



**Billing Code: 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XF362**

**Endangered and Threatened Species; File No. 21316**

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** NMFS has received an application from Barney M. Davis L.P. for an incidental take permit, pursuant to the Endangered Species Act (ESA) of 1973, as amended, for Barney M. Davis Power Station in Corpus Christi, TX. The facility monitors the intake canal in an effort to intercept sea turtles prior to their contact with the facility's cooling water intake structure. The facility is requesting the permit be issued for a duration of 10 years.

Although the facility has been in operation since 1974, the presence of sea turtles in the intake canal has only occurred during the past 10 years, and is associated with cold-stunning events. Under the proposed action, when a sea turtle is located in the intake canal of the facility, the sea turtle will be collected by Texas Parks and Wildlife Department and held at their nearby facility until the United States Fish and Wildlife Service collects the sea turtles for tagging and rehabilitation at the Animal Rehabilitation Keep prior to release back into the Gulf of Mexico. Although every effort will be made to intercept sea turtles prior to the cooling water intake structure, it is possible that a stunned sea turtle may become

impinged on the automatic rake prior to entering the structure. Although unlikely, due to the physical characteristics and operations of the structure, any impingement of turtles would be lethal.

NMFS is furnishing this notice in order to allow other agencies and the public an opportunity to review and comment on this document. All comments received will become part of the public record and will be available for review.

**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 application is available for download and review at [http://www.nmfs.noaa.gov/pr/permits/esa\\_review.htm](http://www.nmfs.noaa.gov/pr/permits/esa_review.htm) under the section heading ESA Section 10(a)(1)(B) Permits and Applications. The application is also available upon written request or by appointment in the following office: Endangered Species Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13752, Silver Spring, MD 20910; phone (301) 427-8403; 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](http://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: Ron Dean.
- **Mail:** Submit written comments to Endangered Species Conservation Division,

Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13535,  
Silver Spring, MD 20910; Attn: Ron Dean.

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:** Ron Dean, (301) 427-8445.

**SUPPLEMENTARY INFORMATION:** 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 for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

### **Background**

Pursuant to the ESA, NMFS reviewed in Barney Davis’ December 23, 2015 application, including the conservation plan and analytical methods for estimating potential

takes. After discussions with NMFS, Barney Davis submitted an updated application on November 4, 2016. NMFS and the applicant continued discussions, and Barney Davis submitted all additional information on August 25, 2017 and the application was considered complete at that time. The duration of the proposed permit is 10 years.

Barney M. Davis, LP 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, TX. 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 has a 0.75-mile intake canal into the Laguna Madre leading to the facility's Cooling Water Intake Structure. The phenomenon of “cold-stunning” occurs to sea turtles in the waters around the facility’s intake structure. During cooler months, sea turtles in the Laguna Madre cross the entrance of the facility’s intake canal to where water is cooler, and become “cold-stunned” and therefore unable to swim. 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). The facility currently coordinates with 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. The facility is applying for an Incidental Take Permit in accordance with rules established under Section 10(a)(1)(B) of the Endangered Species Act of 1973.

The permit application is 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.

### **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 Davis describes measures designed to minimize and mitigate the impacts of any incidental takes of ESA-listed green and Kemp's ridley sea turtles.

The facility has experienced an increased occurrence in the number of cold-stunned sea turtles in the intake canal during the winter months and currently coordinates with 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.

The facility utilizes a 0.75-mile cooling water intake canal leading to the Cooling Water Intake Structure (CWIS) from the Laguna Madre. To avoid and minimize take of sea turtles, Barney Davis proposes to have staff visually monitor the area a minimum of four times per every 12-hour shift. These visual assessments provide staff the opportunity to identify turtles in the canal prior to them reaching the intake structure. 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 to assist in estimating their age.

Barney M. Davis Power Station is an existing facility and there are no construction

activities planned, nor additional funding. 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 regulations (40 CFR 1506.6). NMFS will evaluate the application, associated documents, and submitted comments to determine whether the application meets the requirements of the ESA Section 10(a)(1)(B) permitting process. If it is determined that the requirements are met, a permit will be issued for incidental takes of ESA-listed threatened Northwest Atlantic Distinct Population Segment of green turtles and Kemp's ridley sea turtles under the jurisdiction of NMFS.

Barney Davis evaluated three alternatives to the proposed action: (1) seasonal outages of the facility during winter months when the incidence of take is higher; (2) additional monitoring equipment located prior to the intake structure; and (3) a "no action" alternative. The alternatives considered were determined to either be unfeasible, or to have no significant impact, or would result in an increase in adverse effects to sea turtles compared to the activity as proposed.

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 8, 2017.

Angela Somma,  
Chief, Endangered Species Division,  
Office of Protected Resources,  
National Marine Fisheries Service.

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