Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.671–5 is amended by:

1. Revising paragraphs (b)(5), (b)(8), and (b)(21).
2. Revising paragraph (c)(2)(iv), (v)(C), (vi), and (vii).
3. Revising paragraph (c)(3).
4. Adding paragraph (c)(5)(iv).
5. Revising paragraphs (f)(1)(i)(A) and (viii)(A).

The revisions and addition read as follows:

§ 1.671–5 Reporting for widely held fixed investment trusts.

* * * * *

(b) * * *

(5) [The text of proposed § 1.671–5(b)(5) is the same as the text of § 1.671–5T(b)(5) published elsewhere in this issue of the **Federal Register**].

* * * * *

(8) [The text of proposed § 1.671–5(b)(8) is the same as the text of § 1.671–5T(b)(8) published elsewhere in this issue of the **Federal Register**].

* * * * *

(21) [The text of proposed § 1.671–5(b)(21) is the same as the text of § 1.671–5T(b)(21) published elsewhere in this issue of the **Federal Register**].

* * * * *

(c) * * *

(2) * * *

(iv) [The text of proposed § 1.671–5(c)(2)(iv) is the same as the text of § 1.671–5T(c)(2)(iv) published elsewhere in this issue of the **Federal Register**].

(v) * * *

(C) [The text of proposed § 1.671–5(c)(2)(v)(C) is the same as the text of § 1.671–5T(c)(2)(v)(C) published elsewhere in this issue of the **Federal Register**].

(vi) [The text of proposed § 1.671–5(c)(2)(vi) is the same as the text of § 1.671–5T(c)(2)(vi) published elsewhere in this issue of the **Federal Register**].

(vii) [The text of proposed § 1.671–5(c)(2)(vii) is the same as the text of § 1.671–5T(c)(2)(vii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(3) *Requirement that trustees file an information return and that WHMT trustees list WHMTs on an Internet Web site*—(i) *Information return identifying a NMWHFIT to the IRS.* For each NMWHFIT for which the trustee acts, the trustee of a NMWHFIT must file the form specified as the information return to be used for identifying a NMWHFIT to the IRS. The form must be filed by the due date provided by that form and must contain the information required to be provided by the form. If, following the publication of final regulations in the **Federal Register**, the IRS issues additional guidance that prescribes another method to be used to identify and provide information with respect to a NMWHFIT to the IRS, this method must be used.

(ii) *Information return for trustees of WHMTs and the requirement that the trustee maintain an Internet Web site listing the CUSIP numbers and names of the WHMTs for which the trustee acts.* The trustee of a NMWHFIT must file the form specified as the information return to be used for identifying the trustee to the IRS. The form must be filed by the due date provided by that form and contain the information required to be provided by the form. In addition, the trustee must maintain a list of the WHMTs for which the trustee acts on the trustee's Internet Web site (or another site designated by the trustee for this purpose). If, following the publication of final regulations in the **Federal Register**, the IRS issues additional guidance that prescribes another method to be used to identify a trustee as a WHMT trustee and provide information with respect to the WHMTs for which the trustee acts, this method must be used.

* * * * *

(5) * * *

(iv) *Directory of WHMT trustees and NMWHFITs.* The IRS provides a directory of WHMT trustees and NMWHFITs, and WHMT trustees provide an Internet Web site at which the trustees list the WHMTs for which they act, to assist requesting persons in locating a representative of a WHFIT that will provide the information specified in paragraph (c) of this section. A requesting person may report consistent with this section for any arrangement identified in the directory as a NMWHFIT or on a WHMT trustee's Internet Web site as a WHMT provided that the requesting person does not have actual knowledge that the arrangement is not a WHFIT.

(f) * * *

(1) * * *

(i) * * *

(A) [The text of proposed § 1.671–5(f)(1)(i)(A) is the same as the text of § 1.671–5T(f)(1)(i)(A) published elsewhere in this issue of the **Federal Register**].

* * * * *

(viii) *Reporting market discount information under the safe harbor*—(A) *In general*—(1) *Trustee is required to provide market discount information.* If the trustee is required to provide information regarding market discount under paragraph (c)(2)(vii) of this section, the trustee must provide—

(*i*) The information required to be provided under paragraph (f)(1)(iv)(A)(*1*)(*iii*) of this section; and

(*ii*) If the NMWHFIT holds debt instruments with OID and the NMWHFIT has a start-up date on or after January 24, 2006, the aggregate adjusted issue price of the debt instruments per trust interest calculated as of the start-up date and as of January 1 for each subsequent year of the NMWHFIT.

(*2*) *Trustee is not required to provide market discount information.* If the trustee is not required to provide market discount information under paragraph (c)(2)(vii) of this section (because the NMWHFIT meets the *de minimis* test of paragraph (c)(2)(iv)(D)(*1*) of this section, the qualified NMWHFIT exception of paragraph (c)(2)(iv)(E) of this section, or the NMWHFIT final year exception of paragraph (c)(2)(iv)(F) of this section), the trustee is not required under this paragraph (f) to provide any information regarding market discount.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 06–6650 Filed 7–28–06; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 060629183–6183–01; I.D. 022106A]

RIN 0648–AT39

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Conducting Precision Strike Weapons Testing and Training by Eglin Air Force Base in the Gulf of Mexico

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from Eglin Air Force Base (Eglin AFB) for an authorization to take marine mammals incidental to conducting Precision Strike Weapons (PSW) testing and training in the Gulf of Mexico (GOM). By this document, NMFS is proposing regulations to govern that take. In order to issue a Letter of Authorization (LOA) and final regulations governing the take, NMFS must determine, among other things, that the taking will have a negligible impact on the affected species and stocks of marine mammals. NMFS regulations must set forth the permissible methods of take and other means of effecting the least practicable adverse impact on the affected species or stock of marine mammals and their habitat. NMFS invites comment on the application and the regulations.

DATES: Comments and information must be postmarked no later than September 5, 2006.

ADDRESSES: You may submit comments on the application and proposed rule, using the identifier 022106A, by any of the following methods:

E-mail: *PR1.022106A@noaa.gov*.

Federal e-Rulemaking Portal: *http://www.regulations.gov*.

Hand-delivery or mailing of paper, disk, or CD–ROM comments should be addressed to: P. 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.

Documents cited in this proposed rule may also be viewed, by appointment, during regular business hours at the above address or at the Department of the Air Force, AAC/EMSN, Natural Resources Branch, 501 DeLeon St., Suite 101, Eglin AFB, FL 32542–5133.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, 301–713–2289, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (MMPA) directs the Secretary of Commerce (Secretary) 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 regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary 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 if regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the mitigation, monitoring and reporting of such taking.

