UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

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FINDING OF NO SIGNIFICANT IMPACT
ON THE EFFECTS OF THE ISSUANCE OF A MODIFICATION TO A SCIENTIFIC RESEARCH PERMIT (NO. 13330) TO CONDUCT SCIENTIFIC RESEARCH ON SMALLTOOTH SAWFISH IN FLORIDA WATERS

National Marine Fisheries Service

On December 23, 2010, the National Marine Fisheries Service, Office of Protected Resources (NMFS PR) received an application to modify a scientific research permit application from the NMFS Southeast Fisheries Science Center (Bonnie Ponwith, Responsible Party 75 Virginia Beach Drive, Miami, FL 33149) to conduct research on smalltooth sawfish in Florida Coastal waters.

In accordance with the National Environmental Policy Act (NEPA), NMFS prepared a Supplemental Environmental Assessment (SEA) analyzing the impacts on the human environment associated with issuing the modification (*Supplemental Environmental Assessment on the Issuance of a Modification to Scientific Research Permit No. 13330 to the NMFS Southeast Fisheries Science Center to Conduct Research on Protected Smalltooth Sawfish*). In addition, a Biological Opinion was issued under Section 7 of the Endangered Species Act (ESA) (*Biological Opinion on the Permits, Conservation and Education Division's proposal to modify a Scientific Research Permit (Number 13330) issued to the NMFS Southeast Fisheries Science Center (Bonnie Ponwith, Responsible Party) for research on smalltooth sawfish in Florida waters pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973.)* The analyses in the SEA, as informed by the Biological Opinion, support the following findings and determination.

The National Oceanic and Atmospheric Administration's Administrative Order 216-6 (May 20, 1999) for implementing NEPA contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality (CEQ) NEPA implementing regulations at 40 C.F.R. 1508.27 state the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

(1) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH) as defined under the Magnuson - Stevens Act and identified in Fishery Management Plans?

Response: The action would remain the same with respect to potential habitat effects as previously analyzed in the original 2008 EA where it was determined any adverse impacts to the ocean and coastal habitats and/or essential fish habitat (EFH) as defined under the Magnuson - Stevens Act and identified in Fishery Management Plans would be minimal and temporary. Therefore, no significant adverse impacts to these environments are anticipated upon issuance of this modification.

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(2) Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response: The proposed action is directed at changing the tagging methods on specific smalltooth sawfish and therefore would not have a significant cumulative impact on biodiversity and/or ecosystem function within the affected environment in the proposed action area. Therefore, no substantial impacts would be expected to occur as a result of the proposed action.

(3) Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?

Response: As analyzed in the previous 2008 EA, issuance of the permit was not expected to have substantial adverse impacts on public health or safety. Since the proposed action would remain substantially the same as previously analyzed, no significant adverse impacts on public health or safety are anticipated upon issuance of this modification.

(4) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?

Response: The proposed changes in tagging techniques could potentially have adverse effects on individual endangered smalltooth sawfish, the target of the research; however, the effects are expected to be less significant at the species level because of the less invasive tagging methods proposed. Although NMFS concludes both modified tagging methods would be less invasive and harmful to sawfish than were the previous methods, both new methods would also provide for better tag retention. Additionally, both tagging methods have been shown to provide for a predictable release of the tags after corrosion of the crimps fastening the tags to the attachment devices. Consequently, NMFS does not expect the new tagging methods would result in fish being harmed or result in the loss of animals. The researchers would still be bound to conduct their research activities in accordance with the mitigating conditions in their original permit, which would reduce the likelihood of any serious injury or mortality occurring. For these reasons, NMFS does not expect the target smalltooth sawfish to be significantly impacted by the new tag attachment procedures.

In the accompanying biological opinion, NMFS Endangered Species Division re-evaluated the record of bycatch of sea turtles resulting in incidental mortality or harmful injury during the first three years of the permit, finding that the level authorized of three sea turtles annually was too high. Consequently, the incidental mortality or harm of sea turtles from research was reauthorized to no more than two sea turtles of any species captured over the remaining permit life. NMFS also concluded that the previously authorized short-term harassment and/or minimal injury for up to three sea turtles annually (associated with net or hook-and-line capture) would not result in any long term consequences, and thus was not changed.

With respect to critical habitat, NMFS designated critical habitat for smalltooth sawfish in September 2009 (74 FR 45353), subsequent to the 2008 EA written for issuance of the original permit. NMFS PR determined the newly defined critical habitat for sawfish would not be

impacted by the research. In consultation with the NMFS Endangered Species Division, threats to smalltooth sawfish critical habitat were evaluated. In the accompanying biological opinion, NMFS determined there were no measurable effects anticipated on the constituent elements of the sawfish critical habitat and that any potential threats were discountable.

(5) Are significant social or economic impacts interrelated with natural or physical environmental effects?

Response: There are no known social or economic impacts associated with the proposed action. Therefore, there would be no significant social or economic impacts interrelated with natural or physical environmental effects.

(6) Are the effects on the quality of the human environment likely to be highly controversial?

Response: A *Federal Register* notice (76 FR 14650) was published on March 17, 2011, allowing other agencies and the public to comment on the action. No comments were received on the application. All agency comments were appropriately addressed within the scoping summary of the SEA and responses were included in the decision memos for the permits. None of the comments were controversial and none addressed the proposal's potential effects on the quality of the human environment.

