

These LOAs remain valid through August 15, 2008, provided the Navy remains in conformance with the conditions of the regulations and the LOAs, and the mitigation, monitoring, and reporting requirements described in 50 CFR 216.184–216.186 (August 21, 2007, 72 FR 46846) and in the LOAs are undertaken.

Dated: October 2, 2007.

**James H. Lecky,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 0648–XB13]

#### Takes of Marine Mammals Incidental to Specified Activities; Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida

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

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Eglin Air Force Base (EAFB) for the take of marine mammals, by Level B harassment only, incidental to Naval Explosive Ordnance Disposal School (NEODS) training operations at EAFB, Florida.

**DATES:** Effective from October 5, 2007, through October 4, 2008.

**ADDRESSES:** A copy of the IHA and the application are available by writing to Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed here (**FOR FURTHER INFORMATION CONTACT**) or online at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

#### FOR FURTHER INFORMATION CONTACT:

Jaclyn Daly or Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289.

#### 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 military readiness activity if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings will 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 certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking 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 marine mammals by harassment. With respect to military readiness activities, harassment is defined as follows:

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Section 101(a)(5)(D) establishes a 30-day public notice and comment period on any proposed IHA. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

##### Summary of Request

On June 7, 2007, NMFS received an application from EAFB requesting re-issuance of their IHA for the harassment, by Level B harassment only, of Atlantic bottlenose dolphins

(*Tursiops truncatus*) and Atlantic spotted dolphins (*Stenella frontalis*) incidental to NEODS training operations at EAFB, Florida, in the northern Gulf of Mexico (GOM). Each of up to six missions per year would include up to five live detonations of approximately 10-lb (4.6-kg) net explosive weight charges to occur in approximately 60-ft (18.3-m) deep water from one to three nm (1.9 to 5.6 km) off shore. EAFB was granted an IHA in 2005 and 2006 for this activity.

Because the relative low cost and ease of use of mines lends itself to use by an array of transnational, rogue, and subnational adversaries that now pose the most immediate threat to American interests and because NEODS supports the Naval Fleet by providing training to personnel from all four armed services, civil officials, and military students from over 70 countries, this activity constitutes a “military readiness activity,” as defined in Section 315(f) of Public Law 107–314 (16 U.S.C. 703 note).

##### Specified Activities

The mission of NEODS is to train personnel to detect, recover, identify, evaluate, render safe, and dispose of unexploded ordnance (UXO) that constitutes a threat to people, material, installations, ships, aircraft, and operations. The NEODS plans to utilize three areas within the Eglin Gulf Test and Training Range (EGTTR), consisting of approximately 86,000 mi<sup>2</sup> (222,739 km<sup>2</sup>) within the GOM and the airspace above, for Mine Countermeasures (MCM) detonations, which involve mine-hunting and mine-clearance operations. The detonation of small, live explosive charges disables the function of the mines, which are inert for training purposes. The training would occur approximately one to three nautical miles (nm) (1.9 to 5.6 km) offshore of Santa Rosa Island (SRI) six times annually, at varying times within the year.

Each of the six training classes would include one or two “Live Demolition Days.” During each set of Live Demolition Days, five inert mines would be placed in a compact area on the sea floor in approximately 60 ft (18.3 m) of water. Divers would locate the mines by hand-held sonars. The AN/PQS–2A hand-held acoustic locator has a sound pressure level (SPL) of 178.5 re 1 μPascal @ 1 meter and the Dukane Underwater Acoustic Locator has a SPL of 157–160.5 re 1 μPascal @ 1 meter. Because output from these hand-held sound sources would attenuate to below any current threshold for protected species within approximately 10–15 m,

noise impacts are not anticipated and are not addressed further in this analysis.

Five charges packed with five lbs (2.3 kg) of C-4 explosive material will be set up adjacent to each of the mines. No more than five charges will be detonated over the 2-day period. Detonation times will begin no earlier than 2 hours after sunrise and end no later than 2 hours before dusk and charges utilized within the same hour period will have a maximum separation time of 20 minutes. Mine shapes and debris will be recovered and removed from the water when training is completed. A more detailed description of the work is contained in the application which is available upon request (see ADDRESSES).

