



Environmental Assessment for Issuing an Incidental Take Permit (File No. 27106) to the North Carolina Division of Marine Fisheries for the Incidental Take of ESA-listed Sea Turtles and Sturgeon Associated with the Otherwise Lawful Commercial Anchored Gill Net Fisheries Operating in the Internal Coastal Waters of North Carolina

FINDING OF NO SIGNIFICANT IMPACT

I. Purpose of Finding of No Significant Impact (FONSI): The National Environmental Policy Act (NEPA) requires the preparation of an Environmental Impact Statement (EIS) for any proposal for a major federal action significantly affecting the quality of the human environment. 42 U.S.C. § 4332(C). The Council on Environmental Quality (CEQ) Regulations direct agencies to prepare a Finding of No Significant Impact (FONSI) when an action not otherwise excluded will not have a significant impact on the human environment. 40 CFR §§ 1500.4(b), 1500.5(b), & 1501.6. To evaluate whether a significant impact on the human environment is likely, the CEQ regulations direct agencies to analyze the potentially affected environment and the degree of the effects of the proposed action. 40 CFR § 1501.3(b). In doing so, agencies should consider the geographic extent of the affected area (i.e., national, regional or local), the resources located in the affected area (40 CFR § 1501.3(b)(1)), and whether the project is considered minor or small-scale (National Oceanic and Atmospheric Administration (NOAA) Administrative Order (NAO) 216-6A Companion Manual (CM)¹, Appendix A-2). In considering the degree of effect on these resources, agencies should examine, as appropriate, short- and long-term effects, beneficial and adverse effects, and effects on public health and safety, as well as effects that would violate laws for the protection of the environment (40 CFR § 1501.3(b)(2)(i)-(iv); NAO 216-6A CM Appendix A-2 - A-3), and the magnitude of the effect (e.g., negligible, minor, moderate, major). CEQ identifies specific criteria for consideration. 40 CFR § 1501.3(b)(2)(i)-(iv). Each criterion is discussed below with respect to the proposed action and considered individually as well as in combination with the others.

¹ NOAA Administrative Order (NAO) 216-6A, "Compliance with the National Environmental Policy Act, Executive Orders 12114, Environmental Effects Abroad of Major Federal Actions; 11988 and 13690, Floodplain Management and 11990, Protection of Wetlands," issued 22 April 2016, and the Companion Manual for NAO 216-6A, "Policy and Procedures for Implementing the National Environmental Policy Act and Related Authorities," issued 13 January 2017.

In preparing this FONSI, National Marine Fisheries Service (NMFS) reviewed the Environmental Assessment for Issuing an Incidental Take Permit (File No. 27106) to the North Carolina Division of Marine Fisheries for the Incidental Take of Endangered Species Act (ESA)-listed Sea Turtles and Sturgeon Associated with the Otherwise Lawful Commercial Anchored Gill Net Fisheries Operating in the Internal Coastal Waters of North Carolina, which evaluates the affected area, the scale and geographic extent of the proposed action, and the degree of effects on those resources (including the duration of impact, type, and whether the impacts were adverse and/or beneficial and their magnitude). The EA is hereby incorporated by reference. 40 CFR § 1501.6(b).

II. Approach to Analysis:

NMFS proposes to issue an incidental take permit (ITP) to the North Carolina Division of Marine Fisheries (NCDMF), pursuant to section 10(a)(1)(B) of the ESA of 1973 as amended (16 U.S.C. 1531 et seq.), and the regulations governing the incidental taking of endangered and threatened species (50 CFR 222.307). If issued, the ITP would authorize the incidental take, with some mortality, of endangered and threatened sea turtles and sturgeon, including the North Atlantic and South Atlantic distinct population segments (DPSs) of green sea turtles (*Chelonia mydas*); Kemp's ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), and leatherback (*Dermochelys coriacea*) sea turtles, Northwest Atlantic Ocean DPS of loggerhead (*Caretta caretta*) sea turtles; New York Bight, Chesapeake, Carolina, and South Atlantic DPSs of Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*); and shortnose sturgeon (*Acipenser brevirostrum*), associated with the otherwise lawful commercial fisheries operating in North Carolina (NC) internal coastal (inshore) waters using large and small-mesh anchored gill nets. The ITP would be valid for 10 years. As part of their Conservation Plan, NCDMF would continue to regulate these gill net fisheries through the fisheries rules adopted by the NCDMF and proclamations issued by the NCDMF Director. Regulations include mandatory net attendance, yardage limits, soak-time restrictions, net shot limits, net height tie-down requirements, closed areas, mesh size restrictions, minimum distance between fishing operations, marking requirements, permit mandates, and observer requirements.

