



PERMIT TO INCIDENTALLY TAKE ENDANGERED/THREATENED SPECIES

Incidental Take Permit No.: 21316

Expiration Date: August 31, 2030

Annual Reports Due: February 28th (annually)

The National Marine Fisheries Service (NMFS) issues this permit to Barney Davis, LLC to incidentally take two species of sea turtles during the ongoing operation of the Barney Davis Energy Center.

I. AUTHORIZATION

Barney Davis, LLC (Permittee) and its authorized agents are hereby authorized to incidentally take endangered and threatened sea turtles in the intake canal and cooling water intake structure (CWIS) for Barney Davis Energy Center at 4301 Waldron Road, Corpus Christi, Nueces County, Texas in accordance with the provisions of Section 10(a)(1)(B) of the Endangered Species Act of 1973 (ESA) (16 U.S.C. §§ 1531-1543), the National Marine Fisheries Service (NMFS) regulations governing listed species permits (50 CFR Parts 222 and 223), the conditions hereinafter set forth, and the Permittee's application and conservation plan, dated June 26, 2020.

This take authorization is based on the best available science, including historical take data that was obtained from the Texas Sea Turtle Stranding and Salvage Network.

II. BACKGROUND

On December 23, 2015, Barney Davis, LLC submitted an application for an incidental take permit (ITP) for ESA-listed sea turtles associated with otherwise lawful activities associated with the operations of its power generating activities including monitoring of the intake canal in an effort to intercept sea turtles prior to their contact with the facility's CWIS. The application included a conservation plan. After review by and discussions with National Marine Fisheries Service (NMFS), Barney Davis, LLC submitted an updated application on November 4, 2016. Discussions continued, and Barney Davis submitted additional information on August 25, 2017. At that time the application was considered complete. On September 14, 2017, NMFS published

a notice of availability of the Barney Davis, LLC 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 applicant incorporated relevant information from the comments into the application and conservation plan, and re-submitted the documents to NMFS 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, subsequent to the most recent public comment period, NMFS identified new best available data and initiated updates to each of the documents associated with the ITP, including the Environmental Assessment and Biological Opinion, and requested the applicant update their application and conservation plan to also reflect the best available science. The applicant submitted their [final application and conservation plan](#) to NMFS on June 26, 2020.

Barney Davis owns the Barney Davis Energy Center (herein “facility”), which is a natural gas-fired electric power generating facility that operates continuously (i.e., electric generation occurs year-round, with the exception of some outage periods as necessary). The facility is located in Nueces County, Texas on the south side of the City of Corpus Christi. The plant has approximately 1,992 acres of land between the Laguna Madre and Oso Creek. The facility is comprised of two natural gas fired combustion turbines, two Heat Recovery Steam Generators, one steam turbine, one gas-fired boiler for the Westinghouse steam turbine, Continuous Emission Monitoring Buildings, multiple warehouses, a central building (administrative offices, control room and laboratory), switchgear house, a Resource Center, emergency generator building, and two chillers. The facility also utilizes a 0.75-mile cooling water intake canal leading to the CWIS from Laguna Madre. The canal leading to the CWIS and the operation of the CWIS is the primary aspect of the facility operations under consideration for this ITP due to the potential impacts to the ESA-listed sea turtles that are the subject of the ITP request. Although the facility has been in operation since 1974, the presence of sea turtles in the intake canal has only been documented over the past ten years and is primarily associated with cold stunning events. Cold stunning occurs when sea turtles experience a hypothermic reaction when exposed to prolonged cold water temperatures. Once sea turtles are cold-stunned they are unable to swim normally and can float into the facility intake canal. Facility personnel have noticed an increase in the number of sea turtles entering the intake canal in recent years during winter months. Although every effort is made to intercept sea turtles prior to them reaching the CWIS, it is possible that a cold stunned sea turtle may become impinged on the automatic rake prior to entering the structure.

