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. 15415

Background

In May 2010, the National Marine Fisheries Service (NMFS) received an application for a permit (File No. 15415) from Dr. Scott Kraus to conduct research on North Atlantic right whales (*Eubalaena glacialis*) off the U.S. east coast. 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 (EA on the Issuance of a Permit [File No. 15415] for Visual Stimuli Research on North Atlantic Right Whales; March 2011). In addition, a biological opinion was issued under the Endangered Species Act (ESA) (March 2011) summarizing the results of an intra-agency 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 (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?

Response: Although Essential Fish Habitat (EFH) may be present in the action area, the Proposed Action would only affect North Atlantic right whales (*Eubalaena glacialis*) authorized for research by the permit. Because in-water research would only involve routine vessel movements at the water surface and the temporary deployment of a PVC pipe "rope mimic" (see EA for further description) in the path of individual whales at the water surface to test visual capabilities of target animals, 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. Therefore, no EFH consultation was required.

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.)?

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Response: The effects of the action on the target species, and their habitat, EFH, marine sanctuaries, and other marine species were all considered. The Proposed Action would target right whales for approach and observation after visual trials, which is expected to result in no more than short-term minimal disturbance to individual whales. 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 Proposed Action involves close approach of vessels for monitoring, behavioral observation, and photo-identification of target whales. It would not involve hazardous methods, toxic agents or pathogens, or other materials that would have a substantial adverse impact on public health and safety. Research would be conducted by or under the close supervision of experienced personnel, as required by the permits. Therefore, no negative impacts on human health or safety are anticipated during research.

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 Proposed Action would affect individual right whales targeted for visual trials during research. Other species would not be intentionally approach or authorized for research. The Proposed Action would not affect non-target species or critical habitat. The 2011 biological opinion prepared for the Proposed Action concluded that the effects of the Proposed Action would not be severe and would be short-term in nature to individual right whales. There would be no significant population- or species-level impacts. 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. 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 individual right whales. 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 have similar actions been considered controversial in the past. All of the proposed research activities, except the testing of the rope mimic (see Question 8 for more information), are standard research activities that have been conducted on these species by the scientific community for decades. No other portion of the environment beyond right whales would be impacted by the Proposed Action. Substantive comments from the public that would indicate a high degree of controversy were not received on the request.

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 not affect bottom habitat (see Question 1). The research would not result in impacts to National Marine Sanctuaries.

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

Response: Although the visual perception trials are a novel concept in whale research, the effects on the human environment are not uncertain and the proposed action is not expected to result in significant impacts. The proposed take activities have been previously authorized as research activities for right whales for decades. There have been no reported serious injuries or mortalities of cetacean 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. The applicant is a member of the North Atlantic Right Whale Consortium, a highly-coordinated community of researchers who meet annually to share their findings and coordinate research activities at the start of each field season. The short-term stresses (separately and cumulatively when added to other stresses right whales 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 Proposed 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. 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. No sampling would be authorized by the permit. Researchers would not be exchanging ballast water or moving between large water bodies during the course of research.

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 permit 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 Marine Mammal Protection Act (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 target or non-target species. The Proposed Action would not be expected to have more than short-term effects to individuals and negligible effects to target North Atlantic right whale populations. The effects on non-target species were also considered and no substantial effects are expected as research would not be directed at these species. 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 analysis contained in the EA prepared for Issuance of Permit No. 15415, pursuant to the ESA and MMPA, and the ESA section 7 biological opinion, it is hereby determined that the issuance of Permit No. 15415 will not significantly impact the quality of the human environment as described above and in the EA. 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 Environment Impact Statement for this action is not necessary.

James H. Lecky
Director, Office of Protected Resources

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Date