The National Marine Fisheries Service's (NMFS') proposed action is a direct outcome of NCDMF's request for an ITP to authorize take of ESA-listed sea turtles, incidental to NCDMF's inshore gill net fisheries. Under NMFS preferred alternative, NCDMF would be required to operate these fisheries as described in their Conservation Plan, including required monitoring via the Observer Program, measures to avoid, minimize, and mitigate, and the tracking and reporting requirements, and would authorize the take as follows.

The proposed action would authorize NCDMF's requested incidental take by species as depicted below.

Table 1: Requested incidental takes by species. Requested takes include predicted overall takes across the fishery whenever possible; otherwise requested takes are based counts of observed takes. Requested takes are either combined or separate for mesh-size category and disposition. Mesh-size categories are large (≥ 5 ISM, ≥ 12.7 CSMD) and small (< 5 ISM, < 12.7 CSM).

Species	Mesh-size Category	Disposition	Predicted or Observed Takes	Requested 2-year rolling take
Atlantic Sturgeon	Large & Small	Live	Predicted	436
	Large & Small	Dead	Observed	6
Green sea turtle (North and South Atlantic DPSs)	Large & Small	Live	Predicted	542
	Large & Small	Dead	Predicted	170
Kemp's ridley sea turtle	Large	Live	Observed	10
	Large	Dead	Observed	4
	Small	Live or Dead	Observed	4
Loggerhead sea turtle (Northwest Atlantic Ocean DPS)	Large & Small	Live or Dead	Observed	4
Species	Mesh-size Category	Disposition	Predicted or Observed Takes	Total Take over 10-year permit
Shortnose sturgeon	Large & Small	Live or Dead	Observed	4
Hawksbill sea turtle	Large & Small	Live or Dead	Observed	2
Leatherback sea turtle	Large & Small	Live or Dead	Observed	2

The proposed action is not expected to result in a significant impact on the quality of the human environment because the effects of authorizing incidental take of ESA-listed sea turtles and sturgeon would be short-term, minor to moderate and would ultimately lead to a reduction in the number of sea turtles and sturgeon affected by the NC inshore anchored gill net fisheries (as compared with the No Action Alternative and Alternative 2). NMFS expects natural processes and the environment to recover from any such effects of the take (e.g., displacement, live

releases, or mortalities), and even the limited number of anticipated mortalities should not have long-term, major adverse impacts to the species/DPSs.

However, the proposed action would also result in short and long-term beneficial impacts for sturgeon and sea turtles, particularly due to the proposed measures to avoid, minimize, mitigate, and monitor incidental take. These measures include but are not limited to gear configuration restrictions, reduced fishing effort (net length and soak-time restrictions), time/area closures, monitoring and reporting, educating commercial gill net fishers on identification of species, proper handling techniques to minimize impacts to incidentally captured sturgeon and sea turtles, and the biological and legal importance of reporting incidental capture of sea turtles.

Based on the analysis in the EA and supported by ESA Section 7 consultation, the issuance of the ITP, as described in the preferred alternative, would not result in significant environmental impacts, as defined in CEQ's regulations.

The proposed action is not connected to other actions that have caused or may cause effects to the resources in the action area, and there is no potential for the effects of the proposed action to add to the effects of other projects, such that the effects taken together could be significant.

III. Geographic Extent and Scale of the Proposed Action: The proposed action, which is the issuance of an ITP to NCDMF, authorizes the incidental take of green (North Atlantic and South Atlantic DPSs), Kemp's ridley, hawksbill, leatherback, and loggerhead (Northwest Atlantic Ocean DPS) sea turtles, and Atlantic (New York Bight, Chesapeake, Carolina, and South Atlantic DPSs) and shortnose sturgeon and requires implementation of the avoidance, minimization, mitigation and monitoring measures to prevent or reduce adverse effects of any take of the aforementioned ESA-listed species. The action area is limited to the inshore waters of NC, which has been divided into six Management Units (MUs; A, B, C, D1, D2, E), which are presented in **Figure 1** below.

