

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[I.D. 051304A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Final Environmental Impact Statement Addressing Essential Fish Habitat Requirements of the Fishery Management Plans of the U.S. Caribbean

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

ACTION: Notice of availability of a Record of Decision.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, NMFS announces the availability of a Record of Decision (ROD) regarding a final environmental impact statement (FEIS) that was prepared to determine whether to amend the fishery management plans of the Caribbean Fishery Management Council to address essential fish habitat (EFH) requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This ROD documents the decision by NMFS to proceed with such an amendment to: describe and identify EFH for each fishery; identify other actions to encourage the conservation and enhancement of such EFH; and identify measures to prevent, mitigate or minimize to the extent practicable the adverse effects of fishing on such EFH.

ADDRESSES: Copies of the ROD and the FEIS can be obtained from NMFS, Southeast Regional Office, 9721 Executive Center Drive North, St. Petersburg, FL 33702; telephone: 727-570-5317.

FOR FURTHER INFORMATION CONTACT: David Dale, Fishery Biologist, 727-570-5317, fax: 727-570-5300; email: david.dale@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS Southeast Region was the lead agency responsible for preparing, under third party contract, an FEIS for the Generic Essential Fish Habitat Amendment (EFH Amendment) for the spiny lobster, queen conch, reef fish, and coral fishery management plans for the U.S. Caribbean. The FEIS evaluates alternatives for bringing the EFH Amendment into compliance with the EFH mandates of the Magnuson-Stevens Act. For each of the four Caribbean fisheries, the FEIS analyzes a range of potential alternatives to: (1) describe

and identify EFH for the fishery; (2) identify other actions to encourage the conservation and enhancement of such EFH; and (3) identify measures to minimize, to the extent practicable, the adverse effects of fishing on such EFH. The FEIS contains the methods and data used in the analyses, background information on the physical, biological, human, and administrative environments, and a description of the fishing and non-fishing threats to EFH. The notice of availability of the FEIS was published on April 23, 2004 (69 FR 22025).

The ROD documents NMFS' decision to proceed, in cooperation with the Caribbean Fishery Management Council (Council), with amending the spiny lobster, queen conch, reef fish, and coral fishery management plans for the U.S. Caribbean to implement the Council's preferred alternatives for identifying EFH, identifying habitat areas of particular concern, and preventing, mitigating, or minimizing the adverse effects of fishing on EFH. The ROD identifies all alternatives considered in reaching the decision, specifies the alternatives which were considered to be environmentally preferable, and identifies and discusses relevant factors which were balanced by NMFS in making its decision. A copy of the ROD will be mailed to individuals, agencies, or companies that commented on the draft and final EISs. In addition, copies of the ROD and FEIS are available from NMFS (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 20, 2004.

John Oliver,
Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[I.D. 031604B]

Taking Marine Mammals Incidental to Specified Activities; Alafia River Navigation Channel, Tampa, FL

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

ACTION: Notice of receipt of application and proposed authorization for an incidental take authorization; request for comments.

SUMMARY: NMFS has received a request from the U.S. Army Corps of Engineers-Jacksonville District (Corps) for authorizations to take marine mammals, by harassment, incidental to expanding and deepening the Alafia River Navigation Channel in Tampa Harbor, FL (Alafia River project). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue a 1-year Incidental Harassment Authorization (IHA) to the Corps to incidentally take, by harassment, bottlenose dolphins (*Tursiops truncatus*) as a result of conducting this activity and the Corps' application for regulations.

DATES: Comments and information must be received no later than June 24, 2004.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225. The mailbox address for providing e-mail comments on this action is PR2.Tampa1@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: ID#031604B. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size. A copy of the application containing a list of references used in this document may be obtained by writing to the address provided or by telephoning the contact listed under the heading **FOR FURTHER INFORMATION CONTACT**. Publications referenced in this document are available for viewing, by appointment during regular business hours, at the address provided here during this comment period.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713-2322, ext 128.

