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. 14249

Background

In February 2, 2009, the National Marine Fisheries Service (NMFS) received an application for a permit (File No. 14249) from [Ronald Smolowitz, Coonamessett Farm Foundation, Inc., (CFarm)] to conduct research on sea turtles. 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 (Issuance of a Scientific Research Permit to Coonamessett Farm Foundation, Inc., September 2009). In addition, a Biological Opinion was issued under the Endangered Species Act (October 2009) summarizing the results of an interagency consultation. The analyses in the EA, as informed by the Biological Opinion, support the following findings and determination.

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?

> The fishery gear testing research (Project 1) would take place in areas that are currently part of the scallop dredge fishery. The effects to EFH were previously analyzed in the Framework Adjustment 18 to the Atlantic Sea Scallop FMP (NEFMC 2005). The dredging would take place outside closed fishing and habitat areas.
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> Project 2 would not cause damage to habitats or EFH. Turtles would be captured by hoop nets and dip nets, both of these capture methods do not involve setting nets that would damage substrate. Nets remain in the water column when in use. The permits would be conditioned to ensure minimum damage to the habitats as a result of the possible anchoring of the research vessel.

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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.)?

The research would not have a substantial impact on predator-prey relationships or biodiversity. The research would cause short-term effects to the target species (sea turtles) as well as non-target species that are caught in nets; however, most of these species would be released in good condition at the site of capture. A small amount of bottom substrate might be disturbed but ecosystem function would not be impacted.

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

The proposed action does not involve hazardous methods, toxic agents or pathogens, other materials, or activities that would have a substantial adverse impact on public health and safety.

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?

The proposed action would affect individual threatened and endangered sea turtles. However, the effects of the proposed action would not be severe and would be short-term in nature. The proposed action would not likely jeopardize the continued existence of any ESA endangered or threatened species and would not destroy or adversely modify any critical habitat. The action would not have an adverse impact on any marine mammals, as researchers would not interact with them. The research could affect other non-target species (e.g., bycatch), but they are not expected to be appreciably affected by this research. The permit would contain conditions to minimize the potential effects and stress to target and non-target species resulting from the capture.

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

There would be no significant social or economic impacts as a result of the proposed action.

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

NMFS is not aware of controversy surrounding this permit application. A *Federal Register* notice (74 FR 8230) was published to allow other agencies and the public the opportunity to review and comment on the action. Two public

comments were received.

Attorneys for the Fisheries Survival Fund (FSF), an organization whose participants include full-time, limited access scallop fishermen from Massachusetts to Virginia submitted a letter urging NMFS to approve and issue the permit as expeditiously as possible.

Oceana submitted comments and supported either rejecting the application as it now stands or having appropriate NMFS staff work with the applicant to create an experimental design that will yield more useful information. PR1 worked with the applicant, in coordination with the NMFS Northeast Fisheries Science Center (NEFSC) and Northeast Regional Office (NER) to address Oceana's comments and to ensure that the applicant's projects are in line with NEFSC priorities. The applicant is coordinating with the NEFSC to avoid duplication and unnecessary takes of sea turtles. PR1 also worked with the applicant to ensure that they have proper training to conduct proposed activities.

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?

The research would not take place in a protected area. Researchers would avoid conducting research over, on, or immediately adjacent to any sea grass species. NMFS expects minimal damage to the substrate.

8) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

The capture and basic sampling of the proposed research is not new. The scallop dredge project (Project 1) would test a new gear modification. The modified dredge is currently being experimentally used under the NEFSC permit. This permit would allow another researcher to test this gear. NMFS believes that the effects on the human environment would not be highly uncertain and the risks would be minimal and known.

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

Project 1 will be closely coordinated with the NEFSC. The applicant would use takes already issued to the NEFSC to conduct the scallop dredge experiments, no new takes would be authorized. The coordination between permit holders will minimize the effects of the action. Project 2 is not related to other actions.

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?

The action will not result in the destruction of scientific, cultural, or historical resources. The action would not take place in any of these areas.

11) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

The action would not be removing nor introducing any species; therefore, it would not result in the introduction or spread of a nonindigenous 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?

The decision to issue this permit would not be precedent setting and would not affect any future decisions. Issuing a permit to a specific individual or organization for a given activity does not in any way guarantee or imply that NMFS will authorize other individuals or organizations to conduct the same or similar activity.

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?

The action would not result in any violation of Federal, State, or local laws for environmental protection. The permit applicants are 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?

The action is not expected to result in cumulative adverse effects to the species that are the subject of the proposed research. No adverse effects on other non-target ESA listed species are expected. The effects on non-target non-ESA species were also considered and no substantial effects are expected, as none would be affected. No cumulative adverse effects that could have a substantial effect on any species would be expected.

Project 1 may result in mortalities. These mortalities were previously analyzed in the EA and FONSI for Issuance of the NEFSC Permit No. 1576. These mortalities would occur over a limited time period and the permit would be conditioned to ensure the applicant does not go over the allotted number of mortality takes. The take level would not be sufficient to appreciably reduce the likelihood of these species surviving and recovering in the wild.

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. 14249, 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.

for James H. Lecky
Director, Office of Protected Resources

OCT 15 2009
Date