Form 3-186, Notice of Waterfowl Sale or Transfer, from the permittee for as long as you have the birds, eggs, or their progeny.

(b) All progeny of captive-reared birds or from eggs of captive-reared birds must be physically marked in accordance with § 21.13(b).

(c) With the exception of muscovy ducks, you may transfer or dispose of captive-reared birds or their eggs, whether alive or dead, to any other person only if you have a valid waterfowl sale and disposal permit (*see* § 21.25 of subpart C of this part).

(d) Lawfully-possessed and properly-marked birds may be killed, in any number, at any time or place, by any means except shooting. The birds may be killed by shooting only in accordance with all applicable hunting regulations governing the taking of like species from the wild (*see* part 20 of this subchapter).

(e) At all times during possession, transportation, and storage, until the raw carcasses of such birds are finally processed immediately prior to cooking, smoking, or canning, you must leave the marked foot or wing attached to each carcass, unless the carcass is marked as provided in § 21.13(b).

(f) *Muscovy ducks.* You do not need a permit to acquire, possess, or sell properly-marked, captive-reared muscovy ducks (*Cairina moschata*) or their eggs. You may not release captive-reared muscovy ducks to the wild or to any location used by wild ducks. You may not sell muscovy ducks to be hunted or released to the wild, sell them or distribute them as pets, or transfer them to anyone to be hunted or released to the wild. Nothing in this section shall be construed to permit the taking of live muscovy ducks or their eggs from the wild.

(g) Dealers in meat and game, hotels, restaurants, and boarding houses may serve or sell to their customers the carcass of any bird acquired from a holder of a valid waterfowl sale and disposal permit.

3. Amend § 21.25 as follows:

a. By redesignating paragraphs (a), (b), (c), (d), and (e) as paragraphs (b), (c), (d), (e), and (f);

b. By adding a new paragraph (a) to read as set forth below; and

c. By revising newly designated paragraphs (b) and (c) to read as set forth below.

§ 21.25 Waterfowl sale and disposal permits.

(a) *Prohibition on taking waterfowl from the wild.* You may not take migratory waterfowl or their eggs from the wild, except as provided for elsewhere in this subchapter.

(b) *Permit requirement.* You do not need a permit to acquire, possess, sell, or dispose of properly-marked, captive-reared mallard ducks (*Anas platyrhynchos*) or properly-marked, captive-reared muscovy ducks (*Cairina moschata*), or their eggs. You must have a waterfowl sale and disposal permit before you may lawfully sell, trade, donate, or otherwise dispose of other species of properly-marked, captive-reared migratory waterfowl or their eggs.

(c) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter B, waterfowl sale and disposal permits are subject to the following conditions:

(1) You may acquire waterfowl, other than mallard ducks or muscovy ducks, or their eggs, only from a person who has a valid waterfowl sale and disposal permit.

(2) You must physically mark all offspring hatched in captivity before they are 6 weeks of age in accordance with § 21.13(b), unless you hold them at a public zoological park or a public scientific or educational institution.

(3) Properly marked captive-reared birds may be killed, in any number, at any time or place, by any means except shooting. They may be killed by shooting only in accordance with all the applicable hunting regulations for the species (*see* part 20 of this subchapter).

(4) During possession, transportation, and storage, until the raw carcasses of such birds are finally processed immediately prior to cooking, smoking, or canning, the marked foot or wing must remain attached to each carcass. However, if you have a State license, permit, or authorization that allows you to sell game, you may remove the marked foot or wing from the raw carcasses if the number of your State license, permit, or authorization has been legibly stamped in ink on the back of each carcass and on the wrapping or container in which each carcass is maintained, or if each carcass is identified by a State band on a leg or wing pursuant to requirements of your State license, permit, or authorization.

(5) You may transfer or sell live or dead birds marked by a method listed in § 21.13(b), or their eggs, at any time or place.

(6) If you transfer captive-reared birds or their eggs, other than mallard ducks or muscovy ducks or their eggs, to another person, you must complete FWS Form 3-186, Notice of Waterfowl Sale or Transfer, and provide all information required on the form, plus the method or methods listed in § 21.13(b) by which the birds are marked.

(i) Give the original of the completed form to the person acquiring the birds or eggs.

(ii) Retain one copy in your files.

(iii) Attach one copy to the shipping container for the birds or eggs, or include it with shipping documents that accompany the shipment.

(iv) By the end of the month in which you complete the transfer, mail two copies to the Fish and Wildlife Service Regional Office that issued your permit.

* * * * *

4. Revise § 21.54(c) as follows:

(c) *Disposal of muscovy ducks.* Any muscovy duck removed live under this order must be: Any muscovy duck removed live under this order must be: (1) placed with a facility where it will be maintained under conditions that will prevent its escape to the wild, (2) donated to public museums or public institutions for scientific or educational purposes, or (3) euthanized and disposed of by burying or incineration. Any muscovy duck taken lethally under this order may be donated to a public museum or public institution for scientific or educational purposes. If it is not donated to a public museum or public institution, it must be disposed of by burying or incineration. You may not retain for personal use or consumption, offer for sale, or sell a muscovy duck removed under authority of this section, nor may you release it in any other location.

Dated: August 31, 2010

Eileen Sobeck,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2010–23139 Filed 9–30–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 100217098–0373–01]

RIN 0648–AY64

Taking and Importing Marine Mammals; 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: Proposed rule; request for comments.

SUMMARY: NMFS has received an application from the U.S. Department of

the Air Force, Headquarters 96th Air Base Wing (U.S. Air Force), Eglin Air Force Base (Eglin AFB) for authorization to take marine mammals, by Level B harassment, incidental to Naval Explosive Ordnance Disposal School (NEODS) training operations, military readiness activities, at Eglin AFB, FL from approximately December, 2010, to November, 2015. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is proposing regulations to govern the requested take and requesting information, suggestions, and comments on its proposed regulations. NMFS issued annual Incidental Harassment Authorizations pursuant to the MMPA for similar specified activities in 2005, 2006, 2007, and 2008. No activities have occurred to date.

DATES: Information, suggestions, and comments must be received no later than November 1, 2010.

ADDRESSES: Comments on the application 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. Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.*

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (*see* **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet 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. NMFS is current preparing a Draft Environmental Assessment in accordance with the National Environmental Policy Act (NEPA) as implemented by the regulations published by the Council on Environmental Quality (CEQ).

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–713–2289, ext. 172.

SUPPLEMENTARY INFORMATION:

Availability

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (*see* **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet 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.

Background

Paragraphs 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary), upon request, to allow for a period of not more than five years, 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. Alternatively, if the taking is limited to harassment an Incidental Harassment Authorization (IHA) is issued. Upon making a finding that an application for incidental take is adequate and complete, NMFS commences the incidental take authorization process by publishing in the **Federal Register** a notice of a receipt of an application for the implementation of regulations or a proposed IHA.

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

NMFS has defined "negligible impact" in 50 CFR 216.103 as:

> * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The National Defense Authorization Act of 2004 (NDAA) (Pub. L. 108–36) modified the MMPA by removing the "small numbers" and "specified geographic region" limitations and amended the definition of "harassment" as it applies to a "military readiness activity" to read as follows (Section 3(18)(B) of the MMPA):

> (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 behavioral patterns are abandoned or significantly altered (Level B harassment).

Summary of Request

On November 6, 2009, NMFS received a letter from the U.S. Air Force requesting an authorization for the take of marine mammals incidental to NEODS training operations. These training operations are properly considered "military readiness activity" under the provisions of the NDAA. On January 15, 2010, NMFS published a Notice of Receipt (75 FR 2490) in the **Federal Register** for the U.S. Air Force's NEODS training operations and determined that its application was adequate and complete. The U.S. Air Force states and NMFS concurs that underwater explosive detonations could result in the take by harassment of marine mammals by exposing them to sound. The requested regulations would establish a framework for authorizing incidental take with future LOAs. These LOAs, if approved, would authorize the take, by Level B (behavioral) harassment, of Atlantic bottlenose dolphins (*Tursiops truncatus*) incidental to conducting NEODS training operations and testing at Eglin Gulf Test and Training Range (EGTTR) at property off Santa Rosa Island (SRI), Florida, in the northern Gulf of Mexico (GOM). Based on the application, pre-mitigation take would average approximately 10 animals per year; approximately 50 animals over the five year period. NMFS issued annual Incidental Harassment Authorizations (IHA) for almost identical activities in 2005 (70 FR 51341; August 30, 2005), 2006 (71 FR 60639; October 16, 2006), 2007 (72 FR 58290; October 15, 2007), and 2008 (73 FR 56800; September 30, 2008). The past missions have been delayed due to safety issues related to bringing demolition charges under a bridge. No missions have occurred to date under any of the IHAs. NEODS missions would involve underwater detonations of small, live explosive charges adjacent to inert mines. The NEODS training activities are classified as military readiness activities. The U.S. Air Force states that underwater detonation of the specified explosive charges may expose bottlenose dolphins

in the area to noise and pressure resulting in non-injurious temporary threshold shift (TTS) (temporary hearing loss).

