

interested parties in making IPv6 procurement decisions. What would be the costs and benefits of such an approach? What would be the essential elements of an effective clearinghouse program?

#### *b. Government as Consumer*

We seek comment on whether the government should use its position as a large consumer of information technology products to help spur IPv6 deployment. For example, working through its procurement process, should the federal government purchase only IPv6-compatible products and services? Should state and local governments adopt similar procurement policies? What would be the cost to the government of adopting IPv6 procurement policies compared to not adopting such policies? Could the government's adoption of IPv6 procurement policies have any unintended, adverse effects on the market for IPv6 products and services? If so, please define and assess the likelihood and magnitude of such effects.

To the extent commenters support government IPv6 procurement policies, we seek specific comment on how they should be implemented. For example, when should such policies become effective? Should such policies apply to all government entities, or are there specific classes of agencies that should adopt these policies before others? How should government fund any additional costs (if any) associated with the adoption of IPv6 procurement policies?

#### *c. Government Support for Research and Development*

As discussed above, testbeds and experiments by the Fednets and Abilene<sup>26</sup> have provided early working experience relating to the deployment and use of IPv6. Those activities have also helped to train a corps of IPv6 technicians that could be available to facilitate private sector deployment of IPv6. Furthermore, the Internet2 program has established an IPv6 Working Group that interacts with users, university networks, and Fednets to explain IPv6 deployment and transition issues and to provide hands-on experience to those entities concerning implementation, maintenance, and use of IPv6. In light of these activities, we seek comment on whether the government should provide additional support for IPv6 research and development. Are current research and development efforts sufficient? Does the government possess research and

development tools or resources for IPv6 that are not readily available to the private sector? If the government does provide research and development assistance, what form should it take (e.g., use of government facilities, tax incentives, matching grants, direct funding)?

#### *d. Government Funding of IPv6 Deployment*

Aside from research and development projects, we also seek comment on whether the federal government should attempt to spur the growth of IPv6 networks, applications, and services through direct funding of IPv6-related activities. For example, the government could provide direct assistance to entities desiring to purchase IPv6-capable equipment, whether in the form of tax incentives, matching grants, or direct funding. The task force seeks comments on the need, feasibility and wisdom of these approaches. How should such programs be structured and how much would they cost? Could existing policies and programs be used to provide such funding, or would new legislative authorization be required? Where the federal government provides funding to state and local governments for emergency communications equipment and networks, should the federal government require state and local agencies to purchase IPv6-capable equipment to ensure interoperability among equipment and networks in neighboring communities?

#### *e. Government IPv6 Mandates*

Although imposing government mandates on the private sector to deploy IPv6 is perhaps the least preferred role for government, the task force nonetheless seeks comment on this option to ensure that we develop a complete record. Specifically, we seek comment on whether the government should require suppliers of IP products and services to provide those products and services in an IPv6-compatible version by a date certain. To the extent commenters support such an approach, we ask them to explain the specific authority under which such a mandate could be imposed (legislative or administrative), the timeline under which the mandate would operate, and the benefits and costs of imposing such a mandate.

Dated: January 14, 2004.

**Arden L. Bement, Jr.,**

*Director, National Institute of Standards and Technology.*

**Michael D. Gallagher,**

*Acting Assistant Secretary for Communications and Information, National Telecommunications and Information Administration.*

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**BILLING CODE 3510-60-P**

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

[I.D. 010604A]

#### **Taking 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 an incidental take authorization; request for comments.

**SUMMARY:** NMFS has received a request from the U.S. Army Corps of Engineers-Jacksonville District (Corps) for renewal of a one-year Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to deepening the Dodge-Lumms Island Turning Basin in Miami, FL (Turning Basin) and an application for the promulgation of regulations governing the incidental take of marine mammals for the same activity over a 5-year period. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to reissue a 1-year IHA to the Corps to incidentally take, by harassment, bottlenose dolphins (*Tursiops truncatus*) as a result of conducting this activity and the Corps' application for regulations.

