Finding of No Significant Impact for the Proposed Application of Protective Regulations Under Section 4(d) of the Endangered Species Act for the Threatened Southern Distinct Population Segment of North American Green Sturgeon

National Marine Fisheries Service
Southwest Region

National Oceanic and Atmospheric Administration Administrative Order 216-6 (NAO 216-6; May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action under the National Environmental Policy Act (NEPA). In addition, the Council on Environmental Quality (CEQ) regulations implementing NEPA state that the significance of an action should be analyzed both in terms of "context" and "intensity" (40 CFR § 1508.27). 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 FMPs?

> Response: The proposed application of protective regulations under section 4(d) of the Federal Endangered Species Act (ESA) for the Southern Distinct Population Segment of North American green sturgeon (hereafter, "Southern DPS") would not be expected to cause substantial damage to ocean and coastal habitats or essential fish habitat. The protective regulations (called an ESA 4(d) Rule) would reinforce existing laws to protect these habitats and promote further actions to minimize the disturbance and alteration of natural habitats. For example, the ESA 4(d) Rule would reinforce water quality standards established under the Federal Clean Water Act and would result in habitat protections and improvements for the Southern DPS and other fish and wildlife species.

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, the preferred alternative would primarily focus on protecting and conserving the Southern DPS and its habitat. The resulting habitat protections and improvements would benefit other fish and wildlife species and support conditions to maintain biodiversity and ecosystem function.

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

> Response: The preferred alternative would not be expected to adversely affect public health or safety. The primary purpose of the preferred alternative is to regulate the take of the Southern DPS. Implementing the regulations under the preferred alternative may result in changes to activities related to public health and safety, such as land use and water management, by requiring conservation and mitigation measures to reduce or avoid take of the Southern DPS. Impacts to public health or safety would be considered in the development and implementation of such measures.

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 preferred alternative would not adversely affect other species or any designated critical habitat. The purpose of the preferred alternative is to establish protective regulations for the conservation of the Southern DPS. The preferred alternative would be expected to benefit other fish and wildlife species and their habitats that occur within the range of the Southern DPS. Specific benefits would include improvements in water quality, implementation of habitat conservation and restoration activities in rivers and estuaries, and improved fish passage at dams and other in-river structures.

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

> Response: The preferred alternative would impose additional restrictions and regulations on the use of natural resources that may result in social or economic effects. Under the preferred alternative, activities that may result in take of the Southern DPS (e.g., fisheries, hydropower dam operations, water diversions, maintenance dredging, power plant operations) would be subject to analysis under section 7 or section 10 of the ESA. Measures to reduce or avoid take of the Southern DPS would be required. The preferred alternative would also provide exceptions or exemptions from the take prohibitions for activities that are conducted in compliance with criteria as described in the ESA 4(d) Rule or with NMFS-approved 4(d) plans that minimize and monitor take of the Southern DPS. Whether an activity is covered under one of these 4(d) Rule exceptions or exemptions or under section 7 or section 10 of the ESA, the implementation of measures to address take of the Southern DPS may result in effects on the availability of natural resources (e.g., water supplies, energy and mineral resources, fisheries resources) for human use and thus result in social or economic impacts. The preferred alternative, however, would not be expected to result in significant social or economic impacts because the measures required to address take of the Southern DPS would be similar to, and would not represent a significant change from, measures required under existing regulations.

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

Response: The preferred alternative would not be expected to result in highly controversial effects. The preferred alternative would implement regulations similar to those already in place for other ESA-listed fish species, including threatened West coast salmon evolutionarily significant units (ESUs) and steelhead DPSs. Public scoping workshops were held on May 31, 2006 and June 1, 2006, with local, state, and federal agencies, resource managers, and resource users. In addition, the proposed 4(d) Rule and draft environmental assessment were made available for public comment, with few comments received. Participation in the workshops and during the public comment period indicated that the preferred alternative would generate public interest and some controversy, but would not be highly 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?

Response: The preferred alternative would not be expected to result in adverse effects on historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, ecologically critical areas, or other unique areas. Existing state and Federal laws prohibit the disturbance of, or harm to, historic and cultural resources, wetlands, and other critical areas such as floodplains and coastal zones. The preferred alternative would comply with and reinforce these laws to protect freshwater rivers, coastal bays and estuaries, and coastal marine waters where the Southern DPS occurs.

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

Response: The effects of the preferred alternative are not uncertain and do not involve unique or unknown risks. NMFS has previously established similar ESA 4(d) Rules for other ESA-listed species. NMFS has identified and analyzed the potential effects of the preferred alternative as described in the Environmental Assessment. Some uncertainty may exist as to the specific measures that would be required to address the take of the Southern DPS, but these are to be determined on a project-by-project basis in subsequent analysis.

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

Response: The preferred alternative would not be expected to result in cumulatively significant adverse effects. Implementation of the preferred alternative would impose additional restrictions on activities that may cause take

of the Southern DPS, including but not limited to: commercial, recreational, and Tribal fisheries; operations of dams and water diversions in the Central Valley, CA; dredging operations; power plant operations; and land use activities that may increase erosion or sediment input into the Sacramento River. Conservation and mitigation measures required to comply with the preferred alternative would add to existing regulatory burdens and costs for affected activities. The preferred alternative would primarily require that the take of the Southern DPS be analyzed and addressed. Thus, the preferred alternative would not be expected to result in significant effects, either individually or cumulatively.

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 preferred alternative would not result in adverse effects on historic places or objects listed in or eligible for listing in the National Register of Historic Places, nor would it result in the loss or destruction of significant scientific, cultural, or historical resources. The preferred alternative would most likely affect activities such as green sturgeon research, fisheries, water diversions, power plant operations, dredging, and other activities that affect the Southern DPS, and would not affect historic places or significant scientific, cultural, or historical resources.

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

Response: No, the preferred alternative would not result in the introduction or spread of a non-indigenous species. The preferred alternative would reinforce regulations prohibiting 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?

Response: The preferred alternative would not be a precedent-setting action by NMFS, nor would it represent a decision in principle about a future consideration. NMFS has previously issued ESA 4(d) Rules for other ESA-listed species, similar to the preferred alternative.

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 preferred alternative would comply with and reinforce existing Federal, state, or local laws or requirements imposed for the protection of the environment.

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?

> Response: The preferred alternative would not be expected to result in cumulative adverse effects that could have substantial effects on the Southern DPS or other species. Implementation of the preferred alternative would benefit the conservation of the Southern DPS and other fish and wildlife species that occupy similar areas as the Southern DPS. Conservation and mitigation measures implemented under the preferred alternative may result in benefits such as improved water quality, erosion control, riparian restoration and protection, stream habitat restoration, and improved fish passage.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting Environmental Assessment prepared for the Proposed Application of Protective Regulations under Section 4(d) of the Endangered Species Act for the Threatened Southern Distinct Population Segment of North American green sturgeon, it is hereby determined that the adoption and implementation by NMFS of protective regulations under section 4(d) of the ESA for the threatened Southern DPS will not significantly impact the quality of the human environment as described above and in the Environmental Assessment. 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 EIS for this action is not necessary.

for Regional Administrator, Southwest Region

3/22/10
Date