Additional information on the NEODS training operations is contained in the application, which is available upon request (*see* **ADDRESSES**).

Description of the Proposed Specified Activities

Background

Potential impacts to listed species and habitat from NEODS testing are limited to the sites offshore of Eglin AFB shown in Figure 1–1 of Eglin AFB's application. The EGTTR encompasses approximately 222,739 km^2 (86,000 mi^2) within the GOM and consists of the airspace over the GOM, which is scheduled and operated by Eglin AFB. NEODS test areas are located approximately three nautical miles (nmi) from shore, in approximately 18.3 m (60 ft) of water and in area W–151 of the EGTTR.

The mission of NEODS is 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 U.S. Navy EOD force of approximately 1,000 men and women has the equipment, mobility, and flexibility to tackle the global spectrum of threats in all world environments. Mine Countermeasures (MCM) detonations is one function of the U.S. Navy EOD force, which involves mine-hunting and mine-clearance operations. The NEODS facilities are located at Eglin AFB, Florida. The proposed training at Eglin AFB involves focused training on basic EOD skills. Examples of these fundamental skills are recognizing ordnance, reconnaissance, measurement, basic understanding of demolition charges, and neutralization of conventional and chemical ordnance.

The NEODS at Eglin AFB proposes to use the GOM waters off of SRI for a portion of the NEODS class. The NEODS would utilize areas approximately one to three nmi offshore of Test Site A–15, A–10 or A–3 for MCM training (see Figure 1–1 of Eglin AFB's application). A "test site" is a specific location on EGTTR where the mission activities actually occur. The goal of the training is to give NEODS students the tools and techniques to implement MCM through real scenarios. The students would be taught established techniques to implement MCM through real scenarios. The students would be taught established techniques for neutralizing mines by diving and hand-placing charges adjacent to the mines. The detonation of small, live explosive charges adjacent to the mine disables the mine function. Inert mines are utilized for training purposes. This training would occur offshore of SRI up to eight times annually, at varying times within the year.

Proposed NEODS Operations

MCM training classes are 51 days in duration, with four days of on-site training in the GOM. Two of these four days will be utilized to lay the inert mines prior to the training. The other two days will require the use of live detonations in the GOM. One large safety vessel and five MK V inflatable 3.1 m (10 ft) rubber boats with 50 horsepower (HP) engines would be used to access the GOM waters during training activities. The training procedures during the two "live demolition" days are described as follows.

First Live Demolition Day: Five inert mines will be placed in a compact area on the GOM floor in approximately 60 ft of water. These five mines will be utilized for the one or two live demolition days. Divers will locate the mines by hand-held sonars (AN/PQS–2A acoustic locator and the Dukane Underwater Acoustic Locator System), which detect the mine casings (mine shape reacquisition). The hand-held sonar would not impact any protected marine species because the sonar ranges are below any current threshold for protected marine species (*see* Table 1–1 of Eglin AFB's application); therefore, potential noise impacts from sonars are not included in this analysis.

Five charges packed with C–4 explosive material (either 2.3 kg [5 lb] NEW or 4.6 kg [10 lb] NEW) will be set up adjacent to the mines. A charge includes detonation cord, non-electric caps, time fuses and fuse igniters. No more than five charges will be utilized over the two-day period. Live training events will occur eight times annually, averaging once every six to seven weeks. Four of the training events will involve five-lb charges, and four events will involve ten-lb charges. Because five detonations (maximum) are expected during each event, there will be up to twenty five-lb detonations and twenty ten-lb detonations annually, for a total of forty detonations. It is expected that 60 percent of the training events will occur in summer, and 40 percent will occur in winter. Therefore, analyses of potential marine mammal impacts in Section 6 of Eglin AFB's application reflect this seasonal distribution. Overpressure from the detonation is intended to disrupt the electrical charge on the mine, rendering it safe. The five charges will be detonated individually with a maximum separation time of 20 minutes between each detonation. The time of detonation will be limited to an hour after sunrise and an hour before sunset. Mine shapes and debris will be recovered and removed from the GOM waters when training is completed.

Second Live Demolition Day: Each team has two days to complete their entire evolution (detonation of five charges). The second day will be utilized only if the teams cannot complete their evolution on day one.

TABLE 1—(TABLE 1–1 OF THE APPLICATION) HAND-HELD SONAR CHARACTERISTICS

	AN/PQS–2A	Dukane
Frequency Operating Range	115 kHz–145 kHz	30–45 kHz.
Audible Frequency Range	N/A	250 Hz–2,500 Hz.
Operating Frequency	115 kHz–145 kHz	37.5 kHz ± 1 kHz.
Sound Pressure Level	1.78.5 re 1 μPa @ 1m	157–160.5 re 1 μPa @ 1m.

Additional details regarding the proposed NEODS training operations can be found in Eglin AFB's LOA application and Draft Environmental Assessment on the Promulgation of Regulations and the Issuance of Letters of Authorization to Take Marine Mammals, by Harassment, Incidental to Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida (Draft EA). The Draft EA can also be found online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Military Readiness Activity

NEODS supports the Naval Fleet by providing training to personnel from all four armed services, civil officials, and

military students from over 70 countries. The NEODS facility supports the Department of Defense Joint Service Explosive Ordnance Disposal training mission. According to the application, the Navy and the Marine Corps believe that the ability of Sailors and Marines to detect, characterize, and neutralize mines from their operating areas at sea, on the shore, and inland, is vital to their doctrines.

As described in the application, the Navy believes that an array of trans-national, rogue, and sub-national adversaries now pose the most immediate threat to American interests. Because of their relative low cost and ease of use, mines will be among the adversaries' weapons of choice in shallow-water situations, and they will be deployed in an asymmetrical and asynchronous manner. The Navy needs organic means to clear mines and obstacles rapidly in three challenging environments: Shallow water; the surf zone; and the beach zone. The Navy also needs a capability for rapid clandestine surveillance and reconnaissance of minefields and obstacles in these environments. The NEODS mission in the GOM offshore of Eglin AFB is considered a military readiness activity pursuant to the National Defense Authorization Act (NDAA) (Pub. L. 108–136).

Proposed Dates, Duration, and Location of Specified Activity

NEODS missions will occur over the next five years utilizing resources within the Eglin Military Complex, including three sites in the EGTTR (Figure 1–1 of Eglin AFB's application). There will be eight training events annually, with an average of one event occurring every six to seven weeks. Half of the events will involve 5 lb charges and half will involve 10 lb charges.

Description of Marine Mammals and Habitat Affected in the Activity Area of the Specified Activities

Marine mammal species that potentially occur within the EGTTR include several species of cetaceans and one sirenian, the West Indian manatee (*see* Table 1 below). Marine mammal species listed as Endangered under the U.S. Endangered Species Act (ESA), includes the humpback, sei, fin, blue, North Atlantic right, sperm whale, and Florida manatee. The marine mammals that generally occur in the proposed training operations area belong to three taxonomic groups: Mysticetes (baleen whales), odontocetes (toothed whales), and sirenians (the manatee). Table 2 below outlines the cetacean species and their habitat in the region of the proposed project area.

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. NEODS missions would be conducted one to three nmi from shore. Therefore, effects on manatees are considered very unlikely, and the discussion of marine mammal species is confined to cetaceans. The primarily cetacean occurring in the NEODS area of interest, EGTTR sub-area 197 (Figure 3–1 of Eglin AFB's application), is the Atlantic bottlenose dolphin and this analysis will focus on that species.

TABLE 2—THE HABITAT AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE PROPOSED STUDY AREA IN THE GULF OF MEXICO OFF OF FLORIDA.

Species	Habitat	ESA [1]	MMPA [2]
Mysticetes			
North Atlantic right whale (*Eubalaena glacialis*)	Coastal and shelf	EN	D.
Humpback whale (*Megaptera novaeangliae*)	Pelagic, neashore waters and banks	EN	D.
Bryde's whale (*Balaenoptera brydei*)	Pelagic and coastal	NL	NC.
Minke whale (*Balaenoptera acutorostrata*)	Pelagic and coastal	NL	NC.
Blue whale (*Balaenoptera musculus*)	Pelagic and coastal	EN	D.
Sei whale (*Balaenoptera borealis*)	Primarily offshore, pelagic	EN	D.
Fin whale (*Balaenoptera physalus*)	Slope, mostly pelagic	EN	D.
Odontocetes			
Sperm whale (*Physeter macrocephalus*)	Pelagic, deep seas	EN	D.
Cuvier's beaked whale (*Ziphius cavirostris*)	Pelagic	NL	NC.
Gervais' beaked whale (*Mesoplodon europaeus*)	Pelagic	NL	NC.
True's beaked whale (*Mesoplodon mirus*)	Pelagic	NL	NC.
Blainville's beaked whale (*Mesoplodon densirostris*)	Pelagic	NL	NC.
Dwarf sperm whale (*Kogia sima*)	Offshore, pelagic	NL	NC.
Pygmy sperm whale (*Kogia breviceps*)	Offshore, pelagic	NL	NC.
Killer whale (*Orcinus orca*)	Widely distributed	NL	NC. D (Southern Resident, AT1 Transient).
Short-finned pilot whale (*Globicephala macrorhynchus*)	Inshore and offshore	NL	NC.
False killer whale (*Pseudorca crassidens*)	Pelagic	NL	NC.
Melon-headed whale (*Peponocephala electra*)	Pelagic	NL	NC.
Pygmy killer whale (*Feresa attenuata*)	Pelagic	NL	NC.
Risso's dolphin (*Grampus griseus*)	Pelagic, shelf	NL	NC.
Bottlenose dolphin *(Tursiops truncatus*)	Offshore, inshore, coastal, estuaries	NL	NC. D (Western North Atlantic Coastal).
Rough toothed dolphin (*Steno bredanensis*)	Pelagic	NL	NC.
Fraser's dolphin (*Lagenodelphis hosei*)	Pelagic	NL	NC.
Striped dolphin (*Stenella coeruleoalba*)	Pelagic	NL	NC.
Pantropical spotted dolphin (*Stenella attenuata*)	Pelagic	NL	NC. D (Northeastern Offshore).

