

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

[I.D. 012303A]

Small Takes of Marine Mammals Incidental to Specified Activities; Port of Miami Construction Project (Phase II)

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

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the U.S. Army Corps of Engineers-Jacksonville District (Corps) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to deepening the Dodge-Lummus Island Turning Basin in Miami, FL (Turning Basin) to a depth of 44 ft (13.41 m). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue a 1-year small take authorization, to the Corps to incidentally take, by harassment, small numbers of bottlenose dolphins (*Tursiops truncatus*) as a result of conducting this activity.

DATES: Comments and information must be received no later than March 21, 2003.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225. Comments cannot be accepted if submitted via e-mail or the Internet. A copy of the application may be obtained by writing to this address or by telephoning the contact listed here. Publications referenced in this document are available for viewing, by appointment during regular business hours, at this address.

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.

Permission may be granted if NMFS finds 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; 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.

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.

Summary of Request

On June 24, 2002, NMFS received a request from the Corps for an IHA to take bottlenose dolphins incidental to deepening the Turning Basin in the Port of Miami, south of Dodge-Lummus Island. The Port of Miami is one of the major terminal complexes in Florida. The majority of this tonnage is high-value general cargo transported in trailers and containers. The Port also accommodates a large cruise ship industry. Development has primarily centered on the Lummus Island terminal and container complex facilities. Expanding and deepening the Turning Basin would eliminate the need

for vessels docked at Lummus Island to back to or from the Fisher Island Turning Basin.

Completion of the dredging project may employ a hopper dredge, clamshell dredge, cutterhead dredge and/or confined blasting. The dredging will remove 1.4 million cubic yards of material from an area 1,500 ft (457.2 m) in diameter. The Corps proposes to dredge the Turning Basin, starting in December 2002, to a maximum depth of 42 ft (12.8 m) plus a 2 ft (0.61 m) overdepth. Material removed from the dredging will be placed in the Miami Ocean Dredged Material Disposal Site.

The Corps expects the contractor will employ underwater dredging and confined blasting to construct the project. Blasting has the potential to have adverse impacts on bottlenose dolphins inhabiting the area near the project. While the Corps does not presently have a blasting plan from the contractor which will specifically identify the number of holes that will be drilled, the amount of explosives that will be used for each hole, the number of blasts per day (usually no more than 3/day) or the number of days the construction is anticipated to take to complete, the Corps has forwarded to NMFS a description of a completed project in San Juan Harbor, Puerto Rico to use as an example. For that project, the maximum weight of the explosives used for each event was 375 lbs (170 kg) and the contractors detonated explosives once or twice daily from July 16 to September 9, for a total of 38 individual detonations. Normal practice is for each charge to be placed approximately 5–10 ft (1.5–3 m) deep depending on how much rock needs to be broken and how deep a depth is sought. The charges are placed in the holes and tamped with rock. Therefore, if the total explosive weight needed is 375 lbs (170 kg) and they have 10 holes, they would average 37.5 lbs (17.0 kgs)/hole. However, a more likely weight for this project may be only 90 lbs (41 kgs) and, therefore, 9 lbs(4.1 kg)/hole. Charge weight and other determinations are expected to be made by the Corps and the contractor approximately 30–60 days prior to commencement of the construction project. Moreover, because the charge weight and other information is not presently available, NMFS will require the Corps provide this information to NMFS, including calculations for impact/mitigation ranges (for the protection of marine mammals and sea turtles from injury), prior to commencing work.