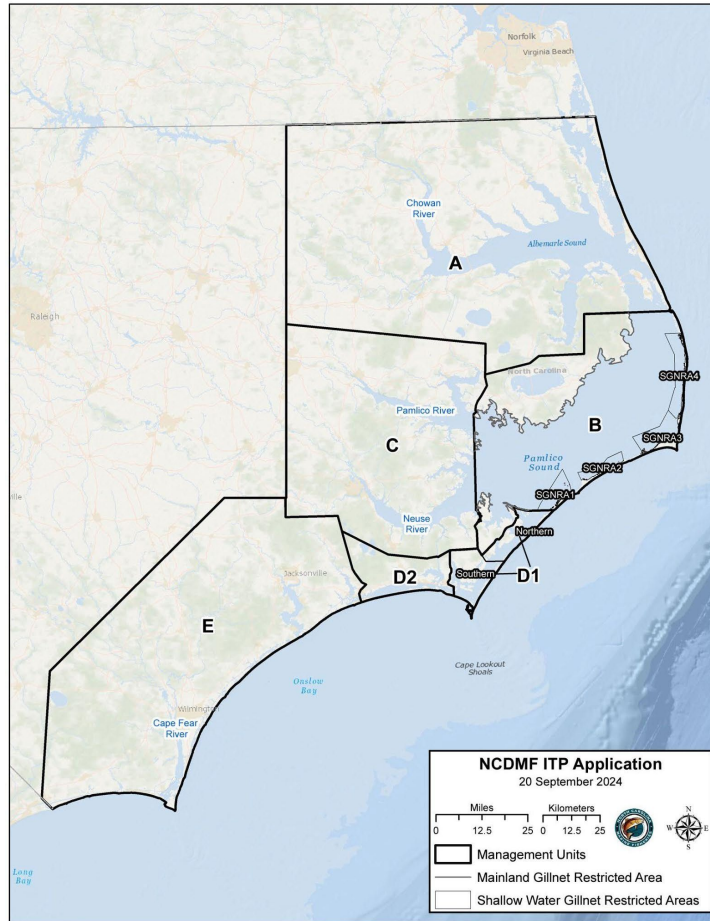


Figure 1. Management Units (MUs; A, B, C, D1, D2, and E) showing updated boundaries between MUs B and D1, and between MUs B and C. In the Pamlico Sound portion of MU B north of the 35° North parallel, gill nets with a mesh size of ≥ 4 inches stretched mesh are confined to Shallow Water Gillnet Restricted Areas (SGNRA) 1-4 and the Mainland Gillnet Restricted Area (200 yd from shore) between September 1 and December 15.

North Carolina inshore waters are characterized as estuarine waters and are designated EFH for multiple federally managed species, including bluefish, summer flounder, snapper grouper, gray snapper, cobia, king mackerel, Spanish mackerel, black sea bass, spiny dogfish, and multiple shrimp species. The inshore waters of North Carolina include nursery and overwintering areas, non-vegetated flats, tidal wetlands, SAV, unconsolidated bottom, hardbottom, and oyster reef habitat. As these fisheries are ongoing, the proposed action was evaluated for its potential to adversely affect designated EFH. After consultation, the SERO Habitat Conservation Division determined the proposed action will not adversely effect EHF; instead, it concluded that many of the proposed conservation measures in the NCDMF ITP application and Conservation Plan would have the effect of conserving EFH and that no additional EFH conservation recommendations under the MSA were necessary.

IV. Degree of Effect:

A. *The potential for the proposed action to threaten a violation of federal, state, or local law or requirements imposed for environmental protection.*

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.

B. *The degree to which the proposed action is expected to affect public health or safety.*

The proposed action is not expected to result in any impacts on public health or safety because the action of issuing an ITP that would provide an exemption to the ESA take prohibitions for capturing ESA-listed sea turtles and sturgeon in the NC inshore gill net fishery has no potential to impact public health or safety. Additionally, while the ITP will require fishermen and observers to fulfill certain responsibilities (e.g., handling species, monitoring, etc.), these aspects of the action are also not expected to result in any impacts on public health or safety. NMFS wants to emphasize that the protection of human life is top priority and will, to the extent it is necessary, take precedence over activities aimed at benefiting the species involved.

C. *The degree to which the proposed action is expected to affect a sensitive biological resource, including:*

a. *Federal threatened or endangered species and critical habitat;*

The proposed action would provide an exemption to the ESA take prohibitions for the incidental capture of ESA-listed sea turtles and sturgeon; therefore, endangered and threatened sea turtles and sturgeon would be affected. The Marine Mammal and Sea Turtle Conservation Division and the Endangered Species Conservation Division consulted with the 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, as well as shortnose sturgeon and Atlantic sturgeon DPSs, 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. Similarly, under NEPA overall, impacts to sturgeon and sea turtles from the proposed action would be direct, short-term, minor to moderate, adverse impacts and would occur when NC inshore anchored gill net fisheries result in incidental takes of any species of sea turtles, including live releases and mortalities. Based on the analysis in the EA and supported by ESA Section 7 consultation, the issuance of the ITP, as described in the preferred alternative, would not result in significant environmental impacts, as defined in CEQ's regulations.