TABLE 2—THE HABITAT AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE PROPOSED STUDY AREA IN THE GULF OF MEXICO OFF OF FLORIDA.—Continued

Species	Habitat	ESA [1]	MMPA [2]
Atlantic spotted dolphin (*Stenella frontalis*)	Coastal to pelagic	NL	NC.
Spinner dolphin (*Stenella longirostris*)	Mostly pelagic	NL	NC.
			D (Eastern).
Clymene dolphin (*Stenella clymene*)	Pelagic	NL	NC.
Sirenians			
West Indian (Florida) manatee (*Trichechus manatus latirostris*) ..	Coastal, rivers and estuaries	EN	D.

[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, NL = Not listed.
[2] U.S. Marine Mammal Protection Act: NC = Not Classified, D = Depleted, S = Strategic.

The three species of marine mammals that are known to commonly occur in close proximity to the NEODS training area of the GOM are the West Indian (Florida) manatee, Atlantic spotted dolphin, and Atlantic bottlenose dolphin.

Florida Manatee

The West Indian manatee in Florida and U.S. waters is listed as Endangered under the Endangered Species Act (ESA). They primarily inhabit coastal and inshore waters. Because the Florida manatee is managed under the jurisdiction of the U.S. Fish and Wildlife Service it is not considered further in this analysis.

Atlantic Spotted Dolphins

The Atlantic spotted dolphin is endemic to the Atlantic Ocean in temperate to tropical waters (Perrin *et al.,* 1987, 1994). In the GOM, Atlantic spotted dolphins occur primarily from continental shelf waters 10 to 200 m (33 to 656 ft) deep to slope waters greater than 500 m (1,640 ft) deep (Fulling *et al.,* 2003; Mullin and Fulling, 2004). Atlantic spotted dolphins were seen in all seasons during GulfCet aerial surveys of the northern GOM from 1992 to 1998 (Hansen *et al.,* 1996; Mullin and Hoggard, 2000). It has been suggested that this species may move inshore seasonally during spring, but data supporting this hypothesis are limited (Caldwell and Caldwell, 1966; Fritts *et al.,* 1983).

Eglin AFB has included Atlantic spotted dolphins in previous requests for IHAs to be conservative, although their occurrence is considered unlikely. The stock assessment reports for the northern GOM describes the shoreward range of Atlantic spotted dolphins as 10 m (33 ft) depth. NEODS activities can occur from one to three miles offshore. Maximum water depth of the proposed activities is 18.3 m (60 ft), but they often train in approximately 9.1 m (30 ft) of water, so this species range occurs at the very edge of the proposed activities. Therefore, the chance of impacting Atlantic spotted dolphins is remote, especially given the monitoring and mitigation measures described below.

Atlantic Bottlenose Dolphins

The marine mammal species potentially affected is the Atlantic bottlenose dolphin. Atlantic bottlenose dolphins are distributed worldwide in tropical and temperate waters. Atlantic bottlenose dolphins occur in slope, shelf, and inshore waters of the entire GOM, and their diet consists mainly of fish, crabs, squid, and shrimp (Caldwell and Caldwell, 1983). In addition, a coastal and an offshore form of the bottlenose dolphin have been suggested. Baumgartner *et al.* (2001) suggest a bimodal distribution in the northern GOM, with a shelf population occurring out to the 150 m (492 ft) isobath and a shelf break population out to the 750 m (2,460.6 ft) isobath. Occurrence in water with depth greater than 1,000 m (3,280.8 ft) is not considered likely and not applicable to this assessment. Migratory patterns from inshore to offshore are likely associated with the movements of prey rather than a preference for a particular habitat characteristic (such as surface water temperature) (Ridgeway, 1972; Irving, 1973; Jefferson *et al.,* 1992).

Within the EGTTR, there are four defined stocks of bottlenose dolphins: the Northern GOM Oceanic Stock, the Northern GOM Continental Shelf Stock, the Eastern GOM Coastal Stock, and the Northern GOM Coastal Stock. In addition, there are 33 stocks of bottlenose dolphins inhabiting the bays, sounds, and estuaries along the GOM coast (Waring *et al.,* 2007). Prior to the 2007 Garrison survey and model predictions, the best estimates of abundance were 7 to 15 years old, occurred during different seasons, and each of the surveys suffered from differing degrees of negative bias in abundance estimates because all surveys assumed that all animals on the trackline were seen. Therefore, estimates based on those surveys would be highly uncertain. Based on data from the Protected Species Habitat Modeling in the EGTTR, the total estimate of abundance of bottlenose dolphins from the winter 2007 survey was 65,861 (95 percent CI 36,699 to 118,200) and for the summer 2007 survey was 11,433 animals (95 percent CI 7,346 to 17,793) (Garrison, 2008). For both the summer and winter surveys, the highest density of bottlenose dolphins occurred in the northern inshore stratum. The summer survey overall abundance estimate for bottlenose dolphins was approximately 50 percent lower than the winter survey (Garrison, 2008). Bottlenose dolphin stocks for the shelf edge and slope are not considered strategic. The potential for biological removal (PBR) for shelf and slope stocks is 45 dolphins (Waring *et al.,* 2001).

The presence of fish in the stomachs of some individual offshore bottlenose dolphins suggest that they dive to depths of more than 500 m (1,640 ft). A tagged individual near Bermuda had maximum recorded dives of 600 to 700 m (1,969 to 2,297 ft) and durations of 11 to 12 min. Dive durations up to 15 min have been recorded for trained individuals. Typical dives, however, are more shallow and of a much shorter duration. Data from a tagged individual off Bermuda indicated a possible diel dive cycle (*i.e.,* a regular daily dive cycle) in search of mesopelagic (living at depths between 180 and 900 m [591 and 2,953 ft]) prey in the deep scattering layer.

In the EGTTR as a whole, there were a total of 281 groups of bottlenose dolphins during the winter survey and 162 groups during the summer survey. According to the species-habitat model for bottlenose dolphins, densities were predicted to be highest in relatively shallow water, with an offshore peak in density between 40 to 60 m (131 to 196.9 ft) depth and in waters ranging

between 27.5 to 28.5 °C (81.5 to 83.3 °F) (Garrison, 2008).

Bottlenose dolphin density estimates for the study area are derived from Protected Species Habitat Modeling in the EGTTR (Garrison, 2008). NMFS developed habitat models using new aerial survey line transect data collected during the winter and summer of 2007. The winter survey was conducted primarily during the month of February (water temperatures of 12 to 15 °C [53.6 to 59 °F]) while the summer survey was primarily during July (water temperatures >26 °C [78.8 °F]). In combination with remotely sensed habitat parameters (sea surface temperature and chlorophyll), these data were used to develop spatial density models for bottlenose dolphins within the continental shelf and coastal waters of the eastern GOM. Encounter rates during the aerial surveys were corrected for sighting probabilities and the probability that animals were available to be seen on the surface. The models predict the absolute density of bottlenose dolphins within the EGTTR. Given that the survey area (EGTTR sub-area 197, Figure 3–1 of Eglin AFB's application) completely overlaps the NEODS mission area and that this data is currently the best available survey data, these models best reflect the occurrence of bottlenose dolphins within the EGTTR.

Table 3–1 of Eglin AFB's application provides median and adjusted bottlenose dolphin densities in EGTTR sub-area 197. These absolute estimates of density (animals per square kilometer [km^2] were produced by combining the spatial density model, sighting probability, and availability model (Garrison, 2008). All environmental terms were retained in the species-habitat model for the winter survey and the summer survey with the exception of glare for the summer survey. The model fits for the winter and summer were highly significant, explained a significant portion of the variability in the data, and resulted in effective predictions of spatial distribution of bottlenose dolphins.