**DATES:** Comments and information must be received no later than February 20, 2004.

**ADDRESSES:** Comments on the application should be addressed to Michael Payne, 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

<sup>26</sup> See Section IV.B.2 *supra*.

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 [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.

**Summary of IHA Request**

On December 1, 2003, NMFS received a request from the Corps for a renewal of an IHA to take bottlenose dolphins incidental to using blasting while deepening the Turning Basin in the Port of Miami, south of Dodge-Lummu Island. An IHA for this activity was issued to the Corps previously on May 22, 2003 (68 FR 32016, May 29, 2003). This IHA will expire on May 21, 2004. Since the work in the Turning Basin has not been started at this time, a new IHA is warranted.

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 Lummu Island terminal and container complex facilities. Expanding and deepening the Turning Basin would eliminate the need for vessels docked at Lummu 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 contract for dredging the Turning Basin, 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 and manatees (*Trichechus manatus latirostris*) 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

within the rock substrate, 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. Because the charge weight and other information is not presently available, NMFS will require the Corps to provide this information to NMFS, including calculations for impact/mitigation zones (for the protection of marine mammals and sea turtles from injury), prior to commencing work.

**Summary of Request for Regulations**

While the Corps was coordinating with NMFS on the application and issuance of an IHA for the Miami Turning Basin in early 2003, the Corps identified at least 6 additional Federal navigation projects that might need similar MMPA authorizations within the next few years, if confined blasting is used as a construction technique. To ensure consistency between MMPA authorizations for these dredging projects, and efficiency for both agencies, NMFS recommended that the Corps apply for these authorizations under section 101(a)(5)(A) of the MMPA, instead of individually under section 101(a)(5)(D) of the MMPA. This request was received on December 1, 2003. At this time however, only the Miami Turning Basin is proposed to be covered by the rulemaking. This rule, if implemented, and Letters of Authorization (LOA) issued under that rule, would replace the IHA process for this activity within the Jacksonville District. Each application for an LOA for another project within the Jacksonville District by the Corps for confined blasting within the District would require separate informal public review and comment, prior to issuance of an LOA. NMFS expects to start this rulemaking in early April, 2004.

**Description of the Marine Mammals Affected by the Activity**

General information on marine mammal species found off the East Coast of the United States can be found in Waring et al. (2001, 2002). These reports are available at the following location: [http://www.nmfs.noaa.gov/prot\\_res/PR2/Stock\\_Assessment\\_Program/sars.html](http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html).

The only marine mammal species likely to be found in the Turning Basin are the bottlenose dolphin and West Indian manatee. Take authorizations for manatees are issued by the U.S. Fish and Wildlife Service (USFWS). There is no stock assessment available concerning the status of bottlenose dolphins in the inshore and nearshore waters off south Florida. Additionally, while neither a status review nor peer-reviewed reports on the status of the Biscayne Bay bottlenose dolphins have been published, the Southeast Fisheries Science Center, NMFS, is currently working on this report. Preliminary information indicates a documented population of 159 bottlenose dolphins residing within the boundaries of the Biscayne Bay area. A total of 146 bottlenose dolphins have been resighted in the Port of Miami area at least one additional time. These animals were often sighted within or transiting through the Port of Miami. It is not known whether bottlenose dolphins inhabit the Turning Basin or whether they simply use the area as a transit to North Biscayne Bay or offshore via the main port channel. The defined stocks of bottlenose dolphins that reside closest to the project area, therefore, are the western North Atlantic coastal (central Florida management unit) and offshore stocks of bottlenose dolphins with a minimum population estimated to be 24,897 for the offshore stock. Abundance of the coastal stock in central Florida is 10,652 in winter, but unknown in summer. Additional assessment information for these two stocks is available at the previously mentioned URL.

