



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

IMPLEMENTING AGREEMENT

by and between

**NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES, DIVISION OF MARINE FISHERIES and NATIONAL MARINE
FISHERIES SERVICE**

**TO ESTABLISH A PROGRAM FOR ENDANGERED AND THREATENED ATLANTIC
STURGEON DISTINCT POPULATION SEGMENTS (DPSs) IMPACTED BY THE
NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL
RESOURCES, DIVISION OF MARINE FISHERIES, ANCHORED GILLNET
FISHERIES OPERATING IN THE ESTUARINE WATERS OF NORTH CAROLINA.**

This Implementing Agreement ("Agreement"), made and entered into as of the 17th day of July, 2014 by and among the NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, DIVISION OF MARINE FISHERIES (NCDMF), the NATIONAL MARINE FISHERIES SERVICE (NMFS or, the Service), hereinafter collectively called the "Parties," defines the Parties' roles and responsibilities and provides a common understanding of action that will be undertaken to minimize and mitigate the effects of take of Atlantic sturgeon DPSs incidental to anchored [i.e., set technique is passive with an anchor or stake at one or both ends of the net shots or operation] gillnet fisheries operating in the estuarine waters of North Carolina.

1.0 RECITALS

This Agreement is entered into with regard to the following facts:

WHEREAS, the operation of North Carolina's state anchored gillnet fisheries in estuarine waters, after environmental review, has been determined to impact the Atlantic sturgeon New York Bight, Chesapeake, Carolina, and South Atlantic DPSs, federally listed as endangered, and the Atlantic sturgeon Gulf of Maine DPS, federally listed as threatened; and,

WHEREAS, NCDMF, with technical assistance from the Service, has developed a series of measures, described in the January, 2014 *Conservation Plan for the Operation of North Carolina Anchored Gillnet Fisheries in North Carolina Estuarine Waters*, (hereinafter referred to as 'Plan') to minimize and mitigate to the maximum extent practicable the effects of take of the subject listed species incidental to the program,



THEREFORE, the Parties hereto do hereby understand and agree as follows:

1.1 PURPOSES. The purposes of this Agreement are:

1.1.1 To ensure implementation of each of the terms of the Plan;

1.1.2 To describe remedies and recourse should any Party fail to perform its obligations, responsibilities, and tasks as set forth in this Agreement; and,

1.1.3 To provide assurances to NCDMF that as long as the terms of the Plan and the Permit issued pursuant to the Plan and this Agreement are fully and faithfully performed, and except as provided for in this Agreement and the Plan or required by law, any additional conservation and mitigation measures will not involve the commitment of additional financial resources or additional restrictions without the consent of the permittee.

2.0 DEFINITIONS

The following terms as used in this Agreement shall have the meanings set forth below:

2.1 TERMS DEFINED IN THE ENDANGERED SPECIES ACT. Terms used in this agreement and specifically defined in the Endangered Species Act (ESA) or in regulations adopted by NMFS under the Act have the same meaning as in the Act and those implementing regulations, unless this Agreement expressly provides otherwise.

2.2 The term "**PERMIT**" shall mean the Atlantic sturgeon incidental take permit issued by NMFS to NCDMF pursuant to Section 10(a)(1)(B) of the ESA. NCDMF's incidental take permit issued by NMFS for listed sea turtles is a separate permit and is not referred to within this Agreement, except for Section 9.5 with regard to severability.

2.3 The term "**PERMIT AREA**" shall mean the estuarine waters of North Carolina as depicted in Figure 4 of the Plan for NCDMF's fisheries deploying anchored gillnets in estuarine waters--management units for Atlantic sturgeon incidental take.

2.4 The terms "**CONSERVATION PLAN**" or "**PLAN**" shall mean the Conservation Plan for NCDMF's fisheries deploying anchored gillnets in estuarine waters—management units for Atlantic sturgeon incidental take.

2.5 The term "**COVERED SPECIES**" shall mean species adequately covered and identified in the Conservation Plan and Section 1.0 of this Agreement.