NEODS missions may be executed at any time during the year. It is anticipated that approximately 60 percent of missions will be executed during summer months, and 40 percent will be executed during winter months. Separate summer and winter density estimates are provided in Table 3–1 of Eglin AFB's application. Months with high CV values (greater than 1) have high degrees of uncertainty in the model predictions. These months include May, June, September, October, and November where density was unknown. In order to compensate for the months without good estimates, interpolation was used between the available months by providing a means of estimating the function at intermediate points through presuming that there were linear seasonal trends. Interpolation assumes that the poorly estimated periods lie somewhere in the middle of the well estimated periods. Adjusted densities for each month were reached after interpolation calculations (*see* Table 3–1 of Eglin AFB's application). Based on the adjusted densities, January, March, and July have the highest bottlenose dolphin densities while the months from August through December months have the lowest densities. On average, there are 0.81 bottlenose dolphins/km^2 throughout the year in EGTTR sub-area 197. Seasonally there are on average 0.84 dolphins/km^2 during summer and 0.78 dolphins/km^2 during winter in sub-area 197.

TABLE 3—(TABLE 3–1 OF THE APPLICATION) BOTTLENOSE DOLPHIN DENSITIES FOR EGTTR SUB-AREA 197

Month	Median density (Individuals/km^2)	CV	Valid	Adjusted density (Individuals/km^2)[a]
November	0.00	31.62	0	0.51
December	0.52	0.25	1	0.52
January	1.24	0.22	1	1.24
February	0.73	0.20	1	0.73
March	1.22	0.28	1	1.22
April	0.84	0.46	1	0.84
Average Winter Density				
May	0.00	22.41	0	0.95
June	0.00	4.47	0	1.06
July	1.17	0.24	1	1.17
August	0.48	0.22	1	0.48
September	0.01	3.02	0	0.49
October	0.00	20.43	0	0.50
Average Summer Density			.....	0.78
Overall Average Density			.....	0.81

[a] Adjusted through interpolation.

NMFS anticipates that no bottlenose dolphins will be injured, seriously injured, or killed during the proposed NEODS training operations. The specific objective of the U.S. Air Force's mitigation and monitoring plan is to ensure that no dolphins (or manatees) or other protected species are in the action area where they might be impacted by the explosive detonations. Because of the circumstances and the proposed mitigation and monitoring requirements discussed in this document, NMFS believes it highly unlikely that the proposed activities would result in injury (Level A harassment), serious injury, or mortality of bottlenose dolphins, however, they may temporarily avoid the area where the proposed explosive demolition will occur. Eglin AFB has requested the incidental take of 10 bottlenose dolphin each year and approximately 50 animals during the five year duration of the proposed action.

Further information on the biology, habitat, and local distribution of these species and others in the region can be found in Eglin AFB's application, which is available upon request (*see* **ADDRESSES**), and the NMFS Marine Mammal Stock Assessment Reports, which are available online at: *http://www.nmfs.noaa.gov/pr/species/*.

Comments and Responses

On January 15, 2010, NMFS published a notice of receipt of application for a LOA in the **Federal Register** (75 FR 2490) and requested comments, information, and suggestions from the public for 30 days. NMFS received comments from the Marine Mammal Commission (Commission) and a private citizen. The private citizen's comments opposed the issuance of an authorization without providing any specific rationale for that position. NMFS, therefore, cannot respond to this comment.

Comment 1: The Commission supports NMFS' intent to publish proposed small-take regulations for these activities, provided the research, mitigation, and monitoring activities described in the application are incorporated into the rule. The Commission looks forward to reviewing the proposed regulations.

Response: NMFS appreciates with the Commission's comments and has incorporated the research, mitigation, and monitoring activities described in the application into the proposed rule.

Potential Effects of Specified Activities on Marine Mammals

In general, potential impacts to marine mammals from explosive detonations could include non-lethal injury (Level A harassment), serious injury, and mortality, as well as Level B harassment. In the absence of monitoring and mitigation, marine mammals may be killed or injured as a result of an explosive detonation due to the response of air cavities in the body, such as the lungs and bubbles in the intestines. Effects are likely to be most severe in near surface waters where the reflected shock wave creates a region of negative pressure called "cavitation." While these direct physiological effects are possible, they are considered unlikely in association with the specified activities due to the monitoring and mitigation measures described below.

A second potential possible cause of mortality is the onset of extensive lung hemorrhage. Extensive lung hemorrhage is considered debilitating and potentially fatal. Suffocation caused by lung hemorrhage is likely to be the major cause of marine mammal death from underwater shock waves. The estimated range for the onset of extensive lung hemorrhage to marine mammals varies depending upon the animal's weight, with the smallest mammals having the greatest potential hazard range.

Marine mammals may potentially be harassed due to noise from NEODS mission involving underwater detonations. The potential numbers and species taken by noise are assessed in this section. Three key sources of information are necessary for estimating potential noise effects on marine resources: (1) The number of distinct firing or test events; (2) the Zone of Influence (ZOI) for noise exposure; and (3) the density of animals that potentially reside within the ZOI. The ZOI is the area where potential impacts from the mission could occur. The "test site" and "mission area" are both found within the ZOI.

For the acoustic analysis, the exploding charge is characterized as a point source. The impact thresholds used for marine mammals relate to potential effects on hearing from underwater detonation noise. No ESA-listed marine mammals would be affected given the location of the proposed action in nearshore waters. The only ESA-listed marine mammal likely to be found in the northeastern GOM, the Federal and state-listed endangered sperm whale (*Physeter macrocephalus*), occurs farther out on the continental slope in water generally deeper than 600 m (1,968.5 ft). Manatees are not considered likely to occur in the mission areas (see Figure 1–1 of Eglin AFB's application) and are therefore not considered in this analysis.

For the explosives in question, actual detonation depths would occur at 60 ft near the sand bottom. The inert mines and sea floor may potentially interact with the propagation of noise into the water. However, 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. A conservative acoustic analysis was selected to ensure the greatest direct path for the harassment ranges and to give the greatest impact range for the injury thresholds.

Criteria and thresholds that are the basis of the analysis of NEODS noise impacts to cetaceans were initially used in U.S. Navy Environmental Impact Statements for ship shock trials of the *Seawolf* submarine and the *Winston S. Churchill* (*Churchill*) vessel (DON, 1998; DON, 2001) and adopted by NMFS (NMFS, 2001). Supplemental criteria and thresholds have been introduced in the EGTTR Programmatic Environmental Assessment (U.S. Air Force, 2002), subsequent EGTTR LOA (U.S. Air Force, 2003) permit request, Precision Strike Weapons (PSW) LOA (U.S. Air Force, 2004), and Naval Surface Warfare Center Panama City Division LOA (U.S. Navy, 2008).

Standard impulsive and acoustic metrics were used for the analysis of underwater pressure waves in this document.

- Energy flux density (EFD) is the time integral of the squared pressure divided by the impedance. EFD levels have units of dB re 1 $\mu Pa^2 \cdot s$.
- ⅓-Octave EFD is the energy flux density in a ⅓-octave frequency band; the ⅓ octave selected is the hearing range at which the subject animals' hearing is believed to be most sensitive.
- Peak pressure is the maximum positive pressure for an arrival of a sound pressure wave that a marine mammal would receive at some distance away from a detonation. Units used here are pounds per square inch (psi) and dB levels.

Non-lethal injurious impacts are defined in this document as eardrum rupture (*i.e.,* tympanic-membrane (TM rupture) and the onset of slight lung injury. These are considered indicative of the onset of injury. The threshold for TM rupture corresponds to a 50 percent rate of rupture (*i.e.,* 50 percent of animals exposed to the level are expected to suffer TM rupture); this is stated in terms of an EFD value of 1.17 in-lb/in^2, which is about 205 dB re 1 $\mu Pa^2 \cdot s$. This recognizes that TM rupture is not necessarily a life-threatening injury, but is a useful index of possible injury that is well-correlated with measures of permanent hearing impairment (*e.g.,* Ketten [1998] indicates a 30 percent incidence of permanent threshold shift [PTS] at the same threshold). 205 re 1 $\mu Pa^2 \cdot s$ has been requested by NMFS to calculate harassment distances for Level A harassment (NMFS, 2008).

Public Law 108–136 (2004) amended the definition of Level B harassment under the MMPA for military readiness activities, such as this action (and also for scientific research on marine mammals conducted by or on the behalf of the Federal Government). For military readiness activities, Level B harassment is now defined as "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." Unlike Level A harassment, which is solely associated with physiological effects, both physiological and behavioral effects may cause Level B harassment.

NMFS (2008) requested a dual criterion (*i.e.,* 182 dB re 1 μPa²·s and 23 psi peak) be used to calculate Level B harassment. Since the mission (five detonations over one or two days) does not meet multiple explosion criteria and the potential for significant alteration of behavior will not be expected for the short duration of noise produced from single detonations from NEODS missions, thresholds for behavioral effects to explosive sound will not be analyzed. The first criterion for non-injurious harassment is TTS, which is defined as a temporary, recoverable loss of hearing sensitivity (NMFS, 2001; DON, 2001). The criterion for TTS is 182 dB re 1 μPa²·s. The potential for significant alteration of behavior described below will not be expected for the short duration of noise produced from single detonations from NEODS tests.

