

*Response:* NMFS has addressed the concern of the definition of TTS in previous small take authorizations (66 FR 22450, May 4, 2001; 67 FR 46712, July 16, 2002). These authorizations state that the best scientific information available supports NMFS' determination that TTS results in Level B harassment, rather than Level A harassment. Because TTS is unlikely to occur in bottlenose dolphins from this project (due to mitigation and monitoring discussed in this document), additional discussion is not warranted at this time.

### Mitigation and Monitoring

NMFS is requiring the Corps to implement mitigation measures and a monitoring program that will establish caution-zone radii to ensure that bottlenose dolphins will not be injured during blasting and that impacts will be at the lowest level practicable. Mitigation measures include: (1) confining the explosives in a hole with drill patterns restricted to a minimum of 8 ft (2.44 m) separation from any other loaded hole; (2) restricting the hours of detonation from 2 hours after sunrise to 1 hr before sunset to ensure adequate observation of marine mammals and sea turtles in the safety zone; (3) staggering the detonation for each explosive hole in order to spread the explosive's total overpressure over time, which in turn will reduce the caution zone radius; (4) capping the hole containing explosives with rock in order to reduce the outward potential of the blast, thereby reducing the chance of injuring a dolphin or sea turtle; (5) matching, to the extent possible, the energy needed in the "work effort" of the borehole to the rock mass to minimize excess energy vented into the water column; and (6) conducting a marine mammal/sea turtle watch with no less than two qualified observers from a small water craft and/or an elevated platform on the explosives barge, for at least 30 minutes before and for 30 minutes after each detonation to ensure that there are no dolphins or sea turtles in the area at the time of detonation. The observer monitoring program will take place in the watch zone. Any marine mammal in the caution zone or the watch zone will not be forced to move out of those zones by human intervention. Detonation shall not occur until the animal moves out of the caution zone on its own volition.

In the unlikely event a marine mammal or marine turtle is injured or killed during blasting, the Contractor shall notify the Corps and the NMFS Regional Office within 48 hours. In addition, the Contractor will also notify the Florida Marine Patrol and the USFWS in Vero Beach.

### Reporting

The Corps anticipates completing the proposed activities within 24 months of the start date. Therefore, NMFS is issuing a 1-year IHA with the possibility for renewal upon application from the Corps. NMFS requires the Corps to submit a report of activities 120 days before the expiration of the proposed IHA if the Corps plans to request a renewal of its IHA, or 120 days after the expiration of the IHA if a renewal is not being requested.

### Endangered Species Act

Under section 7 of the ESA, the Corps completed consultation with NMFS on September 23, 2002, and with the USFWS on June 19, 2002, for this project. Both agencies found that activities associated with the Corps' dredging project in the Dodge-Lummus Island Turning Basin were not likely to adversely affect listed species.

### National Environmental Policy Act

In accordance with section 6.01 of the National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has analyzed both the context and intensity of this action and determined, based on the Corps' 1989 Environmental Impact Statement and Feasibility Report for the Navigation Study for the Miami Harbor Channel and the contents, results, and analyses of the Corps' blasting project, that this IHA will not individually or cumulatively result in a significant impact on the quality of the human environment as defined in 40 CFR 1508.27. Accordingly, this action qualifies for a categorical exemption and is exempted from further environmental review under NOAA Administrative Order 216-6.

### Conclusions

NMFS determined that the short-term impact as described in the proposed authorization (68 FR 6116, February 6, 2003), should result, at worst, in the temporary modification in behavior by bottlenose dolphins. Although behavioral modifications, including temporarily vacating the area, may be made by this species to avoid the resultant visual and acoustic disturbance from dredging and detonations, this action is expected to have a negligible impact on the affected species or stocks. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of

the mitigation measures mentioned previously in this document.

### Authorization

NMFS has issued an IHA to the Corps for the potential harassment of small numbers of bottlenose dolphins incidental to deepening the Turning Basin in Miami, FL, provided the previously described mitigation, monitoring, and reporting requirements are met. NMFS has determined that the activity would result in the Level B harassment of only small numbers of bottlenose dolphins and will have no more than a negligible impact on this marine mammal stock.

Dated: May 22, 2003.

**Donna Wieting,**

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

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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### **Practitioner Records Maintenance, Disclosure, and Discipline Before the Patent and Trademark Office (Formerly Practitioner Records Maintenance and Disclosure Before the Patent and Trademark Office)**

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the revision of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before July 28, 2003.

**ADDRESSES:** Direct all written comments to Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, Suite 310, 2231 Crystal Drive, Arlington, VA 22202, by telephone at (703) 308-7400; by e-mail at [susan.brown@uspto.gov](mailto:susan.brown@uspto.gov); or by facsimile at (703) 308-7407.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to the attention of Nora Cordova, Mail Stop OED, Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450; by