

FINDING OF NO SIGNIFICANT IMPACT
FOR THE ISSUANCE OF REGULATIONS AND INCIDENTAL TAKE AUTHORIZATIONS TO THE
NATIONAL MARINE FISHERIES SERVICE'S ALASKA FISHERIES SCIENCE CENTER FOR TAKE
OF MARINE MAMMALS INCIDENTAL TO FISHERIES AND ECOSYSTEM RESEARCH IN
MULTIPLE GEOGRAPHIC REGIONS

INTRODUCTION AND PURPOSE

The National Marine Fisheries Service (NMFS), Office of Protected Resources (OPR) received an application from NMFS Alaska Fisheries Science Center (AFSC) requesting incidental take of marine mammals in connection with fisheries and ecosystem research activities analyzed in the 2019 Final Programmatic Environmental Assessment (PEA) for Fisheries and Ecosystem Research Conducted and Funded by AFSC. OPR reviews applications and, if appropriate, issues Incidental Take Authorizations (ITAs) pursuant to the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 et seq.). Based on the review of the AFSC application and Final PEA, OPR is issuing regulations and Letters of Authorization (LOA) to the AFSC pursuant to Section 101(a)(5)(A) of the MMPA and 50 Code of Federal Regulations (CFR) Part 216¹. The regulations and LOAs will be valid for five years from the date of issuance and authorize take, by mortality, serious injury, and harassment (Level A and Level B), incidental to fisheries and ecosystem research conducted in the Pacific and Arctic Oceans, including the California Current ecosystem and the Gulf of Alaska and Bering, Chukchi, and Beaufort Seas.

NMFS' proposed action is a direct outcome of the AFSC request for LOAs. The research activities involving the use of fisheries and ecosystem research gear and active acoustic sources have the potential to cause marine mammals within or near AFSC's proposed action areas to be behaviorally disturbed or result in Level A harassment, serious injury, or mortality and, therefore, warrants incidental take authorization from OPR. An authorization for incidental taking shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and, where relevant, will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. The regulations and LOAs must also set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the monitoring and reporting of such takings.

In addition to reviewing and responding to AFSC's request for LOAs per the MMPA, the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) Regulations (40 CFR 1500-1508), and National Oceanic and Atmospheric Administration (NOAA) policy and procedures² require all proposals for major federal actions to be reviewed with respect to their effects on the human environment. Issuance of regulations and LOAs allowing take of marine mammals, consistent with provisions under the MMPA and incidental to AFSC's lawful activities, is considered a major federal action triggering OPR's NEPA compliance obligations. Therefore, in accordance with 40 CFR 1508.25(a)(1), the analysis in the Final PEA considers AFSC's fisheries and ecosystem research activities as the primary action and OPR's consideration to issue regulations

¹ The regulations governing the taking and importing of marine mammals.

² NOAA Administrative Order (NAO) 216-6A "Compliance with the National Environmental Policy Act, Executive Orders 12114, *Environmental Effects Abroad of Major Federal Actions*; 11988 and 13690, *Floodplain Management*; and 11990, *Protection of Wetlands*" issued April 22, 2016 and the Companion Manual for NAO 216-6A "Policy and Procedures for Implementing the National Environmental Policy Act and Related Authorities" issued January 13, 2017.

and LOAs as the secondary action. OPR also participated substantially throughout the NEPA process to ensure the analysis in the PEA was sufficient to support OPR's proposed action.

The purpose of this document is to explain OPR's rationale for its finding that the issuance of regulations and LOAs to AFSC authorizing take of marine mammals incidental to fisheries and ecosystem research activities will not significantly impact the quality of the human environment.

ANALYSIS SUMMARY

The Final PEA addresses the potential environmental impacts of four alternatives to meet NMFS's purpose and need, including evaluation to ensure they fulfill OPR's purpose and need of issuing regulations and LOAs under Section 101(a)(5)(A) of the MMPA. In addition, OPR reviewed NMFS's Final PEA and concludes the PEA contains an adequate evaluation of the direct, indirect and cumulative impacts on marine mammals and the marine environment, including specific assessment of the effects of gear interactions and underwater sound on marine mammals.