The second criterion for estimating TTS threshold applies to all cetacean species and is stated in terms of peak pressure at 23 psi. The threshold is derived from the *Churchill* threshold which was subsequently adopted by NMFS in its Final Rule on the unintentional taking of marine animals incidental to the shock testing (NMFS, 2001). The original criteria in *Churchill* incorporated 12 psi. The current criteria and threshold for peak pressure over all exposures was updated from 12 psi to 23 psi for explosives less than 907 kg (2,000 lb) based on an IHA issued to the Air Force for a similar action (NOAA, 2006a). Peak pressure and energy scale at different rates with charge weight, so that ranges based on the peak-pressure threshold are much greater than those for the energy metric when charge weights are small, even when source and animal are away from the surface. In order to more accurately estimate TTS for smaller shots while preserving the safety feature provided by the peak pressure threshold, the peak pressure threshold is appropriately scaled for small shot detonations. This scaling is based on the similitude formulas (*e.g.,* Urick, 1983) used in virtually all compliance documents for short ranges. Further, the peak-pressure threshold for marine mammal TTS for explosives offers a safety margin for source or animals near the ocean surface.

The more conservative isopleths of the criterion for estimating Level B harassment will be used in take analysis. Table 6–1 of Elgin AFB's application provides a summary of threshold criteria and metrics for potential noise impacts to sensitive species.

TABLE 4—(TABLE 6–1 OF THE APPLICATION) THRESHOLD CRITERIA AND METRICS UTILIZED FOR IMPACT ANALYSES

Level A harassment	Level B harassment	
Injurious; eardrum rupture (for 50 percent of animals exposed). 205 dB re 1 μPa²·s EFD	Non-injurious; TTS (temporary hearing loss) ... 182 dB re 1 μPa²·s EFD* and/or 12 psi.	Non-injurious; peak-pressure threshold for TTS. 23 psi.

* **Note:** In greatest ⅓-octave band above 10 Hz or 100 Hz.

Noise ZOIs were calculated for bottom detonation scenarios at 60 ft both lethality and harassment (Level A and B harassment). To determine the number of potential "takes" or animals affected, cetacean population information from surveys was applied to the various ZOIs. The impact calculations for this section utilize marine mammal density estimates that have been derived from a Legacy funded NMFS/Air Force project (Garrison, 2008). The species density estimate data were adjusted to reflect the best available data and more realistic encounters of these animals in their natural environment (Garrison, 2008). These calculations and estimates are explained in detail in Section 3, and adjusted density estimates are provided in Table 3–1 of Eglin AFB's application.

Given the variability in mission schedules (any time during the year), an overall average of bottlenose dolphin density of 0.81 individuals/km² is used for take analysis.

Table 6–2 of Eglin AFB's application gives the estimated impact ranges for the two explosive weights. The proposed test locations are one to three nmi south of SRI. NEODS detonations were modeled for bottom detonations at 60 ft.

No behavioral impacts (176 dB re 1 μPa²·s) are anticipated with the NEODS test activities and are not considered in this analysis. Repetitive exposure (below TTS) to the same resident animals is highly unlikely due to the infrequent test events (no more than 5 detonations over a one or two day period), the potential variability in target locations, and the continuous movement of marine mammals in the northern GOM.

TABLE 5—(TABLE 6–2 OF THE APPLICATION) ZOI FOR UNDERWATER EXPLOSIONS

Ordnance	NEW (lbs)	Depth of explosion (m)	Ranges for EFDL >205 dB (m)	Ranges for EFDL in ⅓ octave band (m)	23 psi (m)
Summer					
NEODS MCM 2.3 kg (5 lb) charge	5	18	52.1	227.5	222
NEODS MCM 4.5 kg (10 lb) charge	10	18	77	385	280
Winter					
NEODS MCM 5 lb charge	5	18	52.2	229.8	222
NEODS MCM 10 lb charge	10	18	77	389	280

EFDL = Energy Flux Density Level.

Applying the harassment ranges in Table 6–2 of the application to the species densities of Table 3–1 of the application, the number of animals potentially occurring within the ZOI was estimated. These results are presented in Tables 6–3 and 6–4 of the application. For Level B harassment calculations (Table 6–4 of the application), the ZOI corresponding to the 182 dB re 1 $\mu Pa^2 \cdot s$ metric is used because this radius is in all cases greater than the radius corresponding to 23 psi. The total number of animals potentially exposed annually is in bold. A whole animal (and potential take) is defined as 0.5 or greater, where calculation totals result in fractions of an animal. Where less than 0.5 animals are affected, no calculation totals result in fractions of an animals. Where less than 0.5 animals are affected, no take is assumed. The calculations in Tables 6–3 and 6–4 of the application are based on the expected tempo of: (1) 40 total detonations per year, (2) one-half of detonations are of 5 lb charges, and one-half are of 10 lb charges, and (3) 60 percent of detonations occur in summer, and 40 percent occur in winter.

TABLE 6—(TABLE 6–3 OF THE APPLICATION) MARINE MAMMAL DENSITIES AND RISK ESTIMATES FOR LEVEL A HARASSMENT (205 dB EFD 1/3 OCTAVE BAND) NOISE EXPOSURE FOR SUMMER AND WINTER

Species	Density (animals/km^2)	ZOI (km)		Number of animals exposed to Level A harassment	
		5 lb charge	10 lb charge	5 lb charge	10 lb charge
Summer					
Bottlenose Dolphin	0.78	0.0521	0.0770	0.08 (12 detonations)	0.17. (12 detonations).
Winter					
Bottlenose Dolphin	0.84	0.0522	0.0770	0.06 (8 detonations)	0.13. (8 detonations).
Total Number Animals Potentially Exposed To Level A Harassment Annually				0.44	

TABLE 7—(TABLE 6–4 OF THE APPLICATION) MARINE MAMMAL DENSITIES AND RISK ESTIMATES FOR LEVEL B HARASSMENT (182 dB EFT 1/3 OCTAVE BAND) NOISE EXPOSURE

Species	Density (animals/km^2)	ZOI (km)		Number of animals exposed to Level B harassment	
		5 lb charge	10 lb charge	5 lb charge	10 lb charge
Summer					
Bottlenose Dolphin	0.78	0.2275	0.385	1.52 (12 detonations)	4.36. (12 detonations).
Winter					
Bottlenose Dolphin	0.84	0.2298	0.389	1.11 (8 detonations)	3.19. (8 detonations).
Total Number Animals Potentially Exposed To Level B Harassment Annually				10.18	

The tables above indicate that the potential for non-injurious (Level B) harassment, as well as the onset of injury (Level A harassment) to cetaceans is possible but unlikely even without any mitigation measures. Wintertime ZOIs are generally slightly larger but do not significantly affect the numbers of animals potentially exposed to noise.

Less than 0.5 cetaceans are estimated to be exposed to Level A harassment (205 dB re 1 $\mu Pa^2 \cdot s$) ZOI. Therefore, as discussed above, no potential Level A exposures are anticipated. Level B harassment (182 dB re 1 $\mu Pa^2 \cdot s$) noise would potentially affect approximately 10 cetaceans. None of the above impact estimates consider mitigation measures that will be employed by the proponent to minimize potential impacts to protected species. These mitigation measures are described in Section 11 and are anticipated to greatly reduce potential impacts to marine mammals.

Based on the analyses and results provided here and in Section 6 of Eglin AFB's application, no strategic marine mammal stocks would be affected, and none of the marine mammal species that could potentially be taken is listed as threatened or endangered. The PBR for bottlenose dolphin is 45. No strategic marine mammal stocks would be affected.

Possible Effects of Activities on Marine Mammal Habitat

The primary source of marine mammal habitat impact is noise resulting from live NEODS missions. However, the noise does not constitute a long-term physical alteration of the

water column or bottom topography, as the occurrences are of limited duration and are intermittent in time. Surface vessels associated with the missions are present in limited duration and are intermittent as well.

Other sources that may affect marine mammal habitat were considered and potentially include the introduction of fuel, debris, ordnance, and chemical residues in the water column. The effects of each of these components were considered in the NEODS BA and were determined to be unlikely to adversely affect protected marine species. Marine mammal habitat would not be affected, lost or modified.

NMFS anticipates that the action will result in no impacts to marine mammal habitat beyond rendering the areas immediately around the NEODS training operations in the EGTTR less desirable shortly after each demolition event. The impacts will be localized and instantaneous. Impacts to marine mammal, invertebrate, and fish species are not expected to be detrimental.

Proposed Mitigation

In order to issue an Incidental Take Authorization under Section 101(a)(5)(A) and (D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. The NDAA of 2004 amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that "the least practicable adverse impact" shall include consideration of personnel, safety, practicality of implementation, and the impact on the effectiveness of the "military readiness activity." NEODS training involves military readiness activities.

The NEODS has employed a number of mitigation measures in an effort to substantially decrease the number of animals potentially affected. Eglin AFB is committed to assessing the mission activity for opportunities to provide operational mitigations while potentially sacrificing some mission flexibility.

Prior to the mission, a trained observer aboard the largest surface support vessel will survey (visually monitor) the test area for the presence of sea turtles and cetaceans. The area to be surveyed will span 230 m (754.6 ft) in every direction from the target, which is approximately the size of the largest harassment ZOI. The trained observer will conduct ship-based monitoring for non-participating vessels as well as for protected species. Dependent on visibility, surface observation would be effective out to several kilometers.

