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. 16507-01

Background

In April 2012, the National Marine Fisheries Service (NMFS) received a request to modify permit (File No. 16507) from Dr. Dewayne Fox, Ph.D., Delaware State University, Department of Agriculture and Natural Resources, 1200 North DuPont Highway, Dover, DE 19901, to conduct research on shortnose sturgeon in Delaware waters. In accordance with the National Environmental Policy Act, NMFS has prepared a Supplemental Environmental Assessment (SEA) analyzing the impacts on the human environment associated with permit modification issuance (Supplemental Environmental Assessment (SEA) On the Issuance of a Modification to Scientific Research Permit No. 16507 to Dewayne Fox to Conduct Research on Shortnose Sturgeon; January 2013). In addition, a Biological Opinion was issued under the Endangered Species Act (January 2013) summarizing the results of an intra-agency consultation. The analyses in the SEA, 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's potential habitat effects would remain the same as previously analyzed in the original 2012 EA. In the prior analysis, 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. The proposed modification is not expected to result in impacts to any physical habitat not previously considered in the previous EA.

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 issuing the permit modification. Researchers expect some bycatch of non-target species, at levels unchanged from the original permit. 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 virtually 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 modification is not expected to have substantial adverse impacts on public health or safety. The proposed modification to authorize takes of an additional species is not expected to result in impacts to public health or safety not already considered in the previous EA. 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 could potentially 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 individual sturgeon mortality or serious injuries. The permit contains standard NMFS mitigation protocols to minimize stress and harmful effects on the species. In the Biological Opinion produced for this action, NMFS concluded issuance of the permit would not likely jeopardize the continued existence of the listed sturgeon species. Critical habitat has not been designated for shortnose sturgeon, and no critical habitat for any listed species exists in the action area.

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

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.

Additionally, the permit currently contains mitigation measures to minimize the effects of the research and to avoid unnecessary stress to any listed species by requiring use of specific research protocols. These conditions would remain in effect.

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

environmental effects?

The proposed action is to authorize takes for an additional species—shortnose sturgeon; no other aspect of the permitted activity would change. The analysis in the 2012 EA found no known social or economic impacts associated with the issuance of the original permit. 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 58469) was published on September 21, 2011, allowing other agencies and the public to comment on the action; this notice included the applicant's request for shortnose sturgeon takes. All agency comments were addressed and responses were included in the decision memos for the permit. None of the comments suggested that the proposal's potential effects on the quality of the human environment were controversial. The proposed research methods are commonly used and NMFS is not aware of any controversy surrounding the modification request. No substantive comments from the public were received on this application.

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?

The proposed action is the issuance of the permit modification to authorize shortnose sturgeon takes. The proposed action is directed at the sturgeon and not at any of the described unique areas. Issuance of the permit modification would not be expected to result in significant impacts to any unique areas mentioned above. Additionally, NMFS concluded in the previous EA that sampling and boating activities 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?

No, the effects on the human environment are not likely to be highly uncertain or involve unique or unknown risks. The proposed research activities are not new and are well-established protocols within the research community. Researchers have previously conducted the same type of research with no significant impacts to the environment.

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

Issuance of the permit modification 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?

No, the proposed action would not adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places, as none are designated in the action area. The proposed action is not expected to cause loss or destruction of significant scientific, cultural, or historical resources. NMFS has determined that the proposed action is a type of activity that does not have the potential to cause effects on historic properties.

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

The action's potential effects on the introduction or spread of non-indigenous species would remain the same as previously analyzed in the original 2012 EA. All of the conditions in the original permit to minimize these effects would remain in place. The proposed action to permit shortnose sturgeon takes is not reasonably expected to result in the introduction or spread of 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?

No, the proposed action would not establish a precedent for future action with significant effects, and it does not represent a decision in principle about future consideration. Issuing a permit to a specific individual or organization for a given activity does not in any way guarantee or imply that NMFS will authorize other individuals or organizations to conduct the same or similar activity, nor does it involve irreversible or irretrievable commitment of resources.

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?

No, the proposed action is not reasonably expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment. The proposed action is considered to be in concert with other laws imposed to protect the environment. The modified permit will not relieve the permit holder of the responsibility to obtain any other permits, or comply with any

other Federal, State, local or international laws or regulations 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?

No, the proposed action is not reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species based on the 2012 EA, and the 2012 SEA and Biological Opinion prepared for this action. The action is not expected to result in cumulative adverse effects to any species. The proposed action is expected to have no more than minimal effects on the individual target shortnose sturgeon. As noted in previous responses, no substantial adverse effects on non-target species are expected. 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 SEA and Biological Opinion prepared for issuance of Permit No. 16507-01, 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.

APR 15 2013

Helen M. Golde
Acting Director, Office of Protected Resources

Date