

180 FERC ¶ 61,098  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;  
James P. Danly, Allison Clements,  
Mark C. Christie, and Willie L. Phillips.

Brookfield White Pine Hydro, LLC

Project No. 2302-071

ORDER AMENDING LICENSE TO MODIFY AND APPROVE FINAL SPECIES  
PROTECTION PLAN FOR ATLANTIC SALMON

(Issued August 16, 2022)

1. On December 31, 2019, Brookfield White Pine Hydro, LLC (Brookfield) filed a request to amend its license for the Lewiston Falls Project No. 2302 on the Androscoggin River in Androscoggin County, Maine. Brookfield requests that the Commission approve a Final Species Protection Plan (Final Protection Plan), which would replace a 2013 Interim Species Protection Plan (Interim Protection Plan) and require permanent measures to avoid and minimize impacts to the federally listed Atlantic salmon and the species' designated critical habitat.<sup>1</sup> For the reasons discussed below, we modify and approve the Final Protection Plan.

**I. Background**

**A. Project Description and Existing Fish Passage Facilities and Operation**

2. On September 29, 1986, the Commission issued a new license for the Lewiston Falls Project, for a term of 40 years.<sup>2</sup> The project is the fourth dam on the mainstem Androscoggin River, upstream of the Brunswick Project No. 2284, Pejepscot Project

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<sup>1</sup> The request and proposed Final Protection Plan are attached to a draft Biological Assessment (BA) that Brookfield developed with the National Marine Fisheries Service (NMFS) under the Endangered Species Act (ESA).

<sup>2</sup> *Cent. Me. Power Co.*, 36 FERC ¶ 62,353 (1986). On November 9, 2017, Commission staff issued an order granting Brookfield's request to amend its license for the Lewiston Falls Project to remove portions of a canal system and associated four non-operating power stations for conveyance to the City of Lewiston, Maine, for possible redevelopment for non-power and public use purposes. *Brookfield White Pine Hydro, LLC*, 161 FERC ¶ 62,095 (2017).

No. 4784, and Worumbo Project No. 3428, at river mile 30.8. The project is located within the range of the endangered Gulf of Maine Distinct Population Segment of Atlantic salmon<sup>3</sup> and near the species' designated critical habitat.<sup>4</sup> Fish passage facilities at downstream dams allow upstream migrating adult Atlantic salmon access to the project. There are no fish passage facilities at the project.

**B. Previous ESA Consultation and Interim Protection Plan**

3. On November 17, 2000, NMFS and the U.S. Fish and Wildlife Service (FWS) listed Gulf of Maine Atlantic salmon as endangered.<sup>5</sup> At the time, the listing range did not include areas where the project is located. However, on June 19, 2009, NMFS and FWS expanded the listing range for the species to include the project area,<sup>6</sup> and NMFS designated critical habitat for the species that includes the location of the project.<sup>7</sup> Concerned that the project might affect federally listed Atlantic salmon, Brookfield requested, and Commission staff granted, Brookfield's designation as the Commission's non-federal representative to informally consult with NMFS under section 7 of the ESA.<sup>8</sup> On February 21, 2013, Brookfield filed its proposed Interim Protection Plan for the species, which included an Atlantic Salmon Rescue and Handling Plan, and a draft Biological Assessment (BA) for the plan, and requested that the Commission initiate formal consultation with NMFS on the Interim Protection Plan and incorporate the proposed measures in the project license. Commission staff adopted the draft BA without modification and, by letter issued March 14, 2013, provided a copy of the final BA to, and began formal consultation with, NMFS. Based on the analysis in the BA, Commission staff concluded that project operation may adversely affect individual Atlantic salmon and critical habitat.

4. On July 19, 2013, NMFS issued a Biological Opinion (2013 BO) for the proposed Interim Protection Plan. Regarding the Atlantic salmon, the 2013 BO concluded that

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<sup>3</sup> For purposes of this order, we refer to this population segment as Atlantic salmon.