- 2.6 The term **“OPERATING CONSERVATION PROGRAM”** means the conservation and management measures provided under the Plan to minimize, mitigate, and monitor the impacts of take of the Covered Species as described in the Monitor, Minimize, & Mitigate Impacts section of the Plan.
- 2.7 The term **“TAKE”** means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct, any Covered Species. Harm means an act that actually kills or injures a member of a Covered Species, including an act that causes significant habitat modification or degradation where such modification or degradation actually kills or injures a member of a Covered Species by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering.
- 2.8 The term **“UNFORESEEN CIRCUMSTANCES”** means changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated by plan developers and the Service at the time of the conservation plan’s negotiation and development, and that result in a substantial and adverse change in the status of the Covered Species. Unforeseen circumstances are not changed circumstances. (50 CFR Part 222.307(g)(3)).
- 2.9 **“CHANGED CIRCUMSTANCES”** means changes in circumstances affecting a Covered Species or the Permit Area that can reasonably be anticipated by the Parties and that can be planned for (e.g. the listing of a new species, natural catastrophic event in areas prone to such event). Changed circumstances and the planned responses to those circumstances are described in Chapter 14 of the Plan. Changed circumstances are not Unforeseen Circumstances.
- 2.10 **“COVERED ACTIVITIES”** means certain activities carried out by NCDMF in the Permit Area described in the Conservation Plan that may result in incidental take of Covered Species, provided that such activities are otherwise lawful.
- 2.11 **“LISTED SPECIES”** means a species (including a distinct population segment of a vertebrate species) that is listed as threatened or endangered under the federal Endangered Species Act.
- 2.12 **“UNLISTED SPECIES”** means a species (including a distinct population segment of a vertebrate species) that is not listed as threatened or endangered under the federal Endangered Species Act.

3.0 CONSERVATION PLAN

Pursuant to the provisions of Section 10(a)(1)(B) of the ESA, NCDMF prepared a Plan and submitted it to NMFS with a request that we issue a Permit to allow Covered Species to be incidentally taken within the Permit Area as depicted and described in Figure 4 of the Plan. The Plan describes a mandatory minimization and mitigation program for the Covered Species.

4.0. OBLIGATIONS OF THE PARTIES

4.1 OBLIGATIONS OF THE STATE. NCDMF, on behalf of the State of North Carolina, acting through its established authorities shall perform the following duties:

4.1.1 Fulfill all obligations undertaken by NCDMF in the Plan, the Permits, and this Agreement, including any modifications to mitigation developed through the provisions for changed circumstances and adaptive management in the Plan and this Agreement.

4.1.2 Program and solicit sufficient levels of funding to fully implement the minimization and mitigation program described in the Plan.

4.1.3 Promptly notify and consult with NMFS if, for any reason, (including lack of sufficient appropriated funds or court decisions), NCDMF has become or is likely to become unable to fulfill any obligation required of it in the Plan, Permit or this Agreement.

4.1.4 Promptly respond to all notices and inquiries received from NMFS under the Plan, Permit and this Agreement.

4.1.5 Use its best efforts to resolve any disputes arising with respect to its compliance with or application of the Plan, Permit or this Agreement using the informal dispute resolution process in this agreement or similar process agreed to be the parties.

4.2 OBLIGATIONS OF NMFS. NMFS shall perform the following duties to the extent permitted by the ESA and other applicable federal law:

4.2.1 Upon execution of this Agreement, and the satisfaction of applicable legal requirements, NMFS will approve the Plan and issue NCDMF a permit under Section 10(a)(1)(B) of the ESA authorizing the incidental take of Covered Species affected by the Covered activities during the effective time period of the HCP, Permit and this Agreement.

4.2.2 Promptly notify NCDMF whenever NMFS proposes to list as threatened or endangered, change the listing status a species or designate critical habitat for a Covered species that may be affected by Covered Activities, and again notify NCDMF if and when any final action is taken.

4.2.3 Promptly notify and consult with NCDMF if, for any reason, (including lack of sufficient appropriated funds or court decisions), NMFS has become or is likely to become unable to fulfill any obligation required of it in the Plan, Permit or this Agreement.