Weather that supports the ability to sight small marine life is required in order to mitigate the test site effectively (DON, 1998). Wind, visibility, and surface conditions of the GOM are the most critical factors affecting mitigation operations. Higher winds typically increase wave height and create "white cap" conditions, limiting an observer's ability to locate surfacing marine mammals. NEODS missions would be delayed if the sea state were greater than the Scale Number 3 described on Table 8 (below) and in Eglin AFB's application. Such a delay would maximize detection of marine mammals.

TABLE 8—(TABLE 11–1 OF THE APPLICATION) SEA STATE SCALE FOR MARINE MAMMAL AND SEA TURTLE OBSERVATION

Scale No.	Sea Conditions
0	Flat calm, no waves or ripples.
1	Small wavelets, few if any whitecaps.
2	Whitecaps on 0 to 33 percent of surface; 0.3 to 0.6 m (1 to 2 ft) waves.
3	Whitecaps on 33 to 50 percent of surface; 0.6 to 0.9 m (2 to 3 ft) waves.
4	Whitecaps on greater than 50 percent of surface; greater than 0.9 m (3 ft) waves.

Shipboard Monitoring Team

Shipboard monitoring would be staged from the highest point possible on a support ship. The trained observer will be experienced in shipboard surveys and 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.,* binoculars, as these have been successfully used in monitoring from ships), which should allow the observer to sight surfacing mammals from a significant distance past the safety zone of 230 m (754.6 ft). The trained observer would be responsible for reporting sighting locations, which would be based on bearing and distance.

The trained observer will have proper lines of communication to avoid communication deficiencies to make Go/No-Go recommendations for the detonations. The observer recommends the Go/No-Go decision to the Officer in Tactical Command, who makes the final Go/No-Go decision. As long as no protected species are sighted by the observer, then the mission is a Go, meaning it can proceed. However, if the area is fouled, meaning a protected species has entered the area, then the mission is a No-Go and cannot proceed until those individuals have left the mission area.

Mitigation Procedures Plan

Stepwise mitigation procedures for NEODS missions are outlined below. All zones (TTS, injury, and safety zones) are monitored, plus a buffer area that is twice the size of the largest ZOI (460 m or 1,509.2 ft).

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, few or no patches of *Sargassum,* etc.) and (2) verify that the ZOI is free of visually detectable marine mammals, large schools of fish, large flocks of birds, large *Sargassum* mats, and large concentrations of jellyfish. On the morning of the test, the Officer in Tactical Command would confirm that the test sites can still support the mission and that the weather is adequate to support mitigation.

(a) Two Hours Prior to Mission

Approximately two hours prior to the mission, or at daybreak, (whichever is closest to time of the mission) the appropriate vessel(s) would be on-site near the location of the earliest planned detonation point. Observers onboard the vessels and the trained observer would assess the suitability of the test site, based on visual observation of marine mammals, the presence of large *Sargassum* mats, and overall environmental conditions (visibility, sea state, etc.). This information would be relayed to the Officer in Tactical Command.

(b) One Hour Prior to Mission

One hour prior to the mission, monitoring would commence within the test site to evaluate the test site for environmental suitability. The observer would monitor the area around the detonation site, out to 0.47 km (0.25 nmi) from the site, and record in a database all marine mammals sightings, include the time of each sighting.

(c) Five Minutes Prior to Mission

Visual monitoring would continue to document any protected animals seen inside the ZOI and farther out to 0.47 km (0.25 nmi). If a marine mammal is traveling toward the test area, the time and distance can be calculated to determine if it will enter the test area during detonation.

(d) Go/No-Go Decision Process

The observer would plot and record sightings and bearings for all marine animals detected. This would depict animal sightings relative to the mission area. The observer would have the authority to declare the range fouled and recommend a hold until monitoring indicates that the test area (or ZOI) is and will remain clear of detectable marine mammals.

(e) Throughout the Mission

Monitoring of the test area will continue until the last detonation is complete. If any change in the status of the test area is observed or a protected marine mammal is sighted, the mission will be postponed until the area can be certified clear of protected marine mammals.

The mission would be postponed if:

1. Any marine mammal is visually detected within the ZOI. 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.

2. Any marine mammal is detected within or about to enter the ZOI (230 m [754.6 ft]) and subsequently cannot be reacquired. 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 *Sargassum* rafts or large concentrations of jellyfish are observed within the ZOI. The delay would continue until the *Sargassum* rafts or jellyfish that caused the postponement are confirmed to be outside of the ZOI either due to the current and/or wind moving them out of the mission area.

4. Large schools of fish are observed in the water within 230 m (754.6 ft) of the mission area. The delay would continue until the 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 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 the possibility still exists. Should a charge fail to explode, the Proponent would attempt to identify the problem and detonate the charge with all marine mammal mitigation measures in place as described.

Post-mission monitoring: 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 would commence immediately following each detonation and would be concentrated on the area down current of the test site.

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. Animals that were not killed instantly but were 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 were 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 Officer in Tactical Command.

The NMFS maintains stranding networks along coasts to collect and circulate information about marine mammal strandings. Local coordinators report stranding data to state and regional coordinators. Any observed dead or injured marine mammal would be reported to the appropriate coordinator.

Summary of Mitigation Plan

In the event either any human safety concerns arise or marine mammals are sighted within the ZOI, the test will be postponed. The area to be surveyed will be 0.3 km (0.15 nmi) in every direction from the target (approximately the size of the largest harassment ZOI). Additionally, a buffer area (0.5 km or 0.25 nmi) will be surveyed for protected marine animals moving toward the ZOI. The total area to be monitored is 0.7 km^2 (0.2 nmi^2). The survey vessel will leave the safety footprint immediately prior to detonation; however, given the relatively small impact area, visual observation of the ZOI will be ongoing.

Avoidance of impacts to schools of cetaceans will most likely be realized through visual monitoring since groups of dolphins are relatively easy to spot with the survey distances and methods that will be employed.

Post-mission monitoring would be conducted after each mission and would attempt to document any marine mammals that were killed or injured as a result of the test and, if practicable, recover and examine any dead animals. Post-mission monitoring activities may include coordination with marine animals stranding networks if any dead or injured marine mammal or sea turtles are observed.

Hard-bottom habitats and artificial reefs would be avoided to alleviate any potential impacts to protected habitat. NEODS testing would be delayed if large *Sargassum* mats or large schools of fish or jellyfish were found in the ZOI. Testing would resume only when the mats or schools move outside of the largest ZOI. The NEODS personnel will recover all debris from the targets and charges following test activities.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Mitigations may include any supplemental activities that are designed, proposed, and exercised to help reduce or eliminate the potential impacts to the marine resources. The Air Force recognizes the importance of such "in-place" mitigations and is aware that NMFS recommends an approved mitigation plan that outlines the scope and effectiveness of the Proposed Action's mitigations.

The risk of harassment (Levels A and B) to marine mammals has been determined to be relatively small. Eglin AFB has determined that with the implementation and commitment to utilizing the "visual monitoring" mitigations, potential takes are greatly reduced.

For NEODS testing, areas to be used in missions are visually monitored for marine mammal presence from a surface vessel prior to detonation of mine neutralization charges. Monitoring would be conducted before missions to clear marine mammals within the ZOI. If protected animals are inside the ZOI, firing would be postponed until they left the area. The following procedures may be feasible during the mission activities using the operational aircraft.

- Conduct survey clearance procedures using best operational methods possible.
- Clear ZOI and avoid all dolphins and *Sargassum* rafts to the maximum extent possible.
- Re-conduct clearance procedures if dolphins or *Sargassum* rafts are encountered.
- Conduct post-mission observation and report operations data as required by Eglin's Natural Resources Section, 96 CEG/CEVSN.
- Submit an annual summary (coordinated through 96 CEG/CEVSN) of mission observations to: National Marine Fisheries Service, Southeast Regional Office, Protected Resources Division, 9721 Executive Center Drive North, St. Petersburg, FL 33702.

Proposed monitoring requirements in relation to Eglin AFB's NEODS training activities would include observations made by the applicant and their associates. Information recorded would include species counts, numbers of observed disturbances, and descriptions of the disturbance behaviors before, during, and after explosive activities. Observations of unusual behaviors, numbers, or distributions of marine mammals in the activity area will be reported to NMFS and USFWS so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing marine mammals, sea turtles, and fish carcasses as well as any rare or unusual species of marine mammals and fish would be reported to NMFS and USFWS.

Eglin AFB would notify NMFS and the Regional Office prior to initiation of each explosive demolition session. If at any time injury or death of any marine mammal occurs that may be a result of the proposed NEODS activities, Eglin AFB would suspend activities and contact NMFS immediately to determine how best to proceed to ensure that another injury, serious injury, or death does not occur and to ensure that the applicant remains in compliance with the MMPA. Any takes of marine mammals other than those authorized by the LOA, as well as any injuries or deaths of marine mammals, will be reported to the Southeast Regional Administrator, within 24 hours. An annual draft final report must be submitted to NMFS within 90 days after the conclusion of the NEODS activities. An annual report must be submitted at the time of renewal of the LOA as well. Also, a report must be submitted at least 180 days prior to the expiration of these regulations. The report would include a summary of the activities undertaken and information gathered pursuant to the monitoring requirements set forth in the regulations and LOA, including dates and times of detonations as well as pre- and post-blasting monitoring observations. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report would be considered to be the final report.