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.'' With respect to military readiness activities, the MMPA defines ''harassment'' as:

> (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]. 16 U.S.C. 1362(18)(B).

Summary of Request

On February 4, 2004, Eglin AFB submitted a request for a 1–year Incidental Harassment Authorization(IHA) under MMPA section 101(a)(5)(D) and for an LOA (to take effect after the expiration of the IHA), for the incidental, but not intentional taking (in the form of noise-related harassment), of marine mammals incidental to PSW testing within the Eglin Gulf Test and Training Range (EGTTR) for the next five years, as authorized by section 101(a)(5) of the MMPA. The EGTTR is described as the airspace over the GOM that is controlled by Eglin AFB, and is also referred to as the ''Eglin Water Range.''

PSW missions involve air-to-surface impacts of two weapons, the Joint Air-to-Surface Stand-off Missile (JASSM) AGM–158 A and B and the small-diameter bomb (SDB) (GBU–39/B), that result in underwater detonations of up to approximately 300 lbs (136 kg) and 96 lbs (43.5 kg, double SDB) of net explosive weight (NEW), respectively.

The JASSM is a precision cruise missile designed for launch from outside area defenses to kill hard, medium-hard, soft, and area-type targets. The JASSM has a range of more than 200 nautical miles (nm) (370 kilometers (km)) and carries a 1,000–lb (453.6 kg) warhead. The JASSM has approximately 300 lbs (136 kg) of TNT equivalent NEW. The explosive used is AFX–757, a type of plastic bonded explosive (PBX) formulation with higher blast characteristics and less sensitivity to many physical effects that could trigger unwanted explosions. The JASSM would be launched from an aircraft at altitudes greater than 25,000 ft (7620 m). The JASSM would cruise at altitudes greater than 12,000 ft (3658 m) for the majority of the flight profile until it makes the terminal maneuver toward the target. The JASSM exercise involves a maximum of two live shots (single) and 4 inert shots (single) each year for the next 5 years. One live shot will detonate in water and one will detonate in air. Detonation of the JASSM would occur under one of three scenarios: (1) Detonation upon impact with the target (about 5 ft (1.5 m) above the GOM surface); (2) detonation upon impact with a barge target at the surface of the GOM; or (3) detonation at 120 milliseconds after contact with the surface of the GOM.

The SDB is a glide bomb. Because of its capabilities, the SDB system is an important element of the Air Force's Global Strike Task Force. The SDB has a range of up to 50 nm (92.6 km) and carries a 217.4–lb (98.6 kg) warhead. The SDB has approximately 48 lbs (21.7 kg) of TNT equivalent NEW. The explosive used is AFX–757. Launch from an aircraft would occur at altitudes greater than 15,000 ft (4572 m). The SDB would commence a non-powered glide to the intended target. The SDB exercise involves a maximum of six live shots a year, with two of the shots occurring simultaneously, and a maximum of 12 inert shots with up to two occurring simultaneously. Detonation of the SDBs would occur under one of two scenarios: (1) Detonation of one or two bombs upon impact with the target (about 5 ft (1.5 m)above the GOM surface), or (2) a height of burst (HOB) test: detonation of one or two bombs 10 to 25 ft (3 to 7.6 m) above the GOM surface. No underwater detonations of the SDB are planned.

The JASSM and SDBs would be launched from B–1, B–2, B–52, F–15, F–16, F–18, or F–117 aircraft. Chase aircraft would include F–15, F–16, and T–38 aircraft. These aircraft would follow the test items during captive carry and free flight but would not follow either item below a predetermined altitude as directed by Flight Safety. Other assets on site may include an E–9 turboprop aircraft or MH–60/53 helicopters circling around the target location. Tanker aircraft including KC–10s and KC–135s would also be used. A second unmanned barge may also be on location to hold

instrumentation. Targets include a platform of five containers strapped, braced, and welded together to form a single structure and a hopper barge, typical for transportation of grain.

The Eglin AFB action would occur in the northern GOM in the EGTTR. Targets would be located in water less than 200 ft (61 m) deep and from 15 to 24 nm (27.8 to 44.5 km) offshore, south of Santa Rosa Island and south of Cape San Blas Site D3–A. PSW test and training exercises are a military readiness activity.

Comments and Responses on Eglin AFB's Application

A notice of receipt of Eglin AFB's application for a 1–year IHA and 5–year LOA was published in the **Federal Register** on April 22, 2004 (69 FR 21816). That notice described, in detail, Eglin AFB's proposed activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. Comments received on Eglin AFB's application during the 30–day public comment period were addressed in the August 19, 2005, **Federal Register** notice (70 FR 48675) announcing issuance of a 1–year IHA to Eglin AFB for PSW activities. Please review the 2005 notice prior to submitting comments on this proposed rule.

Description of Marine Mammals Affected by the Activity

There are 29 species of marine mammals documented as occurring in Federal waters of the GOM. Information on those species that may be impacted by this activity are discussed in the Eglin AFB application and Eglin's Final PEA. A summary of that information is provided in this section.

General information on these marine mammal species can be found in Wursig *et al.* (2000) and in the NMFS Stock Assessment Report (Waring, 2006). The NMFS Stock Assessment Report is available at: *http://www.nefsc.noaa.gov/nefsc/publications/tm/tm194/*.

Marine mammal species that potentially occur within the EGTTR include several species of cetaceans and one sirenian, the West Indian manatee. During winter months, manatee distribution in the GOM is generally confined to southern Florida. During summer months, a few may migrate north as far as Louisiana. However, manatees primarily inhabit coastal and inshore waters and rarely venture offshore. PSW missions would be conducted offshore. Therefore, effects on manatees are considered very unlikely.

Cetacean abundance estimates for the study area are derived from GulfCet II (Davis *et al.*, 2000) aerial surveys of the continental shelf within the Minerals Management Service Eastern Planning Area, an area of 70,470 km^2. Texas A&M University and NMFS conducted these surveys from 1996 to 1998. Abundance and density data from the aerial survey portion of the survey best reflect the occurrence of cetaceans within the EGTTR, given that the survey area overlaps approximately one-third of the EGTTR and nearly the entire continental shelf region of the EGTTR where military activity is highest. The GulfCet II aerial surveys identified different density estimates of marine mammals for the shelf and slope geographic locations. Only the shelf data is used because PSW missions will only be conducted on the shelf.