4.2.4 Promptly respond to all notices and inquiries received from NCDMF under the Plan, Permit, or this Agreement.

4.2.5 Use its best efforts to resolve any disputes arising with respect to interpretation or application of the Plan, Permit or this Agreement using the informal dispute resolution process in this agreement or similar process agreed to be the parties.

4.2.6 NMFS shall cooperate and provide, to the extent funding is available, technical assistance to NCDMF as detailed in the Plan and summarized below. Nothing in this Agreement shall require NMFS to act in a manner contrary to the requirements of the Anti-Deficiency Act.

4.2.6.1 NMFS will review annual reports and provide technical assistance to NCDMF for the duration of the permit.

4.2.6.2 NMFS will collaborate with NCDMF and approve or deny any adaptive management changes to the original Plan based on the analysis described in section 11.1e of this Agreement. Within 45 days, NMFS must provide NCDMF a written concurrence or denial of any proposed changes to the adaptive management plan as described in the Monitor, Minimize, and Mitigate Impacts section of the Plan.

4.2.6.3 NMFS will provide, based on available funding, support for passive integrated transponders (PIT) and T-Bar tagging of collected individuals as well as collection and processing of fin clips for genetic testing to identify from which DPS the collected fish originated.

4.2.7 After issuance of the Permit, NMFS shall monitor the implementation thereof, including each of the terms of this Agreement and the Plan in order to ensure compliance with the Permit, the Plan and this Agreement.

4.2.8 "No surprises" Assurances. Provided that NCDMF has complied with its obligations under the HCP, this Agreement, and the permits, the Services (U.S.

Fish and Wildlife Service and NMFS) can require NCDMF to provide mitigation beyond that provided for in the Plan only in accordance with the "no surprises" regulations at 50 222.307(g).

4.2.9 INTERIM OBLIGATIONS UPON A FINDING OF UNFORESEEN CIRCUMSTANCES. If the Services make a finding of unforeseen circumstances, during the period necessary to determine the nature and location of additional or modified mitigation, NCDMF will avoid contributing to appreciably reducing the likelihood of the survival and recovery of the affected species.

5.0 INCORPORATION OF CONSERVATION PLAN

The Plan and each of its provisions are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of this Agreement and the Plan, the terms of this Agreement shall control. In all other cases, the terms of this Agreement and the terms of the Plan shall be interpreted to be supplementary to each other.

6.0 LEGAL REQUIREMENTS

In order to fulfill the requirements that will allow NMFS to issue the Permit, the Plan sets forth measures that are intended to ensure that any take occurring within the Permit Area will be incidental; that the impacts of the take be minimized and mitigated; that adequate funding for the Plan will be provided; and that the take will not appreciably reduce the likelihood of the survival and recovery of the Covered Species in the wild. It also includes measures that have been suggested by the Service as being necessary or appropriate for purposes of the Plan.

7.0 COOPERATIVE EFFORT

In order that each of the legal requirements as set forth in Paragraph 6.0 hereof is fulfilled, each of the Parties to this Agreement must perform certain specific tasks as more particularly set forth in the Plan. The Plan thus describes a cooperative program by NMFS and NCDMF to minimize and mitigate the effects of the Program on the Covered Species.

8.0 TERMS USED

Terms defined and utilized in the Plan and the ESA shall have the same meaning when utilized in this Agreement, except as specifically noted.