Research

Although Eglin AFB does not currently conduct independent Air Force monitoring efforts, Eglin's Natural Resources Section does participate in marine animal tagging and monitoring programs led by other agencies. Additionally, the Natural Resources Section also supports participation in annual surveys of marine mammals in the GOM with NMFS. From 1999 to 2002, Eglin AFB's Natural Resources Section, through a contract representative, participated in summer cetacean monitoring and research opportunities. The contractor participated in visual surveys in 1999 for cetaceans in the GOM, photographic identification of sperm whales in the northeastern GOM in 2001, and 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. In addition, Eglin's Natural Resources Section has obtained Department of Defense funding for two marine mammal habitat modeling projects. The latest such project (2008) included funding and extensive involvement of NMFS personnel so that the most recent aerial survey data could be utilized for habitat modeling and animal density estimates in the northeastern GOM.

Eglin AFB conducts other research efforts that utilize marine mammal stranding information as a means of ascertaining the effectiveness of mitigation techniques. Stranding data is collected and maintained for the Florida panhandle and GOM-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 GOM-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 mitigations, stranding data can yield insight into the species composition of cetaceans in the region.

Negligible Impact Determination

NMFS implementing regulations codified at 50 CFR 216.103 states that "negligible impact is 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."

Based on the analysis contained herein, of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS, on behalf of the Secretary, preliminarily finds that Eglin AFB's proposed activities would result in the incidental take of marine mammals, by Level B harassment only, and that the total taking from the NEODS training operations would have a negligible impact on the affected species or stocks of marine mammals.

Tables 2, 3, 6 and 7 in this document disclose the habitat, regional abundance, conservation status, density, and the number of individuals exposed to sound levels considered the threshold for Level A and B harassment. Also, there are no known important reproductive or feeding areas in the proposed action area.

For reasons stated previously in this document, the specified activities associated with the proposed NEODS operations are not likely to cause TTS, PTS, or other non-auditory injury, serious injury, or death to affected marine mammals. As a result, no take by injury, serious injury, or death is anticipated or authorized, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the proposed monitoring and mitigation measures.

In making a negligible impact determination NMFS evaluated factors such as: No anticipated injury, serious injury, or mortality; the number, nature,

intensity, and duration of harassment (all relatively limited); the low probability that take will likely result in effects to annual rates of recruitment of survival; the context in which it occurs (*i.e.,* impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data); the status of stock or species of marine mammals (*i.e.,* depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population); impacts on habitat affecting rates of recruitment/survival; and the effectiveness of monitoring and mitigation measures.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There is no subsistence hunting for marine mammals in the waters off of the coast of Florida that implicates MMPA Section 101(a)(5)(D).

Endangered Species Act (ESA)

For the reasons already described in this **Federal Register** notice, NMFS has determined that the described proposed NEODS training operations and the accompanying IHA may have the potential to adversely affect species under NMFS jurisdiction and protected by the ESA. Eglin AFB requested a Section 7 consultation pursuant to the ESA with NMFS' Southeast Regional Office (SERO) for the revised proposed NEODS training operations. NMFS SERO issued a Biological Opinion on October 25, 2004 for a five year plan of NEODS training operations in the EGTTR (Consultation No. F/SER/2004/00361). The U.S. Air Force requested informal Section 7 consultation with SERO on May 9, 2010 and SERO concurred that the proposed action may affect, but is not likely to adversely affect, ESA-listed species or designated critical habitat in a letter to the U.S. Air Force dated July 28, 2010.

National Environmental Policy Act (NEPA)

NMFS has begun conducting NEPA analysis and preparing a Draft Environmental Assessment on the Promulgation of Regulations and the Issuance of Letters of Authorization to Take Marine Mammals, by Harassment, Incidental to Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida, which analyzes the project's purpose and need, alternatives, affected environment, and environmental effects for the proposed action. NMFS will complete the necessary NEPA analysis and the public comments received prior to making a determination on the issuance of the final rule and LOA.

Preliminary Determinations

Based on Eglin AFB's application, as well as the analysis contained herein, NMFS has preliminarily determined that the impact of the described NEODS training operations will result, at most, in a temporary modification in behavior (Level B harassment) of Atlantic bottlenose dolphins, in the form of temporarily vacating the action area to avoid NEODS training activities and potential for minor visual and acoustic disturbance from detonations. The effect of the NEODS training operations is expected to be limited to short-term and localized TTS-related behavioral changes.

Due to the infrequency, short time-frame, and localized nature of these activities, the number of marine mammals, relative to the stock population size, potentially taken by harassment is small. In addition, no take by injury, serious injury, or death is anticipated, and take by Level B harassment will be at the lowest level practicable due to incorporation of the proposed monitoring and mitigation measures mentioned previously in this document. No injury (Level A harassment), serious injury, or mortality is expected or authorized for marine mammals, and take by harassment will be at the lowest level practicable due to incorporation of the monitoring and mitigation measures mentioned previously in this document. Further, NMFS has preliminarily determined that the anticipated takes incidental to this activity is expected to result in a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses does not apply to this proposed action as there are no subsistence users within the geographic area of the proposed project.

Classification

For purposes of Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief of 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. The U.S. Air Force is the entity that will be affected by this rulemaking, not a small governmental jurisdiction, small organization or small business, as defined by the Regulatory Flexibility Act. The requested authorization is specific to an will only govern the behavior of the U.S. Air Force as it carries out the specified training activities on water ranges at Eglin AFB. The primary effect of the authorization will be to impose mitigation and monitoring requirements on the U.S. Air Force for a specified, limited number of annual training events. Thus, the regulated activity involves only military activities on a Federal military installation. The requested authorization will not affect the activities of the private sector or result in any costs to local government jurisdictions. As a result, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue five-year regulations establishing a framework for the issuance of LOAs to Eglin AFB for the harassment of Atlantic bottlenose dolphins incidental to NEODS training operations, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

List of Subjects in 50 CFR Part 217

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

Dated: September 24, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 217 is proposed to be amended as follows:

PART 217—REGULATIONS GOVERNING THE TAKE OF MARINE MAMMALS INCIDENTAL TO SPECIFIED ACTIVITIES

1. The authority citation for part 217 continues to read as follows:

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

2. Subpart I is added to part 217 to read as follows.

Subpart I—Taking of Marine Mammals Incidental to Naval Explosive Ordnance Disposal School Training Operations

Sec.

Subpart I–Taking of Marine Mammals Incidental to Naval Explosive Ordnance Disposal School (NEODS) Training Operations

§ 217.80 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammals specified in paragraph (b) of this section by the United States Air Force, Headquarters 96th Air Base Wing, Eglin Air Force Base, and those persons who engage in activities described in paragraphs (a)(1) through (7) of this section and the area set forth in paragraph (b) of this section:

(1) NEODS missions involving underwater detonations of small, live explosive charges adjacent to inert mines in order to disable the mine function.

(2) Live training events occurring eight times annually, averaging one event occurring every six to seven weeks.

(3) Four of the training events involving 5-lb charges, and four events involving 10-lb charges.

(4) Up to twenty 5-lb detonations and twenty 10-lb detonations annually, for a total of forty detonations.

(5) The five charges will be detonated individually with a maximum separation time of 20 minutes between each detonation.

(6) Mine shapes and debris will be recovered and removed from the Gulf of Mexico waters when training is completed.

(7) Each training team has two days to complete their entire evolution (*i.e.,* detonation of five charges). If operations cannot be completed on the first live demolition day, the second live demolition day will be utilized to complete the evolution.

(b) The incidental take of marine mammals at Eglin Air Force Base, within the Eglin Military Complex, including three sites in the Eglin Gulf Test and Training Range at property off Santa Rosa Island, Florida, in the northern Gulf of Mexico, under the activity identified in paragraph (a) of this section, is limited to the following species: Atlantic bottlenose dolphins (*Tursiops truncatus*).

§ 217.81 Effective dates.

Regulations in this subpart are effective from December 1, 2010, through November 30, 2015.

§ 217.82 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 217.87, the U.S. Department of the Air Force, Headquarters 96th Air Base Wing, Eglin Air Force Base, its contractors, and clients, may incidentally, but not intentionally, take marine mammals by Level B harassment, within the area described in § 217.80, 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 is authorized for the species listed in § 217.80(b) and is limited to Level B harassment.

§ 217.83 Prohibitions.

Notwithstanding takings contemplated in § 217.80 and authorized by a Letter of Authorization issued under § 216.106 and § 217.87, no person in connection with the activities described in § 217.80 may:

(a) Take any marine mammal not specified in § 217.80(b);

(b) Take any marine mammal specified in § 217.80(b) other than by incidental, unintentional harassment;

(c) Take a marine mammal specified in § 217.80(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 this subpart or a Letter of Authorization issued under §§ 216.106 and 217.87.

§ 217.84 Mitigation.

