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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF362

Notice of Availability of Draft Environmental Assessment on the Effects of Issuing an Incidental Take Permit No. 21316

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

ACTION: Notice; availability of a Draft Environmental Assessment and receipt of revised application; request for comments.

SUMMARY: NMFS announces the availability of the revised application and Draft Environmental Assessment (EA) on the effects of issuing an Incidental Take Permit (ITP) (No. 21316) to Barney M. Davis L.P., pursuant to the Endangered Species Act (ESA) of 1973, as amended, for the incidental take of green (*Chelonia mydas*, North Atlantic Distinct Population Segment) and Kemp's ridley (*Lepidochelys kempii*) sea turtles associated with the otherwise lawful operation of the Barney M. Davis Power Station in Corpus Christi, TX. The facility is requesting the permit be issued for a duration of 10 years.

DATES: Written comments must be received at the appropriate address or fax number (see **ADDRESSES**) on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: The revised application and EA are available for download and review at <https://www.fisheries.noaa.gov/action/incidental-take-permit-barney-davis-lp> under the section

heading Supporting Materials. The application is also available upon written request or by appointment in the following office: Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13752, Silver Spring, MD 20910; phone (301) 427-8402; 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: Sara Wissmann.
- *Mail:* Submit written comments to Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13661, Silver Spring, MD 20910; Attn: Sara Wissmann.

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 of the comment period may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, etc.) confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Sara Wissmann, (301) 427-8402 or

sara.wissmann@noaa.gov.

SUPPLEMENTARY INFORMATION: Publication of this notice begins the official public comment period for this draft EA. Per the National Environmental Policy Act (NEPA), the purpose of the draft EA is to evaluate the potential direct, indirect, and cumulative impacts caused by the issuance of Permit No. 21316 to Barney M. Davis L.P. for the incidental take of green (*Chelonia mydas* North Atlantic Distinct Population Segment) and Kemp's ridley (*Lepidochelys kempii*) sea turtles associated with the otherwise lawful activity of operating the Barney M. Davis Power Station. In addition, NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on the revised application. All comments received will become part of the public record and will be available for review.

Section 9 of the ESA and Federal regulations prohibit the 'taking' of a species listed as endangered or threatened. The ESA defines "take" to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides a mechanism for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Background

Barney M. Davis, L.P. owns Barney M. Davis Power Station (the facility), a natural gas-fired electric power generating facility. The facility is located at 4301 Waldron Road, Corpus Christi, Nueces County, Texas. The facility has approximately 1,992 acres of land between the Laguna Madre and Oso Creek and is comprised of two natural gas-fired combustion turbines.

The facility utilizes a 0.75-mile cooling water intake canal leading to the Cooling Water

Intake Structure (CWIS) from the Laguna Madre. Although the facility has been in operation since 1974, the presence of sea turtles in the intake canal has only been documented during the past 10 years and is typically associated with cold-stunning events. During cooler months, sea turtles in the Laguna Madre become “cold-stunned” and, therefore, become unable to swim normally. Once the sea turtles are cold-stunned, they float into the facility’s intake canal, toward the facility. The facility has experienced an increased occurrence in the number of sea turtles in the intake canal during the winter months (December -March), which coincides with documented cold stunning events in this region of Texas.

The facility currently coordinates with the Texas Sea Turtle Stranding and Salvage Network (STSSN) and the Texas Parks and Wildlife Department in the Coastal Conservation Association Marine Development Center to collect and relocate sea turtles that have migrated into the intake canal. Under the proposed action and conservation plan, facility staff will implement consistent monitoring of the intake canal, and will continue to work with the Texas STSSN on proper animal identification and handling. Although every effort will be made to intercept sea turtles prior to the cooling water intake structure, it is possible that a cold stunned sea turtle may become impinged on the automatic rake prior to entering the structure. Due to the physical characteristics and operations of the structure, any impingement of turtles could be lethal.

The facility is applying for an ITP in accordance with rules established under Section 10(a)(1)(B) of the ESA. The permit application requests authorization for the incidental take of the North Atlantic Distinct Population Segment (DPS) of the ESA-listed threatened green turtle (*Chelonia mydas*) and the endangered Kemp’s ridley sea turtle (*Lepidochelys kempii*). Based on data from the facility from 2012-2016, the proposed takes for any three year period for the ten-

year duration of the permit is 210 live and 39 dead green sea turtles, and 3 live Kemp's ridley sea turtles.