In order to maximize species conservation and protection, the species density estimate data were adjusted to reflect more realistic encounters of these animals in their natural environment. Refer to ''Conservative Estimates of Marine Mammal Densities'' in this document and Eglin AFB's application for more information on density estimates. The four marine mammal species observed during GulfCet II aerial surveys on the shelf that have the potential to be present in the PSW test area and thereby affected are: Atlantic bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphins (*Stenella frontalis*), dwarf sperm whales (*Kogia simus*), and pygmy sperm whales (*Kogia breviceps*). Brief descriptions of these species were provided in earlier **Federal Register** notices (69 FR 21816, April 22, 2004; 70 FR 48675, August 19, 2005) and are not repeated here.

Impacts to Marine Mammals

Potential impacts to marine mammals from the detonation of the PSWs and SDBs include both lethal and non-lethal injury, as well as Level B harassment in the form of a temporary shift in hearing sensitivity (called temporary threshold shift (TTS) and behavioral responses due to TTS. Although unlikely due to the extensive mitigation measures proposed herein, marine mammals have the potential to be killed or injured as a result of a blast due to the response of air cavities in the body, such as the lungs and bubbles in the intestines. Any effects would likely 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 criterion used by NMFS for categorizing taking by mortality is the onset of extensive lung hemorrhage. Extensive lung hemorrhage is considered to be debilitating and thereby potentially fatal. Suffocation caused by lung hemorrhage would likely be the major cause of any marine mammal death from underwater shock waves.

For the acoustic analysis in this document, the exploding charge is characterized as a point source. The impact thresholds used for marine mammals relate to potential effects on hearing from underwater noise from detonations. For the explosives in question, actual detonation heights would range from 0 to 25 ft (7.6 m) above the water surface. Detonation depths would range from 0 to 80 ft (73.2 m) below the surface. To bracket the range of possibilities, detonation scenarios just above and below the surface were used by Eglin AFB to analyze bombs set to detonate on contact with the target barge. Potentially, the barge may interact with the propagation of noise into the water. However, barge effects on the propagation of noise into the water column cannot be determined without in-water noise monitoring at the time of detonation.

Potential exposure of a sensitive species to detonation noise could theoretically occur at the surface or at any number of depths with differing consequences. As a conservative measure, a mid-depth scenario was selected by Eglin AFB to ensure the greatest direct path for the harassment ranges, and to give the greatest impact range for the injury thresholds.

Explosive Criteria and Thresholds for Impact of Noise on Marine Mammals

NMFS' criteria for explosives and thresholds for assessing impacts of explosions on marine mammals were discussed by NMFS in detail in its issuance of an IHA for Eglin's PSW testing activity (70 FR 48675, August 19, 2005) and are not repeated here. Please refer to that document for background information on this criteria. Based on the discussion in that document, Table 1 illustrates estimated zones of impact for potential mortality (31 psi-ms), Level A harassment (injury; 205 dB EFDL) and Level B harassment (TTS; 182 dB EFDL/23 psi).

TABLE 1. ZONES OF IMPACT FOR UNDERWATER EXPLOSIONS (MID-DEPTH ANIMAL)

Ordnance	NEW (TNT in lb)	Depth or Height of Explosion (m)	Ranges for 31 psi -ms (m)	Ranges for EFDL > 205 dB (m)	Ranges for 182 dB EFDL in 1/3-Octave Band/ 23 psi (m)
Summer					
Single SDB	48	1.5 7.6	n/a n/a	12 12	447 447
Double SDB	96	1.5 7.6	n/a n/a	16 17	550 550
Single JASSM	300	0.3 >6.1	75 320	170 550	770 2490
Winter					
Single SDB	48	1.5 7.6	n/a n/a	12 12	471 471
Double SDB	96	1.5 7.6	n/a n/a	16 16	594 594
Single JASSM	300	0.3 >6.1	75 320	170 590	871 3250

Incidental Take Estimates

For Eglin AFB's PSW exercises, three key sources of information are necessary for estimating potential take levels from noise on marine mammals: (1) The zones of influence (ZOIs) for noise exposure; (2) the number of distinct firing or test events; and (3) the density of animals that potentially reside within a ZOI.

Noise ZOIs were calculated for depth detonation scenarios of 1 ft (0.3 m) and 20 ft (6.1 m) for lethality and for harassment (both Level A and Level B). To estimate the number of potential ''takes'' or animals affected, the adjusted data on cetacean population information from ship and aerial surveys were applied to the various ZOIs.

Table 1 in this document gives the estimated ZOI ranges for various explosive weights for summer and wintertime scenarios for JASSM and SDB. For example, for JASSM, the range, in winter, extends to 320 m (1050 ft), 590 m (1936 ft) and 3250 m (10663 ft) for potential mortality (31 psi-ms), injury (205 dB re 1 microPa^2 -s) and TTS (182 dB re 1 microPa^2–s/23 psi zones), respectively. SDB scenarios are for in-air detonations at heights of 1.5 m (5 ft) and 7.6 m (25 ft) during both seasons (whichever criterion provides the largest zone is used for calculating potential impacts). JASSM detonations were modeled for near- surface (i.e., 1–ft (0.3–m) depth) and below-surface (≤ 20–ft depth (≤6.1 m)). To account for ''double'' (2 nearly simultaneous) events, the charge weights are added (doubled) when modeling for the determination of energy estimates (since energy is proportional to weight). Pressure estimates only utilize the single charge weights for these estimates.

Applying the lethality (31 psi) and harassment (205 and 182 dB EFDL) impact ranges shown in Table 1 to the calculated species densities (in Table 3–1 in Eglin AFB's application), the number of animals potentially occurring within the various ZOIs without implementation of mitigation was estimated. These results are presented in Tables 2, 3, and 4 in this document. In summary, without any mitigation, a small possibility exists for one bottlenose and one Atlantic spotted dolphin to be exposed to blast levels sufficient to cause mortality. Additionally, less than 2 cetaceans might be exposed to noise levels sufficient to induce Level A harassment (injury) (205 dB re 1 microPa2–s) annually, and as few as 31 or as many as 52 cetaceans (depending on the season and water depth) could potentially be exposed (annually) to noise levels sufficient to induce Level B harassment in the form of TTS (182 dB re 1 microPa2–s/23 psi). While none of these impact estimates consider the proposed mitigation measures that will be employed by Eglin AFB to minimize potential impacts to protected species, NMFS proposes to authorize Eglin AFB to lethally take one marine mammal, 2 marine mammals by Level A harassment, and up to 53 marine mammals by Level B harassment (TTS) annually. The proposed mitigation measures described later in this document are anticipated to reduce potential impacts to marine mammals, in both numbers and degree of severity.

