

**FINDING OF NO SIGNIFICANT IMPACT
FOR THE ISSUANCE OF
AN INCIDENTAL TAKE PERMIT (PERMIT FILE NO. 21316) TO BARNEY DAVIS, LLC,
FOR THE OPERATION OF THE BARNEY DAVIS ENERGY CENTER**

INTRODUCTION AND PURPOSE

The National Marine Fisheries Service (NMFS) received an application from Barney Davis, LLC (herein “Barney Davis”) requesting an Incidental Take Permit (ITP) for take of threatened and endangered sea turtle species associated with operation of the Barney Davis Energy Center located in Corpus Christi, Texas. NMFS has a statutory responsibility to authorize take of threatened and endangered species pursuant to the Endangered Species Act (ESA), Section 10(a)(1)(B) after receipt and review of an application and if certain findings and determinations are made. In addition, the National Environmental Policy Act (NEPA), 40 Code of Federal Regulations (CFR) Parts 1500 - 1508, and the National Oceanic and Atmospheric Administration (NOAA) policy and procedures¹ require all proposals for major federal actions be reviewed with respect to environmental consequences on the human environment. Therefore, NMFS conducted an environmental review of the application submitted by Barney Davis and determined an Environmental Assessment (EA) is appropriate for NMFS consideration whether to issue an ITP to Barney Davis.

BACKGROUND

On June 26, 2020, Barney Davis submitted a final complete application, including a conservation plan to NMFS for an ITP to incidentally take ESA-listed, Green turtles, North Atlantic Distinct Population Segment (*Chelonia mydas*) and Kemp’s ridley turtles (*Lepidochelys kempii*), during the conduct of otherwise lawful activities associated with the operation of the Barney Davis Energy Center. The ITP application and conservation plan include take requests and a plan to further monitor, minimize, and mitigate the impacts of incidental take of green and Kemp’s ridley turtles to the maximum extent practicable.

In accordance with the National Environmental Policy Act, NMFS has prepared an EA analyzing the impacts on the human environment associated with the proposed action, which is to issue the ITP with additional take limitations, conditions, and monitoring (Environmental Assessment on the Effects of Issuing Incidental Take Permit No. 21316 to Barney Davis, for the Incidental Take of Sea Turtles Associated with the Otherwise Lawful operation of Barney Davis Energy Center). In addition, a Biological Opinion was issued under section 7 of the ESA summarizing the results of an interagency consultation. The analyses in the EA, as informed by the Biological Opinion, support the following determination.

ANALYSIS SUMMARY

The Council on Environmental Quality (CEQ) Regulations state that the significance of an action should be analyzed both in terms of “context” and “intensity” and lists ten criteria for intensity. The Companion Manual for NOAA Administrative Order 216-6A requires consideration of CEQ’s

¹ National Oceanic and Atmospheric Administration Administrative Order (NAO) 216-6A “Compliance with the National Environmental Policy Act and Executive Order 12114 Environmental Effects Abroad of Major Federal Actions 11988 and 13690 Floodplain Management; and 11990 Protection of Wetlands” and the Companion Manual for NAO 216-6A.

context and intensity criteria (40 CFR 1508.27(a) and 40 CFR 1508.27(b)) along with six additional factors for determining whether the impacts of a proposed action are significant. Each criterion is discussed below with respect to OPR's proposed action and is considered individually as well as in combination with the others.

This Finding of No Significant Impact (FONSI) evaluates the context and intensity of the impacts of the selected alternative—Alternative #2 (Preferred Alternative)—in the Final EA. In addition, OPR relied on the analysis in the Final EA, incorporating certain material by reference per 40 CFR 1502.21 in the evaluation discussed below. The Final EA is available online at <https://www.fisheries.noaa.gov/action/incidental-take-permit-barney-davis-llc>.

1. Can the proposed action reasonably be expected to cause both beneficial and adverse impacts that overall may result in a significant effect, even if the effect will be beneficial?

***RESPONSE:** The proposed action involves both beneficial and adverse impacts, but overall effects will be insignificant. The action involves the issuance of an ITP authorizing incidental take of green sea turtles and Kemp's ridley sea turtles during the 10-year duration of the ITP. This action has potential to result in adverse effects to individual animals (e.g., stress, impingement and mortality). However, this is not likely to result in adverse effects to the species and population or further reduce the likelihood of the survival and recovery of these species in the wild since most individuals would be recovered, rehabilitated and released through the implementation of the monitoring and mitigation measures required by the ITP and the conservation plan.*

2. Can the proposed action reasonably be expected to significantly affect public health or safety?

***RESPONSE:** The proposed action involves monitoring for, collecting, and releasing sea turtles from the Barney Davis Energy Center intake canal, and it will not have a substantial adverse impact on public health and safety.*

3. Can the proposed action reasonably be expected to result in significant impacts to unique characteristics of the geographic area, such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas?

***RESPONSE:** The proposed action is not expected to result in significant impacts to unique characteristics of the geographic area, such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas. No unique geographic area is affected.*

4. Are the proposed action's effects on the quality of the human environment likely to be highly controversial?

***RESPONSE:** The proposed action is not expected to be controversial. There are no highly uncertain effects or effects that involve unique or unknown risks. No new precedence is set by this action. There is no impact on State or local regulations, and the applicant is required to obtain any State and local permits necessary to carry out the action.*

NMFS has conducted two separate public comment periods regarding this action. 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 comments requested clarification on the monitoring protocol that will be used and the training Barney Davis staff will receive, and one commenter provided additional information on cold stunned sea turtles in this region of Texas. On October 19, 2018, Barney Davis submitted a revised application and conservation plan that included the additional necessary details on the protocols and procedures for locating and handling sea turtles during the facility operation, and provides additional information on historic take information from the facility as justification for the requested take necessary for the development of the EA and the issuance of the ITP. 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 EA and a 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 EA 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 EA and Biological Opinion, and requested for the applicant to update their application and conservation plan to also reflect the best available science. None of the most recent changes made are anticipated to be controversial.