The LOAs, if issued, would provide an exception to the AFSC from the take prohibitions for marine mammals under the MMPA, incidental to the conduct of the AFSC's fisheries and ecosystem research activities, namely: (1) the issuance of LOAs for the take of marine mammals by Level A and Level B harassment, and by serious injury or mortality incidental to the AFSC's conduct of fisheries and ecosystem research activities; and (2) compliance with the MMPA which sets forth specific findings and prescriptions (e.g., no unmitigable adverse impact on the availability of a species or stock for subsistence uses, negligible impact on a species or stock, and mitigation, monitoring, and reporting requirements) that must be made in order for NMFS to issue an LOA. In order to authorize incidental take of marine mammals under the MMPA, NMFS must identify and evaluate a reasonable range of mitigation measures to minimize impacts to marine mammals to the level of least practicable adverse impact. This range of mitigation measures has been incorporated as part of the identified alternatives in order to evaluate their ability to minimize potential adverse environmental impacts.

- Alternative 1 (No Action/Status Quo Alternative): Under the Status Quo Alternative, the AFSC would administer and conduct a wide range of fishery-independent research and survey programs as they have been in the recent past. For OPR, denial of an MMPA authorization constitutes the No Action Alternative, which is consistent with our statutory obligation under the MMPA to grant or deny incidental take authorization requests and to prescribe mitigation, monitoring, and reporting with any authorizations. Under this No Action Alternative, OPR would not issue regulations and the LOAs. The No Action/Status Quo Alternative served as a baseline in the PEA against which the impacts of the Preferred Alternative and Modified Research Alternative were compared and contrasted.
- Alternative 2 (Preferred Alternative): The Preferred Alternative is comprised of a combination of fisheries and ecosystem research activities continued from the past and additional, new research surveys and projects. In conjunction with this alternative, AFSC is including International Pacific Halibut Commission surveys and research programs occurring within the U.S. EEZ.
- Alternative 3 (Modified Research Alternative): Under Alternative 3, the AFSC would continue fisheries and ecosystem research as described for the Preferred Alternative. Alternative 3 would include all of the same mitigation measures as described for the Preferred Alternative. The difference between Alternative 3 and the Preferred Alternative is

that Alternative 3 includes a number of additional mitigation measures derived from a variety of sources including: (1) comments submitted from the public on similar actions, (2) discussions within NMFS as a part of the MMPA process, and (3) a literature review of past and current research into potential mitigation measures. This Alternative is not considered as an “all or nothing” proposition; one or more of the additional mitigation measures may be considered for implementation during the MMPA process.

- Alternative 4 (No Research Alternative): Under the No Research Alternative the AFSC would no longer conduct or fund fisheries and ecosystem research and OPR would not issue incidental take regulations and LOAs.

The CEQ Regulations state that the significance of an action should be analyzed both in terms of “context” and “intensity” and lists ten criteria for intensity. The Companion Manual for NOAA Administrative Order 216-6A requires consideration of CEQ’s context and intensity criteria (40 CFR 1508.27(a) and 40 CFR 1508.27(b)) along with six additional factors for determining whether the impacts of a proposed action are significant. Each criterion is discussed below with respect to OPR’s proposed action and is considered individually as well as in combination with the others. This Finding of No Significant Impact (FONSI) evaluates the context and intensity of the impacts of the selected alternative—Alternative 2 (Preferred Alternative)—in the Final PEA. In addition, OPR relied on the analysis in the Final PEA, incorporating certain material by reference per 40 CFR 1502.21 in the evaluation discussed below. The Final PEA is available online at www.fisheries.noaa.gov/action/incidental-take-authorization-noaa-fisheries-afsc-fisheries-and-ecosystem-research.

1. Can the proposed action reasonably be expected to cause both beneficial and adverse impacts that overall may result in a significant effect, even if the effect will be beneficial?