<sup>4</sup> The project is outside of NMFS's designated critical habitat for Atlantic salmon, but flow fluctuations from the project extend into designated critical habitat downstream.

<sup>5</sup> 65 Fed. Reg. 69,459 (Nov. 17, 2000).

<sup>6</sup> 74 Fed. Reg. 29,344 (June 19, 2009).

<sup>7</sup> 74 Fed. Reg. 29,300 (June 1, 2009).

<sup>8</sup> Brookfield January 31, 2013 Request; Commission Staff February 7, 2013 Letter.

project operation with the interim plan may adversely affect, but is not likely to jeopardize, the continued existence of the species and that, although operation will continue to affect essential features of designated critical habitat, the plan would improve the functioning of critical habitat for the species in the Androscoggin River.

5. On December 13, 2013, Commission staff issued an order approving the Interim Protection Plan,<sup>9</sup> and Brookfield implemented the plan protocols.

## **II. Proposed Final Protection Plan**

6. Brookfield proposes to implement measures to avoid and minimize the effects of project operation on federally listed Atlantic salmon and the species' designated critical habitat. The Final Protection Plan includes provisions for an Atlantic Salmon Rescue and Handling Plan and an annual report and meeting with resource agencies. As provided above, there are no fish passage facilities at the project, and Brookfield does not propose to install fishways as part of the final plan.

### **A. Atlantic Salmon Rescue and Handling Plan**

7. To protect Atlantic salmon, Brookfield developed an Atlantic Salmon Rescue and Handling Plan, which updates an existing plan implemented as part of the Interim Protection Plan. The purpose of the plan is to protect Atlantic salmon from effects associated with the operation and maintenance of the project. Operation of the project could affect migrating Atlantic salmon, particularly during and after spill events, by inadvertently attracting and trapping or stranding fish in the various pools in and around Great Falls, located below the five dams and adjacent to the powerhouse. Specifically, Brookfield proposes to:

- implement the plan from May 1 through July 31 of each year;
- notify NMFS, FWS, and Maine Department of Marine Resources (Maine DMR) that the rescue plan has been put into place at the project, if Atlantic salmon have been passed through fishways for the Brunswick, Pejepscot, and Worumbo projects;
- have environmental compliance personnel to coordinate with operations personnel and fisheries technicians on site when rubber dams are re-inflated, and survey the area on the ledges below the rubber dams with binoculars from the East and West sides of the dam to ensure no fish are stranded;

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<sup>9</sup> *Brookfield White Pine Hydro, LLC*, 145 FERC ¶ 62,188 (2013).

- have operations personnel raise the headpond level above the height of the rubber dams such that water and flows will pass over the rubber dam and the length of the ledges to allow egress, if fish are observed in any of the various pools associated with the large exposed series of water falls and bedrock terraces downstream of the project known as Great Falls; and
- record its actions following rubber dam re-inflation or spill events and report annually to NMFS and the Commission any records of Atlantic salmon observed stranded, rescued, or found dead or injured.

### **B. Annual Meetings and Report**

8. As part of the Final Protection Plan, Brookfield proposes to meet annually with NMFS, FWS, Maine DMR, and Maine Department of Inland Fisheries and Wildlife to review draft annual reports, and to consult on fishway operations and study activities planned for the coming year. The annual meetings would also be used to consult with the agencies on specific aspects of the final plan.

9. Measures included in the final plan would be subject to revision after agency consultation and, if necessary, Commission approval. To that end, Brookfield would prepare an annual report, describing the previous year's activities under the final plan and its progress in implementing the Atlantic Salmon Rescue and Handling Plan. Brookfield proposes to provide a draft report to the agencies by January 31 of each year and would then meet with the agencies to discuss the report, implementation of the final plan, and any other issues related to the Atlantic salmon restoration and management activities in the Androscoggin River. Brookfield would file a final report with the agencies and the Commission by March 31 of each year.

