



Permit No.: 23861

Expiration Date: December 31, 2030

Annual Reports Due: Within 90 days following the end of each sampling season;

PERMIT TO INCIDENTALLY TAKE ENDANGERED/THREATENED SPECIES

I. AUTHORIZATION

Midwest Biodiversity Institute, Inc., is hereby authorized to incidentally take the endangered and threatened sturgeon and salmon specified below while conducting electrofishing sampling on the Lower Kennebec River, Maine in the manner specified in the Permit Holder's July 6, 2019 application and supporting documents and communications, subject to the provisions of Section 10(a)(1)(B) of the Endangered Species Act of 1973 (ESA) (16 U.S.C. §§ 1531-1543), the National Marine Fisheries Service (NMFS) regulations governing listed species permits (50 CFR Parts 222 and 223), and the conditions hereinafter set forth.

II. ABSTRACT

On January 31, 2020, Midwest Biodiversity Institute, Inc., (MBI) applied for an incidental take permit (ITP) for ESA-listed shortnose sturgeon, Atlantic sturgeon Gulf of Main (GOM) Distinct Population Segment (DPS) and New York Bight (NYB) DPS, and Atlantic Salmon GOM DPS) associated with an otherwise lawful bioassessment survey conducted in the Lower Kennebec River. Based on our initial review of the application and conservation plan, we requested further information and clarification. On March 30, 2020, MBI submitted a revised application and at that time, the application was considered adequate and complete. On April 17, 2020, NMFS published a notice of receipt (NOR) of the MBI application in the *Federal Register* (85 FR 21413). The comment period ended on May 18, 2020. NMFS and MBI held further discussions regarding information to be incorporated in the Conservation Plan and a final application was submitted on July 6, 2020.

MBI conducts an electrofishing survey in the lower Kennebec River and Sebasticook River in Maine. The purpose of the survey is to document changes to fish assemblages in the rivers following the removal of the Edwards Dam in 2001 and the Ft. Halifax dam in 2009 and has been conducted for the past 18 years. All proposed sample sites occur within the geographic range of the listed GOM DPS of Atlantic salmon, shortnose sturgeon, and Atlantic sturgeon from the GOM DPS, and/or, the NYB DPS. Over the past 18 years MBI conducted the majority of this work as a grantee or contractor to the United States Environmental Protection Agency and the project was covered by 5-year incidental take statements (ITSs) issued under Section 7 of the ESA since 2010, the most recent of which expired in 2019. As MBI is no longer covered by a section 7 ITS MBI determined it was necessary to apply for an ITP in accordance with the requirements under Section 10(a)(1)(B) of the ESA.

Conservation Plan

Section 10 of the ESA specifies that no ITP may be issued unless an applicant submits an adequate conservation plan. The conservation plan prepared by Midwest Biodiversity Institute,

Inc., describes measures designed to monitor, avoid and minimize, to the maximum extent practicable, the incidental take of shortnose sturgeon, Atlantic sturgeon (GOM and NYB DPSs) and Atlantic salmon GOM DPS. The goals of the Conservation Plan are to avoid and minimize take. The required avoidance, minimization, and monitoring measures to avoid or minimize impacts to sturgeon are listed in **IV. Conditions of the Permit**.

Funding for the continued monitoring related to the take of listed species while covered by this permit will be provided through MBI research and development funds, as well as outside funds secured by MBI.

III. INCIDENTAL TAKE AUTHORIZATION

Listed Species Affected:

Endangered

shortnose sturgeon

Atlantic sturgeon (New York Bight DPS)

Atlantic salmon (Gulf of Maine DPS)

Acipenser brevirostrum

Acipenser oxyrinchus

Salmo salar

Threatened

Atlantic sturgeon (Gulf of Maine DPS)

Acipenser oxyrinchus

NMFS authorizes the following non-lethal incidental takes per year:

4 (adult/subadult) Gulf of Maine & New York Bight DPS Atlantic sturgeon

4 (adult/subadult) Shortnose sturgeon

5 (adult/subadult) Gulf of Maine DPS Atlantic salmon

Take must be incidental to otherwise lawful activities described in the ITP application and Conservation Plan, and as conditioned herein. Takes may only occur in conjunction with electrofishing sampling and the monitoring requirements of this ITP. Takes above the levels specified herein are not authorized by this ITP. This ITP covers incidental non-lethal take from the date of issuance through December 31, 2030.

IV. CONDITIONS OF PERMIT

The incidental take of ESA-listed shortnose sturgeon, Atlantic sturgeon (GOM & NYB DPS) and Atlantic salmon GOM DPS is authorized during activities as described in the application and supporting documents and communications with NMFS OPR, subject to compliance with the provisions of the Conservation Plan and this ITP.

A. Duration of Permit

This permit covers incidental take of sturgeon associated with the bioassessment survey conducted by MBI in the Lower Kennebec River from the date of issuance through December 31, 2030.