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 to allow, upon request, the incidental, but not intentional, taking 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.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an

unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the 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."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. 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].

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On February 26, 2004, NMFS received a request from the Corps for an authorization to take bottlenose dolphins incidental to using blasting during expansion of the Alafia River Navigation Channel by widening the channel to 250 ft (76.2 m) and deepening the channel to 42 ft (12.8 m) at mean low low water (mllw). The existing turning basin would be enlarged to a diameter of 1200 ft (365.8 m) with a depth of 42 ft (12.8 m) at mllw. The specific geographic area of the construction will be within the boundaries of the Alafia River Navigation Channel, part of the Tampa harbor navigation project. The Alafia River is located in northern Tampa Bay, Hillsborough County, Florida.

Completion of the dredging project may employ a clamshell dredge, cutterhead dredge and/or blasting. The dredging will remove 5.5 million cubic yards of material from the existing navigation channel and turning basin. Material removed from the dredging will be placed in the Tampa Ocean

Dredged Material Disposal Site and at two "beneficial use of dredged material" sites located near the project area. The project is proposed to start in February 2005 and is estimated to last for 24 months.

The Corps expects the contractor to employ underwater confined blasting and dredging to construct the project. Blasting may have adverse impacts on bottlenose dolphins and manatees (*Trichechus manatus latirostris*) inhabiting near or utilizing the Alafia River channel in the northern portion of Tampa Bay. Dolphins and other marine mammals have not been documented as being directly affected by dredging activities other than blasting.

While the Corps does not presently have a blasting plan from the contractor, which will specifically identify the number of holes that will be drilled, the amount of explosives that will be used for each hole, the number of blasts per day (usually no more than 3/day), or the number of days the construction is anticipated to take to complete, the Corps submitted a description of a completed project in San Juan Harbor, Puerto Rico as an example. For that project, the maximum weight of the explosives used for each event was 375 lbs (170 kg) and the contractors detonated explosives once or twice daily from July 16 to September 9, for a total of 38 individual detonations. Normal practice is for each charge to be placed approximately 5 - 10 ft (1.5 - 3 m) deep within the rock substrate, depending on how much rock needs to be broken and how deep a channel depth is authorized. The charges are placed in the holes and tamped with rock. Therefore, if the total explosive weight needed is 375 lbs (170 kg) and they have 10 holes, they would average 37.5 lbs (17.0 kgs)/hole. However, a more likely weight for this project may be only 90 lbs (41 kgs) and, therefore, 9 lbs (4.1 kg)/hole. Charge weight and other determinations are expected to be made by the Corps and the contractor approximately 30-60 days prior to commencement of the construction project. Because the charge weight and other information is not presently available, NMFS will require the Corps to provide this information to NMFS, including calculations for impact/mitigation zones (for the protection of marine mammals from injury), prior to commencing work. However, as described later in this document, mitigation measures will require the Corps to limit detonations to the minimum level necessary to accomplish the task and the larger the charge weight, the greater the safety zone that

will be required to protect marine mammals.

Summary of Request for Regulations

While the Corps was coordinating with NMFS on the application and issuance of an IHA for the Miami Turning Basin in early 2003 (see 68 FR 32016, May 29, 2003 and 69 FR 2899, January 21, 2004), the Corps identified at least 6 additional Federal navigation projects that might need similar MMPA authorizations within the next few years, if confined blasting is used as a construction technique. To ensure consistency across MMPA authorizations for these dredging projects, and efficiency for both agencies, NMFS recommended that the Corps apply for these authorizations under section 101(a)(5)(A) of the MMPA, instead of individually under section 101(a)(5)(D) of the MMPA. This request was received on December 1, 2003. At this time only the Miami Turning Basin and this Alafia River project are proposed to be covered by the section 101(a)(5)(A) rulemaking. This rule, if implemented, and Letters of Authorization (LOA) issued under that rule, would replace the IHA process for these activities in the Jacksonville District. Each application for an LOA for additional projects within the Jacksonville District for confined blasting within the District would require separate public review and comment, prior to issuance of an LOA. NMFS expects to start this rulemaking shortly.