As part of the facility conservation plan, Barney Davis proposes to monitor for and remove sea turtles from the intake canal and to implement a suite of mitigation and monitoring measures to avoid or minimize the number of incidental takes of sea turtles. Thus, Barney Davis determined

it was necessary to apply for an ITP in accordance with the requirements under Section 10(a)(1)(B) of the ESA. Continued monitoring and mitigation related to the take of sea turtles will be ongoing and funding will be provided through the facility’s annual operating budget.

III. INCIDENTAL TAKE AUTHORIZATION

Endangered and Threatened Species Affected:

Green sea turtle (North Atlantic Distinct Population Segment)	<i>Chelonia mydas</i>
Kemp’s ridley sea turtle	<i>Lepidochelys kempii</i>

The Permittee and its authorized agents are hereby authorized to incidentally take endangered and threatened sea turtles, as specified below:

Species	Total Captures (10-year ITP duration)	Mortalities/Serious Injuries (*subset of total captures)
Green sea turtle (<i>Chelonia mydas</i>) from the North Atlantic Distinct Population Segment	206	24*
Kemp’s ridley sea turtle (<i>Lepidochelys kempii</i>)	4	0

The incidental take authorization only applies to sea turtles that are collected from the facility’s intake canal and CWIS over the 10-year ITP period, including free swimming animals collected from the intake canal (cold stunned or healthy), dead animals collected from the intake canal, and animals that are collected from the CWIS after impingement. If incidental captures or mortalities reach the established limits, the facility must notify NMFS immediately. Captures and mortalities above the limits specified above are not authorized by this ITP.

Each animal collected at the facility constitutes a single take. The take coverage for captures provided in this ITP, includes minor injuries caused by the Permittee that do not result in mortality or prevent the animal from being returned to the wild. Serious injuries caused by the Permittee that prevent an animal from being returned to the wild shall be counted as mortalities under this ITP. Only serious injuries and mortalities caused by the Permittee will be counted towards the take limit for serious injuries and mortalities.

IV. CONDITIONS OF PERMIT

The incidental take of ESA-listed species listed in this ITP is authorized during activities as described in the application and conservation plan, and subject to the strict compliance with the conservation plan and the conditions specified below.

A. Duration of Incidental Take Permit

This ITP covers incidental take of green and Kemp's ridley sea turtles in the intake canal and the CWIS at the facility for 10 years, from the date of issuance through August 31, 2030.

B. Conditions to Monitor, Minimize, and Mitigate Impacts to Listed Species

1. Facility employees must visually monitor from the area immediately surrounding the crib house, which includes the bulkhead, trash racks, and intake canal on a seasonal schedule, to intercept sea turtles prior to impingement in the facility's CWIS.
 - a. From December 1st through March 31st, monitoring will be conducted a minimum of four (4) times per twelve (12) hour shift, spaced at approximately three (3) hour intervals.
 - b. From April 1st through November 30th, monitoring will be conducted one (1) time per shift, or once approximately every twelve (12) hours.
 - c. Visual monitoring will last at least fifteen (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. The frequency and length of each monitoring event must provide sufficient opportunity to identify sea turtles in the intake canal and bulkhead prior to the sea turtles reaching the traveling trash racks. Monitoring will be conducted from the crib house due to safety concerns at the facility (i.e. lighting, guardrails, and safe walking surfaces are not available for the entire length of the intake canal).
2. 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. This training is to be conducted by the National Park Service (NPS), Division of Sea Turtle Science and Recovery, Padre Island National Seashore, Texas Sea Turtle Stranding and Salvage Network (TX STSSN). Training records

and materials must be kept on site for the duration of this ITP. Training materials must be readily available to facility employees.