### **III. Endangered Species Act Consultation**

10. Section 7(a)(2) of the ESA requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species or result in the destruction or adverse modification of designated critical habitat.<sup>10</sup>

11. On February 11, 2019, Brookfield requested that the Commission designate it as the Commission's non-federal representative to informally consult with NMFS under ESA section 7 on the effects of project operation on the Atlantic salmon. Commission staff granted Brookfield's request in a June 13, 2019 letter to NMFS.

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<sup>10</sup> 16 U.S.C. § 1536(a)(2).

12. On December 31, 2019, Brookfield filed its proposed Final Protection Plan for the species and a draft BA for the plan, and requested the Commission to initiate formal consultation with NMFS and incorporate the proposed measures in the project license. Commission staff adopted the BA without modification and provided a copy of the document to NMFS on June 26, 2020, along with a request for formal consultation. Based on the analysis in the BA, Commission staff concluded that operation of the project may adversely affect individual Atlantic salmon and the species' designated critical habitat.

13. On December 28, 2021, NMFS issued a Biological Opinion (2021 BO), which includes an Incidental Take Statement with Reasonable and Prudent Measures (RPM) and associated terms and conditions to avoid or minimize incidental take of the species. The 2021 BO found that implementation of the Final Protection Plan through the end of the license term may adversely affect, but is not likely to jeopardize, the continued existence of the Atlantic salmon. NMFS also found that implementation of the final plan is not likely to destroy or adversely modify critical habitat designated for the Atlantic salmon.

14. The 2021 BO includes an Incidental Take Statement, which specifies the amount of incidental take of Atlantic salmon that can occur through the remainder of the license term as a result of project operations and the activities that will take place under the Final Protection Plan. In order to monitor the effect of incidental take, Brookfield must report to NMFS the progress of the action and its effect on Atlantic salmon.<sup>11</sup>

15. The Incidental Take Statement includes one reasonable and prudent measure (RPM) for the project to avoid or minimize incidental take of the species, as well as terms and conditions to implement those measures.<sup>12</sup> These terms and conditions are in addition to the measures provided in the Final Protection Plan and BA.<sup>13</sup> Brookfield must follow the terms and conditions of the Incidental Take Statement to ensure

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<sup>11</sup> NMFS December 28, 2021 Biological Opinion at 145 (2021 BO) (citing 50 C.F.R. § 402.14(i)(3) (2021)).

<sup>12</sup> The 2021 BO analyzes the Final Protection Plan for both the Lewiston Falls Project and the Brunswick Project and includes RPMs and associated terms and conditions for both projects. However, because the Commission has issued a separate Order Amending License to Modify and Approve Final Species Protection Plan for Atlantic Salmon, Atlantic Sturgeon, and Shortnose Sturgeon for the Brunswick Project, *Brookfield White Pine Hydro, LLC*, 180 FERC ¶ 61,097 (2022), this order only addresses those RPMs and terms and conditions applicable to the Lewiston Falls Project.

<sup>13</sup> 2021 BO at 148.

exemption from the take prohibitions of Section 9 of the ESA.<sup>14</sup> These terms and conditions are attached to this order as Appendix A and are incorporated in the project licenses by ordering paragraph (B).

16. Under RPM 2 the Commission must ensure that Brookfield complete an annual monitoring and reporting program to confirm that they are minimizing incidental take and reporting all project-related observations of dead or injured salmon to NMFS.<sup>15</sup> To implement the RPM, the 2021 BO includes three terms and conditions for the Lewiston Project requiring Brookfield to: (1) prepare in consultation with NMFS a plan to evaluate adult Atlantic salmon migratory delay at the project and, as a component of the upstream passage studies, document the amount of migratory delay that occurs at the project's dam; (2) actively monitor stranding of federally listed fish downstream of the project's dam; and (3) implement the Atlantic Salmon Rescue and Handling Plan at the project from May 1 to November 15 after significant spill events when salmon could be in the project area.<sup>16</sup>

