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. 16479-02

Background

In December 2013, the National Marine Fisheries Service (NMFS) received an application for an amendment to Permit No. 16479-01 from the Pacific Whale Foundation (PWF) [Responsible Party: Gregory Kaufman], to conduct research on false killer whales in waters around Maui, Hawaii. PWF wishes to use currently authorized takes for directed research (vessel approach, photography and observation of whales) rather than incidental harassment during vessel surveys. In accordance with the National Environmental Policy Act, NMFS has determined that the Environmental Assessment (EA) prepared for issuance of Permit No. 16479 (*EA for Effects of Issuing Marine Mammal Scientific Research Permit No. 16479*; Finding of No Significance signed September 17, 2012) appropriately analyzed the impacts on the human environment associated with the permit amendment request. Therefore, a new FONSI is being prepared for this request. In addition, a Biological Opinion (NMFS 2012) was issued under the Endangered Species Act 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 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 cetaceans authorized to be taken during research conducted under the permit. No impacts on habitat are likely to result from the taking of marine mammals. The research would only involve routine vessel movements at the water surface and 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

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and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

Response: The effects of the Proposed Action on the target species, including ESA-listed species and their habitat, EFH, and other marine mammals were all considered. The permit amendment would authorize take of humpback whales and Hawaiian insular false killer whales during photo-identification and observation, which is expected to result in 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 is issuance of a permit amendment to exempt take of cetaceans by harassment during behavioral observation and photo-identification. 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.

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 the target ESA-listed whales during vessel surveys. The permit would continue to contain mitigation measures to minimize the effects of the harassment and to avoid unnecessary stress to protected species by requiring use of specific protocols. The 2012 biological opinion prepared for the Proposed Action concluded that the effects of the Proposed Action on individual animals would be short-term in nature, and would not be likely to jeopardize the continued existence of endangered species or to cause the destruction or adverse modification of designated critical habitat. The opinion included analysis of the Hawaiian insular stock of false killer whales which were proposed for listing as endangered; the stock was officially listed as endangered in November 2012. However, the analysis of the stock in the opinion has not changed as a result of its listing. Non-target species would not be affected by issuance of the permit.

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

Response: There are no significant social or economic impacts interrelated with potential natural or physical impacts of the action. The taking of marine mammals under the permit would not result in significant effects on the natural and physical environment, and there are no significant social or economic impacts interrelated with effects of taking marine mammals. The action does not involve and is not associated with factors typically related to effects on the social and economic environment such

as inequitable distributions of environmental burdens, or differential access to 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: Issuance of the permit is not expected to be controversial based on potential environmental impacts. The application for the proposed amendment was made available for public review and comment for 30 days (79 FR 1833) and provided to the Marine Mammal Commission (MMC) for review and comment. No public comments were received. The MMC recommended issuance of the permit amendment.

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: Issuance of the permit is not expected to result in substantial impacts to any such area. The majority of these are not part of the action area. Though research activities would occur in the Hawaiian Island Humpback Whale National Marine Sanctuary, the taking of marine mammals by harassment will not impact the area because the action involves only routine vessel movements at the water surface; no resources would be impacted.

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

Response: The proposed research does not involve unique or unknown risks to the human environment. Similar research methods have been the subject of previous permits for cetacean research; some studies have occurred for decades. There have been no reported serious injuries or mortalities of cetaceans or risks to any other portion of the human environment as a result of these research methods. It is well documented that the research will result in take by harassment; 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 short-term stresses (separately and cumulatively when added to other stresses cetaceans face in the environment) resulting from the taking 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 the action to

dissipate before animals could be harassed by other human activities. Significant cumulative impacts are not expected because 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 amended permit would continue to contain conditions to mitigate and minimize any impacts to the animals from the taking, 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. NMFS has determined that the proposed action has no potential to cause effects to scientific, cultural or historic resources.

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

Response: The action does not involve removing or introducing any species and 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: 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 exempt take for other individuals or organizations to conduct the same research activity. Any future request received would be evaluated on 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: The action would not result in any violation of federal, state, or local laws for environmental protection. No federal, state, or local permits or consultations are necessary to implement the action, with the exception of the consultation under section 7 of the ESA, which has been completed.

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. For targeted species, 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 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.

REFERENCE

NMFS. 2012. Biological and Conference Opinion on the proposal to issue Permit Number 16479 to Gregory Kaufman to authorize research on humpback whales in Maui County waters, Hawaii, pursuant to Section 10(a)(1)(A) of the Endangered Species Act of 1973. Silver Spring, MD.

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. 16479, it is hereby determined that issuance of Permit No. 16479-02 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.

Perry Gayaldo

for Donna S. Wieting
Director, Office of Protected Resources

JUL 2 2014
Date