

**Finding of No Significant Impact
for the Issuance of an Amendment to Scientific Research Permit No. 774-1714-06
[National Marine Fisheries Service (NMFS) Southwest Fisheries Science Center
(SWFSC)] for Cetacean Studies**

National Marine Fisheries Service

National Oceanic and Atmospheric Administration Administrative Order 216-6 (May 20, 1999) contains criteria for determining the significance of the impacts of the proposed action (Alternative 1, issuance of the proposed amendment). 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. This FONSI is for the proposed action of issuing an amendment to Permit No. 774-1714-06 authorizing harassment of several cetacean species in the Pacific and Southern Oceans, as described in the proposed action of the supporting Supplemental Environmental Assessment (SEA). The proposed action involves close approach during vessel and aerial surveys, biopsy sampling, tagging, and incidental harassment of the target species. 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: The permit amendment would authorize the observation, sampling and tagging of cetaceans during aerial and vessel surveys. These activities are not expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH). Nothing else 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.)?

Response: The effects of the action on target species, including Endangered Species Act (ESA) listed species, and their habitat, EFH, marine sanctuaries, and other marine mammals were all considered in the SEA. Researchers do not intend to remove any animals from the wild or disturb any bottom habitat. Research would largely involve

typical vessel movements at the surface of the water. The research would not affect predator-prey relationships, other species, or any habitat. 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?

Response: The proposed action involves close approach during aerial surveys and vessel surveys for biopsy sampling, tagging, tracking, behavioral observation, and photo-identification of cetaceans. 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 the proposed 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: As determined in the attached biological opinion and evaluated in the SEA, the proposed action would affect individual humpback and sperm whales in the Southern Ocean during research cruises. Researchers would closely approach animals during aerial and vessel surveys for photo-identification, biopsy sampling, tagging, and incidental harassment. 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 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 SWFSC's permit already authorizes takes for the harassment of other cetacean species, including ESA-listed species.

Additionally, the SWFSC's permit already contains mitigation measures which would remain in effect to minimize the effects of the research and to avoid unnecessary stress to any listed 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 the short-term harassment of the cetacean species authorized by the permit. Permitting the proposed research could result in a low level of economic benefit to industries that supply research gear and equipment. However, such impacts would likely be negligible on a national level. Because the proposed activities would occur as part of currently authorized research cruises, NMFS does not expect there to be any significant social or economic impacts of the proposed action interrelated with significant natural or physical environmental effects.

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

Response: To allow other agencies and the public the opportunity to review and comment on the actions, a *Federal Register* notice was published for the requested activities. NMFS received one public comment in which the commenter questioned the validity of the proposed research and all marine researchers as well as NMFS' review of applications and stated that permitted research does not have any value. The commenter did not contact the Permits Division for additional information, speak to any specifics about the application to support his/her claims or request a copy of the application. The proposed research activities would be conducted by trained personnel with mitigation measures that would minimize the effects of research activities. No lethal takes would be authorized or would be expected as a result of the research activities. In regard to claims about the amount of research being conducted, each application is reviewed by NMFS when received to ensure that it meets the issuance criteria set forth in the implementing regulations of the MMPA and ESA and that proposed research is *bona fide*. The attached Supplemental Environmental Assessment analyzed the level of take proposed by the researchers as well as the cumulative level of take on the species by all researchers. For takes of listed species, a Section 7 consultation was conducted which found that the proposed research would not jeopardize any ESA species or critical habitat. Further, NMFS believes the research would provide valuable information on these large whale populations that will aid conservation and management of these species and aid recovery. The proposed research would serve to better understand the relationships between distribution, movement, and behavioral patterns of whales and their prey.

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 since the SWFSC's research is largely pelagic and offshore. EFH would not be substantially impacted. 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. Further, the proposed research would occur during cruises that are already occurring under the SWFSC's permit, which when issued was determined to not result in substantial impacts. Hence, NMFS does not expect these areas to be substantially impacted as a result of the proposed amendment to the permit.

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 proposed activities have been conducted on cetaceans for decades. The risks are known and would involve the temporary, minimal harassment of individual dolphins and whales. Biopsy sampling has been cited in the literature as leading to the death of one dolphin in poor health in the

Mediterranean. Other than this case, 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?

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 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 intended or 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?

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. 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 proposed amendment would only increase takes of cetaceans during currently authorized research cruises. It was previously determined that these cruises would not be expected to result in the introduction or spread of non-indigenous species for the issuance of the SWFSC's permit in 2004. No new trips or cruises would be done as a result of the amendment. Hence, the proposed action would not intentionally remove or introduce any species; and is not expected to result in the introduction or spread of any 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 permit amendment would not be precedent setting and would not affect any future decisions. Issuance of a permit request 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 currently contains language stating that the applicant is required to obtain any state and local permits necessary to carry out the action which would remain in effect upon issuance of the proposed amendment.

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: Although NMFS acknowledges that marine mammals are exposed to other human activities, the proposed amendment is not expected to result in any cumulative adverse effects to these species that could have substantial effects. Although the amendment would increase the number of takes for some cetacean stocks, research would not be expected to have more than short-term effects to individuals and negligible effects to populations or species. This is because the proposed action would not result in the loss of individuals from these populations or appreciable reduce the target animals' fecundity. Only two of the target species are endangered; the SWFSC has not previously studied and thereby harassed these two endangered large whale species as these would be new stocks added to the permit. Researchers are currently authorized takes of any non-target species that could be incidentally harassed during research, but would not attempt to approach or interact with other non-target species. Hence, NMFS does not expect that issuance of the permit amendment would result in cumulative adverse effects to non-target species. Therefore, no cumulative adverse effects that could have a substantial effect on any target or non-target species, would be expected.

DETERMINATION

In view of the information presented in this document and the analysis contained in the Supplemental Environmental Assessment (SEA) prepared for Issuance of Permit No. 774-1714-07, pursuant to the ESA and MMPA, and the ESA section 7 biological opinion, it is hereby determined that the issuance of an amendment to Permit No. 774-

1714-06 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.

James H. Lecky
Director, Office of Protected Resources

Date