#### Potential Effects on Habitat

The Corps expects the effects on marine mammal habitat to be minimal. The bottom of the basin is rock and sand, and the walls of the Turning Basin are vertical rock. The Corps also believes that the area of the Turning Basin may not be suitable habitat for dolphins in Biscayne Bay. It is more likely that the animals use the area to traverse to North Biscayne Bay or offshore via the main port channel. In addition, as a large number of fish are not expected to perish during the detonations, there will not be a significant effect on dolphins' food supply (T. Jordan, pers. comm, 2002).

#### Potential Effects on Marine Mammals

According to the Corps, bottlenose dolphins and other marine mammals have not been documented as being directly affected by dredging activities and, therefore, the Corps does not

anticipate any incidental harassment of bottlenose dolphins by dredging.

Potential impacts to marine mammals from explosive detonations could include both lethal and non-lethal injury, as well as Level B harassment. Marine mammals may be killed or injured as a result of an explosive detonation due to the response of air cavities in the body, such as the lungs and bubbles in the intestines. Effects are likely to be most severe in near surface waters where the reflected shock wave creates a region of negative pressure called "cavitation."

A second possible cause of mortality is the onset of extensive lung hemorrhage. Extensive lung hemorrhage is considered debilitating and potentially fatal. Suffocation caused by lung hemorrhage is likely to be the major cause of marine mammal death from underwater shock waves. The estimated range for the onset of extensive lung hemorrhage to marine mammals varies depending upon the animal's weight, with the smallest mammals having the greatest potential hazard range.

NMFS' criteria for determining non-lethal injury (Level A harassment) from explosives are the peak pressure that will result in: (1) the onset of slight lung hemorrhage, or (2) a 50-percent probability level for a rupture of the tympanic membrane. These are injuries from which animals would be expected to recover on their own. NMFS has also established dual criteria for what constitutes Level B acoustic harassment: (1) An energy-based temporary threshold shift (TTS) from received sound levels 182 dB re 1 microPa<sup>2</sup>-sec cumulative energy flux in any 1/3 octave band above 100 Hz for odontocetes (derived from experiments with bottlenose dolphins (Ridgway *et al.*, 1997; Schlundt *et al.*, 2000); and (2) 12 psi peak pressure cited by Ketten (1995) as associated with a safe outer limit for minimal, recoverable auditory trauma (i.e., TTS). The Level B Harassment zone, therefore, is the distance from the mortality/serious injury zone to the radius where neither of these criterion is exceeded.

#### Mitigation and Monitoring

In the absence of acoustic measurements (due to the high cost and complex instrumentation needed), in order to protect endangered, threatened and protected species (manatees, dolphins, sea turtles), the following equations have been proposed by the Corps for blasting projects to determine zones for injury or mortality from an open water explosion and to assist the Corps in establishing mitigation to

reduce impacts to the lowest level practicable. These equations are believed to be conservative because they are based on humans, which are more sensitive than dolphins (humans) and on unconfined charges while the proposed blasts in the Turning Basin will be confined (stemmed) charges. The equations, based on the Navy Diver Formula, are:

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

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

The Caution Zone represents the radius from the detonation beyond which mortality is not expected from an open-water blast. The Safety Zone is the approximate distance beyond which non-serious injury (Level A harassment) is unlikely from an open-water explosion. These zones will be used for implementing mitigation measures.

In the Turning Basin or any area where explosives are required to obtain channel design depth, marine mammal/sea turtle protection measures will be employed by the Corps. For each explosive charge, the Corps proposes that detonation will not occur if a marine mammal is sighted by a dedicated marine mammal/sea turtle observer within the safety zone, a circular area around the detonation site with the following radius:  $R = 520(W)^{1/3}$  (520 times the cube root of the weight of the explosive charge in pounds) where: R = radius of the safety zone in ft; W = weight of the explosive charge in lbs).