OPR’s proposed action is not expected to cause either beneficial or adverse impacts resulting in any significant effects. OPR is proposing to authorize take incidental to fisheries and ecosystem research for marine mammal species expected to occur in the AFSC’s research areas. Therefore, impacts from OPR’s proposed action are expected to be predominantly to marine mammals, which, if affected, would be through incidental interaction with research gear or through the introduction of sound into the marine environment during research surveys. OPR expects its action to have only intermittent, localized impacts on marine mammals and their habitat, due to the fact that surveys will be operating independently of each other in a large geographic area, survey durations will be limited, and the prescribed mitigation and monitoring minimizes impacts to marine mammals. While OPR predicts direct adverse effects to individuals it does not anticipate population-level effects that would rise to the level of significance. Effects to marine mammal populations are expected to be negligible to minor.

2. Can the proposed action reasonably be expected to significantly affect public health or safety?

OPR’s proposed action would not result in any impacts related to public health and safety because there are no such effects as a result of the issuance of authorization for take of marine mammals incidental to a specified activity. OPR only authorizes the take of marine mammal species associated with the fisheries and ecosystem research activities, which does not involve the public or expose the public directly (e.g., chemicals, diseases) or indirectly (e.g., food sources) to hazardous or toxic materials in a way that would be linked to the quality of the environment and well-being of

humans. Further, the AFSC's fisheries and ecosystem research activities are not likely to release hazardous materials into the environment because AFSC adheres to relevant environmental health and safety standards. Research personnel would follow applicable state and federal laws to ensure a safe working environment.

3. Can the proposed action reasonably be expected to result in significant impacts to unique characteristics of the geographic area, such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas?

The issuance of regulations and LOAs to AFSC is not expected to adversely affect historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas because the fisheries and ecosystem research activities take place where these resources are not present. The only potential effects that may result from OPR's proposed action are potential adverse effects to marine mammals that are the subject of the take authorization, as well as their habitat. Any proposed activity must be consistent with the MMPA and NMFS's implementing regulations and, as applicable, must cause no greater than negligible impacts to affected species or stocks, cause taking determined to be of no greater than small numbers, and include measures sufficient to effect the least practicable adverse impact to marine mammal species or stocks and their habitat. Therefore, it is not likely the issuance of these LOAs could adversely impact these areas at a level that would reach significance under NEPA.

4. Are the proposed action's effects on the quality of the human environment likely to be highly controversial?

OPR's proposed action would not have effects on the human environment that are likely to be highly controversial. The scope of this action is no different than other fisheries and ecosystem research activities, is not unusually large or substantial, and would include the same or similar mitigation and monitoring measures required in other fisheries and ecosystem research surveys. Due to the limited scale of activity in space and time, and the implementation of appropriate mitigation and monitoring measures, there will not be significant impacts to natural resources in the project area. As such, the effects of this action are not likely to be highly controversial.

The proposed action's effects on the quality of the human environment are not highly controversial. NMFS has previously assessed and authorized incidental take of marine mammals for multiple activities involving similar effects to marine mammals. NMFS has also completed multiple EAs, with associated FONSI, for substantially similar activities conducted in diverse locations. Given the substantial nature of prior environmental reviews, the effects of the activity are well-understood, and there is no substantial disagreement concerning the scientific methods and analyses used by NMFS. Nor are the environmental effects disproportionate in type or scope from similar activities.

5. Are the proposed action's effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

The effects of the AFSC's proposed action are primarily related to removal of biomass from the environment and the input of sound into the environment. Removal of biomass from the environment is relatively well-studied, and wildlife and the environment in the AFSC's research area are relatively well understood and, therefore, are not highly uncertain and do not involve unique or unknown risks. OPR's proposed action is not highly uncertain and does not involve

unique or unknown risks. The implementation of mitigation and monitoring measures included in the LOAs would ensure that impacts to marine mammals are limited to the level of least practicable adverse impact. Substantial scientific study and management effort indicates that removals of the authorized numbers of marine mammals, as well as behavioral harassment of limited duration, would not result in a greater than negligible impact on the affected marine mammal stocks or any permanent changes to the manner in which marine mammals utilize the research areas. See related response to question 4 above.