5. Are the proposed action's effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

***RESPONSE:** The proposed action is the issuance of an ITP for the continued operation of the Barney Davis Energy Center. The action, monitoring for and collecting and rescuing sea turtles, is not uncertain and will not involve unique or unknown risks.*

6. Can the proposed action reasonably be expected to establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration?

***RESPONSE:** The proposed action is the issuance of an ITP for the continued operation of the Barney Davis Energy Center. The action, monitoring for and collecting and rescuing sea turtles, will not establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration. NMFS' actions under Section 10(a)(1)(B) are considered individually and are based on the best available scientific information, which is continuously evolving. Subsequent requests for ITPs will be evaluated upon their own merits relative to the criteria established under the ESA and its implementing regulations and the best available scientific information.*

7. Is the proposed action related to other actions that when considered together will have individually insignificant but cumulatively significant impacts?

***RESPONSE:** The proposed action is not expected to contribute to cumulative adverse effects on the two sea turtle species that would be affected by the action in any meaningful way. The ITP authorizes the lethal take of 24 green sea turtles from the North Atlantic DPS. The removal of these turtles from the population will not result in a significant impact even when considering other past, present, and reasonably foreseeable future threats, which are described in the Biological Opinion and EA for this ITP, because the authorized removals are such a small percentage of the population as a whole. The sublethal takes authorized by the ITP involve the monitoring for and collection of live sea turtles, and their transfer to the TX STSSN for subsequent rehabilitation. These actions are unlikely to contribute to a significant cumulative effect to the populations. In fact, the monitoring*

and rescue measures required by the ITP are expected to fully offset the negative impacts of the lethal takes authorized. Recovery efforts for sea turtle populations around the world also show promise, and have the potential to further offset the small lethal take of sea turtles associated with this ITP (Seminoff et al 2015, NMFS and USFWS 2015).

Based on the conclusions in the final Biological Opinion completed in July 2020, OPRs ESA Interagency Cooperation Division determined OPRs Marine Mammal and Sea Turtle Conservation Division's proposed action and the underlying activity are not likely to jeopardize the continued existence or recovery of the North Atlantic DPS green, or Kemp's ridley sea turtles. Further, NMFS does not expect the issuance of this ITP to destroy or adversely modify any designated critical habitat since there is no designated critical habitat in the action area.

8. Can the proposed action reasonably be expected to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources?

RESPONSE: The proposed action is not expected to adversely affect any entities listed in or eligible for listing in the National Register of Historic Places, nor cause loss or destruction of significant scientific, cultural, or historic resources.

9. Can the proposed action reasonably be expected to have a significant impact on endangered or threatened species, or their critical habitat as defined under the Endangered Species Act of 1973?

RESPONSE: A biological opinion was written for the proposed action, and its analysis concluded that the action is not likely to jeopardize the continued existence of any listed species and is not likely to destroy or adversely modify designated critical habitat. The action will not have an adverse impact on any marine mammals or their critical habitat. Additionally, ITP 21316 will contain monitoring measures to minimize cumulative effects and to avoid unnecessary stress to green and Kemp's ridley sea turtles by requiring use of specific handling protocols.

10. Can the proposed action reasonably be expected to threaten a violation of Federal, state, or local law or requirements imposed for environmental protection?

RESPONSE: The proposed action is not expected to threaten a violation of Federal, state, or local law or requirements imposed for environmental protection.

11. Can the proposed action reasonably be expected to adversely affect stocks of marine mammals as defined in the Marine Mammal Protection Act?

RESPONSE: The proposed action is not expected to have an adverse impact on any marine mammals or the habitat necessary for any marine mammal.

12. Can the proposed action reasonably be expected to adversely affect managed fish species?

RESPONSE: The proposed action is not expected to adversely affect any managed fish population, stock or species.

13. Can the proposed action reasonably be expected to adversely affect essential fish habitat as defined under the Magnuson-Stevens Fishery Conservation and Management Act?

RESPONSE: The proposed action is not expected to adversely affect Essential Fish Habitat.

14. Can the proposed action reasonably be expected to adversely affect vulnerable marine or coastal ecosystems, including but not limited to, deep coral ecosystems?

RESPONSE: The proposed action is not expected to adversely affect vulnerable marine or coastal ecosystems, including deep coral ecosystems.

15. Can the proposed action reasonably be expected to adversely affect biodiversity or ecosystem functioning (e.g., benthic productivity, predator-prey relationships, etc.)?

RESPONSE: The proposed action is not expected to have any effects on biodiversity or ecosystem functioning and no substantial impact within the affected area is expected.

16. Can the proposed action reasonably be expected to result in the introduction or spread of a nonindigenous species?

RESPONSE: The proposed action is not expected to result in the introduction/spread of nonindigenous species.

DETERMINATION

In view of the information presented in this document, the Barney Davis Energy Center application, and the Final EA prepared by NMFS, OPR determined the issuance of an Incidental Take Permit to Barney Davis, LLC in accordance with the Preferred Alternative will not significantly impact the quality of the human environment. In addition, we have addressed all beneficial and adverse impacts of the action to reach the conclusion of no significant impacts. Accordingly, the preparation of an Environmental Impact Statement for this action is not necessary.

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Director, Office of Protected Resources,
National Marine Fisheries Service

Date