Description of the Marine Mammals Affected by the Activity

General information on marine mammal species found off the east coast of the United States can be found in Waring et al. (2001, 2002). These reports are available on the Internet at the following location: http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html

Bottlenose dolphins and West Indian manatees are the only marine mammal species expected in the activity area. However, take authorizations for manatees are issued by the U.S. Fish and Wildlife Service (USFWS) and are not covered by this proposed IHA or any future rulemaking for LOAs issued by NMFS. Wang et al. (2002) provides the following minimum population estimates for the Gulf of Mexico bottlenose dolphin stocks: outer shelf, 43,233; shelf and slope, 4,530; western Gulf, 2,938; northern Gulf, 3,518; eastern Gulf, 8,953; and Bay, Sound & Estuarine waters, 3,933.

The best estimate is that the Tampa Bay bottlenose dolphin population

(which includes any dolphins within the Alafia River) consists of 559 individuals (Wang *et al.*, 2002). Previous population estimates for Tampa Bay include Wells *et al.* (1996), Weigle (1990), Scott *et al.* (1989) Wells (1986), Thompson (1981), and O'Dell and Reynolds (1980). A monitoring study of bottlenose dolphins in Tampa Bay was conducted from 1988–1993. The results of that study were published in Wells *et al.* (1996). It is the most recent study of those animals currently available (R. Wells, pers. comm. to T. Jordan, Corps, 2004). The study identified a population size ranging between 437 and 728 individuals utilizing three different survey and population estimation techniques. Some of these animals have been shown to be in the vicinity of the Alafia River channel. In a subsequent examination of the data, Urian (2002) identified five populations of bottlenose dolphins in Tampa Bay. Two of these populations utilize the area adjacent to the Alafia River channel. Specific population levels for these two groups were not provided in the study.

Potential Effects on Marine Mammals

According to the Corps, bottlenose dolphins and other marine mammals have not been documented as being directly affected by dredging activities and therefore the Corps does not anticipate any incidental harassment of bottlenose dolphins by dredging.

Potential impacts to marine mammals from explosive detonations include both lethal and non-lethal injury, as well as Level B harassment. Marine mammals may be killed or injured as a result of an explosive detonation due to the response of air cavities in the body, such as the lungs and bubbles in the intestines. Effects are likely to be most severe in near-surface waters where the reflected shock wave creates a region of negative pressure called “cavitation.” This is a region of near total physical trauma within which no animals would be expected to survive. A second possible cause of mortality or lethal injury is the onset of extensive lung hemorrhage. Extensive lung hemorrhage is considered debilitating and potentially fatal. Suffocation caused by lung hemorrhage is likely to be the major cause of marine mammal death from underwater shock waves. The onset of extensive lung hemorrhage for marine mammals will vary depending upon the animal's weight, with the smallest mammals having the greatest potential hazard range.

NMFS has also established criteria for determining non-lethal injury (Level A harassment) and non-injurious (Level B

harassment) harassment from underwater explosions (see 66 FR 22450, May 4, 2001). For non-lethal injury from explosives the criteria are established as the peak pressure that will result in: (1) the onset of slight lung hemorrhage, or (2) a 50-percent probability level for a rupture of the tympanic membrane. These are injuries from which animals would be expected to recover on their own.

Although each of the tamped charges are fairly small (probably less than the 37 lbs (16.8 kg) per drilled hole used in Puerto Rico) and detonation staggered to reduce total pressure, the maximum horizontal extent for mortality/lethal injury and non-lethal injury (Level A harassment), estimated based on the total charge weight (375 lbs in the case of Puerto Rico) would be less than 1875 ft (571 m) and 3750 ft (1143 m) respectively. As these distances are based on an open-water charge calculation, and as stemmed/confined blasts result in a significant decrease in the strength of the pressure wave released as compared to an open water blast, the zones for mortality and non-serious injury would be significantly less than these distances. As a result of these small impact zones, the relatively shallow waters for blasting, and the nature of bottlenose dolphins to remain in surface waters, the biological monitoring (aerial- and vessel-based) is expected to be effective in locating all marine mammals prior to them entering an area where injury or mortality might result and thereby preventing any takes by injury or mortality.