TABLE 2. MARINE MAMMAL DENSITIES AND RISK ESTIMATES FOR LETHALITY (31 PSI) NOISE EXPOSURE FOR ALL IN-WATER AND IN-AIR DETONATIONS

Species	Density	Number of Animals Exposed from All In-Air and In-Water Detonations	Adjusted Number Exposed Based on 30% Mitigation Effectiveness
Summer			
Dwarf/pygmy sperm whale	0.013	0.004	0.003
Bottlenose dolphin	0.81	0.262	0.183

TABLE 2. MARINE MAMMAL DENSITIES AND RISK ESTIMATES FOR LETHALITY (31 PSI) NOISE EXPOSURE FOR ALL IN-WATER AND IN-AIR DETONATIONS—Continued

Species	Density	Number of Animals Exposed from All In-Air and In-Water Detonations	Adjusted Number Exposed Based on 30% Mitigation Effectiveness
Atlantic spotted dolphin	0.677	0.219	0.153
T. truncatus/S. frontalis	0.053	0.017	0.012
TOTAL		0.502	0.351
Winter			
Dwarf/pygmy sperm whale	0.013	0.004	0.003
Bottlenose dolphin	0.81	0.262	0.183
Atlantic spotted dolphin	0.677	0.219	0.153
T. truncatus/S. frontalis	0.053	0.017	0.012
TOTAL		0.502	0.351

TABLE 3. MARINE MAMMAL DENSITIES AND RISK ESTIMATES FOR LEVEL A HARASSMENT(205 DB EFD 1/3-OCTAVE BAND) NOISE EXPOSURE FOR ALL IN-WATER AND IN-AIR DETONATIONS

Species	Density	Number of Animals Exposed from All In-Air and In-Water Detonations	Adjusted Number Exposed Based on 30% Mitigation Effectiveness
Summer			
Dwarf/pygmy sperm whale	0.013	0.014	0.010
Bottlenose dolphin	0.81	0.893	0.625
Atlantic spotted dolphin	0.677	0.747	0.523
T. truncatus/S. frontalis	0.053	0.058	0.041
TOTAL		1.712	1.198
Winter			
Dwarf/pygmy sperm whale	0.013	0.014	0.010
Bottlenose dolphin	0.81	0.893	0.625
Atlantic spotted dolphin	0.677	0.747	0.523
T. truncatus/S. frontalis	0.053	0.058	0.041
TOTAL		1.712	1.198

TABLE 4. MARINE MAMMAL DENSITIES AND COMBINED RISK ESTIMATES FOR THE 23 PSI PEAK PRESSURE AND THE 182 DB EFD 1/3-OCTAVE BAND LEVEL B HARASSMENT METRICS FOR ALL IN-WATER AND IN-AIR DETONATIONS

Species	Density	Number of Animals Exposed from All In-Air and In-Water Detonations	Adjusted Number Exposed Based on 30% Mitigation Effectiveness
Summer			
Dwarf/pygmy sperm whale	0.013	0.26	0.182
Bottlenose dolphin	0.81	16.209	11.3463
Atlantic spotted dolphin	0.677	13.547	9.4829
T. truncatus/S. frontalis	0.053	1.061	0.7427
TOTAL		31.076	21.7532

TABLE 4. MARINE MAMMAL DENSITIES AND COMBINED RISK ESTIMATES FOR THE 23 PSI PEAK PRESSURE AND THE 182 DB EFD 1/3-OCTAVE BAND LEVEL B HARASSMENT METRICS FOR ALL IN-WATER AND IN-AIR DETONATIONS—Continued

Species	Density	Number of Animals Exposed from All In-Air and In-Water Detonations	Adjusted Number Exposed Based on 30% Mitigation Effectiveness
Winter			
Dwarf/pygmy sperm whale	0.013	0.44	0.308
Bottlenose dolphin	0.81	27.387	19.1709
Atlantic spotted dolphin	0.677	22.89	16.023
T. truncatus/S. frontalis	0.053	1.792	1.2544
TOTAL		52.509	36.7563

Mitigation and Monitoring

Under the current IHA and as proposed here, Eglin will establish and survey the relevant ZOIs and buffer zones around a planned detonation site. The ZOI for the JASSM will be a radius of 2.0 nm (3.7 km) around the detonation site and the buffer zone will be established at a 1.0–nm (1.85–km) radius outside the safety zone. The ZOI for the SDB will be a radius of 5–10 nm (9.3–18.5 km) depending upon weight of the explosive and the buffer zone will be established at a 2.5 - 5 nm (4.6 -18.5 km) radius outside the SDB ZOI. Prior to the planned detonation, trained observers aboard aircraft will survey (visually monitor) the ZOI and buffer area, a very effective method for detecting cetaceans. The aircraft/helicopters will fly approximately 500 ft (152 m) above the sea surface to allow observers to scan a large distance. In addition, trained observers aboard surface support vessels will conduct ship-based monitoring for non-participating vessels as well as protected species. Using 25X power ''Big-eye'' binoculars, surface observation would be effective out to several kilometers.

Weather that supports the ability to sight marine life is required to effectively mitigate impacts on marine life (DON, 1998). Wind, visibility, and surface conditions in the GOM are the most critical factors affecting mitigation operations. Higher winds typically increase wave height and create ''white cap'' conditions, both of which limit an observer's ability to locate surfacing marine mammals. Therefore, PSW missions would be delayed if the Beaufort scale sea state are greater than 3.5.

Visibility is also a critical factor for flight safety issues. A minimum ceiling of 305 m (1000 ft) and visibility of 5.6 km (3 nm) is required to support mitigation and safety-of-flight concerns (DON, 2001).

Aerial Survey/Monitoring Team

Eglin will complete an aerial survey before each mission and train personnel to conduct aerial surveys for protected species. The aerial survey/monitoring team would consist of two observers. Aircraft provide a preferable viewing platform for detection of protected marine species. Each aerial observer will be experienced in marine mammal surveying and familiar with species that may occur in the area. Each aircraft would have a data recorder who would be responsible for relaying the location, the species if possible, the direction of movement, and the number of animals sighted. Standard line transect aerial surveying methods, as developed by NMFS (Blaylock and Hoggard, 1994; Buckland *et al.*, 1993) would be used. Aerial observers are expected to have above average to excellent sighting conditions at sunrise to 1.85 km (1 nm) on either side of the aircraft within the weather limitation noted previously. Observed marine mammals would be identified to the species or the lowest possible taxonomic level and the relative position recorded. In order to ensure adequate daylight for pre- and post-mission monitoring, the mission activity would occur no earlier than 2 hours after sunrise and no later than 2 hours prior to sunset.

