APPENDIX I

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 SEA TURTLE 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 10th day of September, 2013 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 Sea Turtle 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 threatened species of sea turtles (loggerhead turtle, *Caretta caretta*; green turtle, *Chelonia mydas*) and endangered species of sea turtles (leatherback turtle, *Dermochelys coriacea*; hawksbill turtle, *Eretmochelys imbricata*; Kemp's ridley turtle, *Lepidochelys kempii*) under the Endangered Species Act (ESA).

WHEREAS, the NCDMF, with technical assistance from the Service, has developed a series of measures, described in the June 13, 2013 *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 the 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 of 1973 as amended (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 sea turtle incidental take permit issued by NMFS to the NCDMF pursuant to Section 10(a)(1)(B) of the ESA. NCDMF's incidental take permit issued by NMFS for listed Atlantic sturgeon 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 10 of the Plan for the NCDMF's fisheries deploying anchored gillnets in estuarine waters--management units for Sea Turtle incidental take.

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

2.5 The term **"COVERED SPECIES"** shall mean species adequately covered and identified in Section *"Species of Concern"* in the 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, an increase in observer coverage). Changed circumstances and the planned responses to those circumstances are described in Section 14 of this Agreement. Changed circumstances are not Unforeseen Circumstances.

2.10 **"COVERED ACTIVITIES"** means certain activities carried out by the NCDMF in the Permit Area described in Section *"Monitor, Minimize, and Mitigate Impacts"* of the 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 species) that is listed as threatened or endangered under the ESA.

2.12 **"UNLISTED SPECIES"** means a species (including a distinct population segment of a species) that is not listed as threatened or endangered under the

ESA.

3.0 CONSERVATION PLAN

Pursuant to the provisions of Section 10(a)(1)(B) of the ESA, the NCDMF prepared a Plan and submitted with a request that NMFS issue a Permit to allow Covered Species to be incidentally taken within the Permit Area as depicted and described in Figure 10 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 Plan, 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 the state 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 by the parties.

4.2.6 The 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 the NMFS to act in a manner contrary to the requirements of the Anti-Deficiency Act.

> **4.2.6.1** NMFS will review progress reports and annual reports and provide technical assistance to the NCDMF for the duration of the permit.
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> **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 11.1.3 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.
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> **4.2.6.3** NMFS will provide, based on available funding, support for passive integrated transponders (PIT) and Inconel tagging of collected individuals.
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> **4.2.6.4** NMFS will provide, based on available staff, training for observers on handling and tagging sea turtles.

4.2.7 After issuance of the Permit, the 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 Plan, this Agreement, and the permits, the Services can require NCDMF to provide mitigation beyond that provided for in the Plan only in accordance with the "no surprises" regulations at 50 CFR 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 the 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. The Plan 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 5.0 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 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 10th day of September, 2013. 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 the 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 the NCDMF.

9.5 SUSPENSION OR REVOCATION. In the event of suspension or revocation, the NCDMF's obligations under this Agreement and the Plan will continue until the 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 Atlantic sturgeon or any other listed species) 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

The NCDMF will provide such funds as may be necessary to carry out its obligations under the Plan, Permit and this Agreement. The NCDMF should notify the NMFS, if the 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. NCDMF will communicate the projected funding levels annually to NMFS and discuss whether they are adequate to carry out the requirements in the Plan, Permit, and this Agreement.

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 below.

11.1.3 From date of issuance of the Permit NCDMF will annually implement the 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 six primary management units in inshore waters as described in the Plan (see Figure 10). NCDMF will monitor at least 7% (with a goal of 10%) of large mesh (≥4.0 inch stretched mesh (ISM)) gillnet trips in each area during each of 3 seasons (i.e., spring, summer, fall) as defined in the conservation plan. NCDMF will monitor at least 1% (with a goal of 2%) of small mesh (<4.0 inch stretched mesh (ISM)) gillnet trips in each area during each of the three seasons (i.e., spring, summer, fall) as defined in the conservation plan.

11.1.3.2 NCDMF will utilize data collected through the Observer Program using the methodologies outlined in the Conservation Plan to conduct annual analysis to better understand bycatch estimates for

Kemp's ridley and green turtles. Weekly and monthly estimated sea turtle takes will be calculated by NCDMF to ensure authorized estimated and/or observed take levels are not being approached. Observer data collected prior to the issuance of the Permit will also be used to create a more robust data set.

11.1.3.3 Within the first three years, NCDMF will utilize data collected through the Observer Program using the methodologies outlined in the Conservation Plan to conduct an analysis to determine whether bycatch may be estimated for loggerhead turtles in each area. Observer data collected prior to the issuance of the Permit will also be used to create a more robust data set. If it is possible to conduct this analysis, NCDMF will provide those estimates to NMFS and discuss whether adaptive management is necessary.

11.1.3.4 NCDMF will monitor data collected and identify, in a timely manner, whether unusually high sea turtle bycatch occurred within a management unit or subunit, such that NCDMF determines that closure and evaluation is necessary to (1) avoid approaching a take limit, or (2) provide adequate protection for sea turtles, or (3) to allow sea turtles to complete a seasonal migration and minimize interactions. NCDMF will confer with the NMFS on the identification of hotspots.

11.1.3.5 NCDMF will conduct a simulation to determine what level of observer coverage would be required to estimate total bycatch of sea turtles with a reasonable level of precision, assuming no vessel selection or observer bias exists.

11.1.4 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 the 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 if deemed necessary.

11.1.5 NCDMF will provide progress reports and annual reports to NMFS on a regular basis to monitor implementation of the original Plan and Permit and determine whether adaptive management is necessary.