#### Marine Mammals and Habitat Affected by the Activity

Marine mammal species that potentially occur within the EGTTR include several species of cetaceans and the West Indian manatee. While a few manatees may migrate as far north from southern Florida (where there are generally confined in the winter) as Louisiana in the summer, they primarily inhabit coastal and inshore waters and rarely venture offshore. NEODS missions are conducted one to three nm (5.6 km) from shore and effects on manatees are therefore considered very unlikely. Accordingly, EAFB did not seek an incidental take authorization from the U.S. Fish and Wildlife Service, which has jurisdiction over manatees.

Cetacean abundance estimates for the project area are derived from GulfCet II aerial surveys conducted from 1996 to 1998 over a 70,470 km<sup>2</sup> area, including nearly the entire continental shelf region of the EGTTR, which extends approximately 9 nm (16.7 km) from shore. The dwarf and pygmy sperm whales are not included in this analysis because their potential for being found near the project site is remote. Although Atlantic spotted dolphins do not normally inhabit nearshore waters, NMFS has included them in the analysis to ensure conservative mitigation measures are applied. The two marine mammal species expected to be affected by these activities, whose status and distribution were discussed in the proposed IHA (71 FR 43470; August 1, 2006), are the bottlenose dolphin (*Tursiops truncatus*) and the Atlantic spotted dolphin (*Stenella frontalis*). Further descriptions of the biology and local distribution of these species can be found in the application (see ADDRESSES); other sources such as Wursig *et al.* (2000), and the NMFS Stock Assessments, can be viewed at: <http://www.NMFS.noaa.gov/pr/PR2/>

*Stock\_Assessment\_Program/sars.html*.

#### Potential Effects of Activities on Marine Mammals

The primary potential impact to Atlantic bottlenose and the Atlantic spotted dolphins occurring in the EGTTR from the planned detonations is Level B harassment from noise. In the absence of any mitigation or monitoring measures, there is a very small chance that a marine mammal could be injured or killed when exposed to the energy generated from an explosive force on the sea floor. However, NMFS believes the required mitigation measures will preclude this possibility in the case of this particular activity. Analysis of NEODS noise impacts to cetaceans was based on criteria and thresholds initially presented in U.S. Navy Environmental Impact Statements for ship shock trials of the SEAWOLF submarine and the WINSTON CHURCHILL vessel and subsequently adopted by NMFS.

Non-lethal injurious impacts (Level A Harassment) are defined in EAFB's application and this document as tympanic membrane (TM) rupture and the onset of slight lung injury. The threshold for Level A Harassment corresponds to a 50-percent rate of TM rupture, which can be stated in terms of an energy flux density (EFD) value of 205 dB re 1  $\mu\text{Pa}^2 \text{ s}$ . TM rupture is well-correlated with permanent hearing impairment (Ketten (1998) indicates a 30-percent incidence of permanent threshold shift (PTS) at the same threshold). The zone of influence (ZOI) (farthest distance from the source at which an animal is exposed to the EFD level referred to) for the Level A Harassment threshold is 52 m (172 ft).

Level B (non-injurious) Harassment includes temporary (auditory) threshold shift (TTS), a slight, recoverable loss of hearing sensitivity. One criterion used for TTS is 182 dB re 1  $\mu\text{Pa}^2 \text{ s}$  maximum EFD level in any 1/3-octave band above 100 Hz for toothed whales (e.g., dolphins). The ZOI for this threshold is 230 m (754 ft). A second criterion, 23 psi, has recently been established by NMFS for TTS when the explosive or animal approaches the sea surface, in which case explosive energy is reduced, but the peak pressure is not. The ZOI for 23 psi is 222 m (728 ft). NMFS will apply the more conservative of these two.

Level B Harassment also includes behavioral modifications resulting from repeated noise exposures (below TTS) to the same animals (usually resident) over a relatively short period of time. Threshold criteria for this particular type of harassment are currently still

under debate. One recommendation is a level of 6 dB below TTS (see 69 FR 21816, April 22, 2004), which would be 176 dB re 1  $\mu\text{Pa}^2 \text{ s}$ . However, due to the infrequency of the detonations, the potential variability in target locations, and the continuous movement of marine mammals off the northern Gulf, NMFS believes that behavioral modification from repeated exposures to the same animal is highly unlikely.