9.0 TERM

- 9.1 **STATED TERM.** This Agreement and the Plan are effective this 17th day of July, 2014. This Agreement, the Plan, and the section 10(a)(1)(B) incidental take permit (hereinafter referred to as Permit) issued by NMFS will remain in effect for a period of 10 years from the effective date contained in the preceding sentence unless terminated as provided below.
- 9.2 **MUTUAL TERMINATION.** This Agreement may be terminated at any time upon the unanimous consent of NCDMF and NMFS.
- 9.3 **PERMIT SUSPENSION OR REVOCATION.** NMFS may suspend or revoke the Permit that it issued for cause in accordance with applicable laws and regulations. (See 5 U.S.C. § 558; 50 C.F.R., 222.306; 15 C.F.R. § 904.) Such suspension or revocation may apply to an entire permit, or only to specified Covered Species, Permit Areas, or covered activities.
- 9.4 **PERMIT RELINQUISHMENT.** This Agreement shall terminate upon the relinquishment of the Permit by NCDMF.
- 9.5 **SUSPENSION OR REVOCATION.** In the event of suspension or revocation, NCDMF's obligations under this Agreement and the Plan will continue until NMFS determines that all unauthorized take of Covered Species that occurred under that Permit has been fully mitigated in accordance with the Plan. Other Permits (e.g., any Section 10(a)(1)(B) incidental take permit issued to NCDMF for incidental take of marine sea turtles) issued to NCDMF by NMFS are severable; suspension or revocation of one Permit shall not automatically cause suspension, revocation, mutual termination, or relinquishment of the other Permit, provided that suspension, revocation, mutual termination, or relinquishment of one of the Permits may require a reevaluation of the other Permit to ensure that the take authorized by the remaining Permit shall not result in unauthorized take of or jeopardy to the continued existence of any Covered Species, or adverse modification of the critical habitat of any Covered Species.

10.0 FUNDING

NCDMF will provide such funds as may be necessary to carry out its obligations under the Plan, Permit and this Agreement. NCDMF should notify NMFS, if NCDMF's funding resources have materially changed or are likely to materially change, including a discussion of the nature of the change, from the information provided in the Plan.

11.0 RESPONSIBILITIES OF THE PARTIES IN CONSERVATION PLAN IMPLEMENTATION

11.1 RESPONSIBILITIES OF NCDMF

11.1.1 A properly implemented conservation plan means that the Plan, this Agreement, and the Permits have been or are being fully implemented.

11.1.2 NCDMF shall undertake all measures set forth in the Plan to minimize and mitigate the impacts of their estuarine fisheries deploying anchored gill nets on the Covered Species, as summarized in paragraphs 11.1.3 through 11.1.5 below.

11.1.3 From date of issuance of the Permit through the first three years NCDMF will implement NCDMF fisheries monitoring program and monitor and manage 'hotspots' described in the Monitor, Minimize, and Mitigate Impacts section of the Plan to minimize take of the Covered Species. The key monitoring and minimization measures are summarized below:

11.1.3.1 NCDMF will maintain a monitoring program that consist of a combination of onboard and alternative platform observers, trip ticket program, and marine patrol officer activities (when needed). NCDMF will monitor five primary management units in inshore waters as described in the Plan (see Figure 4). Statewide gillnet fishery coverage will seek to achieve 7-10% ≥ 5.0 Inch Stretched Mesh (ISM); 1-2% < 5.0 ISM

11.1.3.2 NCDMF will utilize data collected through the Observer Program using the methodologies outlined in the Conservation Plan to conduct analysis in the first three years to better understand bycatch estimates and Atlantic sturgeon distribution, abundance, and population trend. Observer data collected prior to the issuance of the Permit will also be used to create a more robust data set. If during the first three years NCDMF identifies any hotspots, NCDMF will close the area temporarily until analysis can be completed, as described in the Conservation Plan.

11.1.3.3 NCDMF will monitor data collected and identify, in a timely

manner, whether unusually high Atlantic Sturgeon bycatch occurred within a management unit or subunit, such that NCDMF determines that closure and evaluation is necessary to (1) avoid violation of a take limit, or (2) provide adequate protection for the Atlantic Sturgeon, or (3) to allow Atlantic sturgeon to complete a seasonal migration and minimize interactions. NCDMF will confer with NMFS on the identification of hotspots.

11.1.4 For years four through ten after issuance of the permit, NCDMF will conduct the activities in 11.1.1 through 11.1.3 above and will develop, in collaboration with and with concurrence of NMFS, any necessary changes to the adaptive management plan based on the results of the analysis in 11.1.3 of this Agreement. NCDMF will submit any proposed changes to NMFS for review and concurrence. NCDMF will implement either the adaptive management plan as described in the original Plan or the changed adaptive management plan based on the analysis in 11.1.3 of this Agreement for the remainder of the Permit. During years four through ten if NCDMF deems it necessary to reanalyze the data based on current observer data NCDMF will consult with NMFS, submit any proposed changes to NMFS for review, and continue with the current adaptive management plan or use reevaluated data.