Shipboard Monitoring Team

Eglin AFB will conduct shipboard monitoring to reduce impacts to protected species. The monitoring would be staged from the highest point possible on a mission ship. Observers would be familiar with the marine life of the area. The observer on the vessel must be equipped with optical equipment with sufficient magnification (e.g., 25X power ''Big-Eye'' binoculars, as these have been successfully used in monitoring activities from ships), which should allow the observer to sight surfacing mammals from as far as 11.6 km (6.3 nm) and provide overlapping coverage from the aerial team. A team leader would be responsible for reporting sighting locations, which would be based on bearing and distance.

The aerial and shipboard monitoring teams will have proper lines of communication to avoid communication deficiencies. The observers from the aerial team and operations vessel will have direct communication with the lead scientist aboard the operations vessel. The lead scientist will be a qualified marine biologist familiar with marine surveys. The lead scientist reviews the range conditions and recommends a Go/No-Go decision to the test director. The test director makes the final Go/No-Go decision.

Mitigation Procedures Plan

All zones (injury, ZOI and buffer zones) are monitored. Although unexpected, any mission may be delayed or aborted due to technical reasons. Actual delay times depend on the aircraft supporting the test, test assets, and range time. Should a technical delay occur, all mitigation procedures would continue and remain in place until either the test takes place or is canceled. The ZOI and buffer zone around JASSM missions will be monitored by shipboard observers from the highest point of the vessel. Vessels will be positioned as close to the safety zone as allowed without infringing on the missile flight corridor. The SDB has many mission profiles and does not have a flight termination system; therefore, the safety buffer zone may be quite large (5–10 nm radius (9.3–18.5 km)).

PSW mitigation must be regulated by Air Force safety parameters (pers. comm. Monteith and Nowers, 2004) to

ensure personnel safety. Therefore, marine mammal mitigation effectiveness may be reduced for some missions due to mandatory safety buffers which limit the time and type of marine mammal mitigation. Even though mitigation may be limited for PSW and SDB missions, all SDB detonations are above the water surface (5–25 ft (1.5–7.6 m) above the surface) and of much smaller net explosive weight than JASSM. Table 5 describes safety zones and clearance times for JASSM and SDB missions (time in minutes).

TABLE 5. SAFETY ZONE MONITORING TIME FRAMES AND EFFECTIVENESS

	Flight Time	Safety Clearance Time for Vessels before Launch	Safety Clearance Time for Aircraft before Launch	Total Time of Vessel Safety Clearance before Detonation	Total Time of Aircraft Safety Clearance before Detonation	Human Safety Area
JASSM	:30-1 hr	:30	:15	1:30	1:15	2 NM
SDB	:20	:60	:30	1:20	:50	5-10 NM

Stepwise mitigation and monitoring procedures for PSW missions are outlined here.

Pre-mission Monitoring

The purposes of pre-mission monitoring are to (1) evaluate the test site for environmental suitability of the mission (e.g., relatively low numbers of marine mammals) and (2) verify that the ZOI is free of visually detectable marine mammals. On the morning of the test, the lead scientist would confirm that the test sites can still support the mission and that the weather is adequate to support mitigation.

Five Hours Prior to Mission Launch

Approximately 5 hours prior to mission launch, or at daybreak, the appropriate vessel(s) would be on-site in the primary test site near the location of the earliest planned mission point. Observers onboard the vessel will assess the suitability of the test site, based on visual observation of marine mammals, and overall environmental conditions (visibility, sea state, etc.). This information will be relayed to the lead scientist.

Three Hours Prior to Mission Launch

Approximately three hours prior to mission launch, aerial monitoring would commence within the test site to evaluate the test site for environmental suitability. Evaluation of the entire test site would take approximately 1 to 1.5 hours. Shipboard observers would monitor the ''ZOI'' and buffer zone, and the lead scientist would enter all marine mammals sightings, including the time of sighting and the direction of travel, into a marine animal tracking and sighting database. The aerial monitoring team would begin monitoring the ZOI and buffer zone around the target area. The shipboard monitoring team would combine with the aerial team to monitor the area immediately around the mission area including both the ZOI and buffer zone.

One to 1.5 Hours Prior to Mission Launch

As noted in Table 6 and depending upon the mission, aerial and shipboard viewers would be instructed to leave the area and remain outside the human personnel safety area (over 2 nm (3.7 km) from impact for JASSM and 5–10 nm (9.3–18.5 km) for SDB). The aerial team would report all marine animals spotted and their directions of travel to the lead scientist onboard the vessel. The shipboard monitoring team would continue searching the buffer zone for protected species as it leaves. The aircraft will leave the area and land on base. The surface vessels will stay on the outside of the human personnel safety area (5–10 nm for SDB and 2 nm for JASSM) until after detonation.

Fifteen Minutes Prior to Launch and Go/No-Go Decision Process

Visual monitoring from surface vessels outside the human personnel safety zone would continue to document any animals that may have gone undetected during the past two hours and track animals moving in the direction of the detonation area.

The lead scientist would plot and record sightings and bearing for all marine animals detected. This would depict animal sightings relative to the mission area. The lead scientist would have the authority to declare the range fouled and recommend a hold until monitoring indicates that the ZOI is and will remain clear of detectable animals.

The mission would be postponed if:

(1) Any marine mammal is visually detected within the relevant ZOI (see Table 1) prior to mission launch. The delay would continue until the marine mammal that caused the postponement is confirmed to be outside of the ZOI due to the animal moving out of the range, and

(2) Any marine mammal is detected in the buffer zone and cannot be subsequently re-sighted. 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.

In the event of a postponement, pre-mission monitoring would continue as long as weather and daylight hours allow. Aerial monitoring is limited by fuel and the on-station time of the monitoring aircraft. If a live warhead failed to explode operations would attempt to recognize and solve the problem while continuing with all mitigation measures in place. The probability of this occurring is very remote but does exist. Should a weapon fail to explode, the activity sponsor would attempt to identify the problem and detonate the charge with all marine mammal mitigation measures in place as described. If a live warhead fails to explode the weapon is rendered safe after 15 minutes. The feasibility and practicality of recovering the warhead will be evaluated on a case-by-case basis. If at all feasible, the warhead will be recovered.

Launch to Impact

Visual monitoring from vessels would continue to survey the ZOI and surrounding buffer zone and track animals moving in the direction of the impact area. The lead scientist would continue to plot and record sightings and bearing for all marine animals detected. This will depict animal sightings relative to the impact area. Due to economic (costs of testing $2 million per test) and practical (in-air destruction of the missile) reasons, NMFS is not proposing to require Eglin AFB to terminate an in-flight missile or bomb due to sighting of a protected species.