(a) The activity identified in § 217.80(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 § 217.80(a), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 217.87 must be implemented. These mitigation measures include (but are not limited to):

(1) The time of detonation will be limited to an hour after sunrise and an hour before sunset.

(2) NEODS missions would be postponed if:

(i) The Beaufort sea state is greater than scale number three. Such a delay would maximize detection of marine mammals.

(ii) Any marine mammal is visually detected within the Zone of Influence. The delay would continue until the marine mammal that caused the postponement is confirmed to be outside of the Zone of Influence due to the animal swimming out of the range.

(iii) Any marine mammal is detected within or about to enter the Zone of Influence (*i.e.,* the exclusion radius of 230 m or 754.6 ft) and subsequently cannot be reacquired. The mission would not continue until the last verified location is outside of the Zone of Influence and the animal is moving away from the mission area.

(iv) Large *Sargassum* rafts of large concentrations of jellyfish are observed within the Zone of Influence. The delay would continue until the *Sargassum* rafts or jellyfish that caused the postponement are confirmed to be outside of the Zone of Influence either due to the current and/or wind moving them out of the mission area.

(v) Large schools of fish are observed in the water within 230 m (754.6 ft) of the mission area. The delay would continue until the large fish schools are confirmed to be outside the Zone of Influence.

(3) A Go/No-Go decision process if the range is fouled and if monitoring indicates that the test area is and will remain clear of detectable marine mammals. As long as no protected species are sighted by the observer, then the mission is a Go, meaning it can proceed. However, if the area is fouled, meaning a protected species has entered the area, then the mission is a No-Go and cannot proceed until those individuals have left the mission area.

(4) In the event of a postponement, pre-mission monitoring would continue as long as weather and daylight hours allow. If a charge failed to explode, operations would attempt to recognize and solve the problem while continuing with all mitigation measures in place. Should a charge fail to explode, the proponent would attempt to identify the problem and detonate the charge with all marine mammal mitigation measures in place as described.

(5) Additional mitigation measures as contained in a Letter of Authorization.

(b) [Reserved]

§ 217.85 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization pursuant to §§ 216.106 and 217.87 for activities described in 216.80(a) are required to cooperate with NMFS, and any other Federal, state, or local agency with authority to monitor 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 Administrator, Southeast Region, NMFS, by letter or telephone, prior to activities possibly involving the taking of marine mammals. If the authorized activity identified in § 217.80(a) is thought to have resulted in the mortality or injury of any marine mammals or in any take of marine mammals not identified in § 217.80(b), then the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, NMFS, or designee, by telephone (301–713–2289), within 24 hours of the discovery of the injured or dead animal.

(b) Holders of Letters of Authorization must designate trained, qualified, on-site individuals approved in advance by NMFS, as specified in the Letter of Authorization, to perform the following monitoring requirements:

(1) For NEODS testing, areas to be used in missions are visually monitored for marine mammal presence from a surface support vessel prior to detonation of mine neutralization charges. The observer on the vessel must be equipped with the proper optical equipment and lines of communication in order to recommend the Go/No-Go decision.

(2) Monitoring (pre-mission, two hours prior to mission, one hour prior to mission, five minutes prior to mission, throughout the mission, post-mission) will be conducted before missions to evaluate the test site for environmental suitability of the mission and to verify the area is clear of marine mammals within the Zone of Influence. If marine mammals are inside the Zone of Influence, firing would be postponed until they have left the area.

(3) Conduct survey clearance procedures using best operational methods possible.

(4) Re-conduct clearance procedures if dolphins or *Sargassum* rafts are encountered.

(5) Conduct post-mission observation and report operations data as required by Eglin Air Force Base's Natural Resources Section, 96 CEG/CEVSN. Post-mission monitoring would commence immediately following each detonation and would be concentrated on the area down current of the test site. If any injured or dead marine mammals are observed, that information will be reported and coordinated with marine animals stranding networks.

(6) Submit an annual summary (coordinated through 96 CEG/CEVSN) of mission observations to: NMFS, Southeast Regional Office, Protected Resources Division, 9721 Executive Center Drive North, St. Petersburg, Florida 33702.

(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) Holders of Letters of Authorization must submit an annual report summarizing the specified activity as well as monitoring and mitigation data to the Southeast Regional Administrator, NMFS, within 90 days after the conclusion of the NEODS activities. This report must contain the following information:

(1) Date(s), time(s), and location(s) of explosive activities,

(2) Design of the monitoring program,

(3) Results of the monitoring program including, but not necessarily limited to:

(i) Species counts,

(ii) Numbers of observed disturbances,

(iii) Descriptions of the disturbance behaviors before, during, and after explosive activities,

(iv) Bearing and distances,

(v) Observations of unusual behaviors, numbers, or distributions of marine mammals in the activity area will be reported to NMFS and the U.S. Fish and Wildlife Service so that any potential follow-up observations can be conducted by the appropriate personnel. In addition, observations of tag-bearing marine mammals, sea turtles, and fish carcasses as well as any rare or unusual species of marine mammals and fish would be reported to NMFS and U.S. Fish and Wildlife Service.

(e) An annual report must be submitted at the time of renewal of the Letter of Authorization.

(f) A final report must be submitted at least 180 days prior to expiration of these regulations. This report will summarize the activities undertaken and the results reported in all previous reports.

§ 217.86 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by § 216.103) conducting the activity identified in § 217.80(a) must apply for and obtain either an initial Letter of Authorization in accordance with § 217.87 or a renewal under § 217.88.

(b) The application must be submitted to NMFS at least 30 days before the activity is scheduled to begin.

(c) Application for a Letter of Authorization and for renewals of Letters of Authorization must include the following:

(1) Name of the U.S. citizen requesting the authorization.

(2) A description of the activity, the dates of the activity, and the specific location of the activity, and

(3) Plans to monitor the behavior and effects of the activity on marine mammals.

(d) A copy to the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of marine mammals.

§ 217.87 Letters 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 § 217.88.

(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 (*i.e.,* mitigation); and

(3) Requirements for mitigation, 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 affected species or stock of marine mammal(s).

§ 217.88 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under §§ 216.106 and 217.87 for the activity identified in § 217.80(a) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 217.86 will be undertaken and 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 reports required under § 217.85(d) and (e), and the Letter of Authorization issued under § 217.87, which has been reviewed and accepted by NMFS; and

(3) A determination by NMFS that the mitigation, monitoring, and reporting measures required under §§ 217.84 and 217.85 and the Letter of Authorization issued under §§ 216.106 and 217.87, 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 217.88 indicates that a

substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

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

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register**.

§ 217.89 Modifications of Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS issued pursuant to §§ 216.106 and 217.87 and subject to the provisions of this subpart 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 § 217.88, 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 § 217.80(b), a Letter of Authorization issued pursuant to §§ 216.106 and 217.87 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. 2010–24689 Filed 9–30–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

RIN 0648–BA01

Fisheries Off West Coast States; Notice of Availability for Amendments 16–5 and 23 to the Pacific Coast Groundfish Fishery Management Plan

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

ACTION: Availability of amendments to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendments 16–5 and 23 to the Pacific Coast Groundfish Fishery Management Plan (FMP) for Secretarial review. Amendment 16–5 would modify the FMP to implement an overfished species rebuilding plan for petrale sole and revise existing overfished species rebuilding plans. In addition, Amendment 16–5 would modify the default proxy values for FMSY and BMSY as they apply to the flatfish species, including petrale sole; and the harvest control rule policies. Amendment 23 introduces a new framework for fishery specifications and other measures for establishing Annual Catch Limits (ACLs) as required by the recent amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments on Amendments 16–5 and 23 must be received on or before November 30, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648–BA01, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal, at *http://www.regulations.gov*.
- Fax: 206–526–6736; Attn: Becky Renko.
- Mail: William Stelle, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; Attn: Becky Renko

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (if submitting comments via the Federal e-Rulemaking portal, enter "N/A" in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Becky Renko (Northwest Region, NMFS), phone: 206–526–6110; fax: 206 526 6736; and e mail: *becky.renko@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the internet at the website of the Office of the **Federal Register**: *http://www.access.gpo.gov/su-docs/aces/aces140.html*.

The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a notice that the FMP or amendment is available for public review and comment. NMFS will consider the public comments received during the comment period described above in determining whether to approve Amendments 16–5 and 23 to the FMP.

Petrale sole was declared overfished on February 9, 2010. Amendment 16–5 adds a new rebuilding plan for petrale sole to the FMP and revises the seven existing overfished species rebuilding plans consistent with the Magnuson-Stevens Act. The following groundfish species have been declared as overfished and are currently being managed under rebuilding plans: bocaccio in the Monterey and Conception areas; canary rockfish; cowcod south of Point Conception to the U.S. Mexico boundary; darkblotched rockfish, Pacific Ocean Perch (POP), widow rockfish, and yelloweye rockfish.

In the FMP, MSY refers to a constant harvest rate (F) control rule that is assumed to produce the maximum average yield over time while protecting the spawning potential of the stock. The constant F control rule is generally the proxy for the MSY control rule. The long-term average biomass associated with fishing at F_{MSY} is B_{MSY}. Fishing rates above F_{MSY} eventually result in