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. 14097-04 to National Marine Fisheries Service Southwest Fisheries Science Center

Analysis

The Proposed Action is to issue Amendment No. 4 to Permit No. 14097-03 held by the Southwest Fisheries Science Center as described in Alternative 2 of the accompanying supplemental environmental assessment (SEA). Amendment No. 4 would authorize the use of an unmanned aerial system (UAS) to photograph cetaceans and collect breath samples from gray whales (*Eschrichtius robustus*); suction cup tagging of gray whales; and attaching dart/barb tags to 15 bottlenose (*Tursiops truncatus*) and 15 Risso's dolphins (*Grampus griseus*) per year. National Oceanic and Atmospheric Administration Administrative Order (NAO) 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 harassed during research conducted under the permit amendment. Because 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. Therefore, no EFH consultation was required.

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 Endangered Species Act (ESA) listed species, their habitat, EFH, marine sanctuaries, and other marine mammals were considered. The Proposed Action would target cetaceans for harassment during research activities and is 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

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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 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. Therefore, no negative impacts on human 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: The Proposed Action focuses primarily on gray whales and bottlenose and Risso's dolphins. Issuance of Permit No. 14097-04 does not change any takes of species listed under the ESA already authorized and considered in the 2010 ESA biological opinion (BO) prepared for the issuance of Permit No. 14097. The 2010 BO concluded that the research will not jeopardize listed species or adversely modify or destroy designated critical habitat; that conclusion remains unchanged by this action. The amendment would add harassment during the use of an unmanned aerial system to photograph cetaceans and collect breath samples from gray whales; suction cup tagging of gray whales; and attaching dart/barb tags to 15 bottlenose and 15 Risso's dolphins per year. Except for the requested take of bottlenose and Risso's dolphins, the number of cetaceans that would be taken annually would not change from what is currently authorized. Cetacean research will continue to be conducted through vessel surveys, aerial surveys, photogrammetry, photo-identification, biological sampling, radio tagging, and satellite tagging. No non-target species would be approached during 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 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: NMFS does not consider the Proposed Action controversial nor has it been considered controversial in the past. The application to amend the permit and a draft of this SEA were made available for public review and comment for 30 days (79 FR 18527; April 2, 2014). No public comments were received. Further, the Marine Mammal Commission recommended approval of the action provided that existing permit conditions remain in effect. 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: 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. The applicant may work in National Marine Sanctuary (NMS) waters but the activities are not expected to substantially impact these areas. Researchers would obtain Sanctuary permits, where required, before commencing work in an NMS.

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. The use of UASs in cetacean research is a newer, non-invasive methodology; however, as discussed in the SEA, their use is not expected to result in more than short-lived Level B harassment of the target animals. The proposed activities have been previously authorized as research activities for pinnipeds, cetaceans, and/or sea turtles. 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, including the use of UASs. 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. This is largely due to the broad action area and the fact that much of the applicant's activities would occur offshore or in remote areas. The short-term stresses (separately and cumulatively when added to other stresses 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 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 permit would contain conditions to mitigate and minimize any impacts to the animals from research activities, including the coordination of 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 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 applicant's request; however, no comments were received that changed the scope of the SEA. 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: 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: The decision to issue Amendment No. 4 to the permit would not be precedent setting and would not affect any future decisions for permit requests whether or not the action has significant effects.. 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: The action would not result in any violation of Federal, State, or local laws for environmental protection. The permit would 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: The Proposed 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 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 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 analysis contained in the SEA prepared for Issuance of Permit No. 14097-04, pursuant to the ESA and MMPA, it is hereby determined that the issuance of Permit No. 14097-04 will not significantly impact the quality of the human environment as described above and in the SEA. 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.

Donna S. Wieting
Director, Office of Protected Resources

JUL - 7 2014
Date