Post-mission monitoring

Post-mission monitoring is designed to gauge the effectiveness of pre-mission mitigation by reporting any sightings of dead or injured marine mammals. Post-detonation monitoring via shipboard surveyors would commence immediately following each detonation; no aerial surveys would be conducted during this monitoring stage. The vessels will move into the ZOI from outside the safety zone and continue monitoring for at least two hours, concentrating on the area down current of the test site.

Although it is highly unlikely that marine mammals will be killed or seriously injured by this activity, any marine mammals killed by an explosion would likely suffer lung rupture, which would cause them to float to the surface immediately due to air in the blood stream. Any animals that are not killed instantly but are mortally wounded would likely resurface within a few days, though this would depend on the size and type of animal, fat stores, depth, and water temperature (DON, 2001). The monitoring team would attempt to document any marine mammals that are killed or injured as a result of the test and, if practicable, recover and examine any dead animals. The species, number, location, and behavior of any animals observed by the observation teams would be documented and reported to the lead scientist.

Post-mission monitoring activities include coordination with marine animal stranding networks. NMFS maintains stranding networks along coasts to collect and circulate information about marine mammal standings. Local coordinators report stranding data to state and regional coordinators. Any observed dead or injured marine mammals would be reported to the appropriate coordinator.

Summary of Mitigation Plan

The PSW test will be postponed if any human safety concerns arise, protected species are sighted within the ZOI, any protected species is detected in the buffer zone and subsequently cannot be reacquired, or a marine mammal is moving into the ZOI from the buffer zone. The delay would continue until the marine mammal that caused the postponement is confirmed to be outside of the ZOI due to the animal swimming out of the range.

Avoidance of impacts to pods of cetaceans will most likely be realized through these measures since groups of dolphins are relatively easy to spot with the survey distances and methods that will be employed. Typically solitary marine mammals such as dwarf/pygmy sperm whales, while more challenging to detect, will also be afforded substantial protection through pre-test monitoring.

The safety vessels would conduct post-mission monitoring for two hours after each mission. The monitoring team would document any marine mammals observed dead or injured and, if practicable, recover and examine any dead animals.

Conservative Estimates of Marine Mammal Densities

Using conservative mathematical calculations and conservative density estimates can serve as a technique for making conservative ''take'' estimates. Marine mammal densities used to calculate takes were based on the most current and comprehensive GOM surveys available (GulfCet II). The densities are adjusted for the time the animals are submerged, and further adjusted by applying standard deviations to provide an approximately 99 percent confidence level. As an example, the density estimates for bottlenose dolphins range from 0.06 to 0.15 animals/km2 in GulfCet II aerial surveys of the shelf and slope. However, the final adjusted density used in take calculations is 0.81 animals/km^2.

Reporting

As in the current IHA, NMFS proposes to continue to require Eglin AFB to submit an annual report on the results of the monitoring requirements. This annual report will be due within 30 days prior to the expiration of the current LOA. This report will then be used by NMFS to determine whether incidental takings by Eglin AFB from this activity continue to have a negligible impact on affected species and stocks of marine mammals. This report will include a discussion on the effectiveness of the mitigation in addition to the following information: (1) Date and time of each of the detonations; (2) a detailed description of the pre-test and post-test activities related to mitigating and monitoring the effects of explosives detonation on marine mammals and marine mammal populations; (3) the results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or dead, presumably as a result of the detonation and numbers that may have been harassed due to undetected presence within the ZOI (NMFS and Eglin presume that if an area is determined to be clear of marine mammals and later, during post-event monitoring, marine mammals are found in the area, those marine mammals will be considered ''taken''); and (4) results of coordination with coastal marine mammal stranding networks.

Research

Although Eglin AFB does not currently conduct independent Air Force monitoring efforts, Eglin AFB's Natural Resources Branch does participate in marine animal tagging and monitoring programs led by other agencies. The Natural Resources Branch also supports participation in annual surveys of marine mammals in the GOM with NOAA Fisheries. From 1999 to 2002, Eglin AFB's Natural Resources Branch participated in summer cetacean monitoring and research opportunities through a contract representative. The contractor participated in visual surveys in 1999 for cetaceans in GOM, photographic identification of sperm whales in the northeastern Gulf in 2001, and served as a visual observer during the 2000 Sperm Whale Pilot Study and the 2002 sperm whale Satellite-tag (S-tag) cruise. Support for these research efforts is anticipated to continue.

Eglin AFB utilizes marine mammal stranding information to ascertain the effectiveness of its mitigation measures for offshore activities. Stranding data is collected and maintained for the Florida panhandle and Gulf-wide areas. This is undertaken through the establishment and maintenance of contacts with local, state, and regional stranding networks. Eglin AFB assists with stranding data collection by maintaining its own team of stranding personnel. In addition to simply collecting stranding data, various analyses are performed. Stranding events are tracked by year, season, and NMFS statistical zone, both Gulf-wide and on the coastline in proximity to Eglin AFB. Stranding data is combined with records of EGTTR mission activity in each water range and analyzed for any possible correlation. In addition to being used as a measure of the effectiveness of mission mitigation, stranding data can yield insight into the species composition of cetaceans in the region.

Endangered Species Act (ESA)

NMFS issued a biological opinion regarding the effects of Eglin's PSW activity on ESA-listed species and critical habitat under the jurisdiction of NMFS. That biological opinion concluded that Eglin's PSW activity is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. On August 11, 2005, NMFS determined that issuance of an

annual authorization under section 101(a)(5) of the MMPA to Eglin AFB for this activity will not have effects beyond what was analyzed in 2004 in the Biological Opinion. NMFS has preliminarily determined that the issuance of up to 5 LOAs to Eglin under these regulations (if implemented) would not have effects beyond what was analyzed in the 2004 Biological Opinion. A copy of the Biological Opinion is available upon request (see **ADDRESSES**).

National Environmental Policy Act (NEPA)

In December, 2003, Eglin AFB released a Draft PEA on the PSW activity. On April 22, 2004 (69 FR 21816), NMFS noted that Eglin AFB had prepared a Draft PEA for PSW activities and made this PEA available upon request. Eglin AFB updated the information in that PEA and issued a Final PEA and a Finding of No Significant Impact (FONSI) on the PSW activities.

