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

AUG 22 2012

Finding of No Significant Impact
Issuance of Scientific Research Permit No. 16134

Background

In September 2011, the National Marine Fisheries Service (NMFS) received a complete application for a permit (File No. 16134) from the Virginia Aquarium to conduct research on sea turtles in coastal waters of the mid-Atlantic. In accordance with the National Environmental Policy Act, NMFS has prepared an Environmental Assessment (EA) analyzing the impacts on the human environment associated with permit issuance (EA on the Effects of Issuing Permit No. 16134 for Scientific Research on Protected Sea Turtles in Mid-Atlantic Coastal Waters). In addition, a Biological Opinion was issued under the Endangered Species Act (ESA) summarizing the results of an intra-agency consultation. Permitting will be deferred for the directed capture of sea turtles by trawling requested by the applicant because the NMFS Endangered Species Act Interagency Cooperation Division has not yet completed a section 7 consultation for that activity. However, the description and an analysis of trawling are included in the EA in anticipation of processing a modification to the proposed permit to include this activity. NMFS anticipates a new FONSI will be prepared for this EA at that time, unless the action warrants a Supplemental EA. The analyses in the EA, as informed by the Biological Opinion, support the below findings and determination.

Analysis

National Oceanic and Atmospheric Administration Administrative Order 216-6 (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality (CEQ) regulations at 40 C.F.R. 1508.27 state that 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 as defined under the Magnuson-Stevens Act and identified in Fishery Management Plans?

Response: Based on the proposed location, capture methods, and mitigating conditions of the permit, the proposed action would not result in substantial alteration of substrate or other interactions with physical features of ocean and coastal habitat during capture of sea turtles by net. Although essential fish habitat (EFH) may be found in the area, the nature of the sea turtle takes is not expected to result in impacts to EFH.

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,

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predator-prey relationships, etc.)?

Response: The proposed action is directed at the target sea turtles and would not interfere with benthic productivity, predator-prey interactions or other biodiversity or ecosystem functions. The permitted takes would not affect the diet or foraging patterns of sea turtles. A minimal number of non-target animals could be incidentally caught, but they would be released alive. Animals would not be displaced from habitat or removed from the ecosystem.

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

Response: The proposed action involves exempting takes of sea turtles during basic research (e.g., handling, measuring, and sampling) and does not involve hazardous methods, toxic agents or pathogens, or other materials that could have a substantial adverse impact on public health and safety.

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 action would affect the sea turtles captured and sampled during the research and up to seven Atlantic or shortnose sturgeon annually, as described by the Incidental Take Statement of the Biological Opinion. However, the effects of the proposed action would not jeopardize the species, as concluded in the Biological Opinion. The proposed action would not likely jeopardize the continued existence of any ESA-listed species or likely destroy or adversely modify designated critical habitat. The permit would contain mitigation measures to minimize the effects of the action and to avoid unnecessary stress on target sea turtles.

Dolphins and porpoises are known to interact with trawling vessels. To avoid capturing the animals in the gear, the researchers would monitor the location of dolphins and porpoises in relation to the gear at all times. The permit would not authorize takes of marine mammals and conditions would be included in the permit to reduce the potential for marine mammal interactions.

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

Response: No significant social or economic impacts would be interrelated with natural or physical environmental effects. The take exemptions of sea turtles authorized by the permit will result in insignificant effects on the natural and physical environment, and there are no social or economic impacts interrelated with these effects. The action does not involve and is not associated with factors typically related to effects on the social and economic environment such as inequitable distributions of environmental burdens, or differential access to natural or depletable resources in the action area.

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

Response: There is no dispute within the scientific literature regarding likely effects of the proposed take exemptions. Further, there has been no public opposition to the action: The application and draft EA were made available for public comment and no comments were submitted disputing NMFS' assessment of impacts.

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: Issuance of the permit is not expected to result in substantial impacts to any of the above-listed areas. The majority of these are not part of the action area. Research activities would not occur in National Marine Sanctuaries. Tangle nets would be located in water less than 30 ft deep and away from underwater structures such as wrecks and artificial reefs. Bottom sediment in the area is sand, mud and/or silt so anchors would not cause damage and nets would not be dragged along the bottom. The taking of sea turtles will not impact any unique or ecologically critical areas. Issuance of the permit does not involve contact with or activities that may indirectly impact such areas.

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

Response: The applicant's proposed methods are not new or unique. Permits have been issued for the same type of activities and monitoring reports demonstrate that effects are consistent with those described and evaluated in the EA.

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

Response: The proposed action is not related to other actions. Issuance of the permit is an independent action that relates only to the applicant's specific research project. Other permits NMFS may issue for the same species in the same area are not connected to or dependent on this permit.

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 of these areas nor affect them indirectly.

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

Response: The permit would not authorize removing or introducing any species and the taking of sea turtles would not likely result in the introduction or spread of a non-indigenous species.

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

Response: The decision to issue this permit would not be precedent setting and would not affect any future decisions. Issuing a permit to a specific individual or organization for a given activity is based on statutory issuance criteria and does not in any way guarantee or imply that NMFS will authorize other individuals or organizations to conduct the same or similar activity.

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 permit would not result in any violation of Federal state or local laws for environmental protection. The decision to issue is consistent with applicable ESA statutory criteria for such permits and no other laws apply to the decision. The permit applicant is required to obtain any state and local permits necessary to carry out the action.

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

Response: The action is not expected to result in cumulative adverse effects to the species that are the subject of the proposed research. The proposed action would be expected to have no more than minimal effects on the target sea turtles.

Sturgeon captured incidentally during the capture of sea turtles in tangle nets would be disentangled and released immediately. Up to seven annual incidental captures of Atlantic or shortnose sturgeon are authorized by the Incidental Take Statement of the Biological Opinion. Mitigation measures are included in the permit to minimize the effects to sturgeon. No cumulative adverse effects that could have a substantial effect on any species would be expected.

DETERMINATION

In view of the information presented in this document, and the analyses contained in the EA and Biological Opinion prepared for issuance of Permit No. 16134, it is hereby determined that permit issuance will not significantly impact the quality of the human environment. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.

Helen M. Golde
Acting Director, Office of Protected Resources

8/22/12
Date