6. Can the proposed action reasonably be expected to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration?

The issuance of regulations and LOAs to AFSC is not expected to set a precedent for future actions with significant effects nor represent a decision in principle regarding future considerations. Issuance of an authorization to take marine mammals incidental to proposed activities is a routine process under the MMPA. To ensure compliance with statutory and regulatory standards, NMFS's actions under Section 101(a)(5)(A) of the MMPA must be considered individually and be based on the best available information, which is continuously evolving. Issuance of regulations and an LOA to a specific individual or organization for a given activity does not guarantee or imply that NMFS will authorize others to take marine mammals incidental to similar activities. Subsequent requests for incidental take authorizations would be evaluated upon their own merits relative to the criteria established in the MMPA and 50 CFR Part 216 on a case-by-case basis. AFSC's fisheries and ecosystem research activity has no unique aspects that would suggest it would be a precedent for any future actions.

7. Is the proposed action related to other actions that when considered together will have individually insignificant but cumulatively significant impacts?

The analysis in the Final PEA indicates that the contribution of the three research alternatives to cumulative adverse effects on fish, marine mammal, and other species and resource areas is very small. The proposed AFSC fisheries and ecosystem research activities will also have beneficial contributions to the cumulative effects on both biological and socioeconomic resources. The research alternatives contribute substantially to the science that feeds into federal fishery management measures aimed at rebuilding and managing fish stocks in a sustainable manner. The No Research Alternative would not contribute to direct adverse effects on the marine environment but would contribute indirect adverse effects on both the biological and socioeconomic environments based on the lack of scientific information to inform future resource management decisions. OPR's proposed action is not related to other actions that may have cumulatively significant impacts because the action is limited to the authorization of take incidental to AFSC's specified activity.

8. Can the proposed action reasonably be expected 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?

The effects of issuance of regulations and LOAs are limited to those occurring to marine mammals and their habitat and, therefore, NMFS's proposed action is not expected to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places. Likewise, it is not expected to cause loss or destruction of significant

scientific, cultural, or historical resources. Furthermore, the underlying fisheries and ecosystem research activities themselves take place in the marine environment and, therefore, although known or unknown historical resources may be present, the chance of affecting such resources is so remote and unlikely as to be discountable.

9. Can the proposed action reasonably be expected to have a significant impact on endangered or threatened species, or their critical habitat as defined under the Endangered Species Act of 1973?

Endangered or threatened species, as well as designated critical habitat, occur in the AFSC's research areas. OPR's proposed action is not expected to have a significant impact on endangered or threatened species, as determined through formal consultation under section 7 of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*). NMFS' Alaska Regional Office determined in that the proposed action is not likely to jeopardize the continued existence of any listed species and will not adversely affect any designated critical habitat. The consultation determined that the proposed activities of both AFSC and OPR will not jeopardize the continued existence of endangered or threatened species and would not affect critical habitat.

10. Can the proposed action reasonably be expected to threaten a violation of Federal, state, or local law or requirements imposed for environmental protection?

OPR prepares and issues all authorizations in conformance with the MMPA, ESA, and NEPA in addition to making appropriate determinations under other applicable laws or regulations to ensure our proposed action would not violate any laws or requirements. In addition, AFSC fulfilled its responsibilities under the MMPA for this action and will be required to obtain any additional federal, state, or local permits necessary to carry out the proposed fisheries and ecosystem research activities.

11. Can the proposed action reasonably be expected to adversely affect stocks of marine mammals as defined in the Marine Mammal Protection Act?

The AFSC's proposed research activity has the potential to take marine mammals, as defined by the MMPA. However, while take of individuals is expected, we do not expect adverse impacts at the population level, including stocks of marine mammals. Importantly, effects on individuals or groups of animals does not necessarily translate into an adverse effect to a stock or species, unless such effects for individuals ultimately accrue to the point that there is reduced reproduction or survival leading to effects on annual rates of recruitment or survival for the species. Adverse effects on stocks could potentially result from direct mortality or serious injury or from harassment impacting critical biological functioning and behaviors, such as feeding, mating, calving, or communicating, in a manner that reduces reproductive fitness or survivorship in enough individuals to negatively affect population rates. The loss or serious injury of an individual, or significant reductions in health or reproductive rates, could trigger population impacts if birth rates or emigration do not offset the loss of individuals. For this proposed activity, such removals of individual marine mammals from stocks are at sufficiently low levels such that impacts to the populations are not expected. With regard to behavioral disruptions, due to the transitory and intermittent nature of the surveys, NMFS does not anticipate the activity having adverse effects on marine mammal species or stocks.

