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

FINDING OF NO SIGNIFICANT IMPACT
on Issuance of an Incidental Take Permit (File No. 16230) to the North Carolina Division of Marine Fisheries for take of Sea Turtles in the North Carolina Inshore Gillnet Fishery

National Marine Fisheries Service

Background:
On September 6, 2012 (updated January 18, 2013), the North Carolina Division of Marine Fisheries (NCDMF) submitted an application to the National Marine Fisheries Service (NMFS) for an Incidental Take Permit (ITP) to incidentally take ESA-listed sea turtles associated with large and small mesh gillnet fisheries operating in the inshore North Carolina waters year-round. The ITP application includes provisions that were put in place in 2010 as a result of a lawsuit and Settlement Agreement with the Karen Beasley Sea Turtle Rescue and Rehabilitation Center (Beasley Center), as well as additional management measures as part of a state-wide conservation plan. The application and conservation plan include take requests for endangered Kemp's ridley, leatherback, and hawksbill sea turtles and threatened green and loggerhead sea turtles.

In accordance with the National Environmental Policy Act, NMFS has prepared an Environmental Assessment (EA) analyzing the impacts on the human environment associated with the proposed action, which is to issue the incidental take permit with additional take limitations, conditions, and monitoring *(Environmental Assessment on the Effects of Issuing Incidental Take Permit No. 16320 to North Carolina Division of Marine Fisheries for the Incidental Take of Sea Turtles Associated with the Otherwise Lawful Commercial Inshore Gillnet Fishery in North Carolina Inshore State Waters)*. In addition, a Biological Opinion was issued under section 7 of the Endangered Species Act (ESA) summarizing the results of an interagency consultation. The analyses in the EA, as informed by the Biological Opinion, support the following determination.

Analysis:
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 proposed action is not expected to cause substantial damage to the ocean and coastal habitats and/or EFH. The proposed action would provide an exemption to the ESA take prohibitions for capturing sea turtles incidental to the otherwise lawful North Carolina inshore

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gillnet fishery and would not alter or affect unique areas, including any components of 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.)?

Response: No substantial impacts on biodiversity or ecosystem function within the affected action areas are expected. The proposed action would provide an exemption to the ESA take prohibitions for capturing sea turtles incidental to the otherwise lawful North Carolina inshore gillnet fishery. The proposed action does not interfere with benthic productivity, predator-prey interactions, or other biodiversity or ecosystem functions. The ITP requires all take to be reported to NCDMF, and the state will actively monitor the level of take that occurs. Sea turtle mortalities are expected and are authorized by the permit, but NMFS expects that these mortalities would not appreciably reduce the species' likelihood of survival and recovery in the wild.

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

Response: The proposed action is not expected to have substantial adverse impacts on public health or safety because the action, issuing an ITP, would only provide an exemption to the ESA take prohibitions for capturing sea turtles in the North Carolina inshore gillnet fishery.

(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 provide an exemption to the ESA take prohibitions for the incidental capture of ESA-listed sea turtles; therefore, endangered and threatened sea turtles will be affected. The Marine Mammal and Sea Turtle Conservation Division consulted with NMFS Endangered Species Act Interagency Cooperation Division, which determined in its Biological Opinion that issuance of the permit is likely to adversely affect individual loggerhead, leatherback, Kemp's ridley, green and hawksbill sea turtles, but those effects are not likely to jeopardize the continued existence of these species or to result in the destruction or adverse modification of designated critical habitat. The West Indian manatee *(Trichechus manatus),* also known as the Florida manatee, is a Federally-endangered aquatic mammal protected under the ESA and the Marine Mammal Protection Act. The manatee is also listed as endangered under the North Carolina Endangered Species Act. The U.S. Fish and Wildlife Service (FWS) is the lead Federal agency responsible for the protection and recovery of the West Indian manatee under the provisions of the ESA. As such NMFS consulted with FWS, and in a letter dated November 29, 2011, FWS concurred with NMFS' determination that the proposed action, issuance of an ITP for sea turtles, was not likely to adversely affect the West Indian manatee. Manatees are rare in North Carolina waters; and, therefore, it is not likely that any alternative would have a significant impact on manatees. Seabirds are susceptible to incidental capture in the North Carolina inshore gillnet fishery; and, therefore, negative impacts may occur (e.g., mortality from entanglement and drowning) to seabirds from all of the alternatives. No ESA-listed seabirds are expected to be incidentally captured or adversely affected by the North Carolina inshore gillnet fishery.

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

effects?

Response: There would be no significant social or economic impacts interrelated with significant natural or physical environmental effects. The North Carolina inshore gillnet fishery is currently in operation, and NCDMF has previously issued regulatory proclamations that have specified requirements for when gillnets can be placed in the water. The permit and conservation plan are based in large part on the existing regulations, and NMFS does not anticipate any additional incremental impact resulting from issuance of the permit.