#### Comments and Responses

On July 12, 2007, NMFS published in the **Federal Register** a notice of a proposed IHA for EAFB's request to take marine mammals incidental to NEODS training exercises in the GOM, and requested comments regarding this request (See 72 FR 38061). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission).

*Comment 1:* The Commission recommends NMFS grant the requested authorizations provided that Eglin AFB conduct all practicable monitoring and mitigation measures to afford the potentially affected marine mammal species adequate protection from serious and lethal injury.

*Response:* NMFS believes that the IHA includes all practicable monitoring and mitigation measures to avoid serious or lethal injury of marine mammals, and we believe that they will be effective. The radius around the site of the explosion where the animals could potentially be injured is 52 m, and animals would have to be significantly closer than that for the potential for serious injury or death to occur. MMOs will be monitoring a 460-m radius area for the entire 15 minutes leading up to the detonation and the operation will be postponed if animals are seen within the 230-dB ZOI or if large schools of fish, which could attract the dolphins, are seen within the ZOI.

*Comment 2:* The Commission recommends that NEODS training operations be suspended immediately if a seriously injured or dead marine mammal is found in the vicinity of the operations and the death or injury could be attributable to the NEODS activities. Further, the Commission recommends that any suspension should remain in place until NMFS has (1) reviewed the situation and determined that further deaths or serious injuries are unlikely to occur or (2) issued regulations authorizing such takes under section 101(a)(5)(A) of the MMPA.

*Response:* NMFS concurs with the Commission's recommendation and will include this provision in the IHA.

*Comment 3:* The Commission also resubmitted the identical comments it

submitted on the 2005 and 2006 NEODS IHA.

*Response:* NMFS stated the Commission's concerns and addressed them in the **Federal Register** notice announcing the issuance of the 2005 IHA (70 FR 51341; August 30, 2005), and they may be referenced there.

#### **Numbers of Marine Mammals Estimated to be Harassed**

Estimates of the potential number of Atlantic bottlenose dolphins and Atlantic spotted dolphins to be harassed by the training were calculated using the number of distinct firing or test events (maximum 30 per year), the ZOI for noise exposure, and the density of animals that potentially occur in the ZOI. The take estimates provided here do not include mitigation measures, which are expected to further minimize impacts to protected species and make injury or death highly unlikely.

The estimated number of Atlantic bottlenose dolphins and Atlantic spotted dolphins potentially taken through exposure to the Level A Harassment threshold (205 dB re 1  $\mu\text{Pa}^2$  s), are less than one (0.22 and 0.19, respectively) annually.

For Level B Harassment, two separate criteria were established, one expressed in dB re 1  $\mu\text{Pa}^2$  s maximum EFD level in any 1/3-octave band above 100 Hz, and one expressed in psi. The estimated numbers of Atlantic bottlenose dolphins and Atlantic spotted dolphins potentially taken through exposure to 182 dB are 4 and 3 individuals, respectively. The estimated numbers potentially taken through exposure to 23 psi are also 4 and 3 individuals, respectively.

#### **Possible Effects of Activities on Marine Mammal Habitat**

NMFS anticipates no loss or modification to the habitat used by Atlantic bottlenose dolphins or Atlantic spotted dolphins in the EGTTR. The primary source of marine mammal habitat impact resulting from the NEODS missions is noise, which is intermittent (maximum 30 times per year) and of limited duration. The effects of debris (which will be recovered following test activities), ordnance, fuel, and chemical residues were analyzed in the NEODS Biological Assessment and the Air Force concluded that marine mammal habitat would not be affected.

#### **Mitigation and Monitoring**

Mitigation will consist primarily of surveying and taking action to avoid detonating charges when protected species are within the ZOI. A trained,

NMFS-approved observer will be staged from the highest point possible on a support ship and have proper lines of communication to the Officer in Tactical Command. The survey area will be 460 m (1509 ft) in every direction from the target, which is twice the radius of the ZOI for Level B Harassment (230 m (755 ft)). To ensure visibility of marine mammals to observers, NEODS missions will be delayed if whitecaps cover more than 50 percent of the surface or if conditions exceed a Beaufort 3 sea state.