In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS reviewed the information contained in Eglin AFB's Final PEA and determined that the Eglin AFB's PEA accurately and completely describes the proposed action alternative, reasonable additional alternatives, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. Based on this review and analysis, NMFS adopted Eglin's PEA under 40 CFR 1506.3 and made its own FONSI statement on July 25, 2005. Therefore, it was not necessary to issue a new EA, supplemental EA or an environmental impact statement for the issuance of an IHA to Eglin AFB to take marine mammals incidental to this activity. NMFS will review its determination as part of this rulemaking. A decision will be made prior to making a final determination on issuing a final rule for this activity. A copy of NMFS' FONSI for this activity is available upon request (see **ADDRESSES**). A paper copy of the Eglin AFB Programmatic EA for this activity is available by contacting either Eglin AFB or NMFS (see **ADDRESSES**).

Preliminary Determinations

NMFS has preliminarily determined that, based on the information provided in Eglin's application, the Final PEA and this document, the total taking of marine mammals by PSW activities will have a negligible impact on the affected species or stocks over the 5–year period of take authorizations. While no take by serious injury or death is anticipated during this period, limited mortality is proposed to be authorized in the event that the extensive mitigation measures are not totally successful. However, even if serious injury or mortality were to occur, the total taking still would have no more than a negligible impact on the affected marine mammal species or stocks.

In addition, the potential for temporary or permanent hearing impairment is low and will have the least practicable adverse impact on the affected species or stocks through the incorporation of the mitigation measures mentioned in this document. The information contained in Eglin's EA and incidental take application support NMFS' finding that impacts will be mitigated by implementation of a conservative safety range for marine mammal exclusion, incorporation of aerial and shipboard survey monitoring efforts in the program both prior to and after detonation of explosives, and delay/postponement/cancellation of detonations whenever marine mammals or other specified protected resources are either detected within the safety zone or may enter the safety zone at the time of detonation or if weather and sea conditions preclude adequate aerial surveillance. Since the taking will not result in more than the incidental harassment of certain species of marine mammals, will have only a negligible impact on these stocks, will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses (as there are no known subsistence uses of marine mammal stocks in the GOM), and, through implementation of required mitigation and monitoring measures, will result in the least practicable adverse impact on the affected marine mammal stocks, NMFS has preliminarily determined that the requirements of section 101(a)(5)(A) of the MMPA have been met and this proposed rule can be issued.

Request for Information

NMFS requests interested persons to submit comments, information, and suggestions concerning Eglin's application and this proposed rule. Prior to submitting comments, NMFS recommends reviewers of this document read the responses to comments made previously (70 FR 48675, August 19, 2005) for this action as NMFS does not plan to address these issues further without the submission of additional scientific information or reasoning supporting the comment.

Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. To submit comments through the Federal e-Rulemaking Portal, go to *http://www.regulations.gov* and follow the instructions for submitting comments. To help us process and review comments more efficiently, please use only one method.

A copy of the application containing a list of references used in this document may be obtained by writing to NMFS (see **ADDRESSES**), by telephoning the contact listed under **FOR FURTHER INFORMATION CONTACT**, or at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. A paper copy of Eglin AFB's Final Programmatic Environmental Assessment (Final PEA) is available by writing to the Department of the Air Force (see **ADDRESSES**).

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities since it would apply only to the U.S. Air Force, a federal agency. It may affect a small number of contractors providing services related to reporting the impact of the activity on marine mammals, some of whom may be small businesses, but the number involved would not be substantial. Further, since the monitoring and reporting requirements are what would lead to the need for their services, the economic impact on them would be beneficial. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: July 27, 2006.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart V is added and reserved.

3. Subpart W is added to part 216 to read as follows:

Subpart W—Taking Marine Mammals Incidental to Conducting Precision Strike Weapon Missions in the Gulf of Mexico

Sec.

Subpart W—Taking Marine Mammals Incidental to Conducting Precision Strike Weapon Missions in the Gulf of Mexico

§ 216.250 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by U.S. citizens engaged in U.S. Air Force Precision Strike Weapon missions within the Eglin Air Force Base Gulf Test and Training Range within the northern Gulf of Mexico. The authorized activities as specified in a Letter of Authorization issued under §§ 216.106 and 216.257 include, but are not limited to, activities associated with

(1) The Joint Air-to-Surface Stand-off Missile (JASSM) exercise for a maximum of two live shots (single) and 4 inert shots (single) annually and

(2) The small-diameter bomb (SDB) exercise for a maximum of six live shots a year, with two of the shots occurring simultaneously and a maximum of 12 inert shots, with up to two occurring simultaneously.

(b) The incidental take by Level A harassment, Level B harassment, or mortality of marine mammals under the activity identified in this section is limited to the following species: Atlantic bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphins (*Stenella frontalis*), dwarf sperm whales (*Kogia simus*) and pygmy sperm whale (*Kogia breviceps*).

§ 216.251 Effective dates.

Regulations in this subpart are effective from 30 days after the date of publication of the final rule in the **Federal Register** until 5 years and 30 days after the date of publication of the final rule in the **Federal Register**.

§ 216.252 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.257, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by Level A and Level B harassment, and mortality within the area described in § 216.250(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The taking of marine mammals under a Letter of Authorization is limited to the species listed in § 216.252(b) and is limited to a total of 1 mortality, 2 takes by Level A harassment, and 53 takes by Level B harassment annually.

§ 216.253 Prohibitions.

Notwithstanding takings contemplated in § 216.250 and authorized by a Letter of Authorization issued under §§ 216.106 and 216.257, no person in connection with the activities described in § 216.250 shall:

(a) Take any marine mammal not specified in

§ 216.250(b);

(b) Take any marine mammal specified in § 216.250(b) other than by incidental, unintentional Level A or Level B harassment or mortality;

(c) Take a marine mammal specified in § 216.250(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§ 216.106 and 216.257.

§ 216.254 Mitigation.

The activity identified in § 216.250(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.250(a) under a Letter of Authorization, the following mitigation measures must be implemented:

(a)(1) For the JASSM, the holder of the Letter of Authorization must establish and monitor a safety zone for marine mammals with a radius of 2.0 nm (3.7 km) from the center of the detonation and a buffer zone with a radius of 1.0 nm (1.85 km) radius from the outer edge of the safety zone.

(2) For the SDB, the holder of the Letter of Authorization must establish and monitor a safety for marine mammals with a radius of no less than 5 nm (9.3 km) for single bombs and 10 nm (18.5 km) for double bombs and a buffer zone from the outer edge of the safety zone with a radius of at least 2.5 nm (4.6 km) for single bombs and 5 nm (18.5 km) for double bombs.

(b) When detonating explosives:

(1) If any marine mammals are observed within the designated safety zone prescribed in condition (a)(1) of this section, or within the buffer zone prescribed in condition (a)(2) of this section that are on a course that will put them within the safety zone prior to JASSM or SDB launch, the launching must be delayed until all marine mammals are no longer within the designated safety zone.

