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

Finding of No Significant Impact
Issuance of Scientific Research Permit No. 16306

Background

In July 2011, the National Marine Fisheries Service (NMFS) received an application for a permit (File No. 16306) from Gail Wippelhauser, Maine Division of Marine Resources, to conduct research on shortnose sturgeon in the Gulf of Maine. 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 (Environmental Assessment on the Effects of Issuing a Permit for Scientific Research on Protected Shortnose Sturgeon in the Gulf of Maine; April 2012). In addition, a Biological Opinion was issued under the Endangered Species Act (March 2012) summarizing the results of an intra-agency consultation. 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?

> The action area does not include national marine sanctuaries or coral reef ecosystems. However, designated EFH does occur in the action area. Although the researcher's boats would pass through and over the water column where EFH occurs, NMFS determined this would not adversely impact the physical environment, including any portion considered EFH. Additionally, with respect to anticipated effects on EFH by gill nets and trawls fished, NMFS concluded this gear would result in no more than minimal disturbance to the physical environment, including the bottom substrate and any portion having 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, predator-prey relationships, etc.)?

> No substantial impact on biodiversity or ecosystem function within the affected area is expected as a result of permit issuance.

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Researchers expect some bycatch of non-target species. However, non-target fish would be removed from the net and released at the site of capture at short intervals, and it is expected that all by-catch would be released alive without long-term effects on predator-prey relationships.

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

Issuance of the permit is not expected to have substantial adverse impacts on public health or safety. The proposed action will not affect traffic and transportation patterns, risk of exposure to hazardous materials or wastes, risk of contracting disease, risk of damages from natural disasters, food safety, or other aspects of 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?

The proposed action may have adverse effects on individual endangered shortnose sturgeon, but the effects are not expected to be significant at the population or species level. Furthermore, we do not anticipate any unintentional individual sturgeon mortality or serious injuries. Permit 16306 does authorize a small number of intentional mortalities directed at shortnose sturgeon eggs and larvae. In the Biological Opinion produced for this action, NMFS concluded issuance of the permit would not likely jeopardize the continued existence of the endangered shortnose sturgeon. The permit contains standard NMFS mitigation protocols to minimize stress and harmful effects on the species. Critical habitat has not been designated for shortnose sturgeon; thus, it would not be affected.

Because nets would typically be checked at short intervals and returned immediately to the water with minimal exposure to handling stress, NMFS believes that virtually all bycatch would be released alive.

The listed Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) occurs in the action area. There is potential for it to be captured as bycatch during sampling for shortnose sturgeon. Any captured Atlantic sturgeon would be handled using the same protective measures developed for shortnose sturgeon which minimize stress and harmful effects to the species. The permit holder also possesses Permit No. 16526 and Atlantic sturgeon captures in the Gulf of Maine are authorized under that permit.

Based on the applicant's past netting record, and the success of mitigation measures put into place to minimize interaction with Atlantic salmon over the past five years, NMFS anticipates no Atlantic salmon would be captured during proposed sturgeon netting; thus, no authorized capture or mortality for Atlantic

salmon would be issued. NMFS believes in the unlikely event an Atlantic salmon were captured in gillnets, it would suffer short-term stress, posing a potential risk to the salmon, but would not likely result in serious injury or mortality. In the event that a salmon were caught, the researchers would suspend sampling immediately and consult with NMFS PR within 48 hours.

In the unlikely event sea turtles or marine mammals were encountered while netting, researchers would be directed by permit conditions to avoid contact with the animals.

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

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?

A *Federal Register* notice (76 FR 58471) was published on September 21, 2011, allowing other agencies and the public to comment on the action. All agency comments were addressed and responses were included in the decision memos for the permit. None of the agency comments addressed the proposal's potential effects on the quality of the human environment. No comments from the public were received on this application. Given the proposed research methodologies are well known and are expected to have minimal effects, NMFS believes it is not likely to be controversial.

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?

Issuance of the permit would not be expected to result significant impacts to any unique areas mentioned above. Additionally, with respect to anticipated effects on EFH by gill nets, trawls and boating activities, NMFS concluded these would only result in minimal disturbance to the physical environment, including the bottom substrate and any portion having EFH.

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

The effects of the proposed action on the human environment are predictable based on evaluation of the effects of previously permitted research on the same species. The risks of the proposed action are known in that they are expected to

be the same as those considered for issuance of other such permits for takes of shortnose sturgeon, and are not unique to this specific permit.

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

Issuance of the permit is not interrelated with or interdependent on any other federal, state or local actions that could have environmental impacts. This permit is independent of other permits. While the results of the research may inform future management actions affecting the environment, the nature and timing of those actions is too speculative to consider and those actions would be subject to separate NEPA analysis.

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?

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. The proposed action would also not occur in an area of significant scientific, cultural or historical resources and would not cause their loss or destruction.

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

The U.S. Geological Survey has documented several aquatic nuisance species in the proposed action area that may be spread by the actions of the permit holder. However, the applicant has agreed to follow conditions proposed by NMFS for minimizing potential spread of these aquatic nuisance species and the action is not be expected to result in introduction or spread of non-indigenous species to other watersheds. The action also does not involve discharging bilge water or other issues of concern relative to nonindigenous 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?

The decision to issue this permit would not be precedent setting and would not affect any future decisions. NMFS has issued numerous scientific research permits to study shortnose sturgeon pursuant to section 10 of the Endangered Species Act, thus, this is not the first permit NMFS has issued for this type of research activity. Issuance of a permit or permit modification, to a specific individual or organization for a given research activity, does not in any way guarantee or imply NMFS would authorize other individuals or organizations to conduct the same research activity. Any future request received, including those by the applicant, 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?

Issuance of the proposed permit is not expected to violate any Federal, State, or local laws for environmental protection. NMFS has sole jurisdiction for issuance of such permits for shortnose sturgeon and has determined the research consistent with applicable provisions of the ESA. The permit contains language stating this permit does not relieve the Permit Holder of the responsibility to obtain other permits, or comply with other Federal, State, local, or international laws or regulations.

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?

NMFS concluded the proposed taking may have adverse effects on individual shortnose sturgeon. However, because shortnose sturgeon are a robust species and respond well to the types of handling proposed, the cumulative effects on the population are not likely long-term or significant to the species.

Since the two species co-occur, NMFS considered the potential for cumulative effects on Atlantic sturgeon. NMFS concluded that since researchers would be monitoring the nets closely, if Atlantic sturgeon were captured, the same measures protective of shortnose sturgeon would be taken to ensure survival. Takes of Atlantic sturgeon are authorized under Permit No. 16526, held by the applicants for File No. 16306.

NMFS considered impacts on marine mammal or sea turtle interactions when sampling for sturgeon. Although interactions with these animals is considered rare based on historical records, and the proposed seasonal sampling methods used to minimize contact, the permit is conditioned so that nets would not be set if these animals were seen in the vicinity of the research.

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. 16306, 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

MAY 10 2012
Date