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

Finding of No Significant Impact
Issuance of Scientific Research Permit No. 13430-02
For Research on Marine Mammals

Background

The National Marine Fisheries Service (NMFS) proposes to issue a major amendment to Permit No. 13430-01 for research on marine mammals in the wild, pursuant to the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*). Permit No. 13430-01 authorizes the NMFS National Marine Mammal Laboratory (NMML) to conduct research on Pacific harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), and northern elephant seals (*Mirounga angustirostris*) within coastal waters and on pinniped rookeries and haul outs of Washington and Oregon. The permit amendment would extend the duration of the permit by five years and authorize the use of additional sedative drugs during captures. The permit includes additional mitigation to avoid take of an endangered species. In accordance with the National Environmental Policy Act, NMFS has prepared a supplemental environmental assessment (SEA) analyzing the impacts on the human environment associated with permit issuance (Supplemental Environmental Assessment for Issuance of Permit No. 13430-02 for Research on Marine Mammals; 2015). The analyses in the SEA support the findings and determination below. NMFS has chosen to issue a permit amendment for activities as described in Alternative 2 of the SEA.

Analysis

National Oceanic and Atmospheric Administration Administrative Order (NAO) 216-6 (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality (CEQ) regulations at 40 C.F.R. 1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

1) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in Fishery Management Plans?

> Issuance of a permit as described in Alternative 2 of the SEA is not reasonably expected to cause substantial damage to ocean and coastal habitats or essential fish habitat (EFH). Conduct of the research authorized by the permit is not likely to result in permanent or large-scale damage to components of ocean and coastal habitat in the action area. Use of nets or pens in the water to capture animals, and ingress or egress of researchers accessing field sites may cause localized

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disturbance of substrate. The effects of such disturbance would be transitory and recoverable.

Conduct of the research authorized by the permit is not likely to affect EFH because it does not involve nor will it result in activities that have been shown to affect EFH including disturbance or destruction of habitat from stationary fishing gear, dredging and filling, agricultural and urban runoff, direct discharge, or the introduction of exotic 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.)?

The proposed action is not expected to affect biodiversity or ecosystem function. The research authorized by the permit is not likely to alter foraging patterns, dietary preferences, or relative distribution or abundance of species groups within the area. The research activities will not affect nutrient flux, primary productivity, or other factors related to ecosystem function in the area.

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

Conduct of the research authorized by the permit is not expected to affect things typically associated with impacts on public health and safety such as traffic and transportation patterns; noise levels; risks of exposure to hazardous materials and wastes; risks of contracting disease; risks of damages from natural disasters; or food safety. The research activities would be conducted by qualified personnel in a safe manner as required by the permit. These activities would not involve hazardous methods, toxic agents or pathogens, or other materials that would have an adverse impact on public health and safety.

4) Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?

Conduct of the research authorized by the permit will directly and indirectly result in adverse effects on a specified number of animals targeted by the research, as well as non-target animals in the immediate vicinity of the research. Given the mitigation measures required by the permit, these adverse effects are likely to result only in transitory and recoverable changes in behavior and physiological parameters of the affected animals, but are not expected to result in measurable effects on populations, stocks, or species. Additional mitigation will avoid takes of endangered Southern Resident killer whales (*Orcinus orca*), and no effects are anticipated for any other threatened or endangered species.

Conduct of the permitted research is not expected to adversely affect critical habitat in the area because it will not result in more than localized disturbance of substrate, the effects of which will be transitory and recoverable.

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

Conduct of the permitted research will result in insignificant effects on the natural and physical environment, but there are no significant social or economic impacts interrelated with these effects. The research does not involve and is not associated with factors typically related to effects on the social and economic environment such as inequitable distributions of environmental burdens, differential access to natural or depletable resources in the action area. The research is conditioned to eliminate the potential for adverse impacts on local subsistence use of marine mammals.

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

Some of the permitted research techniques have been the subject of public controversy for previous permits. That controversy was related to whether certain techniques were humane and whether certain research projects using those techniques were bona fide science. The likely adverse effects of such techniques are limited to a specified number of marine mammals targeted by the research and are predicted to involve transitory stress, pain and injury. There is no scientific controversy regarding whether or how such techniques will adversely affect individual animals.

