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 Nos. 14682, 10018-01, 13846, 14451, 14585, 14599, 14122, 14296, and 14353

Background

From September 14 to November 12, 2009, the National Marine Fisheries Service (NMFS) received eight complete applications for permits (File Nos. 14682, 13846, 14451, 14585, 14599, 14122, 14296, and 14353) and one complete application for an amendment to Permit No. 10018 from Whit Au, Jim Darling, Joseph Mobley, Jr., Adam Pack, Fred Sharpe, Jan Straley, Briana Witteveen, Ann Zoidis, and Rachel Cartwright, respectively, to research on humpback whales and other cetacean species in the Pacific and Atlantic Oceans. In accordance with the National Environmental Policy Act, NMFS has prepared an Environmental Assessment (EA) analyzing the impacts on the human environment associated with permit issuance (Environmental Assessment for the issuance of Scientific Research Permits for research on humpback whales and other cetaceans; June 2010). In addition, a Biological Opinion was issued under the Endangered Species Act (NMFS 2010) summarizing the results of an interagency consultation. The analyses in the EA, as informed by the Biological Opinion, support the below findings and determination.

Analysis

National Oceanic and Atmospheric Administration Administrative Order 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?

> Although Essential Fish Habitat (EFH) may be present in the action area, the proposed action would only affect cetaceans authorized for research by the permit. The majority of research would only involve routine vessel movements at the water surface and aerial surveys above land and water, the Proposed Action would not be expected to cause damage to other aspects of ocean and coastal habitat such as reefs, seagrass beds, soft-bottom sediment, etc.

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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: The effects of the action on target species, including Endangered Species Act (ESA) listed species, and their habitat, EFH, marine sanctuaries, and other marine mammals and turtles were all considered. The Proposed Action would target cetaceans for research activities expected to result only in short-term minimal disturbance to individual animals. This work is not expected to affect an animal's susceptibility to predation, alter dietary preferences or foraging behavior, or change distribution or abundance of predators or prey. Therefore, the Proposed Action is not expected to have a substantial impact on biodiversity or ecosystem function.

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

Response: The research activities would be conducted by trained personnel in a safe manner. Research would be conducted by or under the close supervision of experienced personnel, as required by the permit. These activities would not involve hazardous methods, toxic agents or pathogens, or other materials that would have a substantial adverse impact on public health and safety. While there is always the potential for the researchers operating under the permit to be injured, this would only result in individual health and safety issues and would not rise to the level of public health or safety issues. Therefore, no negative impacts on public health or safety are anticipated during the proposed activities.

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: As determined in the 2010 biological opinion, the Proposed Action would affect listed cetaceans in the action area during research. The Proposed Action would also affect several non-listed species. Researchers may harass individual animals during vessel- and aerial-based activities. However, the biological opinion concluded that the effects of the proposed action would be short-term in nature to individual animals. The Proposed Action would not likely jeopardize the continued existence of any ESA-listed species and would not likely destroy or adversely modify designated critical habitat. Some research under the permits would take place in Hawaiian monk seal critical habitat; however, the researchers would only operate a vessel at the water surface. None of the research activities would affect the constituent elements of the habitat. The research activities would not affect the Hawaiian monk seal's prey species or the quality of the water. Therefore research is not expected to negatively affect critical habitat. There may be marine mammal or sea turtle species not targeted by research activities in the Action Area during research, but because they would not be approached by researchers and the permits would contain mitigation measures to avoid disturbing non-target species, they would not be affected by the Proposed Action. Further, the permit would contain mitigation measures to minimize the effects of the research and to avoid unnecessary

stress to any protected species by requiring use of specific research protocols.

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

Response: Effects of the research would be limited to the short-term harassment of the target species. Permitting the proposed research could result in a low level of economic benefit to local economies in the action area. However, such impacts would be negligible on a national or regional level and therefore are not considered significant. These impacts are not interrelated with any natural or physical impacts. The Proposed Action would not result in inequitable distributions of environmental burdens or affect access (short- or long-term use) to any natural or depletable resources in the action area.

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

Response: NMFS does not consider the Proposed Action controversial nor has it been considered controversial in the past. The proposed research activities are standard research activities that have been conducted on these species by the scientific community, and by the applicants, for decades. No other portion of the marine environment beyond the target species would be impacted by the proposed action.

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 proposed research would not be expected to result in substantial impacts to any such area. The majority of these habitats are not part of the action area. EFH would not be substantially impacted since all research would occur at the water surface and not affect bottom habitat. Review of acoustic playback activities was requested from EFH Coordinators in the Alaska and Pacific Islands Regions. Adverse effects to EFH from activities conducted under the proposed action are not expected; no further EFH consultation was required.

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

Response: The proposed research is not unique. The proposed activities have been previously authorized as research activities for cetaceans and pinnipeds for decades. There have been no reported serious injuries or mortalities of target species or risks to any other portion of the human environment as a result of these research activities. Therefore, the risks to the human environment are not unique or unknown.

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

Response: The proposed action is not related to other actions with individually insignificant, but cumulatively significant impacts. While these 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. Researchers that are conducting activities in the same general area would be required to coordinate activities to avoid harassing the same individuals. The short-term stresses (separately and cumulatively when added to other stresses cetaceans face in the environment) resulting from the research activities would be expected to be minimal. Behavioral reactions suggest that harassment is brief, lasting minutes, before animals resume normal behaviors. Hence, NMFS expects any effects of research to dissipate before animals could be harassed by other human activities. Significant cumulative impacts are not expected since no serious injury or mortality is expected (resulting in no direct loss of animals from the population), nor is an appreciable reduction in the fecundity of target individuals. Furthermore, the permit would contain conditions to mitigate and minimize any impacts to the animals from research activities, including the coordination of research 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?

Response: The action would not take place in any district, site, highway, structure, or object listed in or eligible for listing in the National Register of Historic Places, thus none would be impacted. See Response #4 for a discussion about critical habitat. Research may occur in National Marine Sanctuaries. Although NMFS does not expect impacts to Sanctuary resources, the National Marine Sanctuary Program was provided an opportunity to review the applicant's request; however, no comments were received. The Proposed Action would not occur in other areas of significant scientific, cultural or historical resources and thus would not cause their loss or destruction. None of these resources are expected to be directly or indirectly impacted.

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

Response: The action would not be removing or introducing any species; therefore, it would not likely result in the introduction or spread of a non-indigenous species. Equipment used in biopsy sampling and tagging would be cleaned and disinfected between uses.

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 decision to issue the permits would not be precedent setting and would

not affect any future decisions. 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?

Response: 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 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?

Response: The 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 negligible effects to cetacean and pinniped 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 EA and Biological Opinion prepared for issuance of Permit Nos. 14682, 10018-01, 13846, 14451, 14585, 14599, 14122, 14296, and 14353, 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.

James H. Lecky
Director, Office of Protected Resources

7/14/10
Date