17. The BO also includes one conservation recommendation.<sup>17</sup> NMFS recommends that the Commission require Brookfield to carry out activities that improve the environmental baseline in the Androscoggin River in order to compensate for unavoidable effects of their actions.<sup>18</sup> This could include the removal of other barriers to fish migration in the watershed or the construction of fishways likely to contribute to the recovery of the species and their designated critical habitat.<sup>19</sup> Because the conservation recommendation is a regional river basin goal and would not provide mitigation for the impacts of the Lewiston Falls Project, we do not adopt it. The Commission considers project-specific recommendations in its licensing and amendment proceedings and must review and balance a range of public interest considerations, both developmental and environmental. The implementation of the broad conservation recommendation would require Brookfield to incur substantial cost without improving the safe, timely, and

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<sup>14</sup> Section 9 of the ESA prohibits any taking of listed species unless the take is authorized in an Incidental Take Statement after formal consultation under ESA section 7 or in an incidental take permit issued under ESA section 10. 16 U.S.C. § 1538(a)(1)(B).

<sup>15</sup> 2021 BO at 148.

<sup>16</sup> *Id.* at 151.

<sup>17</sup> 50 C.F.R. § 402.14(j) (“Conservation recommendations are advisory and are not intended to carry any binding legal force.”).

<sup>18</sup> 2021 BO at 153.

<sup>19</sup> *Id.*

effective passage of fish at the project. The Final Protection Plan includes provisions for an Atlantic Salmon Rescue and Handling Plan and an annual report and meeting with resource agencies. We find that these measures, along with the RPMs discussed above, adequately protect Atlantic salmon species and their habitat.

#### **IV. Environmental Analysis**

18. Because Brookfield's Final Protection Plan would not require any ground disturbing activity or changes to project works or operation, the plan will not have environmental impacts and environmental review of the proposed action is not necessary.<sup>20</sup>

#### **V. Discussion**

19. Brookfield's Final Protection Plan, including the Atlantic Salmon Rescue and Handling Plan, will ensure compliance with the ESA, improve conditions for Atlantic salmon, and avoid or minimize incidental take of Atlantic salmon at the project. Therefore, we modify and approve the final plan and amend the license to require its implementation by Brookfield.

20. RPM 2, Term and Condition 8 of the Incidental Take Statement provides requirements for contacting NMFS under certain circumstances, including any interactions with Atlantic salmon or Atlantic and shortnose sturgeon, including lethal and non-lethal take. After contacting NMFS following any such incident, Brookfield must file a written report with the Commission within 15 days, as required by ordering paragraph (C) of this order.

21. Brookfield proposes to prepare and file with the Commission annual reports detailing its progress in implementing measures contained in the final plan and Incidental Take Statement. The reports would provide information on any monitoring and study results or any information regarding Atlantic salmon rescue or stranding downstream of the project. To keep Commission staff apprised of its progress, we modify the plan to require Brookfield to include, at minimum, the following information: (1) a summary of Brookfield's actions undertaken the previous year to implement the final plan, including a summary of consultation with NMFS and other resource agencies regarding progress under the plan and any other pertinent issues regarding Atlantic salmon, including any modifications to studies undertaken as part of the plan; (2) a summary of Brookfield's actions undertaken the previous year to implement the Atlantic Salmon Rescue and

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<sup>20</sup> 18 C.F.R. 380.4(a)(13) (2021).

Project No. 2302-071

- 8 -

Handling Plan; and (3) a proposed schedule for implementing the elements associated with the final plan for the next year.<sup>21</sup>

The Commission orders:

(A) Brookfield White Pine Hydro, LLC's (Brookfield) December 31, 2019 Final Species Protection Plan (Final Protection Plan) for the Lewiston Falls Project No. 2302, including Atlantic Salmon Rescue and Handling Plan, is approved, as modified by paragraphs (D) and (E).