Pre-mission monitoring will be used to evaluate the test site for environmental suitability of the mission. Visual surveys will be conducted two hours, one hour, and the entire 15 minutes prior to the mission to verify that the ZOI (230 m (755 ft)) is free of visually detectable marine mammals and large schools of fish, and that the weather is adequate to support visual surveys. The observer will plot and record sightings, bearing, and time for all marine mammals detected, which would allow the observer to determine if the animal is likely to enter the test area during detonation. If a marine mammal appears likely to enter the test area during detonation, if large schools of fish are present, or if the weather is inadequate to support monitoring, the observer will declare the range fouled and the tactical officer will implement a hold until monitoring indicates that the test area is and will remain clear of detectable marine mammals.

Monitoring of the test area will continue throughout the mission until the last detonation is complete. The mission would be postponed if:

(1) Any marine mammal is visually detected within the ZOI (230 m (755 ft)). The delay would continue until the animal that caused the postponement is confirmed to be outside the ZOI (visually observed swimming out of the range).

(2) Any marine mammal is detected in the ZOI and subsequently is not seen again. The mission would not continue until the last verified location is outside of the ZOI and the animal is moving away from the mission area.

(3) Large schools of fish are observed in the water within of the ZOI. The delay would continue until large fish schools are confirmed to be outside the ZOI.

In the event of a postponement, pre-mission monitoring would continue as long as weather and daylight hours allow. If a charge fails to explode, mitigation measures would continue while operations personnel attempt to recognize and solve the problem (e.g., detonate the charge).

Post-mission monitoring is designed to determine the effectiveness of pre-mission mitigation by reporting any sightings of dead or injured marine mammals. Post-detonation monitoring, concentrating on the area down current of the test site, would commence immediately following each detonation and continue for at least two hours after the last detonation. The monitoring team would document and report to the appropriate marine animal stranding network any marine mammals killed or injured during the test and, if practicable, recover and examine any dead animals. The species, number, location, and behavior of any animals observed by the teams would be documented and reported to the Officer in Tactical Command.

Additionally, in the unlikely event that a seriously injured or dead marine mammal is found in the vicinity of the operations and the death or injury could be attributable to the NEODS activities, training operations will be suspended and NMFS contacted immediately. This suspension would remain in place until the Service has (1) reviewed the situation and determined that further deaths or serious injuries are unlikely to occur or (2) issued regulations authorizing such takes under section 101(a)(5)(A) of the MMPA.

#### **Reporting**

The Air Force will notify NMFS 2 weeks prior to initiation of each training session. Any takes of marine mammals other than those authorized by the IHA, as well as any injuries or deaths of marine mammals, will be reported to the Southeast Regional Administrator, NMFS, within 24 hours. A summary of mission observations and test results, including dates and times of detonations as well as pre- and post-mission monitoring observations, will be submitted to the Southeast Regional Office (NMFS) and to the Division of Permits, Conservation, and Education, Office of Protected Resources (NMFS) within 90 days after the completion of the last training session.

#### **Endangered Species Act**

In a Biological Opinion issued on October 25, 2004, NMFS concluded that the NEODS training missions and their associated actions are not likely to jeopardize the continued existence of threatened or endangered species under the jurisdiction of NMFS or destroy or adversely modify critical habitat that has been designated for those species. NMFS has issued an incidental take statement (ITS) for NEODS for sea turtles pursuant to section 7 of the Endangered Species Act. The ITS

contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of this take. This IHA action is within the scope of the previously analyzed action and does not change the action in a manner that was not considered previously.

### National Environmental Policy Act

In 2005, NMFS prepared an Environmental Assessment (EA) on the Issuance of Authorizations to Take Marine Mammals, by Harassment, Incidental to Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida and subsequently issued a Finding of No Significant Impact (FONSI). This IHA action is within the scope of the previously analyzed action and does not change the action in a manner that was not considered previously. Therefore, preparation of an EIS on this action is not required by NEPA or its implementing regulations. However, in 2007, a supplemental EA was prepared to address new information on the effects to EFH and cumulative impacts to the physical and biological environment from other EAFB activities.