11.1.5.1 *Take Reports.* NCDMF will report all incidental sea turtle takes to NMFS via email within 24 hours of their occurrence, in any

season of the year (spring, summer, fall, winter), whether documented by an observer or reported by a fisherman, or by any other means. Reports of incidental take should include the date of the take, the condition of the turtle, the species (if known), photographs, and any other pertinent details of the circumstances of the taking (e.g., location, gear description, etc.). NCDMF will also provide copies of all take reports to the NC Sea Turtle Stranding and Salvage Network.

11.1.5.2 *Weekly Progress Reports*. For those weeks in which sea turtle interactions are documented, a weekly report must be submitted to the NMFS by Friday of the following week. The weekly reports must include the weekly take estimates and cumulative totals, including: observed takes with species, location, condition, and photos; and the total number of observed trips in that area.

11.1.5.3 *Seasonal Progress Reports*. Progress reports must be submitted to the NMFS Office of Protected Resources within 30 days after the end of the spring, summer, and fall seasons (*i.e.*, June 30, September 30, December 31). The reports must include:

> **11.1.5.3.1** A summary of the weekly reporting information previously submitted;
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> **11.1.5.3.2** Descriptions of any additional management measures taken by NCDMF;
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> **11.1.5.3.3** One or more maps or graphical displays illustrating the geographic distribution of all observed large and small mesh gillnet trips and the locations of all observed incidental takes of sea turtles;
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> **11.1.5.3.4** The number of law enforcement contacts made with gillnet vessels the nature of these contacts;
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> **11.1.5.3.5** Any violations detected by NCDMF of the proclamations implementing the requirements of this permit, and the status of all resulting enforcement actions; and
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> **11.1.5.3.6** A description of any adaptive management actions taken.

11.1.5.4 *Annual Reports*. NCDMF will prepare annual written reports for each year during which the Plan is in effect. A year is defined as beginning September 1 and ending the following August 31 (e.g.,

September 1, 2013 through August 31, 2014). NCDMF will submit annual reports for September 1 through August 31 to NMFS by the following January 31 (i.e., 5 months after the year ends). A summary of the key contents of each annual report is provided below:

11.1.5.4.1 Actual and estimated incidental takes (including mortality) and the level of uncertainty of the estimates (e.g., confidence intervals, CVs) of Covered Species by management units as described in the Plan.

11.1.5.4.2 Size composition, disposition (alive/dead), location, and dates of incidental take of Covered Species recorded during monitoring program as described in the Plan and Plan Appendix.

11.1.5.4.3 One or more maps or graphical representations illustrating the geographic distribution of all observed large and small mesh gillnet hauls and the locations of all observed incidental sea turtle takes.

11.1.5.4.4 A description of the mitigation activities, adaptive management actions, and enforcement activities conducted.

11.1.6 Within two years of Permit implementation, NCDMF will obtain certifications from each fisherman intending to use anchored gillnets in inshore waters as defined in the Conservation Plan that the fisherman acknowledges the Permit requirements and wishes to be included under that Permit. NCDMF will periodically compare trip ticket data to the certifications to ensure that any new entrants into the fishery are certified. NCDMF will annually remind certified fishermen of the Permit requirements. Alternatively, NCDMF will implement a permit system, whereby the permit would serve as a certificate of inclusion, for fishermen using anchored gillnets in inshore waters to ensure compliance with the Conservation Plan, Permit, and this Agreement.

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 or sovereign immunity under applicable law they would possess for their present and future acts, or failure to act, without existence of this Agreement.

12.1.1.2 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 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 the 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 the 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 if or 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 progress and annual reporting under the Permit if deemed necessary. NCDMF will notify NMFS on any actions (e.g., increased observer coverage) they intend to take pursuant to this section.

14.2 NMFS-INITIATED ADAPTIVE MANAGEMENT

If the NMFS determines that one or more of the adaptive management provisions 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 progress and annual reporting), the 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 the NMFS on its actions. Such changes are provided for in the Plan and this Implementing Agreement 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 annual monitoring, per this Implementing Agreement, unless the NMFS first provides written approval. NCDMF may propose any such adaptive management changes by notice to the 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, the NMFS will, in writing, approve the proposed adaptive management changes, approve them as modified by the 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. The NMFS will not approve minor modifications to the Plan of this agreement if the NMFS determine that such modifications would result in operations under the Plan that are materially different from those analyzed in connection with the original Plan. Similarly, NMFS will not approve a minor modificiation with significant effects on the environment that are new or materially different from those analyzed in connection with the original Plan, changes in the amount or extent of take, or 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 minor changes that concern safety or practical considerations (e.g., an additional hour of soak time, exempted areas), as addressed under section 14, and which will not have meaningful consequences to the conservation of the species covered by the Permit or result in NMFS revisiting the finding that the Plan minimizes incidental take to the maximum extent practicable; and

15.1.5 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.

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 at any time the NCDMF submits an application to amend the permit and a revised Conservation Plan. An amended permit would be contingent on NMFS' subsequent approval of the proposed amendments. The Permit may also be amended upon reasonable notice by the Director of OPR. The Permit shall be amended in accordance with all applicable legal requirements, including but not limited to the ESA, the National Environmental Policy Act, and the 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 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 B. Daniel III, NCDMF, Morehead City, NC

Donna S. Wieting, OPR, NMFS, Silver Spring, MD

16.4 ENTIRE AGREEMENT

This Agreement, together with the Plan and the Permit, constitutes the entire Agreement between the Parties. 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 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 the 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 the 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 the NMFS an agency 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.

16.10 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.

BY _____ Date 9/10/13

Louis B. Daniel, III, Ph.D.
Director
North Carolina Division of Marine Fisheries

BY PERRY GAMALDO Date SEP 10 2013

for Donna S. Wieting
Director
Office of Protected Resources
NOAA's National Marine Fisheries Service