(B) The terms and conditions of the Incidental Take Statement included with the National Marine Fisheries Service's (NMFS) December 28, 2021 Biological Opinion are hereby incorporated into the license. The terms and conditions are attached to this order as Appendix A.

(C) Brookfield must inform the Commission after contacting the NMFS regarding any interactions with Atlantic salmon, including lethal and non-lethal take, pursuant to the terms and conditions of the Incidental Take Statement included in NMFS's December 28, 2021 Biological Opinion by filing a written report within 15 days of the occurrence of any issue.

(D) Brookfield must file an annual Final Protection Plan report with the Commission. Each report shall include, at minimum, the following information: (1) a summary of Brookfield's actions undertaken the previous year to implement the final plan, including a summary of its consultation with NMFS and other resource agencies regarding progress under the plan and any other pertinent issues regarding Atlantic salmon; (2) a summary of Brookfield's actions undertaken the previous year to implement the Atlantic Salmon Rescue and Handling Plan; and (3) a proposed schedule for implementing the elements associated with the final plan for the next year. A draft of the report must be provided to NMFS, U.S. Fish and Wildlife Service, Maine Department of Marine Resources, and Maine Department on Inland Fisheries and Wildlife by December 31 each year following implementation of the final plan. A final report, after consultation with the resource agencies, shall be filed with the Commission by March 31 each year following implementation of the final plan.

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<sup>21</sup> The reports should be combined with the information required to be filed by Brookfield for the Brunswick Project. *Brookfield White Pine Hydro, LLC*, 180 FERC ¶ 61,097 at ordering para. (D).

Project No. 2302-071

- 9 -

(E) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 825*l*, and the Commission's regulations at 18 C.F.R. § 385.713 (2021). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

By the Commission.

( S E A L )

Debbie-Anne A. Reese,  
Deputy Secretary.

## APPENDIX A

DEPARTMENT OF COMMERCE  
NATIONAL MARINE FISHERIES SERVICEREASONABLE AND PRUDENT MEASURES  
AND TERMS AND CONDITIONS OF THE INCIDENTAL TAKE STATEMENT  
INCLUDED IN THE BIOLOGICAL OPINION FOR THE  
BRUNSWICK AND LEWISTON FALLS HYDROELECTRIC PROJECTS (FERC  
NOs. 2284 AND 2203)

Filed December 28, 2021

The following reasonable and prudent measures are necessary and appropriate to minimize the impact of the amount or extent of incidental take (50 CFR 402.02) and monitor that take incidental take of Atlantic salmon, shortnose sturgeon, and Atlantic sturgeon. These reasonable and prudent measures and terms and conditions are in addition to the measures contained in the December 31, 2019 SPP and BA, as well as the Brunswick Fishway Operations and Maintenance Plan filed on April 12, 2021, that the licensee has committed to implement and FERC is proposing to incorporate into the project licenses. As those measures will become requirements of the amended licenses, we do not repeat them here as they are considered to be part of the proposed action.

Reasonable and Prudent Measures

1. FERC must ensure, through enforceable conditions of the amended licenses, that the proposed fish passage measures are implemented and monitored in a manner that is adequately protective of listed species.
2. FERC must ensure, through enforceable conditions of the Project license, that the licensee complete an annual monitoring and reporting program to confirm that they are minimizing incidental take and reporting all project-related observations of dead or injured salmon to us.

Terms and Conditions

To implement reasonable and prudent measure #1, FERC must require the licensee to do the following:

1. To adequately monitor take, prepare in consultation with NMFS a plan to measure the survival of downstream migrating Atlantic salmon smolts at the Brunswick Project if and when similar studies are conducted at the Pejepscot and/or Worumbo Projects upstream.