(2) If any marine mammals are detected in the buffer zone and subsequently cannot be reacquired, the mission launch will not continue until the next verified location is outside of the safety zone and the animal is moving away from the mission area.

(3) If weather and/or sea conditions preclude adequate aerial surveillance for detecting marine mammals, detonation must be delayed until adequate sea conditions exist for aerial surveillance to be undertaken. Adequate sea conditions means the sea state does not exceed Beaufort sea state 3.5 (i.e., whitecaps on 33 to 50 percent of surface; 0.6 m (2 ft) to 0.9 m (3 ft) waves), the visibility is 5.6 km (3 nm) or greater, and the ceiling is 305 m (1,000 ft) or greater.

(4) To ensure adequate daylight for pre- and post-detonation monitoring, mission launches may not take place earlier than 2 hours after sunrise, and detonations may not take place later than 2 hours prior to sunset, or whenever darkness or weather conditions will preclude completion of the post-test survey effort described in § 216.255.

(5) If post-detonation surveys determine that a serious injury or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed with the National Marine Fisheries Service and appropriate changes must be made prior to conducting the next mission detonation.

(6) Mission launches must be delayed if aerial or vessel monitoring programs

described under § 216.255 cannot be fully carried out.

§ 216.255 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §§ 216.106 and 216.257 for activities described in § 216.250(a) is required to conduct the monitoring and reporting measures specified in this section and any additional monitoring measures contained in the Letter of Authorization.

(b) The Holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, National Marine Fisheries Service, or designee, by letter or telephone (301–713–2289), at least 2 weeks prior to any modification to the activity identified in § 216.250(a) that has the potential to result in the mortality or Level A or Level B harassment of marine mammals that was not identified and addressed previously.

(c) The Holder of this Authorization must:

(1) Designate qualified on-site individual(s) to record the effects of mission launches on marine mammals that inhabit the northern Gulf of Mexico;

(2) Have on-site individuals, approved in advance by the National Marine Fisheries Service, to conduct the mitigation, monitoring and reporting activities specified in these regulations and in the Letter of Authorization issued pursuant to § 216.106 and § 216.257.

(3) Conduct aerial surveys to reduce impacts on protected species. The aerial survey/monitoring team will consist of two experienced marine mammal observers, approved in advance by the Southeast Region, National Marine Fisheries Service. The aircraft will also have a data recorder who would be responsible for relaying the location, the species if possible, the direction of movement, and the number of animals sighted.

(4) Conduct shipboard monitoring to reduce impacts to protected species. Trained observers will conduct monitoring from the highest point possible on each mission or support vessel(s). The observer on the vessel must be equipped with optical equipment with sufficient magnification (e.g., 25X power ''Big-Eye'' binoculars.

(d) The aerial and shipboard monitoring teams will maintain proper lines of communication to avoid communication deficiencies. The observers from the aerial team and operations vessel will have direct communication with the lead scientist aboard the operations vessel.

(e) Pre-mission Monitoring: Approximately 5 hours prior to the mission, or at daybreak, the appropriate vessel(s) would be on-site in the primary test site near the location of the earliest planned mission point. Observers onboard the vessel will assess the suitability of the test site, based on visual observation of marine mammals and overall environmental conditions (visibility, sea state, etc.). This information will be relayed to the lead scientist.

(f) Three Hours Prior to Mission:

(1) Approximately three hours prior to the mission launch, aerial monitoring will commence within the test site to evaluate the test site for environmental suitability. Evaluation of the entire test site would take approximately 1 to 1.5 hours. The aerial monitoring team will begin monitoring the safety zone and buffer zone around the target area.

(2) Shipboard observers will monitor the safety and buffer zone, and the lead scientist will enter all marine mammal sightings, including the time of sighting and the direction of travel, into a marine animal tracking and sighting database.

(g) One to 1.5 Hours Prior to Mission Launch:

(1) Depending upon the mission, aerial and shipboard viewers will be instructed to leave the area and remain outside the safety area. The aerial team will report all marine animals spotted and their directions of travel to the lead scientist onboard the vessel.

(2) The shipboard monitoring team will continue searching the buffer zone for protected species as it leaves the safety zone. The surface vessels will continue to monitor from outside of the safety area until after impact.

(h) Post-mission monitoring:

(1) The vessels will move into the safety zone from outside the safety zone and continue monitoring for at least two hours, concentrating on the area down current of the test site.

(2) The Holder of the Letter of Authorization will closely coordinate mission launches with marine animal stranding networks.

(3) The monitoring team will document any dead or injured marine mammals and, if practicable, recover and examine any dead animals.

(i) Activities related to the monitoring described in this section may include retention of marine mammals without the need for a separate scientific research permit.

(j) In accordance with provisions in § 216.258(b)(2), the Holder of the Letter of Authorization must conduct the research required under the Letter of Authorization.

(k) Reporting

(1) Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must submit an annual report to the Director, Office of Protected Resources, National Marine Fisheries Service, no later than 60 days prior to the date of expiration of the Letter of Authorization. This report must contain all information required by these regulations and the Letter of Authorization.

(2) The final comprehensive report on all marine mammal monitoring and research conducted during the period of these regulations must be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service at least 240 days prior to expiration of these regulations or 240 days after the expiration of these regulations if new regulations will not be requested.

§ 216.256 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined at § 216.103) conducting the activity identified in § 216.250(a) must apply for and obtain either an initial Letter of Authorization in accordance with §§ 216.106 and 216.257 or a renewal under § 216.258.

§ 216.257 Letter of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 216.258.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the species or stock of affected marine mammals.

(d) Except for the initial Letter of Authorization, notice of issuance or

denial of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.258 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 216.257 for the activity identified in § 216.250(a) will be renewed annually upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application submitted under § 216.256 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring report required under

§ 216.255(b), and the Letter of Authorization, which has been reviewed and accepted by the National Marine Fisheries Service; and

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring and reporting measures required under § 216.254 and the Letter of Authorization issued under §§ 216.106 and 216.257, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 216.258 indicates that a substantial modification to the described work, mitigation, monitoring or research undertaken during the upcoming season will occur, the National Marine Fisheries Service will provide the public a period of 30 days for review and seek comment on:

(1) New cited information and data that indicates that the determinations made for promulgating these regulations are in need of reconsideration, and

(2) Proposed changes to the mitigation, monitoring and research requirements contained in these regulations or in the current Letter of Authorization.

§ 216.259 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to a Letter of Authorization issued pursuant to §§ 216.106 shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.258, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.250(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.257 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

[FR Doc. E6–12556 Filed 8–2–06; 8:45 am]

BILLING CODE 3510–22–S