11.1.5 NCDMF will prepare annual written reports for each year during which the Plan is in effect. Annual reports will be submitted to NMFS by May 31 of the year following the calendar year to which the report applies. A summary of the key contents of each annual report is provided below:

11.1.5.1 Actual or estimated of the incidental take (including mortality) of Covered Species by management units as described in the Plan.

11.1.5.2 Size, age composition (based on length information), location, and dates of incidental take of Covered Species recorded during monitoring program as described in the Plan and Plan Appendix.

11.1.5.3 A description of the mitigation activities conducted.

12.0 REMEDIES AND ENFORCEMENT

12.1 REMEDIES IN GENERAL.

Except as set forth below, each Party shall have all remedies otherwise available to enforce the terms of this Agreement, the Permit, and the Plan, and to seek remedies for any breach hereof, subject to the following:

12.1.1 NO MONETARY DAMAGES. No Party shall be liable in damages to any other Party or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement or any other cause of action arising from this Agreement. Notwithstanding the foregoing:

12.1.1.1 Retain Liability. All Parties shall retain whatever liability they would possess for their present and future acts, or failure to act, without existence of this Agreement.

12.1.1.2 Responsibility of the United States. Nothing contained in this Agreement is intended to limit the authority of the United States government to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA.

12.1.2 INJUNCTIVE AND TEMPORARY RELIEF. The Parties acknowledge that the Covered Species are unique and that their loss as a species would result in irreparable damage to the environment and that therefore injunctive and temporary relief may be appropriate to ensure compliance with the terms of this Agreement.

12.2 DISPUTE RESOLUTION.

The parties recognize that disputes concerning implementation of, compliance with, or termination of this Agreement, the Plan, and the Permit may arise from time to time. The parties agree to work together in good faith to resolve such disputes, using the informal dispute resolution procedures set forth in this section, or such other procedures upon which the parties may later agree. However, if at any time any party determines that circumstances so warrant, it may seek any available remedy without waiting to complete informal dispute resolution.

12.2.1 INFORMAL DISPUTE RESOLUTION PROCESS. Unless the parties agree upon another dispute resolution process, or unless an aggrieved party has initiated administrative proceedings or suit in federal court as provided in this section, the parties may use the following process to attempt to resolve disputes:

12.2.1.1 The aggrieved party will notify the other party of the provision that may have been violated, the basis for contending that a violation has occurred, and the remedies it proposes to correct the alleged violation.

12.2.1.2 The party alleged to be in violation will have 30 days, or such other time as may be agreed, to respond. During this time it may seek clarification of the information provided in the initial notice. The aggrieved party will use its best efforts to provide any information then

available to it that may be responsive to such inquiries.

12.2.1.3 Within 30 days after such response was provided or was due, representatives of the party having authority to resolve the dispute will meet and negotiate in good faith toward a solution satisfactory to all parties, or will establish a specific process and timetable to seek such a solution.

12.3 LIMITATIONS AND EXTENT OF ENFORCEABILITY

12.3.1 LEGAL AUTHORITIES UNAFFECTED. Nothing in this Agreement shall absolve NCDMF from such other limitations as may apply to the permitted activities under other laws of the United States and the State of North Carolina.

13.0 CHANGED CIRCUMSTANCES

13.1 CHANGED CIRCUMSTANCES NOT PROVIDED FOR IN THE PLAN

If NMFS deems additional conservation and mitigation measures are necessary to respond to changed circumstances and such measures were not provided for in the plan's operating conservation program, NMFS will not require any conservation and mitigation measures in addition to those provided for in the plan without prior consultation with and the consent of NCDMF, provided the plan is being properly implemented.