Project No. 2302-071

- 11 -

- a. Coordinate with the licensees of the Pejepscot and Worumbo Projects to ensure that passage at the Brunswick Project is evaluated if and when salmon studies are conducted at those upstream projects.
  - b. Require BWPH to measure the survival of downstream migrating Atlantic salmon smolts at the Brunswick Project using a scientifically acceptable methodology if/when studies are being conducted at upstream projects. BWPH must incorporate the Brunswick Project into these studies by installing telemetry receivers as necessary at the Project. The study must:
    - i. Measure the survival of downstream migrating smolts approaching within 200 meters of the dam downstream to the point where delayed effects of passage can be quantified.
    - ii. Use a Cormack-Jolly-Seber (CJS) model, or other acceptable approach, to determine if the survival estimate and associated error bounds are within the scope of published telemetry work for salmon in the region.
    - iii. BWPH must consult with us concerning the application of appropriate statistical methodology and must provide an electronic copy of model(s) and data to us.
  - c. All tags released in the system must have codes that are not duplicative of tags used by other researchers in the river, including university, state, federal and international tagging programs.
2. Prepare in consultation with NMFS a plan to evaluate adult Atlantic salmon upstream and downstream passage at the Brunswick Dam, as well as delay at the Lewiston Falls Project.
- a. Conduct an upstream passage study at the Brunswick Project when either 1) more than 40 adult Atlantic salmon return per year in two consecutive years, or 2) sufficient stocking occurs upstream of the project such that NMFS determines it is likely to produce at least 40 returning adult Atlantic salmon. The study should be conducted in the year that sufficient adults are anticipated.
    - i. As a component of their upstream passage studies, BWPH must document the amount of migratory delay that occurs at the Brunswick Project.
    - ii. As a component of their upstream passage studies, BWPH must document the amount of migratory delay that occurs at the Lewiston Falls Dam.

- iii. As a component of this study, BWPH must monitor the survival of downstream migrating kelts approaching within 200 meters of the dam downstream to the point where delayed effects of passage can be quantified. To make the best use of fish, this study must coincide with the proposed upstream passage study.
        - iv. A Cormack-Jolly-Seber (CJS) model, or other acceptable approach, must be used to determine if the survival estimate and associated error bounds are within the scope of published telemetry work for salmon in the region.
        - v. BWPH must consult with NMFS concerning the application of appropriate statistical methodology and must provide an electronic copy of model(s) and data to NMFS.
        - vi. All tags released in the system must have codes that are not duplicative of tags used by other researchers in the river, including university, state, federal and international tagging programs.
      - b. At the Brunswick Project, BWPH must install, operate, and maintain a PIT tag receiver near the entrance of the fishway to monitor movements of salmon and sturgeon in the project area annually throughout the term of the amended license. Provide all PIT tag data to NMFS annually by December
      - c. BWPH must insert a PIT tag into all ESA-listed Atlantic salmon that are trapped and handled at the Brunswick fishway.
3. Require that BWPH operate the upstream and downstream fishways at the Brunswick Project to ensure that passage of Atlantic salmon is safe, timely, and effective.
  - a. BWPH must take immediate action, regardless of whether the fishway is being observed in-person or remotely, to pass Atlantic salmon when they are observed in the fishway, regardless of the co-occurrence of an invasive species. If an invasive species is observed with an Atlantic salmon in the fishway, BWPH should attempt to pass the salmon upstream while preventing the passage of the invasive species.
  - b. BWPH staff must be onsite if the v-gate near the viewing window of the Brunswick fishway is being operated to ensure that salmon are not injured or killed by the closing of the gate. This gate must not be controlled remotely.

