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. 15274

Background

In August 2010, the National Marine Fisheries Service (NMFS) received an application for a permit (File No. 15274) from Dan R. Salden, Ph.D. to conduct research on humpback whales and other cetaceans in Hawaii and Alaska. 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 Marine Mammal Scientific Research Permit No. 15274; November 2011). In addition, a Biological Opinion was issued under the Endangered Species Act (November 2011) 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 this permit is not expected to affect ocean and coastal habitats or any designated EFH. The permitted research would involve vessel surveys for the observation of marine mammals. Research activities would be limited to the operation of the vessel at the surface of the water, and all activities would be directed at target marine mammal species. Therefore, the activities are not expected to have any significant adverse impacts on the physical environment. 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 ESA-listed species and their habitat, EFH, marine sanctuaries, and non-target species were all

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considered in the EA. The Proposed Action would target large whales for 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 involves vessel surveys and close approach of vessels for behavioral observation, and photo-identification of marine mammals. 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. 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: There is designated critical habitat for Cook Inlet Beluga whales in the action area but the research will not affect this habitat. As determined in the 2011 biological opinion, the Proposed Action would affect endangered humpback whales and the proposed to be ESA-listed Hawaiian Insular false killer whales, during vessel surveys. However, the biological opinion concluded that the effects of the proposed action on individuals will not be severe and would be short-term in nature. 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 Proposed Action would also affect bottlenose dolphins, pantropical spotted dolphins, spinner dolphins, false killer whales, killer whales, and short-finned pilot whales, which would also be harassed during vessel surveys. Although endangered Hawaiian monk seals, threatened and endangered sea turtles, and other non-listed marine mammals are known to occur in the action area, these species are not the target of the research, and the appropriate distance would be kept from these animals to prevent any disturbance. No other non-target species would be affected by the proposed research. The permit will contain conditions to minimize the potential effects and stress to target species.

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 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 applicant, for decades. The application and draft EA were made available for public comment (76 FR 5338) and no substantive comments were received. 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: There is designated critical habitat for Cook Inlet Beluga whales in the action area; however, as determined by the 2011 biological opinion, the proposed action would not likely destroy or adversely modify designated 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. The majority of these habitats are not part of the action area. Research activities would occur in the Hawaiian Islands Humpback Whale National Marine Sanctuary but would be coordinated with Sanctuary staff and would not result in substantial impacts to the Sanctuary. There are no districts, sites, highways or structures listed in or eligible for listing in the National Register of Historic Places in the action area. The proposed action represents non-consumptive use of marine mammals and does not preclude their availability for other scientific, cultural, or historic uses, including subsistence harvest by Alaskan Natives.

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. Monitoring reports from previous permits of a similar nature, the 2011 biological opinion, and published scientific information on impacts of close

approach of cetaceans, indicate the proposed activities are not likely to result in significant adverse impacts to the species. There is considerable scientific information available on the likely impacts of such activities.

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 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 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 research is not associated with any known mechanisms of transporting and introducing non-indigenous species. For example, researchers would be working from small vessels that do not take on ballast water, and would not be moving between large 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 Endangered Species Act. 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 permits for cetaceans and has determined the proposed research to be consistent with all applicable provisions of the MMPA and ESA. The permits currently contain language stating that these permits do 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. 15274, 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.

James H. Lecky
Director, Office of Protected Resources

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Date