3. When a sea turtle is observed at the facility, the following procedures will be followed. These conditions apply regardless of time of year or condition of the animal (live or dead).
 - a. Facility employees must contact Texas Parks and Wildlife Hatchery (TPWH) staff immediately upon observation and/or collection of the animal. If TPWH staff are not available to assist, facility employees must immediately contact NPS TX STSSN. Facility employees must follow any instructions provided by TPWH or NPS TX STSSN for the collection, handling, and holding of the animal until the animal is transferred to the TPWH or the NPS TX STSSN.
 - b. Facility employees must work together to rescue/collect the sea turtle using available nets and equipment, following the capture procedures provided during training, and following any instructions provided by TPWH or the TX STSSN for the specific take and situation (per condition 3a).
 - c. Facility employees must safely and securely hold the animal in a dry, open topped container following procedures provided during training, and following any instructions provided by TPWH or the NPS TX STSSN for the specific take and situation (per condition 3a), until TPWH staff or NPS TX STSSN can collect the sea turtle.
 - d. Facility employees must document the sea turtle by photograph once the animal has been collected and assistance has been requested. This information must be included in the take report and annual report (see conditions C1 and C2, below).
 - e. Facility employees must record where the sea turtle was found on facility property (i.e. canal, bulkhead, trash racks, CWIS). This information must be included in the take report and annual report (see conditions C1 and C2, below).
 - f. Facility employees must record information on the canal water temperature and whether or not the CWIS was drawing in water from the canal in the 48 hours prior to every take, both live and dead. This information must be included in the take report and annual report (see conditions C1 and C2, below).
 - g. All dead sea turtles captured at the facility must be transferred to the TX STSSN for documentation and necropsy.
 - h. All live sea turtles captured at the facility must be transferred to the TX STSSN for evaluation and determination of the most appropriate care (i.e.

placement at a permitted rehabilitation facility, triaged as part of an ongoing cold-stun event, immediate release). Any live sea turtles that are placed in rehabilitation and later die of injuries sustained at the facility, or are unable to be returned to the wild because of injuries sustained at the facility, will be counted as mortalities under this ITP.

- i. The Permittee must follow-up on the disposition of each live sea turtle taken at the facility, including: which rehabilitation facility the sea turtle is transferred to and if/when they are released back into the wild, or if they later died at the rehabilitation facility.
- j. The Permittee must work with the NPS TX STSSN and/or rehabilitation facilities to determine if funds are needed for the rehabilitation of any sea turtles captured by the facility.
- k. If the TPWH and/or the NPS TX STSSN are no longer able to assist with the collection, evaluation, and rehabilitation of sea turtles captured by the facility, the Permittee must notify NMFS immediately, so NMFS can assist in identifying permitted rehabilitation facilities for the evaluation and rehabilitation of any animals found at the facility.

C. Reporting Requirements

1. *Take Reports.*

All sea turtle incidental takes that occur at the Barney Davis Energy Center must be reported to NMFS via email within 24 hours of their occurrence.

Take reports should be sent to Shannon Bettridge, Chief, Marine Mammal and Sea Turtle Conservation Division, at Shannon.Bettridge@noaa.gov and Wendy Piniak at Wendy.Piniak@noaa.gov.

Take reports should include the following information:

- date of the take,
- species (if known),
- photograph of the sea turtle (if available),
- condition of the sea turtle,
- where the animal was found on facility grounds (i.e. canal, bulkhead, trash rack, CWIS),
- disposition (i.e. if/when transferred to the TX STSSN), and,

- any other pertinent details of the circumstances of the taking (e.g. location, was the CWIS drawing in water, and the canal water temperature).

2. *Annual Reports.*

Annual Reports will be due by February 28th of each calendar year, for the reporting period of the previous calendar year. The first annual report will include the time period between ITP issuance and December 31, 2020.

The annual report must include:

- a. A summary of the total sea turtle take authorized under the permit (206 green sea turtles {up to 24 mortalities or serious injuries}, and 4 live Kemp's ridley sea turtles), and a summary of the total annual actual take, by species, for the project duration to-date.
- b. The total number of sea turtles encountered in the intake canal and the CWIS, by species, size, and animal condition, for the current annual reporting period.
- c. An assessment of the variables which may have contributed to the incidental take of each sea turtle, for the current annual reporting period. For each take, include whether or not the CWIS was drawing in water prior to the capture, the water temperature at the time of the capture, and if a known cold stun event was occurring.
- d. The current status of each incidental take (e.g. found dead, found alive and undergoing rehabilitation, released, died at the rehabilitation facility). If a sea turtle was transferred to rehabilitation, please provide the name of the rehabilitation facility.

