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

APR 15 2013

Finding of No Significant Impact
Issuance of Scientific Research Permit No. 16388

Background

On July 22, 2011, the National Marine Fisheries Service (NMFS) received an application for a permit (File No. 16388) from Mark Baumgartner, Ph.D. to conduct research on humpback, fin, blue, sei, bowhead, North Atlantic right, North Pacific right, and Eastern North Pacific gray whales from waters in the northwest Atlantic from Maine to Florida; Canadian waters of the Gulf of Maine, Labrador Sea, Davis Strait, Baffin Bay, and Hudson Bay; waters off the U.S. North Pacific (California to Washington); and the Arctic Ocean including Bering, Chukchi and Beaufort Seas. 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 on Effects of Issuing Scientific Research Permit No. 16388, for Protected Marine Mammals; April 2013). In addition, a Biological Opinion was issued under the Endangered Species Act (ESA) (April 2013) summarizing the results of an intra-agency consultation. The analyses in the EA, as informed by the Biological Opinion, support the findings and determination below.

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?

> Response: Issuance of the permit is not expected to affect ocean and coastal habitats or any designated Essential Fish Habitat (EFH). Although EFH may be present in the action area, the Proposed Action would only affect marine mammals authorized for research by the permit. The majority of research would only involve routine vessel movements at the water surface and all activities would be directed at target marine mammal species. None of the activities in the Proposed Action are directed at or likely to have any impact on habitat. The Proposed Action does not involve alteration of substrate, movement of water or air masses, or other interactions with physical features of ocean and coastal habitat. Therefore, no EFH consultation was required.

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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 ESA-listed species and their habitat, EFH, marine sanctuaries, and non-target species were all considered in the EA. The Proposed Action would target marine mammals for research activities that are expected to only result in short-term minimal disturbance to individual whales. This work is not expected to interfere with benthic productivity, 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 issuance of a permit to take animals via vessel surveys and close approach of vessels for passive acoustic recording, dermal and suction cup tagging, behavioral observations, photo-id, and tracking of marine mammals. There would not be a risk of exposure to hazardous materials or wastes, risk of contracting disease, risk of damages from natural disasters, food safety, or other aspects of 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. Research would be conducted by or under the close supervision of experienced personnel, as required by the permit. 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: As determined in the 2013 Biological Opinion, the Proposed Action would affect ESA-listed species in the action area during research. Researchers may harass individual animals during vessel 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. There is designated critical habitat for leatherback sea turtles, Steller sea lions, North Pacific and North Atlantic right whales, southern resident killer whales, northern sea otters, marbled murrelets, and proposed critical habitat for Cook Inlet beluga whales in the action area; however, none of the research activities would affect the constituent elements of the habitats. The research activities would not affect the

North Atlantic right whales' prey species or the quality of the water. No injuries to listed species are expected. No other non-target species would be affected by the proposed research. 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 target animals. Issuance of this permit and conduct of the authorized research would not substantially impact short- or long-term use of the environment or result in use of natural or depletable resources, such as might be expected from construction or resource extraction activities. Issuance of this permit and conduct of the research would not result in inequitable distributions of environmental burdens or access to environmental goods. 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.

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 highly 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 applicant, for decades. A *Federal Register* notice (77 FR 31585) was published to allow other agencies and the public the opportunity to review and comment on the action. Comments were received only on the methods and objectives of the research and not on the environmental effects of the action on the human environment. 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: As mentioned in #4, there is designated critical habitat for multiple species in the action area; however, as determined by the 2013 Biological Opinion, the proposed action would not likely destroy or adversely modify critical habitat. The proposed research does not involve alteration of substrate, movement of water or air masses, or other interactions with physical features of ocean and coastal habitat and would not be expected to result in substantial impacts to any such area. Research activities would occur in the Studds-Stellwagen Bank, Gray's Reef, Monitor, Florida Keys, Olympic Coast, Cordell

Bank, Gulf of the Farallones, Channel Islands, and Monterey Bay National Marine Sanctuaries as well as the San Juan Islands, Protection Island, and Alaska Maritime Wildlife Refuge but would be coordinated with Sanctuary and Refuge staff and would not result in substantial impacts to the Sanctuaries or Refuges. The proposed action represents non-consumptive use of marine mammals and does not preclude their availability for other scientific, cultural, or historic uses.

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

Response: The potential risks of permit issuance and conduct of the permitted research are not unique or unknown, nor is there significant uncertainty about impacts. The proposed activities have been previously authorized as research activities for cetaceans for decades. No serious injuries or mortalities of target species or risks to any other portion of the human environment have been reported 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. The incremental impact of the action when added to other past, present, and reasonably foreseeable future actions (e.g., whaling, research, habitat degradation, ship strikes, entanglement) as discussed above and in the EA 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 proposed action is an undertaking that does not have the potential to cause effects on historic properties. 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. 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.

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

Response: Issuance of this permit is not expected to result in introduction or spread of non-indigenous species. The action would not be removing or introducing any species. The research is not associated with any known mechanisms of transporting and introducing non-indigenous species. For example, researchers would not be moving between bodies of water.

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: Issuance of this permit would not set a precedent for future actions or represent a decision in principle. NMFS has issued numerous scientific research permits pursuant to section 104 of the MMPA and section 10 of the ESA. Nothing about NMFS' decision making process pursuant to the statutory and regulatory criteria is unique to these permits, nor are these the first permits NMFS has issued for this type of research activity. Issuance of this permit does not involve any irreversible or irretrievable commitments of resources.

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 this permit is not expected to violate any Federal, State, or local laws or requirements related to environmental protection. NMFS has sole jurisdiction for issuance of such permit for marine mammals and has determined the proposed research to be consistent with all applicable provisions of the MMPA and ESA. The permit contains language stating that the permit does not relieve the Permit Holder of the responsibility to obtain any other permits, or comply with any other Federal, State, local, or international laws or regulations.

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 proposed action is not expected to result in cumulative adverse effects on the target species or non-target species. Effects on the target species are expected to be restricted to a specified number of individuals, and not expected to rise to a level that would impact a stock or species. While non-target species may be encountered incidentally, they would not be intentionally approached, and are not expected to be affected by the proposed action.

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 No. 16388, 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.

Helen M. Golde

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Date

Acting Director, Office of Protected Resources