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 a Scientific Research Permit (File No. 16919) to Eye of the Whale**

National Marine Fisheries Service

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?

Response: The permit would authorize the close approach of humpback whales by research vessels for photo-identification and observation and would not damage any ocean, coastal habitats, or essential fish habitat (EFH). Although EFH has been identified in the action area, the proposed action is not reasonably expected to cause substantial damage to any EFH because activities would do no more than operate a vessel and occasionally suspend a hydrophone into the upper water column. No substrate, bottom habitat or water quality would be substantially impacted.

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 humpback whales, including their habitat, EFH, marine sanctuaries, and other marine mammals were all considered finding that no substantial impacts would occur. The research would not affect predator-prey relationships, other species, or any habitat. No substantial impact on biodiversity and ecosystem function within the affected areas would be expected.

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 during vessel surveys for photo-identification and behavioral observation of humpback whales and does not involve hazardous methods, toxic agents or pathogens, or other materials that would have a substantial adverse

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impact on public health and safety. Therefore, no negative impacts on human health or safety are anticipated.

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 result in the temporary harassment of individual humpback whales. Critical habitat, other marine mammals, and other non-target species are not expected to be adversely affected by the proposed action. The proposed research is comprised of vessel approaches to large whales for photo-identification and behavioral observation. Because the research activities are focused on the target whales, it is not expected that the marine environment, including any designated critical habitat, would be adversely affected, directly or indirectly. Non-target Steller sea lions that are found in the same area as the targeted whales could approach the research vessel, but researchers would make no attempt to interact with these animals; thus, the proposed activities are not expected to adversely affect these animals. Lastly, a Biological Opinion was prepared for the proposed action, and its analysis concluded that the proposed action is not likely to jeopardize the continued existence of ESA-listed species. The Biological Opinion also concluded that the proposed action is not likely to destroy or adversely modify designated critical habitat.

Additionally, the proposed permit would contain mitigation measures to minimize the effects of the research and to avoid unnecessary stress to the target species, protected non-target marine mammal species, as well as designated critical habitat within the study area.

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

Response: There would be no significant social or economic impacts interrelated with significant natural or physical environmental effects.

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

Response: A *Federal Register* notice (77 FR 27717) was published to provide the public the opportunity to review and comment on the action. No substantive public comments were received; therefore NMFS does not expect the issuance of the proposed permit to have highly controversial effects on the quality of the human environment. The same type of research has been conducted previously with no public controversy.

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's surface and not affect bottom habitat.

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. Vessel surveys, considered a form of Level B harassment, of large whales have been conducted for decades and may cause temporary disturbance of individual animals. 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. The short-term stresses (separately and cumulatively when added to other stresses the marine mammals face in the environment) resulting from the research activities would be expected to be minimal. The permit would contain conditions to mitigate adverse impacts to the animals from these activities.

Overall, the proposed action would be expected to have no more than short-term effects on marine mammal species. The incremental impact of the action when added to other past, present, and reasonably foreseeable future actions discussed in the environmental assessment would be minimal and not significant.

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, directly or indirectly. The proposed action would also not occur in an area of significant scientific, cultural or historical resources and thus would not cause their loss or destruction. Furthermore, the permit would contain language stating that the applicant must obtain any other Federal, State, or local permits and/or authorizations that are required.

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 nor introducing any species; therefore, it would not result in the introduction or spread of a non-indigenous species. Researchers would be working from small vessels that do not take on ballast water nor would they be moving between large water bodies.

12) Is the proposed action likely to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration?

Response: The decision to issue this permit would not set a precedent or 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: Issuance of the permit would not result in any violation of Federal state or local laws for environmental protection. The permit contains language stating that the applicant 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 humpback whales or non-target species in the North Pacific. For targeted humpbacks, the proposed action would not be expected to have more than short-term effects to individual animals. The effects on non-target species were also considered and no substantial effects are expected as research would not be directed on these species. Therefore, no cumulative adverse effects that could have a substantial effect on any species, target or non-target, would be expected.

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**DETERMINATION**

In view of the information presented in this document and the analysis contained in the supporting Environmental Assessment (EA) prepared for Issuance of Scientific Research Permit No. 16919, pursuant to the ESA and MMPA, and the ESA Section 7 Biological Opinion, it is hereby determined that the issuance of Permit No. 16919 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.

Helen M. Golde
Acting Director, Office of Protected Resources

10/9/12
Date