b. *Stocks of marine mammals as defined in the Marine Mammal Protection Act;*

Under NEPA, the stocks of marine mammals as defined in the Marine Mammal Protection Act would not be affected by the preferred alternative because it merely exempts NCDMF from the ESA's take prohibitions. Although marine

mammals could be affected by the NC large and small-mesh gill net fisheries, the rate and frequency of overlap with those species or stocks protected by the MMPA is relatively low, and we do not anticipate that any interactions, were they to occur, would result in a significant impact on any single marine mammal species or stock. The fishery is managed under the Bottlenose Dolphin Take Reduction Plan for interacting with strategic stocks of bottlenose dolphins (NMFS 2006). Regardless, under the ITP review process, we must ensure that the applicant complies with other federal laws. Our process is described in section 3.2.4, Other Protected Resource, of the EA.

c. *Essential fish habitat identified under the Magnuson–Stevens Fishery Conservation and Management Act;*

The proposed action would not have an adverse effect on any designated essential fish habitat (EFH). The proposed action would provide an exemption to the ESA take prohibitions for capturing ESA-listed sea turtles and sturgeon incidental to the otherwise lawful NC inshore gill net fishery and would not alter or affect unique areas, including any components of EFH. On May 16, 2023, NMFS determined that no EFH conservation measures were necessary under the MSA to protect and conserve managed species designated EFH.

d. *Bird species protected under the Migratory Bird Treaty Act;*

The proposed action does not, in and of itself, affect bird species protected under the Migratory Bird Treaty Act. Any potential effects on bird species should be addressed by NCDMF as part of its regulation of inshore large and small mesh gill net fisheries and other federal or state agencies that have management authority over bird species. However, under the ITP review process, we must ensure that the applicant complies with other federal laws. Our process is described in section 3.2.4, Other Protected Species, of the EA.

e. *National marine sanctuaries or monuments;*

National marine sanctuaries or monuments would not be affected by the proposed action because (1) a take exemption relieves a restriction (i.e., prohibiting the take of a ESA-listed species); and (2) as the action is to issue an incidental take permit to NCDMF for the incidental take of ESA-listed sea turtles and sturgeon. Thus, national marine sanctuaries or monuments are not included in the analysis because they are not associated with the proposed action. Please see **Table 1 of the EA** for a full list of Elements of the human environment not evaluated.

f. *Vulnerable marine or coastal ecosystems, including, but not limited to, shallow or deep coral ecosystems;*

The nature of the proposed action is such that it would not result in effects to these areas or resources. The proposed action would provide an exemption to the ESA take prohibitions for the incidental capture of ESA-listed sea turtles and sturgeon. Issuance of the proposed ITP would not involve alteration of substrate, movement of water or air masses, or other interactions with physical features of

ocean and coastal habitat. Please see **Table 1 of the EA** for a full list of Elements of the human environment not evaluated.

g. Biodiversity or ecosystem functioning (e.g., benthic productivity, predator-prey relationships, etc.)

The proposed action would not interfere with benthic productivity, predator-prey interactions, or other biodiversity or ecosystem functions. The ITP is designed to provide additional safeguards for ESA-listed species, and therefore, issuance of an ITP would result in fewer individual animals being removed from the ecosystem compared to the numbers removed before any ITPs were issued for these fisheries. Significant removal and/or decline of sea turtle and sturgeon in the NC inshore waters ecosystem may have cascading effects throughout the ecosystem but, as explained in the EA, such effects are not expected from the proposed action. However, effects on biodiversity and habitat would be further reduced under the proposed action, as it would further limit the removal of essential ESA-listed species from the ecosystem. Thus, adverse impacts of issuance of the proposed ITP on biodiversity and habitat are anticipated to be indirect, short-term, and minor because the minimization and mitigation measures identified in the Conservation Plan would limit the removal of essential ESA-listed species from the ecosystem.

D. The degree to which the proposed action is reasonably expected to affect a cultural resource: properties listed or eligible for listing on the National Register of Historic Places; archeological resources (including underwater resources); and resources important to traditional cultural and religious tribal practice.

The proposed action would provide an exemption to the ESA take prohibitions for capturing ESA-listed sea turtles and sturgeon incidental to the NC inshore gill net fishery. First, NMFS is not aware that any unique areas contemplated under this criterion exist within the areas potentially affected by the large and small mesh gill net fisheries. Also, even if there were, the the nature of the action is such that it would not result in significant impacts to unique areas, such as historic or cultural resources, parkland, prime farmlands, wetlands, wild and scenic rivers, EFH, or ecologically critical areas. Finally, NMFS reached out to the North Carolina Indian tribes and did not receive comment on the proposed action.