### Conclusions

NMFS has issued an IHA to the Air Force for the NEODS training missions to take place at EAFB over a 1-year period. The issuance of this IHA is contingent upon adherence to the previously mentioned mitigation, monitoring, and reporting requirements. NMFS has determined that the NEODS training, which entails up to six missions per year, including up to five live detonations per mission of approximately 5-lb (2.3 kg) net explosive weight charges to occur in approximately 60-foot (18 m) deep water from one to three nm off shore, will result in the Level B harassment of Atlantic bottlenose dolphins and Atlantic spotted dolphins (less than 0.0002 percent of the population for each species, and perhaps 1–2 percent of an inshore stock of bottlenose dolphin, if one of them were harassed) and will have a negligible impact on these marine mammal species and stocks. While behavioral modifications may be made by Atlantic bottlenose dolphins and Atlantic spotted dolphins to avoid the resultant acoustic stimuli, when the potential density of dolphins in the area and the required mitigation and monitoring are taken into consideration NMFS does expect any injury or mortality to result. The effects of the NEODS training are expected to be limited to short-term and localized TTS-related behavioral changes. No

rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the NEODS test sites.

### Authorization

As a result of these determinations, NMFS proposes to issue an IHA to the Air Force for NEODS training operations at EAFB, Florida, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: October 9, 2007.

**James H. Lecky,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration RIN: 0648–XD29

### Gulf of Mexico Fishery Management Council (Council); Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene public meetings.

**DATES:** The meetings will be held October 29 – November 1, 2007.

**ADDRESSES:** The meetings will be held at the Beau Rivage, 875 Beach Blvd., Biloxi, MS 39530.

*Council address:* Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

**FOR FURTHER INFORMATION CONTACT:** Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

### SUPPLEMENTARY INFORMATION:

#### Council

#### Wednesday, October 31, 2007

2 p.m. – The Council meeting will begin with a review the agenda and minutes.

2:15 pm – 4:15 p.m. – Public testimony on exempted fishing permits (EFPs), if any, and Reef Fish Amendment 30A will be received.

4:15 – 5:15 p.m. – An Open Public Comment Period regarding any fishery issue of concern will be held. People wishing to speak before the Council should complete a public comment card prior to the comment period.

5:15 – 5:30 p.m. – A CLOSED SESSION on Personnel will be held.

#### Thursday, November 1, 2007

The Council will review and discuss reports from the previous two days' committee meetings as follows:

8:30 a.m. – 10:30 a.m. – Reef Fish Management;

10:30 a.m. – 10:45 a.m. – Joint Reef Fish/Mackerel/Red Drum;

10:45 a.m. – 11 a.m. – Data Collection;

11 a.m. – 11:15 a.m. – Budget/Personnel;

11:15 a.m. – 11:30 a.m. – Spiny Lobster/Stone Crab Management;

1 p.m. – 1:30 p.m. – Red Drum Management;

1:30 p.m. – 2 p.m. – Shrimp Management;

2 p.m. – 2:15 p.m. – Habitat Protection.

2:15 p.m. – 3:15 p.m. – The Council will discuss Other Business items.

3:15 p.m. – 3:30 p.m. – The Council will conclude its meeting with Elections of Chairman and Vice-Chairman.

#### Committees

#### Monday, October 29, 2007

9:30 a.m. – 11:30 a.m. – Orientation Session for New Members.

1 p.m. – 5:30 p.m. – The Reef Fish Management Committee will meet to discuss the Scoping Document for Reef Fish Amendment 29 (Grouper IFQ), a Report on Marine Reserves, an Ecosystem Modeling Workshop Report, a Preliminary Public Hearing Draft of Reef Fish Amendment 30B, and a Draft Red Snapper Allocation Discussion Document.

#### Tuesday, October 30, 2007

8 a.m. – 12 p.m. – The Reef Fish Management Committee will continue with a review of Reef Fish Amendment 30A for Gray Triggerfish/Greater Amberjack and a Goliath Grouper Cooperative Research Project.

1:30 p.m. – 2 p.m. – The Joint Reef Fish/Mackerel/Red Drum Management Committee will meet to discuss a Generic Amendment for Regulation of Offshore Aquaculture.

2 p.m. – 3 p.m. – The Data Collection Committee will meet to discuss reports by the SSC Select Committee on Revision of Marine Recreational Fishery Statistics Survey (MRFSS).

3 p.m. – 4 p.m. – Budget/Personnel Committee will meet to review the Status of 2007 Funding, the 2008 Council Operational Budget and hold a CLOSED SESSION on Personnel.

4 p.m. – 5:30 p.m. – The Red Drum Management Committee will meet to discuss Recommendations for Long-term Research by the Ad Hoc Review Panel for Red Drum.