- c. Position cameras to ensure that there are no blind spots where Atlantic salmon could hold without being observed when operating remotely.
  - d. Consult annually with NMFS regarding the appropriate timing for the initiation of the implementation of downstream spill measures.
  - e. Remove any debris that could affect the ability of fish to pass either the downstream or upstream fish passages immediately upon inspection.
  - f. Replace entrance gate actuator and upstream fishway handrail within one day of tailrace flows subsiding to safe levels after high water event during the fish passage season.
  - g. Annual maintenance requiring the shutdown of upstream fish ways should be conducted during the first two weeks of August. The fishway should not be inoperable for any longer than it takes to make the necessary repairs.
  - h. Consult with NMFS regarding the timing of the replacement of flashboards.
4. Require that BWPH actively monitor for the stranding of listed fish downstream of the Brunswick Dam and Lewiston Falls Dam.
  - a. Develop, in consultation with NMFS, an appropriate schedule for regularly surveying the pool downstream of the Brunswick dam for both stranded salmon and shortnose and Atlantic sturgeon.
  - b. Implement the Atlantic salmon Rescue and Handling Plan at the Lewiston Falls Project from May 1 to November 15 after significant spill events when salmon could be in the project area.
5. Require that BWPH update the sturgeon handling plan to incorporate the following conditions:
  - a. BWPH must record the weight, length, and condition of all sturgeon that are handled. Sturgeon must also be scanned for PIT tags. Genetic samples must be taken from all captured Atlantic sturgeon (alive or dead) to allow for identification of the DPS of origin of captured individuals and tracking of the amount of incidental take. This must be done in accordance with the Procedures for Obtaining Sturgeon Fin Clips:  
[https://media.fisheries.noaa.gov/dammigration/sturgeon\\_genetics\\_sa](https://media.fisheries.noaa.gov/dammigration/sturgeon_genetics_sa)

[mpling\\_revised\\_june\\_2019.pdf](#). All fin clips and the accompanying metadata form must be held and submitted to the Atlantic Coast Sturgeon Tissue Research Repository on a quarterly basis. The Sturgeon Genetic Sample Submission Form is available for download at: <https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic>. Captured sturgeon, regardless of the presence or scale of injury, must be safely returned to the Androscoggin River downstream of the project.

- b. Dead sturgeon must be placed on ice or be refrigerated if possible. NMFS must be contacted immediately for further instructions.

To implement reasonable and prudent measure #2, FERC must require the licensee to do the following:

1. Inspect the upstream and downstream fish passage facilities at the Brunswick Project daily when they are open. The licensee must submit summary reports to NMFS weekly during the fish passage season.
2. Notify NMFS of any changes in operation including maintenance activities and debris management at the project during the term of the amended license.
3. Submit as-built drawings to NMFS for the current configuration of the upstream and downstream fishways.
4. Allow NMFS staff to inspect the upstream and downstream fishways at reasonable times, including but not limited to annual engineering inspection.
5. Review and update Fishway Operations and Maintenance Plan a minimum of every 3 years in cooperation with NMFS. The plan must be updated as soon as possible to ensure it is consistent with the terms and conditions of this Opinion, as well as with the State of Maine's most recent version of their Atlantic Salmon Trap Operating and Fish-Handling Protocols (except where it may conflict with the terms and conditions included with this Incidental Take Statement).
6. In the event of a serious injury or mortality of any ESA listed species, allow NMFS access to investigate the source of the mortality and work in cooperation with NMFS to correct the source of serious injury/mortality.
7. Submit annual reports at the end of each calendar year summarizing the results of proposed action and any takes of listed sturgeon or Atlantic salmon to NMFS by December 31.

Project No. 2302-071

- 15 -

8. Contact NMFS within 24 hours of any interactions with Atlantic salmon, shortnose sturgeon, or Atlantic sturgeon, including non-lethal and lethal takes (Matt Buhyoff: by email ([Matt.Buhyoff@noaa.gov](mailto:Matt.Buhyoff@noaa.gov)) or phone (207) 866-4238 and to: [incidental.take@noaa.gov](mailto:incidental.take@noaa.gov)). By December 31 of each year, an annual report summarizing this information must be provided to NMFS to document the take level from all sources and all life stages.
9. In the event of any lethal takes, any dead specimens or body parts must be photographed, measured, and preserved (refrigerate or freeze) until disposal procedures are discussed with NMFS.

Document Content(s)

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