

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA), notification is hereby given that an Incidental Harassment Authorization (IHA) has been issued to the U.S. Army Corps of Engineers-Jacksonville District (Corps) to take small numbers of bottlenose dolphins (*Tursiops truncatus*), by harassment, incidental to deepening the Dodge-Lummus Island Turning Basin in Miami, FL (Turning Basin).

DATES: This authorization is effective from May 22, 2003, through May 22, 2004.

ADDRESSES: A copy of the application may be obtained by writing to Kimberly Skrupky, Office of Protected Species, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, Md 20910, or by telephoning the contact listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713-2322, ext 128.

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 to allow, upon request, the incidental, but not intentional, taking 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.

NMFS has found that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the 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.

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. 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"].

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

On June 24, 2002, NMFS received a request from the Corps for an IHA to take bottlenose dolphins, by harassment, incidental to deepening the Turning Basin in the Port of Miami, south of Dodge-Lummus Island. The Corps has formulated equations for confined charges, based on the Navy Diver Formula, to determine zone radii for three zones:

Caution Zone Radius = $260(\text{lbs explosives/delay})^{1/3}$

Safety Zone Radius = $520(\text{lbs explosives/delay})^{1/3}$

Watch Zone Radius = $3(260(\text{lbs explosives})/1/3)$

The Caution Zone is the radius from an open-water blast where mortality will not occur. Detonation will not occur if a marine mammal is known to be within this area. The Safety Zone is the radius from an open-water blast where injury will not occur. The Watch Zone is three times the Caution Zone where observers will conduct a watch before and after the detonation.

A notice of receipt of the application and proposed authorization was published on February 6, 2003 (68 FR 6116). That notice described the activity and anticipated effects on marine mammals. NMFS received one comment letter from the Marine Mammal Commission (Commission) on the application and proposed authorization.

Comment 1: The Commission agrees that, unless animals are close to the source or exposure is frequent, the actions are negligible. They note, however, that it would be useful if NMFS or the applicant conducted pre- and post-blast surveys, and monitored and mapped the distribution of high-intensity sound resulting from the shallow-water blasts.

Response: NMFS recognizes that while acoustic measurements would be helpful, they too expensive relative to this single blasting project. Surveys will be conducted both prior to and post-

blasting. A marine mammal watch will be conducted by no less than 2 qualified observers from a small watercraft at for at least 30 minutes before and after the time of each detonation, in the watch zone calculated for an open water blast.

Comment 2: Survey data may be available concerning the numbers of dolphins and other marine mammals in, and their use of, the Dodge-Lummus Island Turning Basin area. If so, they should be provided to NMFS. If not, NMFS may want to require that the applicant conduct such surveys prior to initiating the proposed activities.

Response: The Corps provided information regarding a survey conducted by the NMFS, Southeast Fisheries Science Center, Miami Laboratory. NMFS has been conducting a photo-identification survey of the dolphins in Biscayne Bay since 1990. The study area encompasses an area of approximately 200 mi². This study area ranged from Haulover Inlet south to the Card Sound Bridge behind Key Largo. The study has identified 159 individual animals residing in Biscayne Bay, 146 of which have been resighted on at least one additional time. Many of these animals have been sighted within or transiting through the Port of Miami. Population studies conducted by the Southeast Fisheries Science Center have found that the size of the subpopulation of bottlenose dolphins in Biscayne averages between 78 and 92 individuals (Joe Contillo, pers. com. May 5, 2003).

Comment 3: NMFS should advise the Corps that manatees have been observed in this area. If there is the potential that manatees will also be taken incidental to the proposed activities, authorization for such taking would be needed from the U.S. Fish and Wildlife Service.

Response: The Corps completed consultation with the USFWS for this project on June 19, 2002. The USFWS concurred with the Corps that activities associated with the Corps' dredging project in the D-L-I Turning Basin were not likely to adversely affect listed species.

Comment 4: An across-the-board definition of temporary threshold shift (TTS) as constituting no more than Level B harassment inappropriately dismisses possible injury and biologically significant behavioral effects (e.g., an increased risk of natural predation or ship strikes) that can result from repeated TTS harassment and from the cumulative effects of long-term exposure. The Commission therefore reiterated its recommendation that TTS be considered as having the potential to injure marine mammals (i.e., Level A harassment).