



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XA327]

Endangered Species; Notice of Issuance for Incidental Take Permit No. 21316

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that NMFS has issued an incidental take permit to Barney Davis, LLC, for the incidental take of threatened North Atlantic Distinct Population Segment green sea turtles (*Chelonia mydas*) and endangered Kemp's ridley sea turtles (*Lepidochelys kempii*) during the conduct of otherwise lawful activities associated with the operation of the Barney Davis Energy Center, located in Corpus Christi, TX. The incidental take permit is issued for a duration of 10 years.

ADDRESSES: The incidental take permit, final environmental assessment, and other related documents are available on the NMFS Office of Protected Resources website at <https://www.fisheries.noaa.gov/action/incidental-take-permit-barney-davis-llc>.

FOR FURTHER INFORMATION CONTACT: Sara Wissmann, phone: (301) 427-8402; e-mail: Sara.Wissmann@noaa.gov, or Wendy Piniak, phone: (301) 427-8402; e-mail: Wendy.Piniak@noaa.gov.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act (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 if the taking is incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. The regulations for issuing incidental take permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Barney Davis, LLC (herein Barney Davis) owns Barney Davis Energy Center (herein 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 comprises two natural gas-fired combustion turbines, two Heat Recovery Steam Generators, a Cooling Water Intake Structure (CWIS) and other equipment and structures necessary for operation.

The facility uses a 0.75-mile (1.2-kilometer) cooling water intake canal leading to the CWIS from the Laguna Madre basin. 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 has been primarily associated with cold-stunning events.

On December 23, 2015, Barney Davis submitted a first draft application for an incidental take permit for the take of ESA-listed sea turtles associated with otherwise lawful activities associated with the operations of its power station. After review by and discussions with NMFS, subsequent revised applications and information were submitted on November 4, 2016 and August 25, 2017. On September 14, 2017, NMFS published a notice of availability of the Barney Davis application and conservation plan in the

Federal Register (82 FR 43224), and requested public comment. The comment period was open for 30-days, and ended on October 16, 2017. Two public comments were received. The information in these comments was incorporated into the incidental take permit. After discussions between NMFS and the applicant, additional revisions were made to the application and conservation plan, and application was re-submitted on October 19, 2018. On September 27, 2019 NMFS published a second notice of availability in the **Federal Register** (84 FR 51116) to request public comment on the Draft Environmental Assessment and revised application and conservation plan. The public comment period was open for 30-days, through October 28, 2019. No public comments were received on either the Draft Environmental Assessment or the revised application.

In February 2020, NMFS and the applicant entered into discussions on the level of take that would be authorized by the proposed incidental take permit. It was decided to restructure the take authorization to a 10-year permit total and reduce the number of takes authorized. As such, NMFS requested that the applicant update their application and conservation plan with their updated take request and incorporate the best available science. The Applicant revised their application and conservation plan to include the best scientific and commercial data available and submitted a final version to NMFS on June 26, 2020. This final document is available on the NMFS website.

NMFS has issued the requested incidental take permit under the authority of the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226).

This incidental take permit is valid for 10 years and authorizes the incidental take of 206 green sea turtles (up to 24 severe injuries or mortalities), and 4 live Kemp's ridley sea turtles during the 10-year duration of the permit. This permit covers incidental take from date of issuance through August 31, 2030 and will facilitate the rescue and rehabilitation of sea turtles found at the facility.

The conservation plan includes several mitigation and monitoring measures which will offset the impact of the taking authorized by the incidental take permit. Facility employees will visually monitor the area surrounding the cribhouse, which includes the intake canal, bulkhead, and trash racks on a specific seasonal schedule to intercept sea turtle prior to impingement. Visual monitoring will last for at least 15 minutes during each monitoring event. Facility employees will use appropriate equipment (*i.e.* binoculars), as needed, to sufficiently identify sea turtles in the canal and bulkhead. Facility employees responsible for monitoring the intake canal must be trained upon hiring, and again annually, on the proper procedures required for the collection of sea turtles, as well as identification and proper recordkeeping procedures. Training records and materials must be kept on site for the duration of the incidental take permit. Facility employees must contact Texas Parks and Wildlife Hatchery staff immediately upon observation and/or collection of the animal. If Texas Parks and Wildlife Hatchery staff are not available to assist, facility employees must immediately contact the National Park Service, Texas Sea Turtle Stranding and Salvage Network. Facility employees must follow any instructions provided by Texas Parks and Wildlife Hatchery staff or the National Park Service regarding the collection, handling, and holding of the animal until the animal is transferred to the Texas Sea Turtle Stranding and Salvage Network. Facility

employees must also record details on the take, including, where the animal was found on facility property, species, condition of the animal, disposition, and any other pertinent details of the circumstances of the taking, which will be provided to NMFS.

Criteria for Issuing an Incidental Take Permit

Issuance criteria are described in ESA section 10(a)(2)(B) and its implementing regulations (50 C.F.R. 222.307(c)(2)). According to the ESA, NMFS shall issue the requested incidental take permit, if NMFS finds that the following criteria are met:

- (i) The taking will be incidental;
- (ii) The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
- (iii) The applicant will ensure that adequate funding for the plan will be provided;
- (iv) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- (v) The measures, if any, required under subparagraph (A)(iv) will be met, and NMFS has received such other assurances as it may require that the plan will be implemented.

NMFS found that Barney Davis met the criteria for the issuance of an

incidental take permit, and as such, NMFS issued an incidental take permit to Barney Davis for the incidental take of green and Kemp's ridley sea turtles during the operation of their facility.

Dated: August 6, 2020.

Donna S. Wieting,
Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 2020-17519 Filed: 8/10/2020 8:45 am; Publication Date: 8/11/2020]