

Guide for Green Sturgeon 4(d) Exceptions

For Scientific Research and Monitoring, Emergency Fish Rescue and Salvage, and Habitat Restoration Activities

In 2010, the National Marine Fisheries Service (NMFS) established protective regulations under Section 4(d) of the Endangered Species Act (ESA), prohibiting the take¹ of green sturgeon (*Acipenser medirostris*) that belong to the threatened southern Distinct Population Segment (DPS). NMFS also established exceptions from the take prohibitions for certain scientific research and monitoring, habitat restoration, and emergency fish rescue and salvage activities. This guide describes the requirements for these 4(d) exceptions. More detailed information can be found in the regulations under 50 CFR 223.210.

Scientific Research and Monitoring Exception

The take prohibitions for southern DPS green sturgeon do not apply to ongoing or future Federal, state, or private-sponsored scientific research or monitoring activities if they meet the following requirements.

The scientific research or monitoring activity:

- i. complies with required state reviews or permits;
- ii. is directed at the southern DPS and is not incidental to research or monitoring of another species;
- iii. minimizes disruption of upstream spawning migrations by limiting take of live mature adults in the following areas to the time period from July 1 through March 1:
 - a. Lower Feather River from the confluence with the Sacramento River to the Oroville Dam (rkm 116);
 - b. Lower Yuba River from the confluence with the Feather River to the Daguerre Dam (rkm 19); and
 - c. Suisun, San Pablo, and San Francisco Bays or the Sacramento-San Joaquin Delta from the Golden Gate Bridge up into the Sacramento River to Keswick Dam (rkm 483).
- iv. does not involve removal of any life stage of the southern DPS from the wild to for more than 60 minutes; and
- v. does not involve lethal take or artificial spawning or enhancement activities.

If you determine that your scientific research or monitoring activities qualify for the exception, you must submit the following information to the NMFS West Coast Region (WCR; see Submission Information) at least 60 days prior to the start of your study:

- i. a description of the study objectives and justification;

¹ The ESA defines the term “take” to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.

- ii. a summary of the study design and methodology;
- iii. estimates of the total non-lethal take of southern DPS fish anticipated;
- iv. estimates of incidental take of other ESA-listed species anticipated and proof that those takes have been authorized by NMFS or the U.S. Fish and Wildlife Service (USFWS);
- v. identification of funding sources; and
- vi. a point of contact.

The NMFS WCR will review your submission and respond with a determination of whether your research or monitoring activities qualify for the exception. If they do, then NMFS will determine a schedule for reporting on your activities. Reports must include:

- i. the total number of southern DPS and any other ESA-listed species taken;
- ii. information to support that the take was non-lethal; and
- iii. a summary of project results.

Emergency Fish Rescue and Salvage Exception

The take prohibitions for southern DPS green sturgeon do not apply to emergency fish rescue and salvage activities that include aiding sick, injured, or stranded fish; disposing of dead fish; or salvaging dead fish for use in scientific studies. To qualify for this exception, these activities must:

- i. comply with required state or other Federal reviews or permits;
- ii. be conducted by an employee or designee of NMFS, USFWS, any Federal land management agency, California Department of Fish and Wildlife, Oregon Department of Fish and Wildlife, Washington Department of Fish and Wildlife, or Alaska Department of Fish and Game; and
- iii. benefit the southern DPS.

You must submit a report to NMFS WCR (see Submission Information) within 10 days after conducting emergency fish rescue and salvage activities. The report must include:

- i. the number and status of green sturgeon handled;
- ii. the location of rescue and/or salvage operations; and
- iii. the potential cause(s) of the emergency.

Habitat Restoration Exception

The take prohibitions for southern DPS green sturgeon do not apply to the following habitat restoration activities that re-establish self-sustaining habitats for the southern DPS:

- i. barrier removal or modification to restore water flows;
- ii. riverine or estuarine bed restoration;

- iii. natural bank stabilization;
- iv. restoration of native vegetation;
- v. removal of non-native species; and
- vi. removal of contaminated sediments.

If you determine that your habitat restoration activities qualify for this exception, you must submit a detailed description of the restoration activities to the NMFS WCR (see Contacts) at least 60 days prior to the start of activities. The description must include:

- i. the geographic area affected;
- ii. when activities will occur and how they will be conducted;
- iii. the severity of direct, indirect, and cumulative effects on the southern DPS;
- iv. the methods used to ensure that the likelihood of survival or recovery of the southern DPS is not reduced;
- v. a plan for minimizing and mitigating any adverse effects on southern DPS spawning or rearing habitat;
- vi. estimates of the amount of incidental take of ESA-listed species and how that estimate was made;
- vii. a plan for effective monitoring and adaptive management;
- viii. identification of funding sources;
- ix. demonstration that all state and Federal regulatory requirements have been met;
- x. a pledge to use the best available science and technology; and
- xi. a point of contact.

The NMFS WCR will review your submission and respond with a determination of whether the habitat restoration activities qualify for the exception. If they do, then NMFS will determine a schedule for submitting progress reports. Reports must include:

- i. the total number of southern DPS fish taken;
- ii. whether the take was lethal or non-lethal;
- iii. a summary of the project status; and
- iv. any changes in the methods.

Submission Information

Submissions may be transmitted electronically or by mail (electronic submissions preferred) and should be addressed to the Regional Administrator of NMFS WCR.

Electronic

Electronic submissions may be sent to the NMFS WCR Assistant Regional Administrator for the Protected Resources Division and California Central Valley Office. The email addresses may be found at: <https://www.fisheries.noaa.gov/about/west-coast-region>.

Mail

Regional Administrator
National Marine Fisheries Service
West Coast Region
501 West Ocean Boulevard
Suite 4200
Long Beach, CA 90802-4213

Paperwork Reduction Act Burden Statement

NOAA estimates that completing the information collections for the green sturgeon 4(d) exceptions will vary depending on the requirement. On average, the estimated time per response will be: scientific research or monitoring exception, 40 hours; emergency fish rescue and salvage reports, 20 hours; habitat restoration exception, 40 hours; reports for scientific research/monitoring and habitat restoration, 5 hours. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NOAA, Susan Wang at Susan.Wang@noaa.gov. This collection has been approved by the Office of Management and Budget (OMB). The eight-digit OMB approval number that appears at the upper right of this instruction document confirms this approval. If this number were not displayed, we could not conduct this information collection.