

Guide for Green Sturgeon 4(d) Exemptions

For Fisheries, Tribal, and Scientific Research and Monitoring Programs

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 exemptions from the take prohibitions for fisheries, tribal, and scientific research and monitoring activities conducted under NMFS-approved programs. This guide describes the requirements for these 4(d) exemptions. More detailed information can be found in the regulations under 50 CFR 223.210.

Scientific Research and Monitoring Exemption

The take prohibitions for southern DPS green sturgeon do not apply to ongoing or future state-sponsored scientific research or monitoring activities that are part of a NMFS-approved state 4(d) research program conducted by, or in coordination with, the following state fishery management agencies: California Department of Fish and Wildlife (CDFW), Oregon Department of Fish and Wildlife (ODFW), Washington Department of Fish and Wildlife (WDFW), or Alaska Department of Fish and Game (ADFG).

To apply for and be included in a NMFS-approved state 4(d) research program, you must submit an application via the Authorizations and Permits for Protected Species (APPS) online platform (insert website). The application must include:

- i. an estimate of total direct or incidental take;
- ii. a description of the study design and methodology;
- iii. a justification for take and the techniques employed; and
- iv. a point of contact.

You will receive written notification regarding whether your application has been approved and included in the state 4(d) research program. If approved, you must provide an annual report summarizing the number of southern DPS green sturgeon taken directly or incidentally and the project results.

If approved, the state 4(d) research program authorization will cover one calendar year. You must renew your authorization annually for each subsequent year by submitting a renewal request via the APPS online platform at least 30 days before the expiration date.

The lead state agency for each 4(d) research program (CDFW, ODFW, WDFW, or ADFG) will use the information you provide in your application and reports to provide the following to NMFS:

- i. Descriptions of ongoing and future state-supported research activities, for NMFS' approval of the state 4(d) research program; and

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. An annual report on the activities conducted under the state 4(d) research program, for NMFS' review to evaluate the effects of the activities on southern DPS green sturgeon and ensure actual take did not exceed the estimated take numbers.

Fisheries Exemption

The take prohibitions for southern DPS green sturgeon do not apply to fisheries activities conducted in accordance with a NMFS-approved Fishery Management and Evaluation Plan (FMEP). FMEPs must be established by the appropriate state or federal fishery management agency. An FMEP must meet the following criteria:

- i. prohibit retention of green sturgeon (i.e., zero bag limit);
- ii. set maximum incidental take levels, including restrictions to minimize incidental take of green sturgeon (e.g., temporal/spatial restrictions, size limits, gear modifications);
- iii. provide a biologically based rationale demonstrating that the incidental take management strategy will not significantly reduce the likelihood of survival or recovery of the southern DPS;
- iv. include effective monitoring and evaluation plans;
- v. provide for evaluating monitoring data and revising the FMEP as needed;
- vi. provide for effective enforcement and education; and
- vii. provide a timeframe for FMEP implementation.

The process for establishing an FMEP involves the following steps:

- 1. The fishery management agency submits an FMEP to NMFS for review.
- 2. Once NMFS finds that an FMEP meets the criteria listed above, NMFS will publish a notice in the Federal Register announcing the availability of the FMEP for review and public comment. The public comment period must be at least 30 days.
- 3. Upon approval, NMFS will issue a letter to the fishery management agency specifying the implementation and reporting requirements.

Once NMFS has approved an FMEP:

- i. The fishery management agency must report the amount of incidental take of southern DPS fish and summarize the effectiveness of the FMEP to NMFS on a biannual basis.
- ii. NMFS will evaluate the FMEP every 5 years and identify changes to improve the FMEP's effectiveness.
- iii. Amended FMEPs: NMFS will review and provide a public comment period of at least 30 days before approving the amended FMEP.
- iv. Withdrawing approval of an FMEP: NMFS will provide a public comment period of at least 30 days before withdrawing approval of an FMEP.

Tribal Exemption

The take prohibitions for southern DPS green sturgeon do not apply to fishery harvest or other activities undertaken by a tribe or by a tribal member, permittee, employee, or agent in an area where tribal treaty fishing occurs, if those activities are compliant with a tribal resource management plan (Tribal Plan), provided that the Secretary of Commerce (Secretary) determines that implementation of the Tribal Plan will not appreciably reduce the likelihood of survival and recovery of the southern DPS.

A Tribal Plan:

- i. may include, but is not limited to, fishery harvest, artificial production, research, water management, or land management;
- ii. may be developed by one tribe or jointly with other tribes;
- iii. must specify the procedures by which the tribe or tribes will enforce its provisions.

With regard to a Tribal Plan, the Secretary will:

- i. consult on a government-to-government basis with any tribe that so requests;
- ii. provide technical assistance in examining impacts on the southern DPS, to the maximum extent practicable;
- iii. seek public comment on the determination of whether implementation of the Tribal Plan will appreciably reduce the likelihood of survival and recovery of the southern DPS; and
- iv. public notification in the Federal Register of any determination regarding a Tribal Plan and the basis for that determination.

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) exemptions will vary depending on the requirement. On average, the estimated time per response will be: state 4(d) research program, 40 hours; research applications, 40 hours; research reports, 5 hours; FMEPs, 160 hours; FMEP reports, 20 hours; Tribal Plans, 160 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.