UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910

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 and any authorized officer, employee, contractor, or agent acting on behalf of Clearwater (hereinafter "Clearwater" or "Permit Holder"), 724 Wolcott Avenue, Beacon, New York, 12508. This permit is subject to the provisions of Section 10(a)(1)(B) of the Endangered Species Act of 1973 (ESA; 16 U.S.C.1539(a)(1)(B)), the regulations governing listed species permits (50 CFR Part 222), and conditions of this permit.

II. ABSTRACT

On July 10, 2023, Clearwater submitted a renewal application for an ESA Section 10(a)(1)(B) permit, including a conservation plan for the operation of its 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 29, 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 10 sturgeon, with no more than 4 taken in a single season (April 1st through November 5th, either or combination of Atlantic and shortnose sturgeon) for their 2024 through 2034 seasons, which may be caught in trawl or seine gear used to collect fish and invertebrate specimens from the Hudson River, New York. However, the historical data provided did not support the authorization of up to 4 takes in a single season. After discussion with the applicant, NMFS is authorizing a total of 10 takes for the duration of the permit, with no more than 2 takes in any given season. This is a reduction of 10 sturgeon from the previous 10 year permit.

The take of ESA-listed Atlantic sturgeon is largely anticipated to be the New York Bight distinct population segment (DPS, 96 percent), but individuals may also originate from the Gulf of Maine (3 percent) and Chesapeake Bay (1 percent) DPSs. Of the total 10 individual sturgeon authorized to be taken for the duration of the permit, Clearwater does not anticipate any lethal takes, but applied for 2 lethal takes for the duration of the permit in the event they encounter conditions that would lead to mortality. However, NMFS analyzed the historical data and other information on sturgeon in the project 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 with the 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 (= ≤ 5 minutes). Beach seines, which allow for targeted catch, will be used where practicable (e.g., away from urban areas and where tides allow). Any sturgeon caught incidental to Clearwater's activities will be released immediately.

III. INCIDENTAL TAKE AUTHORIZATION

Endangered

Atlantic sturgeon *Acipenser oxyrinchus oxyrinchus*

Chesapeake Bay Distinct Population Segment (DPS)

New York Bight DPS

Shortnose sturgeon *Acipenser brevirostrum*

Threatened

Atlantic sturgeon *Acipenser oxyrinchus oxyrinchus*

Gulf of Maine DPS

Take Authorized:

A total of 10 sturgeon (either or combination of Atlantic and shortnose sturgeon) may be taken over the 10-year permit term, of which up to two sturgeon (either or combination of Atlantic and shortnose sturgeon) may be taken in any year. Of the 10 individual sturgeon, only one lethal take is authorized over the 10-year permit term.

IV. TERMS AND CONDITIONS OF THE PERMIT

The incidental take of Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) from the Gulf of Maine, New York Bight, and Chesapeake Bay DPSs 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 take (i.e., 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.1

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

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 may retain the dead sturgeon and submit an Incident Report as described in Condition C.1. Upon submission of the Incident Report, NMFS's Endangered Species Conservation Division will direct Clearwater on the final disposition of dead sturgeon. Any dead sturgeon not retained by Clearwater must be returned immediately 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. 24-Hour Incidental Take Reports.

    a. The Permit Holder must report all incidental takes of covered species to NMFS Office of Protected Resources (OPR) via email to *PR.ESA.incidentaltakepermits@noaa.gov* within 24 hours of incidental take.

        i. Reports of incidental take must include (as available) the date of the take, the condition of the animal, and any other pertinent details of the circumstances of the taking (e.g., 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).

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

iii. The Permit Holder should also contact NMFS Office of Protected Resources, Greater Atlantic Regional Fisheries Office, (978) 281-9300.

2. *Annual Report.*

a. The Permit Holder must submit annual reports to NMFS by December 31. A year is defined as April 1st through November 5.The annual report must be submitted to:

i. PR.ESA.incidentaltakepermits@noaa.gov

ii. 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

b. The annual report must include:

i. 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).

ii. A map of where sturgeon were incidentally taken during the trawl and beach seine activities.

iii. A description of the mitigation activities and adaptive management actions taken (including but not limited to those described under Condition B.

3. *Final Report.*

a. 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 provided in Condition C.2.

D. General Permit Conditions

1. NMFS may suspend or revoke the permit that it issued for cause in accordance with applicable laws and regulations (See 5 U.S.C. § 558; 50 CFR 222.306; 15 CFR 904.). Such suspension or revocation may apply to an entire permit, or only to specified covered species, permit areas, or covered activities.

2. 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.

3. Upon request by the Director of the NMFS 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, related to ESA-listed species covered by this permit, or pertain to the Director's responsibilities under the ESA.

4. The provisions of this permit may be amended upon reasonable notice by the Director of the Office of Protected Resources in accordance with the "no surprises" rule (63 FR 8859; February 23, 1998)(50 CFR 222.307(g)).

5. 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.

6. The Permit Holder is responsible for the activities of any individual who is operating under the authority of this permit.

7. 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.

8. 50 CFR 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.

9. The Permit Holder shall strictly adhere to the Conservation Plan and the conditions of this Permit. If the Permit Holder is not implementing or adhering to the Conservation Plan or the conditions of the Permit, then the take authorization provided by this Permit shall not apply.

10. This permit does not relieve the Permittee from compliance with other applicable foreign, state, local, or federal laws.

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2/20/2025

Kim Damon-Randall
Director, Office of Protected Resources

Date

This permit becomes effective upon the signature of the Permit Holder. Acceptance of the permit serves as evidence that the permittee identified below has read, understands, and agrees to abide by and implement all conditions identified in ITP No. 27686.

2/21/25

Emily Marcet
Education Director
Hudson River Sloop Clearwater Inc.

Date