Public comments were received on the subject amendment application. The Marine Mammal Commission recommended that NMFS issue the permit amendment, provided the current permit conditions remain in effect. The current pinniped permit conditions would remain in effect; minor updates to the general terms and conditions consistent with all MMPA permits would be made.

The Sea Shepherd Conservation Society requested additional justification and information on the continuation of activities and use of the proposed sedative. The applicant provided additional information and justification to NMFS' satisfaction in a response included in the administrative record for this permit. The Sea Shepherd Conservation Society also commented on branding sea lions in Astoria, Oregon. However, those activities are not conducted under the proposed permit and are authorized separately under section 109(h) of the MMPA. Comments were not received from Sea Shepherd regarding the conduct of branding activities authorized by NMML's permit.

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?

> Conduct of the permitted research is not expected to substantially impact unique or ecologically critical areas. There are a number of places within the action area that could be considered unique or ecologically critical, including coastal wetlands, a National Marine Sanctuary, several National Wildlife Refuges, State Parks, EFH, and designated critical habitat. However, the research is not expected to cause more than localized disturbance of substrate, the effects of which would be transitory and recoverable.

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

> The effects of the permitted research on the human environment are not highly uncertain and the research does not involve unique or unknown risks. The permitted research does not involve techniques for which the risks to and effects on the biological and physical environment cannot reasonably be predicted based on monitoring reports from previously permitted research and published literature on the effects of human activities on marine mammals and other wildlife.

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

> The proposed action is not related to other actions with individually insignificant, but cumulatively significant impacts. While the target species are impacted by other human activities, including other scientific research, these activities are not occurring simultaneously on the same individuals of a population/stock. The short-term stresses (separately and cumulatively when added to other stresses marine mammals face in the environment) resulting from the research activities would be expected to be minimal. The amended permit would continue to contain conditions to mitigate and minimize any impacts to the animals from research activities, including requiring the coordination of activities with other researchers in the area.

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?

> Conduct of the permitted research will not affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places because none are present in the action area and the effects of the research are limited to resources within the action area. Conduct of the permitted research will not cause loss or destruction of significant scientific or historical resources as none are present. Gray whales in the action area may be considered a

significant cultural resource, as they are a traditional subsistence animal for the Makah Tribe. However, the permit is conditioned to eliminate the potential for adverse impacts on local subsistence use of marine mammals.

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

Conduct of the permitted research is not reasonably expected to result in the spread or introduction of non-indigenous species. The research involves handling animals in the wild, but not transporting animals among locations. The research may involve movement of vessels; however, the research will occur within state waters of Washington and Oregon, or on land-based pinniped sites, and there are no known non-indigenous species in these areas that are likely to be introduced by the research to an area where they do not currently exist.

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?

No. Issuance of a permit to a specific individual or organization for a given research activity does not in any way guarantee or imply that NMFS will authorize other individuals or organizations to conduct the same research activity. Any future request received would be evaluated upon its own merits relative to the criteria established in the MMPA, ESA, and NMFS' implementing regulations.

13) Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?

The action would not result in any violation of Federal, State, or local laws for environmental protection. The permit would contain language stating that the Holder is required to obtain any other Federal, State and local permits necessary to carry out the action.

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?

The proposed action is not expected to result in any cumulative adverse effects to the species that are the subject of the proposed research or non-target species found in these waters. For targeted species, the proposed action would not be expected to have more than short-term effects to individuals and insignificant effects to populations. The effects on non-target species were also considered and no substantial effects are expected as research would not be conducted on these species and researchers would make no efforts to approach or interact with them. Therefore, no cumulative adverse effects that could have a substantial effect on any species, target or non-target, would be expected.

DETERMINATION

In view of the information presented in this document, and the analyses contained in the SEA prepared for issuance of Permit No. 13430-02, it is hereby determined that permit issuance will not significantly impact the quality of the human environment. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.

Donna S. Wieting

Donna S. Wieting
Director, Office of Protected Resources

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Date