13.2 LISTING OF SPECIES THAT ARE NOT COVERED SPECIES

In the event that a non-Covered Species that may be affected by covered activities becomes listed under the ESA, NMFS will work with NCDMF on adaptive management measures that may be implemented to insure the Permit and Plan are not likely jeopardize the continued existence of the newly listed species until the Plan is amended to adequately cover such species and the Permit is amended to include such species, or until the Service notifies NCDMF that such measures are no longer needed to avoid jeopardy to, take of, or adverse modification of the critical habitat of the non-Covered Species. The parties agree that Permit amendments may require additional minimization and mitigation measures to adequately cover non-Covered Species

14.0 ADAPTIVE MANAGEMENT

14.1 NCDMF-INITIATED ADAPTIVE MANAGEMENT

NCDMF will implement the adaptive management provisions in the Monitor, Minimize, and Mitigate Impacts section of the Plan (and as changed, if appropriate, based on the first three years of monitoring) when changes in management practices are necessary to achieve the Plan's biological objectives, or to respond to monitoring results or new scientific information. NCDMF will collaborate with NMFS to develop an adaptive management plan based on the results of the first three years of monitoring under the Permit if deemed necessary. NCDMF will notify NMFS on any actions they intend to take pursuant to this section. If during the four to ten year period changes in management practices are necessary to achieve the Plan's biological objectives, or to respond to monitoring results or new scientific information NCDMF will collaborate with NMFS to develop an adaptive management plan based data analysis.

14.1.1 Atlantic States Marine Fisheries Commission Assessment

New information is intended to include the ASMFC assessment, slated to be completed in 2015.

14.1.2 North Carolina 2012 and 2013 Take Numbers

New information is intended to include new take numbers obtained by North Carolina. NCDMF will prepare its raw 2012 and 2013 bycatch data for submission to NMFS to be included in reports.

14.2 NMFS-INITIATED ADAPTIVE MANAGEMENT

If NMFS determines that one or more of the adaptive management provisions in the Plan as specified in section 14.1 (above) have been triggered and that NCDMF has not changed its management practices in accordance with the Monitor, Minimize, and Mitigate Impacts section of the Plan (and as changed, if appropriate, based on the first three years of monitoring), NMFS will so notify NCDMF and will direct NCDMF to make the required changes. Within 30 days after receiving such notice, NCDMF will make the required changes and report to NMFS on its actions. Such changes are provided for in the Plan and this Implementing Agreement (which provides for possible changes to the adaptive management program based on the first three years of monitoring) and constitute changed circumstance. They do not constitute unforeseen circumstances or require amendment of the Permit or Plan. Compliance with such changes shall be a condition of Permit compliance.

14.3 CHANGES TO MITIGATION

For the duration of the Permit, NCDMF will not implement adaptive management

changes that may result in less mitigation than provided for Covered Species under the original terms of the Plan and, as modified based on from the first three years of monitoring, per this Implementing Agreement, unless NMFS first provides written approval. NCDMF may propose any such adaptive management changes by notice to NMFS, specifying the adaptive management modifications proposed, the basis for them, including supporting data, and the anticipated effects on Covered Species, and other environmental impacts. Within 120 days of receiving such a notice, NMFS will, in writing, either approve the proposed adaptive management changes, approve them as modified by NMFS, or notify NCDMF that the proposed changes constitute Permit amendments that must be reviewed under Section 15.2 of this Agreement. Changes to mitigation approved through this procedure will be appended to the Conservation Plan and NCDMF's compliance with them will be a condition of Permit compliance.

14.4 NO INCREASE OR CHANGE IN TAKE

This section does not authorize any modifications that would result in an increase in the amount or change the nature of take, or increase the impacts of take, of Covered Species beyond that analyzed under the original Plan and any amendments thereto.

15.0 MODIFICATIONS AND AMENDMENTS

Except as otherwise set forth herein, the Plan and this Agreement may be amended consistent with the ESA and with the written consent of each of the Parties hereto.