On September 14, 2017 (82 FR 43224) NMFS announced the availability of the Barney M. Davis Power Station ITP application. At that time, the application was determined to be complete and therefore was provided to the public for review. Based on public comments received and additional discussions between NMFS and Barney M. Davis, L.P., it was decided that Barney M. Davis, L.P. would further revise their application and re-submit to NMFS. The updated and final application was received by NMFS on October 19, 2018. This revised application provides additional necessary details on the protocols and procedures for locating and handling sea turtles during the facility operation, and provides additional information on the historic takes that have been observed at the facility as justification for the requested take necessary for the development of the draft EA and the issuance of the ITP.

Conservation Plan

Section 10 of the ESA specifies that no permit may be issued unless an applicant submits an adequate habitat conservation plan. The conservation plan prepared by Barney M. Davis L.P. describes measures to minimize and mitigate the impacts of any incidental takes of ESA-listed green and Kemp's ridley sea turtles.

The facility has experienced increased numbers of cold-stunned sea turtles in the intake canal during the winter months over the past several years. The facility currently coordinates with Texas Parks and Wildlife Department's Coastal Conservation Association Marine Development Center to collect and relocate sea turtles that have migrated into the intake canal.

To avoid and minimize take of sea turtles, facility personnel will visually monitor the area immediately surrounding the cribhouse, which includes the bulkhead, trash racks, and intake

canal on a seasonal schedule. From December 1st through March 31st, monitoring will be conducted a minimum of four times per twelve hour shift, spaced at approximately three-hour intervals. From April 1st through November 30th, monitoring will be conducted one time per shift, or once approximately every twelve hours. Visual monitoring will last for approximately fifteen minutes during each monitoring event. Facility staff responsible for monitoring the intake canal will be trained upon hiring, and again annually, on the proper procedures required for the collection of turtles. Photos of potentially affected species are available to staff to assist them with species identification. Staff will be required to measure the length of the turtles collected.

Barney M. Davis Power Station is an existing facility. Continued monitoring related to the take of sea turtles will be ongoing and funding provided through the facility's annual operating budget.

National Environmental Policy Act

This notice is provided pursuant to section 10(c) of the ESA and the National Environmental Policy Act (NEPA) regulations (40 CFR 1506.6). The draft EA was prepared in accordance with NEPA (42 USC 4321, et seq.), 40 CFR 1500-1508 and NOAA policy and procedures (NAO 216-6A and the Companion Manual for the NAO 216-6A).

Alternatives Considered

In preparing the Draft EA, NMFS considered the following 2 alternatives for the action.

Alternative 1: No Action. In accordance with the NOAA Companion Manual for NAO 216-6A, Section 6.B.i, NMFS is defining the No Action alternative as not authorizing the incidental take of green (*Chelonia mydas* North Atlantic DPS) and Kemp's ridley (*Lepidochelys kempii*) sea turtles associated with the otherwise lawful operation of the Barney M. Davis Power Station. This is consistent with our statutory obligation under Section 10(a)(1)(B) of the ESA to

either: (1) deny the requested permit or (2) grant the requested permit and prescribe mitigation, monitoring, and reporting requirements. Under the No Action Alternative, NMFS would not issue the ITP, in which case we assume this applicant would proceed with their Power Station activities as described in the application without implementing the full suite of specific mitigation measures and monitoring and reporting included in the Conservation Plan and in the ITP as requirements.

Alternative 2: Issue Permit as Requested in Application (Proposed Action): Under Alternative 2, an ITP would be issued to exempt Barney M. Davis, L.P. from the ESA prohibition on taking of green (*Chelonia mydas* North Atlantic DPS) and Kemp's ridley (*Lepidochelys kempii*) sea turtles during the otherwise lawful operation of the Barney M. Davis Power Station. As required under Section 10(a)(1)(B), the ITP would require the Barney M. Davis Power Station to operate as described in the proposed conservation plan to avoid and minimize take of sea turtles.

The Draft EA presents a comparison of the direct, indirect, and cumulative effects of the alternatives. Regulations for implementing NEPA (42 U.S.C. 4331 *et seq.*) require considerations of both the context and intensity of a proposed action (40 CFR 1508.27). The issuance of the Permit as Requested in the Application (Alternative 2, Proposed Action) would allow Barney M. Davis L.P. to continue to operate the Barney M. Davis Power Station and would require conservation measures to minimize risk to sea turtles. This would result in less socio-economic costs than the No Action alternative (Alternative 1). The final permit determinations will not be completed until after the end of the 30-day comment period and will fully consider all public comments received during the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: September 23, 2019.

Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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