



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF158

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Port Everglades Harbor Navigation Improvement Project, Broward County Florida

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

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from the United States Army Corps of Engineers (USACE) for authorization to take small numbers of marine mammals incidental to the Port Everglades Harbor Navigation Improvement Project in Broward County, Florida, over the course of 5 years from May 2030 through May 2035. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of the USACE's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the USACE's application and request.

DATES: Comments and information must be received no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments on the application should be addressed to Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Fleming@noaa.gov*. An electronic copy

of the USACE's application may be obtained online at:

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. In case of problems accessing these documents, please call the contact listed below.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period.

Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at

<https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Kate Fleming, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On May 30, 2024, NMFS received an application from the USACE requesting authorization to take marine mammals incidental to confined underwater blasting associated with the Port Everglades Harbor Navigation and Improvement Project in Port Everglades Harbor (Lake Mabel, Stranahan River, and the Atlantic Ocean) in Broward County, Florida. Following NMFS’ review of the application, the USACE submitted a revised application on August 21, 2024. After discussions between NMFS and USACE, particularly with respect to application of the Updated Technical Guidance (NMFS, 2024), USACE submitted subsequent revised applications on August 1, 2025 and again

on September 5, 2025. The application was deemed adequate and complete on September 25, 2025. The requested regulations under which we would issue the requested LOA would be valid for 5 years, between May 2030 and May 2035. The USACE plans to conduct confined underwater blasting to deepen and widen the Port Everglades harbor and entrance channel. Blasting may incidentally expose three species of marine mammals to elevated levels of noise resulting in take by Level A harassment and Level B harassment. Therefore, the USACE requests authorization to incidentally take marine mammals. Due to the proposed mitigation and monitoring measures, USACE has not requested that NMFS authorize take by mortality or serious injury from exposure to blasting.

NMFS notes USACE previously submitted an application to NMFS for authorization to take marine mammals incidental to the same project (87 FR 27990, May 10, 2022); however, the application available for public comment here supersedes that 2022 application.

Specified Activities

The USACE is planning to deepen and widen Port Everglades Harbor using confined underwater blasting in areas where dredging or other rock removal methods are expected to be unsuccessful. Blasting would involve the use of conventional (high) explosive materials to breakup rock substrate in six designated areas in the harbor and entrance channel: the Outer Entrance Channel, Inner Entrance Channel, Main Turning Basin, Widener, South Access Channel, and Turning Notch in Lake Mabel, Stranahan River, and the Atlantic Ocean (See figure E-1 in the application). During the 5-year effective period of the requested regulations and LOA, if issued, blasting is expected to occur up to 6 days per week during daylight hours over approximately 280 days.

Blasting would only be implemented between March 15 through November 15, annually, to comply with in-water work windows designed to protect West Indian

Manatees (*Trichechus manatus*) which are listed under the U.S. Endangered Species Act (ESA) and are under the jurisdiction of the U.S. Fish and Wildlife Service. The USACE has requested take, by Level B harassment and Level A harassment, of bottlenose dolphins (*Tursiops truncatus*), Tamanend's bottlenose dolphins (*Tursiops erebennus*), and Atlantic spotted dolphins (*Stenella frontalis*). The USACE's application contains proposed mitigation and monitoring measures designed to reduce impacts to marine mammals and avoid mortality or serious injury.

USACE also plans to install a bulkhead comprised of sheet piles in the South Access Channel and Turning Notch using impact driving. However, the USACE has determined that take can be avoided through the implementation of mitigation and monitoring measures such as bubble curtains, shutdown zones, and Protected Species Observers, and therefore has not requested authorization to take marine mammals incidental to this activity. Other components of the project the USACE has determined would not result in the take of marine mammals include drilling blast holes at night, use of alternative rock pre-treatment equipment such as rock breaking chisels, punch barges, clamshell bucket drops, and terrestrial-based activities (*e.g.*, relocation of a land-based Coast Guard station).

Information Solicited

Interested persons may submit information, suggestions, and comments concerning the USACE's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by the USACE, if appropriate.

Dated: September 26, 2025.

Kimberly Damon-Randall,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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