

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

RIN 0648-XE937

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Fisheries Research

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for letters of authorization; request for comments and information.

SUMMARY: NMFS' Office of Protected Resources (OPR) has received a request from the NMFS Alaska Fisheries Science Center (AFSC) for authorization to take small numbers of marine mammals incidental to conducting fisheries research, over the course of five years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), OPR is announcing receipt of the AFSC's request for the development and implementation of regulations governing the incidental taking of marine mammals. OPR invites the public to provide information, suggestions, and comments on the AFSC's application and request.

DATES: Comments and information must be received no later than October 16, 2017.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to ITP.Laws@noaa.gov.

Instructions: OPR is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at www.nmfs.noaa.gov/pr/permits/incidental/research.htm without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not

submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: www.nmfs.noaa.gov/pr/permits/incidental/research.htm. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined "negligible impact" in 50 CFR 216.103 as . . . an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

NMFS has defined "unmitigable adverse impact" in 50 CFR 216.103 as . . . an impact resulting from the specified activity:

(1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) directly displacing subsistence users; or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and

(2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

The MMPA states that the term "take" means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On June 28, 2016, OPR received an adequate and complete application from the AFSC requesting authorization for take of marine mammals incidental to fisheries research conducted by the AFSC. We previously made this version of the application available for public review on October 18, 2016 (81 FR 71709), for a period of 30 days.

On September 6, 2017, AFSC presented substantive revisions to the application. First, AFSC has modified their analysis of potential take of marine mammals resulting from fisheries research activities that they conduct following a determination that take of sperm whales and killer whales is a reasonably anticipated outcome of those activities. These species are known to attempt depredation of the catch of longline operations, and although there are no known interactions between these species and research longline gear, there are records of such interactions between these species and commercial longline operations. Therefore, AFSC has modified their request for authorization of take to include small numbers of take of these species specifically incidental to fisheries research using bottom longline gear.

Second, AFSC has determined it appropriate to incorporate the fisheries research activities of the International Pacific Halibut Commission (IPHC) into their specified activity. The IPHC, established by a Convention between the governments of Canada and the U.S., is an international fisheries organization mandated to conduct research on and management of the stocks of Pacific halibut (*Hippoglossus stenolepis*) within the Convention waters of both nations. Although operating in U.S. waters (and, therefore, subject to the MMPA prohibition on "take" of marine mammals), the IPHC is not appropriately considered to be a U.S. citizen (as defined by the MMPA) and

cannot be issued an incidental take authorization. IPHC activity and requested take authorization is described in Appendix C of AFSC's application.

Aside from section 6.1 (describing the requested take authorization incidental to AFSC-conducted activities) and Appendix C (describing IPHC activities and associated take authorization request), the AFSC application is unchanged from the version made available for review in 2016.

The requested regulations would be valid for five years from the date of issuance. The AFSC plans to conduct fisheries research surveys in multiple geographic regions, including the Gulf of Alaska, Bering Sea, and Arctic Ocean. The IPHC operates in the Bering Sea, Gulf of Alaska, and waters off the U.S. west coast. It is possible that marine mammals may interact with fishing gear (e.g., trawls nets, longlines) used in AFSC's and IPHC's fisheries research projects, resulting in injury, serious injury, or mortality. In addition, the AFSC operates active acoustic devices that have the potential to disturb marine mammals. Because the specified activities have the potential to take marine mammals present within these action areas, the AFSC requests authorization to take multiple species of marine mammal that may occur in these areas, incidental to the activities planned by AFSC and IPHC.

Specified Activities

The Federal Government has a responsibility to conserve and protect living marine resources in U.S. federal waters and has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside the United States. NOAA has the primary responsibility for managing marine fin and shellfish species and their habitats, with that responsibility delegated within NOAA to NMFS.

In order to direct and coordinate the collection of scientific information needed to make informed management decisions, Congress created six Regional Fisheries Science Centers, each a distinct organizational entity and the scientific focal point within NMFS for region-based, Federal fisheries-related research. This research is aimed at monitoring fish stock recruitment, abundance, survival and biological rates, geographic distribution of species and stocks, ecosystem process changes, and marine ecological research. The AFSC is the research arm of NMFS in U.S. waters off of Alaska.

As noted above, the IPHC is an international organization dedicated to conducting research in support of increasing and maintaining knowledge of halibut biology and stock assessment.

Research is aimed at monitoring fish stock recruitment, survival and biological rates, abundance and geographic distribution of species and stocks, and providing other scientific information needed to improve our understanding of complex marine ecological processes. The AFSC and IPHC propose to administer and conduct these survey programs over the five-year period.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the AFSC's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the AFSC and IPHC, if appropriate.

Dated: September 11, 2017.

Catherine Marzin,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF362

Endangered and Threatened Species; File No. 21316

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: NMFS has received an application from Barney M. Davis L.P. for an incidental take permit, pursuant to the Endangered Species Act (ESA) of 1973, as amended, for Barney M. Davis Power Station in Corpus Christi, TX. The facility monitors the intake canal in an effort to intercept sea turtles prior to their contact with the facility's cooling water intake structure. The facility is requesting the permit be issued for a duration of 10 years.

Although the facility has been in operation since 1974, the presence of sea turtles in the intake canal has only occurred during the past 10 years, and is associated with cold-stunning events. Under the proposed action, when a sea

turtle is located in the intake canal of the facility, the sea turtle will be collected by Texas Parks and Wildlife Department and held at their nearby facility until the United States Fish and Wildlife Service collects the sea turtles for tagging and rehabilitation at the Animal Rehabilitation Keep prior to release back into the Gulf of Mexico. Although every effort will be made to intercept sea turtles prior to the cooling water intake structure, it is possible that a stunned sea turtle may become impinged on the automatic rake prior to entering the structure. Although unlikely, due to the physical characteristics and operations of the structure, any impingement of turtles would be lethal.

NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on this document. All comments received will become part of the public record and will be available for review.

DATES: Written comments must be received at the appropriate address or fax number (see **ADDRESSES**) on or before October 16, 2017.

ADDRESSES: The application is available for download and review at http://www.nmfs.noaa.gov/pr/permits/esa_review.htm under the section heading ESA Section 10(a)(1)(B) Permits and Applications. The application is also available upon written request or by appointment in the following office: Endangered Species Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13752, Silver Spring, MD 20910; phone (301) 427-8403; fax (301) 713-4060.

You may submit comments, identified by NOAA-NMFS-2017-0104, by any of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/

- **#!docketDetail;D=NOAA-NMFS-2017-0104** click the "Comment Now" icon, complete the required fields, and enter or attach your comments.

- **Fax:** (301) 713-4060; Attn: Ron Dean.

- **Mail:** Submit written comments to Endangered Species Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13535, Silver Spring, MD 20910; Attn: Ron Dean.

Instructions: You must submit comments by one of the above methods to ensure that we receive, document, and consider them. Comments sent by any other method, to any other address or individual, or received after the end