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

JAN 18 2013

Finding of No Significant Impact
Issuance of Scientific Research Permit No. 13927-01

Background

In October 2011 the National Marine Fisheries Service (NMFS) issued a permit to Dr. James Hain to conduct research on North Atlantic right whales off the southeastern coast of the United States. In March 2012, NMFS received a request from Dr. Hain to amend his permit to increase the number of right whales that may be harassed annually during aerial surveys from 50 to 100 and during vessel surveys from 10 to 60. 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. In addition, a Biological Opinion was prepared under the Endangered Species Act summarizing the results of an intra-agency consultation. The analyses in the SEA, 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 (EFH) as defined under the Magnuson-Stevens Act and identified in Fishery Management Plans?

> The amended permit would authorize aerial and vessel approaches, observation, and passive acoustic recording of several cetacean species. These activities are not expected to cause substantial damage to the ocean, coastal habitats, or EFH. Nothing would be removed from or intentionally left in the marine environment during research. All activities would occur at or near the surface of the water and would not be expected to substantially impact any biological, chemical, or physical properties of such habitat.

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 effects of the action on the target endangered species, and their habitat, EFH, and non-target species were all considered in the SEA and the original EA. The

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proposed action is not expected to affect predator-prey relationships, biodiversity, or other non-target species. No wildlife would be intentionally removed from the wild or their survival or reproductive success affected. Therefore, no substantial impacts would be expected to occur as a result of the proposed action.

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

No negative impacts on human health or safety are anticipated during the proposed research. The proposed action involves close approaches of aerial platforms and vessels for behavioral observations, photo-identification, and passive acoustic recordings of large 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 permit.

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?

As determined in the attached Biological Opinion and evaluated in the SEA, the proposed action would affect individual North Atlantic right, humpback whales, and some small cetaceans during the research. Researchers would closely approach these ESA-listed species by vessels, by various aerial platforms, photo-identify, observe, acoustically record, and incidentally harass individual whales. However, the Biological Opinion concluded that the effects of the proposed action would not be severe and would be short-term in nature to individual animals. The Biological Opinion determined that 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 research would take place in right whale critical habitat; however, the researchers would only operate a vessel at the water surface and gear would only enter the upper portion of the water column temporarily during tagging and sampling activities. None of the research activities would affect the primary constituent elements of designated critical habitat.

The research activities would not affect the whale's prey species or the quality of the water. No other non-target species would be targeted or intentionally approached during research. Although other ESA-listed species, such as sea turtles and shortnose sturgeon may be in the action area, the Biological Opinion determined that those species are not likely to be adversely affected by the proposed research.

Additionally, the permit already contains mitigation measures to minimize the effects of the research and to avoid unnecessary stress to any listed species by

requiring use of specific research protocols. These would remain in effect for the permit amendment.

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

NMFS does not expect any significant social or economic impacts as a result of or interrelated with the natural effects of the proposed action. Effects of the research would be limited to the short-term harassment of the target large whale 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.

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

The effects to the quality of the human environment are not likely to be highly controversial. Similar research has been conducted by the applicant and other researchers for decades without 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?

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 adversely affected. The proposed research would occur at or near the water surface and would not substantially affect bottom habitat or any biological, physical or chemical property of such habitat. While research could occur in designated right whale critical habitat in the North Atlantic the proposed action would not be expected to substantially impact either of these areas as stated in response to question #4.

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

The proposed research is not unique. The applicant has conducted similar research under previous permits on the same species and in the same study area. Throughout the world, scientists have used these same techniques to study cetaceans for decades. The risks are known and would involve the temporary, minimal harassment of individual large whales and dolphins. 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 the proposed activities. Based on the description of the activities by the applicant and mitigation measures of the permit, no mortalities or serious injuries would be expected. 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?

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 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. Behavioral reactions suggest that harassment is brief, lasting minutes, before animals resume normal behaviors. Hence, NMFS expects any effects of harassment 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 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?

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. Issuance of the permit would not cause the loss or destruction of any significant scientific, cultural or historical resources.

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

No. The action is not expected to result in the introduction or spread of non-indigenous species. The action would not remove or introduce any new species. Researchers would not work from platforms that take on ballast water or move between large water bodies.

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. The decision to issue the amended 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 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?

No. The action would not result in any violation of Federal, State, or local laws for environmental protection. The permit already contains language stating that the applicant is required to obtain any state and local permits necessary to carry out the action. These requirements would remain in effect for the amended permit.

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?

No. 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. For targeted species, the proposed action is expected to have no more than short-term effects to individuals and negligible effects at the population and species level. All of the proposed research (behavioral observations, photo-identification, passive acoustic recordings, aerial and vessel surveys) is considered Level B harassment under the MMPA, and does not have the potential to injure an individual. The proposed action would not result in the loss of individuals from these populations or appreciably reduce the target animals' fecundity. NMFS also does not expect that issuance of the amended permit would result in cumulative adverse effects to non-target species. The researchers would not attempt to approach or interact with non-target 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 analyses contained in the SEA and Biological Opinion prepared for issuance of Permit No. 13927-01, 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
Acting, Director, Office of Protected Resources

1/18/13
Date