NMFS has also established dual criteria for what constitutes Level B acoustic harassment for all marine mammals: (1) an energy-based temporary threshold shift (TTS) from received sound levels of 182 dB re 1 microPa₂-sec cumulative energy flux in any 1/3 octave band above 100 Hz for odontocetes (derived from experiments with bottlenose dolphins (Ridgway *et al.*, 1997; Schlundt *et al.*, 2000); and (2) 12 psi peak pressure (cited by Ketten (1995) as associated with a safe outer limit for minimal, recoverable auditory trauma (i.e., TTS)).

Mitigation

The Corps proposes to implement mitigation measures that will establish both caution- and safety-zone radii to ensure that bottlenose dolphins will not be injured or killed during blasting and that impacts will be at the lowest level practicable. In the absence of acoustic measurements of the shock and pressure waves emanating from the detonations (due to the high cost and complex instrumentation needed), the following

equations have been proposed by the Corps for blasting projects to determine zones for injury or mortality from an open water explosion and to assist the Corps in establishing mitigation to reduce impacts to the lowest level practicable. These equations are conservative because they are based on humans, which are more sensitive to the effects from the pressure wave of the detonation than are dolphins and because they are based on unconfined charges while the proposed blasts in the Alafia River will be confined or stemmed charges (i.e., placed in a hole drilled in rock and tamped with rock). Studies (e.g., Nedwell and Thandavamoorthy 1992) have shown that stemmed/confined blasts have a greater than 90 percent decrease in the strength of the pressure wave released as compared to an open water blast.

The equations, based on Young (1991), are:

$$\text{Caution Zone radius} = 260 (\text{lbs/delay})^{1/3}$$

$$\text{Safety Zone radius} = 520 (\text{lbs/delay})^{1/3}$$

with R = 260 times or 520 times the cube root of the weight of the explosive charge in pounds where R = radius of the safety zone in ft and W = weight of the explosive charge in lbs. The Caution Zone represents the radius from the point of detonation beyond which mortality would not be expected from an open-water blast. The Safety Zone is the approximate distance beyond which non-serious injury (Level A harassment) would be unlikely from an open-water explosion. These zones will be used for implementing mitigation measures to protect both marine mammals and sea turtles, although the activity area is apparently not good habitat for sea turtles.

In the area where explosives are required to obtain channel design depth for each explosive charge, the Corps proposes that detonation will not occur if a marine mammal is sighted within the Safety Zone by a member of the marine mammal observer program.

Although the Caution Zone is considered to be an area for potential mortality, the Corps and NMFS believe that because all explosive charges will be stemmed, the true areas for potential mortality and injury will be significantly smaller than this area and, therefore, for reasons mentioned previously, it is unlikely that even non-serious injury will occur. This is particularly true in this case, since bottlenose dolphins are commonly found on the surface of the water and implementation of a mitigation/monitoring program is unlikely to miss bottlenose dolphins in such a small area.

Additional mitigation measures that will significantly lower potential impacts to marine mammals (and sea turtles) include: (1) confining the explosives in a hole with drill patterns restricted to a minimum of 8 ft (2.44 m) separation from any other loaded hole; (2) restricting the hours of detonation from 2 hours after sunrise to 1 hour before sunset to ensure adequate observation of marine mammals in the safety zone; (3) staggering the detonation for each explosive hole in order to spread the explosive's total overpressure over time, which in turn will reduce the radius of the caution zone; (4) capping the hole containing explosives with rock in order to reduce the outward potential of the blast, thereby reducing the chance of injuring a dolphin or manatee; (5) matching, to the extent possible, the energy needed in the "work effort" of the borehole to the rock mass to minimize excess energy vented into the water column; and (6) conducting a marine mammal watch with no less than two qualified observers from a small water craft and/or an elevated platform on the explosives barge, at least 30 minutes before and continue for 30 minutes after each detonation to ensure that there are no dolphins, manatees or sea turtles in the area at the time of detonation.

