

**FINDING OF NO SIGNIFICANT IMPACT
ON THE ISSUANCE OF REGULATIONS AND AN INCIDENTAL TAKE AUTHORIZATION
TO THE NATIONAL MARINE FISHERIES SERVICE'S NORTHEAST FISHERIES SCIENCE CENTER
FOR TAKE OF MARINE MAMMALS INCIDENTAL TO FISHERIES AND ECOSYSTEM RESEARCH
CONDUCTED IN THE ATLANTIC COAST REGION**

National Marine Fisheries Service (NMFS), Office of Protected Resources (OPR)

Background

The National Marine Fisheries Service (NMFS), Office of Protected Resources (OPR) is proposing to promulgate regulations and issue a Letter of Authorization (LOA) to the Northeast Fisheries Science Center (NEFSC) pursuant to Section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. §§ 1631 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 Code of Federal Regulations (CFR) Part 216). The LOA will be valid for five years from the date of issuance and authorizes take, by mortality, serious injury, and harassment (Level A and Level B), incidental to fisheries research conducted in the Atlantic Ocean.

NMFS' proposed action is a direct outcome of the NEFSC request for an LOA. The research activities involving the use of fisheries research gear and active acoustic sources have the potential to cause marine mammals within or near NEFSC's proposed action areas to be behaviorally disturbed or result in Level A harassment, serious injury or mortality and, therefore, warrants an incidental take authorization from NMFS. NMFS' issuance criteria require that the taking of marine mammals authorized by an LOA 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. In addition, the LOA must 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.

The NEFSC's Final PEA contains a thorough analysis of the environmental consequences of their proposed action on the human environment, including specific assessment of the effects of gear interactions and underwater sound on marine mammals. OPR participated in the development of the NEFSC's PEA to ensure that the necessary information and analyses were included in the PEA to support OPR's proposed action to promulgate regulations and issue an LOA.

Analysis

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 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 (FMP)?**

Response: OPR's proposed action would not result in damage to ocean and coastal habitats or essential fish habitat (EFH) because there are no effects to such resources 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.

With respect to the NEFSC's proposed action (*i.e.*, fisheries and ecosystem research activities), the NEFSC and its cooperating research partners use several types of research gear that contact the seafloor, including bottom contact trawl gear, gillnets, fyke nets, and dredges that may impact benthic habitats. Direct impacts to benthic habitats would be limited to areas within the northwestern Atlantic Ocean where the NEFSC uses bottom-contact gear, would occur only every few years, and would have a very small footprint and minor localized adverse effects on the physical environment. The NEFSC's research activity would temporarily reduce the quality of water column EFH where it exists through production of underwater noise; these effects are temporary and will result in no long-term impacts to the environment.

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: 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 NMFS does not anticipate the impact to be substantial. The NEFSC's 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, discussed in the response to Question 1, would be temporary over a short-term period.

3) Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?

Response: 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. The effects of OPR's proposed action are limited in scope to marine mammals.

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

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: Endangered or threatened species and other protected species, as well as designated critical habitat, occur in the NEFSC's research area and sub-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' Greater Atlantic Regional Office determined in June 2016 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 NWFSC and OPR may affect, but are not likely to adversely affect, listed marine mammal species.

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

Response: OPR's proposed action would not have any social or environmental impacts 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.

6) Are the 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 research activities, is not unusually large or substantial, and would include the same or similar mitigation and monitoring measures required in other fisheries 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.

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?

OPR's proposed action would not result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, EFH, or ecologically critical areas because there are no effects to such resources 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.

Some of the NEFSC's fisheries research activities occur within Stellwagen National Marine Sanctuary, but the removals of fish and invertebrates for scientific purposes is very small compared to estimated biomass metrics and is considered to have minor adverse effects on the sanctuaries. Traditional resources would not be impacted. No other unique characteristics of the geographic area are known. National Marine Sanctuaries Act Section 304(d) consultation on NEFSC's Final PEA was concluded in February, 2016.

8) 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 NEFSC'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 NEFSC'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 LOA 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.

9) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

The analysis in the NEFSC 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 NEFSC scientific 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 NEFSC's specified activity.

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?

OPR's proposed action would not result in adverse effects to places or resources eligible for listing in the National Register of Historic Places or result in adverse effects to historical resources because there are no effects to such resources 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. Likewise, the NEFSC has determined that the proposed action is not an undertaking with the potential to affect historic resources.

11) 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 spread of any nonindigenous species. Also, the NEFSC does not expect that the underlying proposed action of research activity 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.

12) Is the proposed action likely to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration?

Any future applications for incidental take authorizations will be independently analyzed on the basis of the best scientific information available. A finding of no significant impact for both OPR's proposed action and NEFSC's proposed research activities may inform the environmental review for

future projects but would not establish a precedent or represent a decision in principle about a future consideration.

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?

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. The NEFSC's research activities require issuance of multiple permits. NEFSC is pursuing all required permits; each agency will review the NEFSC's research activity as appropriate to ensure that no federal, state, or local laws or requirements will be violated.

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?

OPR's issuance of Incidental Take Authorizations under the MMPA is specifically designed to reduce the effects of the specified activities to the least practicable adverse impact to marine mammals, through the inclusion of appropriate mitigation and monitoring measures. As such, the proposed action would not result in cumulative adverse effects that could have a substantial effect on species in the action area.

DETERMINATION

In view of the information presented in this document, the NEFSC application and the analysis in the NEFSC's Final PEA, it is hereby determined that OPR's proposed action to issue regulations and an LOA for the incidental take of marine mammals would 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.


Donna S. Wieting, Director

Office of Protected Resources

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Date