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

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Finding of No Significant Impact
Issuance of Scientific Research Permit Nos. 13846-02, 14451-01, and 14353-01

Background

The National Marine Fisheries Service (NMFS) 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) for eight permits (File Nos. 14682, 13846, 14451, 14585, 14599, 14122, 14296, and 14353) and one permit amendment (Permit No. 10018). A Finding of No Significant Impact associated with that EA was signed on July 14, 2010. In addition, a Biological Opinion was issued under the Endangered Species Act (ESA) in 2010 summarizing the results of an interagency consultation.

Since that time, NMFS listed Insular Hawaiian false killer whales as endangered under the ESA in November 2012. Because of this listing, NMFS is proposing to amend three of the permits analyzed in the 2010 EA (File Nos. 13846, 14451, and 14353) to include authorization under the ESA to take Insular Hawaiian false killer whales, in addition to the existing authorization under the Marine Mammal Protection Act. NMFS is also proposing to expand the geographic area where research may be conducted under Permit No. 14353 to throughout the Hawaiian Islands, including the Northwestern Hawaiian Islands (NWHI) chain. While not previously authorized by Permit No. 14353, the effects of conducting research on humpback whales and other cetaceans in this area were analyzed for other permits in the 2010 EA.

The activities proposed are consistent with the Proposed Action Alternative in the Environmental Assessment for the Issuance of Scientific Research Permits for Research on Humpback Whales and Other Cetaceans (NMFS 2010). In addition, a Biological Opinion was issued under the Endangered Species Act (NMFS 2013) summarizing the results of an interagency consultation on the proposed amendments to these three permits. The analyses in the 2010 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:

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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 action area has not changed from what was analyzed in the 2010 EA. 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.

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 other marine mammals and turtles were all considered in the 2010 EA and have not changed. 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: As described in the 2010 EA and FONSI, 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: NMFS listed Insular Hawaiian false killer whales as endangered under the ESA in November 2012; however, the effects of authorizing takes of this species has not changed from those described in the 2010 EA and FONSI. The number of takes of false killer whales and the amount of research effort planned for this species has not changed since that FONSI was signed. As determined in both the 2013 and 2010 Biological

Opinions, 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 permits 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: As described in the 2010 EA and FONSI, the effects of 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: As described in the 2010 EA and FONSI, 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. In addition, NMFS published a notice in the *Federal Register* announcing receipt of the applications to amend the three permits, making them available for public review. No public comments were received.

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 described in the 2010 EA and FONSI, 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 for issuance of the original permits. 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: As described in the 2010 EA and FONSI, 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: As described in the 2010 EA and FONSI, the proposed action is not related to other actions with individually insignificant, but cumulatively significant impacts. This has not changed. 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 permits would continue to 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: Overall, the action area has not changed. Although research proposed under Permit No. 14353-01 would expand to include areas of the northwest Hawaiian islands, the effects of the proposed research in this expanded area were previously described and analyzed in the 2010 EA and FONSI for other permits authorized in that action. Issuance of the amendments would not change the manner in which the permitted taking of marine mammals may affect the environment, which was reviewed and documented in the EA for issuance of the original permits. As described in the 2010 EA and FONSI, 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 applicants' requests during processing of the original permits; 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: As described in the 2010 EA and FONSI, 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.

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: As described in the 2010 EA and FONSI, 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: As described in the 2010 EA and FONSI, the action would not result in any violation of Federal, State, or local laws for environmental protection. This has not changed. The permits would continue to 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: As described in the 2010 EA and FONSI, 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 false killer whales, the Proposed Action would not be expected to have more than short-term effects to individuals and negligible effects to 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 2010 EA and the 2010 and 2013 Biological Opinions prepared for issuance of the permits, 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.

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PERRY GAYAUDO

for Helen M. Golde
Acting Director, Office of Protected Resources

Date