to paragraph 1 of this agreement; and (5) any additional information requested by the Assistant Administrator for Fisheries of NMFS that pertains to NYSDEC's program for the conservation of endangered and threatened fish and wildlife;

(b) The Assistant Administrator for Fisheries of NMFS will, on or before October 1 of each year, notify NYSDEC in writing whether the cooperative agreement is renewed effective October 1 of that year, or that the state's program or authorities are no longer in compliance with the criteria of section 6(c) of the Act, and unless appropriate changes are made by June 30 of the following year, this agreement shall be terminated. If NYSDEC, after satisfying the renewal provisions of the immediately preceding paragraph, has not been notified concerning the renewal of this agreement by October 1 of each year the agreement shall continue in force and effect as if it had been renewed.

5. Amendment

This agreement may be amended at any time with the written concurrence of the signatories.

6. Termination

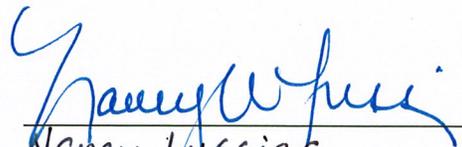
This agreement may be terminated: (a) by mutual agreement; (b) by NYSDEC upon 60 days written notice to the Assistant Administrator for Fisheries of NMFS; or (c) notwithstanding the renewal provisions in section 4(b) of this cooperative agreement, by NMFS upon 60 days notice to NYSDEC from the Assistant Administrator for Fisheries of NMFS, stating reasons why the state's conservation program for endangered and threatened species is no longer in compliance with the criteria in section 6(c) of the Act, or that the state has otherwise violated provisions of this agreement. NYSDEC may submit a written request for review to the Secretary within 30 days of the receipt of the termination notice. The Secretary shall consider all evidence submitted by NYSDEC in its request for review and either reaffirm the termination of this agreement at the end of the 60 day notification period, or reverse the determination of the Assistant Administrator of NMFS and revoke the notice of termination. Any Federal funds that have been awarded pursuant to this agreement to NYSDEC, but not expended by NYSDEC, as of the date termination of this agreement or final reaffirmation thereof shall be returned to NMFS for reallocation pursuant to section 6(d).



Eileen Sobeck
Assistant Administrator for Fisheries
National Marine Fisheries Service

2/12/15

Date



Nancy Lussier
Director, Management & Budget
New York State Department of Environmental Conservation

APR 07 2015

Date

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APR 01 2019

Handwritten signature: *James W. Jones*
James W. Jones
Director, Management & Evaluation
New York State Department of Environmental Conservation