E. The degree to which the proposed action has the potential to have a disproportionately high and adverse effect on the health or the environment of minority or low-income communities, compared to the impacts on other communities (EO 12898).

NMFS does not expect the proposed action to disproportionately affect minority and low-income communities. There would be no significant social or economic impacts interrelated with significant natural or physical environmental effects. 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 the issuance of the permit.

F. The degree to which the proposed action is likely to result in effects that contribute to the introduction, continued existence, or spread of noxious weeds or nonnative

invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of the species.

The proposed action would not introduce any species; therefore, it would not result in the introduction or spread of a non-indigenous species.

G. *The potential for the proposed action to cause an effect to any other physical or biological resources where the impact is considered substantial in magnitude (e.g., irreversible loss of coastal resource such as marshland or seagrass) or over which there is substantial uncertainty or scientific disagreement.*

The proposed action is neither expected to cause a substantial effect to any other physical or biological resource nor is there substantial uncertainty or scientific disagreement on the impacts of the proposed action, based on the following reasons. The potential risks associated with this action are not unique or unknown and there is no significant uncertainty about impacts. NMFS has issued six separate ITPs to NCDMF for the incidental take of sea turtles and sturgeon in inshore gill net fisheries and, for each ITP, NMFS has completed NEPA analyses and Section 7 Biological Opinions (among other evaluations) for those actions. The scope of this action is not substantially different from past ITP applications and is not unusually large or substantial, and would include the same or similar mitigation and monitoring measures required in past ITPs. Therefore, NMFS expects any potential effects from the issuance of our ITP to be similar to prior activities, which are not likely to be highly uncertain or involve unique or unknown risks.

V. Other Actions Including Connected Actions: The proposed action and other individually insignificant actions would not result in cumulatively significant impacts. The proposed action would authorize the incidental take of sea turtles and sturgeon, resulting in both live captures and mortalities. Sea turtles and sturgeon 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 these listed species. 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 significantly impact the quality of the human environment, appreciably reduce the species' likelihood of survival and recovery in the wild, or adversely affect spawning mortality or recruitment rates. The incremental impact of the proposed authorization of takes of sea turtles and sturgeon incidental to the otherwise legal NC inshore gill net 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.

VI. Mitigation and Monitoring: NMFS does not authorize the operation of the NCDMF gill net fishery; however, NMFS does authorize the incidental take of ESA-listed species under its jurisdiction in connection with these activities. NMFS must base any decision to issue an ITP on statutory and regulatory criteria, which include determining whether the applicant will, to the maximum extent practicable, monitor, minimize, and mitigate the impacts of the taking of ESA-listed species. NMFS' issuance of this ITP is thus conditioned upon reporting requirements and the implementation of minimization, mitigation, and monitoring measures designed to avoid or reduce impacts to these ESA-listed species. These conditions are summarized below and are described in detail in the Conservation Plan and in Section 2.2.2 of the EA and include:

- Monitoring through an Observer Program;
- NCDMFs existing statutes, regulations, and proclamations;
- The NCDMF will commit funds of up to \$2,000 per year to purchase PIT tags;
- Maintaining telemetry array throughout the inshore waters of NC;
- The NCDMF would commit up to \$3,000 per year to fund genetic analysis of sturgeon fin clips;
- Restrictions on gear construction, reduced fishing effort (net length, soak-time restrictions), and time/area closures;
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- Increase permit requirement awareness through education and outreach;
- Documentation of the number and species taken;
- Submission of interaction, as well as monthly, seasonal, and annual reports, to NMFS.

DETERMINATION

The CEQ NEPA regulations, 40 CFR § 1501.6, direct an agency to prepare a FONSI when the agency, based on the Environmental Assessment for the proposed action, determines not to prepare an EIS because the action will not have significant effects. In view of the information presented in this document and the analysis contained in the supporting EA, it is hereby determined that the issuance of ITP No. 27106 will not significantly impact the quality of the human environment. The Environmental Assessment for Issuing an Incidental Take Permit (File No. 27106) to the NCDMF for the incidental take of ESA-listed sea turtles and sturgeon associated with the otherwise lawful commercial anchored gill net fisheries operating in the internal coastal waters of NC is hereby incorporated by reference. In addition, all beneficial and adverse impacts of the proposed action as well as mitigation measures, have been evaluated to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.

Kimberly Damon-Randall
 Director, Office of Protected Resources

10/1/2024
 Date