Although the Caution Zone is considered to be an area for potential mortality, the Corps believes that because all explosive charges will be stemmed (placed in a drilled hole and tamped with rock), the areas for potential mortality and injury will be significantly smaller than this area and, therefore, it is unlikely that even non-serious injury would occur if, as is believed to be the case, monitoring this zone is effective. For example, since bottlenose dolphins are commonly found on the surface of the water, implementation of a mitigation/monitoring program is expected by NMFS to be close to 100 percent effective.

The Corps proposes to implement mitigation measures and a monitoring program that will establish both caution- and safety-zone radii to ensure that bottlenose dolphins will not be injured during blasting and that impacts will be at the lowest level practicable. Additional 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 radius of the caution zone; (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, manatee, 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, at least 30 minutes before and continue 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 a circular area at least three times the radius of the above described Caution Zone (called the watch zone). Any marine mammal(s) in the caution, safety, or watch zones will not be forced to move out of those zones by human intervention. Detonation shall not occur until the animal(s) move(s) out of the safety zone on its own volition.

### Reporting

NMFS proposes to require the Corps to submit a report of activities 120 days before the expiration of the proposed IHA if the proposed work has started. This report will include the status of the work being undertaken, marine mammals sighted during the monitoring period, any behavioral observations made on bottlenose dolphins and any delays in detonation due to marine mammals or sea turtles being within the safety zone.

In the unlikely event a marine mammal or marine turtle is injured or killed during blasting, the Contractor shall immediately notify the NMFS Regional Office.

### Endangered Species Act

Under section 7 of the ESA, the Corps completed consultation with NOAA Fisheries on September 23, 2002 and with the USFWS on June 19, 2002 for this project. Both agencies concurred with the Corps 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

The Corps prepared an Final Environmental Impact Statement (FEIS) in 1989 for the Navigation Study for the Miami Harbor Channel. A copy of this document is available upon request (see ADDRESSES). NMFS is reviewing this FEIS in relation to the Corps' application and will determine the appropriate action to take under NEPA prior to making a determination on the issuance of an IHA.

### Preliminary Conclusions

NMFS has preliminarily determined that the Corps' proposed action, including mitigation measures to protect marine mammals, should result, at worst, in the temporary modification in behavior by bottlenose dolphins, including temporarily vacating the area to avoid the blasting activity and the potential for minor visual and acoustic disturbance from dredging and detonations. This action is expected to have a negligible impact on the affected species or stocks of marine mammals. 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 described in this document.

### Proposed Authorization

NMFS proposes to reissue an IHA to the Corps for the potential harassment of small numbers of bottlenose dolphins incidental to deepening the Dodge-Lummus Island Turning Basin in Miami, FL (Turning Basin), provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of bottlenose dolphins and will have no more than a negligible impact on this marine mammal stock.

### Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed IHA and the application for regulations request (see ADDRESSES).

Dated: January 14, 2004.

**Donna Wieting,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*  
[FR Doc. 04-1216 Filed 1-20-04; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 010804A]

### Marine Mammals; Permit No. 821-1588-03 and File No. 909-1726-00

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

**ACTION:** Receipt of application for amendment and application for permit.

**SUMMARY:** Notice is hereby given that Texas A&M University, Department of Marine Biology, P.O. Box 1675, Galveston, Texas 77551 (Principal Investigator: Dr. Randall W. Davis) has requested an amendment to scientific research Permit No. 821-1588-01, and Daniel T. Engelhaupt, P.O. Box 197, Picton, New Zealand has applied in due form for a permit to take marine mammals for scientific research.

**DATES:** Written or telefaxed comments must be received on or before February 20, 2004.

**ADDRESSES:** The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)713-0376; and

Permit No. 881-1588-03 (Davis) and File No. 909-1726-00 (Engelhaupt): Assistant Regional Administrator for Protected Resources, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702-2432; phone (813)570-5301; fax (813)570-5517; and

File No. 909-1726-00 (Engelhaupt): Assistant Regional Administrator for Protected Resources, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298; phone (508)281-9346; fax (508)281-9371.

Written comments or requests for a public hearing on these requests should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on the particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no