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

1. **Avoidance, Minimization and Monitoring Measures.** MBI shall comply with the following conditions:

- a) MBI will only conduct sampling between mid-September and mid-October to minimize any encounters with early life stage or juvenile fish.
- b) MBI will request any recent acoustic detections of ESA listed species in the study area and take steps to avoid any congregations of listed species.
- c) Only trained and qualified MBI crew leaders and either MBI or Maine DMR agency technicians will be allowed to carry out the sampling activities. The MBI crew leader will review the ESA listed species minimization and avoidance procedures with the sampling crew at the beginning of each sampling day. In addition Maine DMR procedures (Bruchs et al. 2016) for electrofishing will be included in the training and instructions.
- d) Sampling and the operation of the electrofishing gear will be done in a manner that minimizes the potential for injury to the listed species. The pulse frequency will be reduced to 30-60Hz when sampling in areas of prior interaction with ESA listed species to minimize the risk of injury.
- e) Electric current and sampling activity will cease upon an encounter where a listed species is observed to be affected by the electric field. Affected sturgeon, if immobilized and/or in apparent distress, may be netted or otherwise handled in order to ascertain any injury and to revive if necessary, but the individual will not be removed from the water. Otherwise, affected fish that leave the electric field under their own power and appear to be uninjured will not be pursued and netted. In such cases, the species identification and estimation of length will be made visually.
- f) Sampling will not be conducted when ambient water temperature is $>22^{\circ}\text{C}$ per Maine DMR specifications (Bruchs et al. 2016). Temperature will be routinely measured at the start of each electrofishing site, but will be more frequently monitored (every 2 hours) when temperatures are between $20-22^{\circ}\text{C}$.
- g) When there is any interaction with a listed species all sampling activities will cease and the electric current will be shut off for a period of five minutes and/or until the individual fish are released and determined to have departed the area. Notation will be made about the physical condition of the individual in terms of the reaction to the electric field and if it was able to leave the area under its own power. Photographs will be taken of each interaction to document occurrence and any evidence of injury.

C. Reporting Requirements

1. *Take Reports.* All protected species incidental takes during sampling must be reported to the Chief, Endangered Species Conservation Division, Office of Protected Resources, NMFS, via email (angela.somma@noaa.gov) within 24 hours of their occurrence. Reports of incidental take should include the date of the take, the condition of the fish, the species (if known), and any other pertinent details of the circumstances of the taking. Including estimated fork length (cm); photographs; voltage in use; and documentation of any external tags or markings.
2. *Annual Reports.*

An annual report must be submitted to:

Angela Somma
Chief, Endangered Species Conservation Division

Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, Maryland 20910
(angela.somma@noaa.gov)

with a copy to:

Celeste Stout
Endangered Species Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, Maryland 20910
(celeste.stout@noaa.gov)

Within ninety (90) days following the end of each sampling season. The annual report must include:

- 1) Annual take of shortnose sturgeon, Atlantic sturgeon and Atlantic salmon during activities authorized by the permit;
- 2) an annual data set compiled from the data collected during sampling including days sampling occurred, locations, and water temperatures;
- 3) raw fish assemblage data;
- 4) and a narrative describing any issues encountered during the year that interfered with implementation of the conservation plan including a description of any corrective actions taken or any proposed issue resolution.

3. *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 individuals indicated above.

D. General Permit Conditions

1. NMFS may suspend or revoke the permit that it issued for cause in accordance with applicable law. 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 OPR, 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.

4. The provisions of this permit may be amended upon reasonable notice by the Director of OPR, in accordance with applicable law.
5. In the event any ESA-listed species not authorized by this or another incidental take permit is killed, injured, or collected during the course of activities in the restricted area, the Permit Holder must notify the NMFS OPR Chief of the Endangered Species Conservation Division as soon as possible, but not later than two days after the event. If the individual is killed, it must be retained for scientific analysis. The Permit Holder must then submit a written report to the Chief of the Endangered Species Division describing the circumstances of the unauthorized take. 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. Such activities include capturing, handling, releasing, transporting, maintaining, and caring for any animal authorized to be taken by this permit.
7. Under the terms of the ESA 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.
8. NMFS OPR will annually review this permit and determine whether it needs to be suspended or amended. Yearly evaluation of this permit by NMFS OPR will include re-analyses of all data and a re-assessment of the take levels.
9. 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.
10. The Permit Holder is required to adequately fund the Conservation Plan. Upon request by NMFS OPR, the Permittee shall provide documentation that the Conservation Plan is receiving adequate funding. If NMFS OPR reasonably believes that the Conservation Plan is not being adequately funded, then NMFS OPR may require the Permit Holder to produce an annual budget for the Conservation Plan, which will be subject to review and approval by NMFS OPR.
11. The Permit Holder shall strictly adhere to the Conservation Plan and conditions of this Permit. If the Permit Holder is not implementing or adhering to the Conservation Plan or the conditions of this Permit, then the take authorization provided by this Permit shall not apply.
12. This permit does not relieve the Permittee from compliance with other applicable law.

Donna S. Wieting
Director
Office of Protected Resources
National Marine Fisheries Service

Date

Chris O. Yoder
Research Director,
4673 Northwest Parkway,
Hilliard, OH 43026

Date