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

JUL 2 4 2014

Finding of No Significant Impact
Issuance of Scientific Research Permit No. 16436-01

Background

On November 25, 2013, the National Marine Fisheries Service (NMFS) received an application from the New York State Department of Environmental Conservation (NYSDEC) to modify Permit Nos. 16436 and 16439, whereby Permit No. 16436 was requested to include additional "takes" of shortnose sturgeon (*Acipenser brevirostrum*) and Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) and Permit No. 16439 was requested to be terminated.

In accordance with the National Environmental Policy Act, NMFS prepared a Supplemental Environmental Assessment (SEA) analyzing the impacts on the human environment associated with permit issuance entitled: *Supplemental Environmental Assessment (SEA) on the Issuance of a Modified Scientific Research Permit (File No. 16436-01) to the New York State Department of Environmental Conservation, to Conduct Scientific Research on Endangered Shortnose and Atlantic sturgeon in the Hudson River.* This SEA updates the prior EA prepared for the original action in 2012 entitled: *Environmental Assessment for the Issuance of 12 Scientific Research Permits for Research on Atlantic Sturgeon.*

The Biological Opinion prepared for issuance of the original permit and the Proposed Action in this SEA, summarized the results of intra-agency consultations and authorized no other incidental takes of other protected species. The analyses in the current SEA of the proposed action, as informed by the Biological Opinion, support the below finding 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:

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(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?

In a 2011 and 2012 EA, NMFS PR analyzed the impact of authorizing scientific research permits for taking shortnose and Atlantic sturgeon, on the Hudson River, including Permit Nos. 16439 and 16436, respectively. NMFS concluded that the potential for adverse impacts on the physical environment from issuing the permits were minimal and would have no substantial impacts on the bottom substrate of rivers, coastal estuaries, or near-shore marine areas, including any portion considered EFH. The NMFS Northeast Regional Office of Habitat Conservation concurred, agreeing that the actions would not adversely affect essential fish habitat; thus, no formal consultation was required in the prior actions.

Although the Permit Holder is now consolidating the takes of shortnose and Atlantic sturgeon under the modified permit (Permit 16436-01) and terminating Permit 16439, there would be no change in the assessment of impacts caused to the above mentioned resources by issuing the modified permit. The increase in the intensity of take authorized requested in the proposed modification would also not change the assessment as to impacts on 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.)?

The proposed action is issuing a scientific research permit to target shortnose and Atlantic sturgeon and does not interfere with benthic productivity, predator-prey interactions or other biodiversity or ecosystem functions. Minimal impact on biodiversity or ecosystem function within the affected area is expected as a result of the permit modifications. Disturbance to the benthic habitat resulting from anchoring nets to river bottom would be minimal.

The permit modification does provide an annual increase of one incidental lethal take or injury for each species over the life of the permit. However, with exception of the limited mortality authorized, the targeted sturgeon life stages sampled will not be removed from the ecosystem or be displaced from habitat; nor will the action affect their diet or foraging patterns.

(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 a substantial adverse impact on public health or safety. The proposed modification 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 permit contains standard NMFS mitigation protocols to minimize stress and harmful effects of research activities on the species, similar to the original permit. Where the permit modification does propose additional take of numbers of both shortnose and Atlantic sturgeon, and use of new research procedures and activities, the Biological Opinion produced for this action concludes that issuance of the permit modification as, mitigated, will not likely jeopardize the continued existence of either of the targeted sturgeon species, or of any critical habitat for listed species.

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

The analyses in the 2011 and 2012 EAs prepared for the issuance of Permit Nos. 16439 and 16436 found that there were no known social or economic impacts interrelated with natural or physical environmental effects. Since there are no changes proposed which would increase the social or economic impacts resulting from this modification, no change in this assessment is warranted.

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

A *Federal Register* notice (79 FR 26724) was published on May 9, 2014, allowing other agencies and the public to comment on the action. Intra-agency comments from the Greater Atlantic Regional Fisheries Office were supportive of the application. Also, no comments from the public were received on this application. Given that the proposed research methodologies are well known and are expected to have minimal effects, NMFS believes it is non-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?

There would be no substantial changes in the former assessments' conclusions made about unique areas as a result of the permit modifications; consequently, NMFS does not anticipate further adverse impacts for these mentioned resources (See also No. 1 above with respect to no adverse impacts concluded for coastal areas and 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 modification on the human environment are predictable based on evaluation of the effects of issuing prior permits for research on the same species, including Hudson River waters where similar authorized research has been permitted over the prior 10 years.

(9) Are the proposed actions 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 modification is independent of other permits authorized, although by issuing this permit modification, the efforts of the Permit Holder would now consolidate the former separate research permit for shortnose sturgeon within the Hudson River and estuary action area. 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.

Furthermore, although there would be one other Atlantic and shortnose sturgeon permit authorized in the Hudson River (Permit No. 17095), which would overlap the same action area, researchers would be required in the respective permits to coordinate their activities with one another, thereby limiting netting efforts at the same time and thus limiting cumulative impacts resulting from research.

(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 areas of significant scientific, cultural or historical resources and so 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 potential impact from the introduction or spread of non-indigenous would be minimized in the modification, as was previously discussed in the 2011 and 2012 EAs and also conditioned in the respective permits. These conditions in the original permits would remain in place to limit spread of organisms between watersheds. To prevent potential spread of aquatic nuisance species all equipment assigned to the research will not be reassigned to other watersheds until the research is completed or suspended. And, if the research has been completed or suspended, all gear and equipment would be bleached, washed and air dried before being re-deployed to a new location.

(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?

The decision to issue this permit modification would not be precedent setting, nor would it affect any future decisions. NMFS has issued numerous scientific research permits to study Atlantic and shortnose sturgeon pursuant to section 10 of the Endangered Species Act. Thus, the permit modification is not the first permit NMFS has issued for this type of research activity. Issuance of a permit or permit modification to individuals or organizations for a given research activity does not in any way guarantee or imply that NMFS would authorize other individuals or organizations to conduct the same research activity. Any future requests received, including those by the Permit Holder, 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 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 shortnose or Atlantic sturgeon and has determined the research consistent with applicable provisions of the ESA. Further, the modification contains language stating that 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 concludes that issuing the proposed modification may have adverse effects on individual Atlantic or shortnose sturgeon. However, while the action would impact individuals of the targeted species' life stages, NMFS concludes that the research would not have any cumulative effects on each of the populations studied, or either species as a whole; and, thus, the permit issuance is not likely to result in long-term or significant impacts.

Further, the mitigation measures imposed by the conditions of the permit modification are intended to reduce, to the maximum extent practical, the potential for adverse effects of the research. Since the proposed action would be related to the study of Atlantic and shortnose sturgeon life stages, no other portion of the human environment would be affected in a manner not already considered. Because the proposed action is directed take of both sturgeon species, NMFS does not expect any other listed species to be taken incidentally.

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 Modification No.16436-01, it is hereby determined that the permit's 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.

Donna S. Wieting,
Director, Office of Protected Resources

JUL 2 4 2014
Date