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

Response: On October 31, 2012, NMFS published a notice of receipt of NCDMF's application (File No. 16230) and a request for public comment in the *Federal Register* (77 FR 65864). The public comment period was open for 30-days, ending on November 30, 2012. Additionally, on July 16, 2013 (78 FR 51709), NMFS published a Federal Register Notice requesting public comment for 15 days on the Draft Environmental Assessment. NMFS received comments on the content and specific components of the application and Draft EA. NMFS received no comments indicating any highly controversial issues.

NMFS does not expect the issuance of the proposed permit to have highly controversial effects on the quality of the human environment.

(7) Can the proposed action be reasonably 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 proposed action would provide an exemption to the ESA take prohibitions for capturing sea turtles incidental to the North Carolina inshore gillnet fishery. The nature of the action is such that it would not result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, EFH, or ecologically critical areas.

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

Response: The effects of the proposed action on the human environment would be limited to the sea turtle captures authorized to be taken incidental to the North Carolina inshore gillnet fishery, and those effects are not unique or unknown. The Endangered Species Conservation Division consulted with NMFS Endangered Species Act Interagency Cooperation Division, which determined in its Biological Opinion that issuance of the permit is not likely to jeopardize the continued existence of NMFS ESA-listed species or to result in the destruction or adverse modification of designated critical habitat. The Conservation Plan and permit rely on proven effective methods for monitoring, minimizing, and mitigating the impacts of incidental take in a fishery.

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

Response: The proposed action and other individually insignificant actions do not result in cumulatively significant impacts. The proposed action will authorize the incidental capture of sea turtles, resulting in both live captures and mortalities. Sea turtles face numerous natural and anthropogenic threats throughout their life histories that shape their status and affect their ability to recover. Effects of past and ongoing human and natural factors (fisheries, vessel traffic, etc.) occurring in this broad area have contributed to the current status of the listed sea turtles. Based on the analysis in this EA and supported by ESA section 7 consultation, NMFS expects that issuance of the proposed incidental take permit would not appreciably reduce the species likelihood of survival and recovery in the wild, nor would it adversely affect spawning, mortality rates, or recruitment rates. The incremental impact of the proposed authorization of takes of sea turtles incidental to the otherwise legal North Carolina inshore gillnet fishery, when added to other past, present, and reasonably foreseeable future actions, is not expected to result in population-level effects; and, therefore, will not have cumulatively significant impacts.

(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 proposed action would provide an exemption to the ESA take prohibitions for capturing sea turtles incidental to the North Carolina inshore gillnet fishery. The nature of the action is such that it would not result in effects to these areas or resources.

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

Response: The proposed action would not introduce any species; therefore, it would not 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 represent a decision in principle about a future consideration?

Response: The decision to issue this ITP would not be precedent-setting and would not affect any future decisions. Issuing an ITP 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.

(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: The proposed action would provide an exemption to the ESA take prohibitions for capturing sea turtles incidental to the North Carolina inshore gillnet fishery in accordance with the Endangered Species Act. The proposed action would not result in any violation of Federal state or local laws for environmental protection. The ITP does not relieve NCDMF of the responsibility for obtaining other permits, or complying with other Federal, State, local, or international laws or regulations, if necessary and required.

(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: The action of issuing an ITP to the NCDMF is not expected to result in any cumulative adverse effects to the target or non-target species of the North Carolina inshore gillnet fishery, that are the subject of the proposed ITP. Based on the analysis in this EA and supported by ESA section 7 consultation, NMFS expects that issuance of the proposed ITP would not appreciably reduce the likelihood of survival and recovery in the wild for any sea turtle species. The incremental impact of the proposed authorization of takes of sea turtles incidental to the otherwise legal North Carolina inshore gillnet fishery, when added to other past, present, and reasonably foreseeable future actions, is not expected to result in population-level effects. As noted in the EA, Atlantic Sturgeon may also be taken in the North Carolina inshore gillnet fishery, but impacts will be evaluated in a forthcoming EA.

DETERMINATION

In view of the information presented in this document and the analyses contained in the EA prepared for issuance of the ITP, pursuant to the ESA, and the ESA section 7 Biological Opinion, NMFS hereby determines that the issuance of ITP No. 16230 would not significantly impact the quality of the human environment as described above. In addition, all direct, indirect and cumulative beneficial and adverse impacts of the proposed action have been addressed in reaching the conclusion of no significant impacts. Accordingly, preparation of an Environment Impact Statement (EIS) for this action is not necessary.

Perry Gayaldo

for Donna S. Wieting
Director, Office of Protected Resources

9.6.13
Date