Monitoring Program

The Corps proposes to implement a aerial and vessel-based observer monitoring programs. The vessel-based observer program will take place in a circular area at least three times the radius of the above described Caution Zone (called the watch zone). Detonation will not occur if a marine mammal or sea turtle is sighted within the safety zone and will be delayed until the animal(s) move(s) out of the safety zone on its own volition. The aerial and vessel-based marine mammal watch is proposed to be conducted for at least a half hour before and after the time of each detonation.

Reporting

NMFS proposes to require the Corps to submit a report of activities 120 days before the expiration of the proposed IHA if the proposed work has started. This report will include the status of the work being undertaken, marine mammals sighted during the monitoring period, any behavioral observations made on bottlenose dolphins and any delays in detonation due to marine mammals being within the safety zone.

In the unlikely event a marine mammal or sea turtle is injured or killed during blasting, the Contractor shall

immediately notify the NMFS Regional Office.

Endangered Species Act

Under section 7 of the ESA, the Corps completed consultation with the USFWS on December 14, 1998 for this project. The USFWS concluded that the work would not likely jeopardize the continued existence of the manatee, if standard manatee protection conditions were implemented. The Corps reinitiated consultation with the USFWS by letter dated July 5, 2000, because blasting was identified as a component of the project. On July 24, 2000 and September 5, 2000, the USFWS provided the Corps with recommendations for protecting manatees while conducting blasting operations. These recommendations have been incorporated into the project. Because the proposed issuance of this IHA to the Corps is a federal action under section 7 of the ESA that might affect sea turtles (a listed species under NMFS' jurisdiction), NMFS has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on whether or not to issue an IHA.

National Environmental Policy Act

The Corps prepared an Environmental Assessment (EA) on the Navigation Study for Tampa Harbor-Alafia River, Florida in September 2000 and made a finding of no significant impact on October 11, 2000. A copy of this document is available for viewing (see ADDRESSES). NMFS is reviewing this EA in relation to the Corps' application and will determine the appropriate action to take under NEPA prior to making a determination on the issuance of an IHA.

Preliminary Conclusions

NMFS has preliminarily determined that the Corps' proposed action, including mitigation measures to protect marine mammals, should result, at worst, in the temporary modification in behavior by bottlenose dolphins resulting from temporary hearing impairment (TTS), but may also include temporarily vacating the Alafia River area to avoid the blasting activity and the potential for minor visual and acoustic disturbance from dredging and detonations. Because this project will affect at most a few dolphins due to its local impact, short time duration, and implementation of effective vessel-based and aerial monitoring programs, NMFS believes that only a small number of dolphins may be taken by Level B

harassment and this is expected to have only a negligible impact on the affected species or stocks of bottlenose dolphins. In addition, no take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures described in this document.

Proposed Authorization

NMFS proposes to issue an IHA to the Corps for the harassment of small numbers of bottlenose dolphins incidental to expanding and deepening the Alafia River Navigation Channel in Tampa Harbor, FL, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of bottlenose dolphins and will have no more than a negligible impact on this marine mammal stock.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed IHA and the application for regulations request (see ADDRESSES).

Dated: May 18, 2004.

Laurie K. Allen,

*Director, Office of Protected Resources,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032904C]

Small Takes of Marine Mammals Incidental to Specified Activities; Harbor Activities at Vandenberg Air Force Base, CA

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

ACTION: Notice of issuance of an incidental take authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to The Boeing Company (Boeing) to take marine mammals by harassment incidental to harbor activities related to the Delta IV/Evolved Expendable