(7) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas?

Response: The activities in this proposed modification would not be expected to result in substantial impacts to any unique areas. The action area remains unchanged from that previously analyzed under the 2008 EA for the original permit (No. 13330) which concluded no substantial impacts to the areas, including EFH and historic or cultural resources mentioned above were expected.

(8) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

Response: Potential risks by proposed research methods are not unique or unknown, nor is there significant uncertainty about impacts. Monitoring reports from other permits of similar nature, and published scientific information on impacts of smalltooth sawfish, indicate the proposed activities would not result in significant adverse impacts to the human environment or the species. There is also growing scientific information available on the minimal likelihood of such impacts to the species.

(9) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

Response: There is one other smalltooth sawfish permit authorized in Florida waters with similar objectives and an action area overlapping part of the proposed action. However, both of the actions would be expected to have no more than short-term effects on individual endangered smalltooth sawfish and no effects on other aspects of the environment. The

incremental impacts of both actions when added to other past, present, and reasonably foreseeable future actions discussed in the 2008 EA, would be minimal and not significant.

(10) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places, or may cause loss or destruction of significant scientific, cultural or historical resources?

Response: The action would not take place in any district, site, highway, structure, or object listed in or eligible for listing in the National Register of Historic Places; thus, none would be impacted. However, the modified research efforts would continue to be focused in the region of the Florida coast from Naples to Key West, encompassing the Ten Thousand Islands and Everglades National Park and the Florida Keys National Marine Sanctuary (FKNMS). Although the action area remains unchanged from that previously analyzed under the 2008 EA for the original permit (No. 13330), which concluded no substantial impacts to the areas mentioned above were expected, the applicant is required by permit condition to consult again with the FKNMS Permitting Coordinator and Science Coordinator, or others requiring other separate permitting, prior to using a modification of the permit. On June 17, 2011, notice of a new letter of authorization was issued from the FKNMS giving permission for the applicant to continue research in the marine sanctuary, concluding there would be no substantial impacts on, nor loss or destruction of, the resources.

(11) Can the proposed action reasonably be expected to result in the introductions or spread of a non-indigenous species?

Response: The proposed research activities would not be expected to increase the likelihood of an introduction or spread of non-indigenous species to other watersheds. The research activities would also not involve discharging bilge water or other issues of concern relative to non-indigenous species.

(12) Is the proposed action likely to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration?

Response: The decision to issue this research permit would not be precedent setting nor would it affect future decisions. NMFS has issued several past scientific research permits to study smalltooth sawfish pursuant to section 10 of the ESA; thus, this is not the first permit NMFS has issued for this type of research activity. Issuance of a permit modification, to a specific individual or organization for research activity, does not in any way guarantee or imply NMFS would authorize other individuals or organizations to conduct the same activity. Any future request received, including those by the applicants, would be evaluated upon its own merits relative to the criteria established in the ESA and NMFS' implementing regulations.

(13) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

Response: Issuance of the proposed permit modification is not expected to violate any Federal, State, or local laws for environmental protection. NMFS has sole jurisdiction for issuance of such permits for conducting scientific research on smalltooth sawfish and has determined the

proposed research activities are consistent with applicable provisions of the ESA. However, the modification contains language stating the permit does not relieve the Permit Holder of the responsibility to obtain other required permits, or comply with other Federal, State, local, or international laws or regulations.

The Permit Holder acknowledged responsibility for obtaining proper authorization to conduct the proposed modification in the action area encompassing the FKNMS. Notice of a new letter of authorization was issued from the FKNMS for the applicant to continue research was received by email on June 16, 2011.

(14) Can the proposed action reasonably be expected to result in cumulative adverse effects having a substantial effect on the target species or non-target species?

Response: NMFS concluded the proposed procedures would have potential adverse effects on individual smalltooth sawfish. However, because the changes proposed for the types of handling and methods attaching tags are considered even less invasive than the methods replaced, the cumulative effects on the population are not likely long-term or significant to the species.

In the accompanying biological opinion for this modification, NMFS evaluated the species' expected responses as well as the population and species level risks associated with the expected incidental take of sea turtles by the proposed research activities. Based on prior monitoring reports submitted by smalltooth sawfish researchers, as well as estimates of incidental take associated with commercial fisheries utilizing net, rod-and-reel, and longline equipment, NMFS concluded in the biological opinion that it now expects only up to two sea turtles of any species would suffer harmful injury or mortality over the course of the remaining term of the permit. Consequently, in an effort to minimize sea turtle mortality, NMFS identified reasonable and prudent measures in the biological opinion limiting sea turtle interactions during research activities to meet this objective. These measures were incorporated into the permit as conditions.

DETERMINATION

In view of the information presented in this document and the analyses contained in the SEA prepared for issuance of the permit, pursuant to the ESA, and the ESA section 7 Biological Opinion, it is hereby determined that the issuance of Permit Modification No. 13330-01 would not significantly impact the quality of the human environment as described above. In addition, all beneficial and adverse impacts of the proposed action have been addressed reaching the conclusion of no significant impacts. Accordingly, preparation of an Environment Impact Statement (EIS) for this action is not necessary.

JUL 18 2011

James H. Lecky
Director, Office of Protected Resources

Date