Annual reports must be submitted electronically to:

Shannon Bettridge at Shannon.Bettridge@noaa.gov,
Wendy Piniak at Wendy.Piniak@noaa.gov, and
David Bernhart at David.Bernhart@noaa.gov (electronic copy).

A hard copy of the annual report must be submitted to:

Shannon Bettridge
Chief, Marine Mammal and Sea Turtle Conservation Division
Office of Protected Resources

National Marine Fisheries Service
1315 East-West Highway
Silver Spring, Maryland 20910
(Shannon.Bettridge@noaa.gov)

3. *Final Report:*

The Permittee must submit a final report within one hundred eighty (180) days of the expiration of this ITP (August 31, 2030) summarizing the total take that occurred under the ITP and the circumstances surrounding it, as required in each annual report. The final report must be submitted to the individuals indicated above in Section C2.

D. General Permit Conditions

1. NMFS may suspend or revoke this ITP for cause in accordance with applicable laws and regulations (See 5 U.S.C. § 558; 50 C.F.R. § 222.306; 15 C.F.R. § 904.). Such suspension or revocation may apply to an entire ITP, or only to specified covered species, areas, or covered activities.
2. The Permittee may not transfer or assign this ITP to any other person(s), as person is defined in Section 3(12) of the ESA. This ITP is not in force or effective if transferred or assigned to any other person.
3. Upon request by the Director of the NMFS, Office of Protected Resources, the Permittee must allow any employee(s) of NMFS, or any other person(s) duly designated by the Director, to inspect the Permittee's records and facilities if such records and facilities pertain to activities for which a take of ESA-listed species is authorized by this ITP, relate to ESA-listed species covered by this ITP, or pertain to the Director's responsibilities under the ESA.
4. The provisions of this ITP may be amended if unforeseen circumstances arise, upon reasonable notice by the Director of OPR. Unforeseen circumstances include, but are not limited to, the take of a species or life stage of sea turtle that has not been taken previously or changes to the structure or availability of the TX STSSN to assist with the collection, evaluation, and rehabilitation of taken sea turtles.
5. In the event any ESA-listed species not authorized by this ITP is killed, injured, or collected during the course of activities, the Permittee must notify the NMFS OPR

Chief, Marine Mammal and Sea Turtle Division (Shannon Bettridge, see contact info in Section C2, above) as soon as possible, but not later than 24-hours after the event. If the ESA-listed animal is killed, it must be retained for scientific analysis. The Permittee must then submit a written report to the Chief of the Marine Mammal and Sea Turtle Division describing the circumstances of the unauthorized take. Pending review of these circumstances, NMFS may suspend or amend this ITP.

6. The Permittee is responsible for the activities of any individual who is operating under the authority of this ITP. Such activities include capturing, handling, releasing, transporting, maintaining, and caring for any animal authorized to be taken by this ITP.
7. This ITP does not relieve the Permittee from compliance with other applicable laws.
8. Under the terms of the ESA regulations, a violation of any of the terms and conditions of this ITP will subject the Permittee, and/or any individual who is operating under the authority of this ITP, to penalties as provided for in the ESA.
9. NMFS OPR will annually review this ITP and determine whether it needs to be amended based on unforeseen circumstances. Yearly evaluation of this ITP by NMFS OPR may include re-analyses of all data and a re-assessment of the take levels.
10. The Permittee is required to adequately fund the conservation plan. Upon request by NMFS OPR, the Permittee shall provide documentation that the conservation plan is receiving adequate funding. If NMFS OPR reasonably believes that the conservation plan is not being adequately funded, then NMFS OPR may require the Permittee to produce an annual budget for the conservation plan, which will be subject to review and approval by NMFS OPR.

11. 50 CFR Section 222.23(d)(8) provides for a reasonable fee to be charged to cover the costs of issuance of permits under the ESA. The fee for this ITP has been waived.

Donna S. Wieting
Director
Office of Protected Resources

Date

Cecilia Garcia-Rios
4301 Waldron Road,
Corpus Christi, Texas 78418

Date

cc. OPR – Bettridge, Wissmann, Piniak; SERO – Bernhart