15.1 MINOR MODIFICATIONS

Any party may propose minor modifications to the Plan of this Agreement by providing written notice to all other parties. Such notices shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, including its effects on operations under the Plan and on Covered Species. The parties will use best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon all other parties' written approval. If, for any reason, a receiving party objects to a proposed modification, it must be processed as an amendment of the Permit in accordance with subsection 15.2 of this section. NMFS will not approve minor modifications to the Plan of this agreement if NMFS determines that such modifications would result in: 1) operations under the Plan that are materially different from those analyzed in connection with the original Plan; or 2) such modifications would result in significant effects on the environment that are new or materially different from those analyzed in connection with the original Plan; or 3) changes in the amount or extent of take; or 4) additional forms of take not analyzed in connection with the original Plan.

Minor modifications to the Plan and Agreement processed pursuant to this subsection

may include but are not limited to the following:

- 15.1.1 Corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning;
- 15.1.2 Correction of any maps or exhibits to correct errors in mapping or to reflect previously approved changes in the Permit or Plan;
- 15.1.3 Minor changes to survey, monitoring or reporting protocols;
- 15.1.4 Other types of modifications that are minor in relation to the Plan, that the Service have analyzed and agreed to, and on which the public has had an opportunity to comment upon; and

Any other modifications to the Plan or Agreement will be processed as amendments or the Permit in accordance with subsection 15.2 of this section.

15.2 AMENDMENT OF THE PERMIT

The Permit may be amended in accordance with all applicable legal requirements, including but not limited to the ESA, the National Environmental Policy Act, and NMFS' implementing regulations. The party proposing the amendment shall provide a statement of the reasons for the amendment and an analysis of its environmental effects, including its effects on operations under the Plan and on Covered Species.

16.0 MISCELLANEOUS PROVISIONS

16.1 NO PARTNERSHIP

Except as otherwise expressly set forth herein, neither this Agreement nor the Plan shall make or be deemed to make any Party to this Agreement the agent for or the partner of any other Party.

16.2 SUCCESSORS AND ASSIGNS

This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties hereto and their respective successors and assigns. Assignment or other transfer of the Permit shall be governed by the Service's regulations.

16.3 NOTICE

Any notice permitted or required by this Agreement shall be delivered personally to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any Party may from time to time specify to the other Parties in writing:

Louis Daniel, Director, NCDMF
3441 Arendell Street
Morehead City, NC 28557

Donna S. Wieting,
Director, Office of Protected Resources, NMFS
1315 East West Highway
Silver Spring, MD 20910

16.4 ENTIRE AGREEMENT

This Agreement, together with the Plan and the Permit, constitutes the entire Agreement between NMFS and NCDMF. It supersedes any and all other agreements, either oral or in writing among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

16.5 AVAILABILITY OF FUNDS

Implementation of this Agreement and the Plan by NMFS is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The parties acknowledge that the Service will not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

16.6 DUPLICATE ORIGINALS

This Agreement may be executed in any number of duplicate originals. A complete original of this Agreement shall be maintained in the official records of each of the Parties hereto.

16.7 THIRD-PARTY BENEFICIARIES

Without limiting the applicability of the rights granted to the public pursuant to the provisions of the ESA and other applicable law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing federal or state law.

16.8 RELATIONSHIP TO THE ESA AND OTHER AUTHORITIES

The terms of this Agreement shall be governed by and construed in accordance with the ESA and other applicable laws. In particular, nothing in this Agreement is intended to limit the authority of NMFS to seek penalties or otherwise fulfill their responsibilities under the ESA. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of NMFS as agencies of the federal government.

16.9 REFERENCES TO REGULATIONS

Any reference in this Agreement, the Plan, or the Permit to any regulation or rule of NMFS shall be deemed to be a reference to such regulation or rule in existence at the time an action by one or all of the Parties is taken.

16.11 APPLICABLE LAWS

All activities undertaken pursuant to this Agreement, the Plan, or the Permit must be in compliance with all applicable state and federal laws and regulations.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date last signed below.

Perry GAYARDO

JUL 17 2014

Date

for

Donna S. Wieting
Director, Office of Protected Resources

L. B. Daniel
Louis B. Daniel, Ph.D.
Director of North Carolina Division of Marine Fisheries
Permit Holder/Principal Investigator

7/22/14
Date