12. Can the proposed action reasonably be expected to adversely affect managed fish species?

OPR expects issuing LOAs to the AFSC for the take of marine mammals incidental to conducting fisheries and ecosystem research activities to cause short-term minor adverse impacts to some managed fish species. AFSC's action involves insignificant levels of biomass removal and is anticipated to have minor physical impacts to important habitat for managed fish species. Individual fish may be directly impacted by noise, but such impacts are expected to be limited to temporary displacement. In addition, marine mammals have not been identified as a prey component of managed fish species in this area, so authorizing the incidental take of marine mammals will not reduce the quantity and/or quality of EFH (see related response to question 13 below).

13. Can the proposed action reasonably be expected to adversely affect essential fish habitat as defined under the Magnuson-Stevens Fishery Conservation and Management Act?

We do not expect that issuing LOAs to the AFSC for the take of marine mammals incidental to conducting fisheries and ecosystem research activities would cause adverse effects to EFH. Effects of OPR's action—the issuance of LOAs—are limited to impacts to marine mammals and their habitat. The fisheries and ecosystem research activities may impact bottom habitat or result in temporarily elevated noise levels, but these surveys will be short in duration and intermittent within any specific areas. Therefore, authorizing the take of marine mammals is unlikely to affect water quality or substrate necessary to provide spawning, feeding, breeding, or growth to maturity functions for managed fish. In accordance with 2017 guidance issued by NMFS's Office of Habitat Conservation concerning incidental take authorizations and EFH, we determined the issuance of the LOAs will not result in adverse impacts to EFH and, further, that it will not require separate consultation per Section 305(B)(2) of the MSA as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267).

14. Can the proposed action reasonably be expected to adversely affect vulnerable marine or coastal ecosystems, including but not limited to, deep coral ecosystems?

We do not expect our action to impact any vulnerable marine ecosystems, nor any aspects of biodiversity or functioning of marine ecosystems, in a significant manner. As described elsewhere in this document, the impact from our action is limited to impacts to marine mammals and their habitat, due to the potential for marine mammal interaction with research gear and for increased noise levels into the marine environment during the research activity.

15. Can the proposed action reasonably be expected to adversely affect biodiversity or ecosystem functioning (e.g., benthic productivity, predator-prey relationships, etc.)?

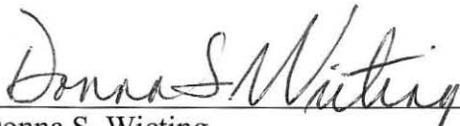
OPR's proposed action may have some impact on biodiversity or ecosystem function related to the negligible impacts on marine mammal stocks or populations, but OPR does not anticipate the impact to be substantial. The AFSC's fisheries and ecosystem research activities may temporarily impact ecosystem function by: (1) removing predators and/or prey species from the environment; and (2) temporarily creating elevated levels of underwater sound, thereby disturbing forage fish. Bottom disturbance would be temporary over a short-term period.

16. Can the proposed action reasonably be expected to result in the introduction or spread of a nonindigenous species?

OPR's proposed action would not result in the spread of any nonindigenous species. Also, the AFSC does not expect that the underlying proposed action of fisheries and ecosystem research activities would result in the spread of any nonindigenous species because there are no such effects as a result of the issuance of authorization for take of marine mammals incidental to a specified activity. The effects of OPR's proposed action are limited in scope to marine mammals.

DETERMINATION

In view of the information presented in this document, the AFSC application, and the 2018 Final Biological Opinion and 2019 Final PEA prepared by NMFS, OPR determined the issuance of LOAs to the AFSC in accordance with the Preferred Alternative will not significantly impact the quality of the human environment. In addition, we have addressed all beneficial and adverse impacts of the action to reach the conclusion of no significant impacts. Accordingly, the preparation of an Environmental Impact Statement for this action is not necessary.



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AUG 27 2019

Date