



**BILLING CODE: 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XE467**

**Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Testing and Training Activities Conducted in the Eglin Gulf Test and Training Range**

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

**ACTION:** Notice; receipt of application for Letter of Authorization; request for comments and information.

**SUMMARY:** NMFS has received a request from the United States Air Force (USAF), Eglin Air Force Base (AFB) 96<sup>th</sup> Test Wing (AFMC) for authorization to take marine mammals incidental to conducting testing and training activities in the Eglin Gulf Test and Training Range (EGTTR) in the Gulf of Mexico over the course of five years, from February 4, 2018 through February 3, 2023. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of Eglin AFB's request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on Eglin AFB's application and request.

**DATES:** Comments and information must be received no later than [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

**ADDRESSES:** Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. 1315 East-West Highway, Silver Spring, MD 20910-3225 and electronic comments should be sent *ITP.Pauline@noaa.gov*.

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

Comments sent via e-mail, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted to *www.nmfs.noaa.gov/pr/permits/military.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.

**FOR FURTHER INFORMATION CONTACT:** Rob Pauline, Office of Protected Resources, NMFS, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:**

**Availability**

An electronic copy of Eglin AFB's application may be obtained online at: *www.nmfs.noaa.gov/pr/permits/incidental/military.htm*. In case of problems accessing the document, please call the contact listed above.

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA(16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking

of small numbers of marine mammals of a species or population stock, by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings for marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such taking are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The NDAA of 2004 (Public Law 108–136) removed the “small numbers” and “specified geographical region” limitations indicated earlier 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 sheltering, to a point where such

behavioral patterns are abandoned or significantly altered (Level B Harassment). Eglin AFB has identified these testing and training activities as military readiness activities.

On April 23, 2012, NMFS promulgated a rulemaking and issued a Letter of Authorization (LOA) for takes of marine mammals incidental to Eglin AFB's Naval Explosive Ordnance Disposal School (NEODS) training operations at Eglin AFB. This rule expired on April 24, 2017 (77 FR 16718, March 22, 2012). On March 5, 2014, NMFS promulgated rulemaking and issued a LOA for takes of marine mammals incidental to Eglin AFB's Air Force Special Operations Command (AFSOC) precision strike weapons (PSW) and air-to-surface (AS) gunnery activities in the EGTTR, which is valid through March 4, 2019 (79 FR 13568, March 11, 2014). In addition to these rules and LOAs, NMFS has issued Incidental Harassment Authorizations (IHA) for take of marine mammals incidental to Eglin AFB's Maritime Strike Operations (78 FR 52135, August 22, 2013; valid August 19, 2013 through August 18, 2014) and Maritime Weapons Systems Evaluations Program (WSEP) annually in 2015 (81 FR 7307) and 2016 (82 FR 10747). Eglin AFB complied with all conditions of the LOAs and IHAs issued, including submission of final reports. Based on these reports, NMFS has determined that impacts to marine mammals were not beyond those anticipated. On November 10, 2015, Eglin Natural Resources submitted an LOA request to consolidate all EGTTR activities into one authorization for five years. NMFS Office of Protected Resources planned to issue the EGTTR LOA by January 2017. However, it became apparent that the LOA would not be issued in time to cover February 2017 Maritime WSEP missions based on concerns associated with the acoustic model methodology and mission-day scenario versus per-detonation approach. Eglin Natural

Resources requested and received a separate IHA (82 FR 10747, February 15, 2017) valid from February 4, 2017 through February 3, 2018 for those WSEP missions that incorporated such methodology revisions, which has also served as interim coverage for a small number of other 2017 missions while the EGTTTR LOA was being revised.

Eglin AFB's current rulemaking/LOA application would also supersede the existing PSW and AS gunnery rule that is in effect until March 4, 2019, and would include all of Eglin AFB's testing and training activities, including WSEP activities, into one new rule with the exception of NEODS training activities. Eglin AFB has never conducted any NEODS training activities and is not including these activities as part of the new rulemaking.

### **Summary of Request**

On May 3, 2017, NMFS received an adequate and complete application from Eglin AFB requesting authorization for the take of marine mammals incidental to testing and training activities in the EGTTTR (defined as the area and airspace over the Gulf of Mexico controlled by Eglin AFB, beginning at a point three nautical miles (nmi) off the coast of Florida) for a period of five years. These testing and training activities have the potential to result in take of marine mammals in the waters of the EGTTTR. Therefore, Eglin AFB requests authorization to take two species of marine mammals that may occur in this area, Atlantic bottlenose dolphins (*Tursiops truncatus*) and Atlantic spotted dolphins (*Stenella frontalis*).

### **Specified Activities**

Eglin AFB proposes the following actions in the EGTTTR: 1) 86<sup>th</sup> Fighter Weapons Squadron (FWS) Maritime WSEP test missions that involve the use of multiple

types of live and inert munitions (bombs and missiles) detonated above, at, or slightly below the water surface; 2) Advanced Systems Employment Project actions that involve deployment of a variety of pods, air-to-air missiles, bombs, and other munitions (all inert ordnances in relation to EGTTR); 3) AFSOC training, including air-to-surface gunnery missions involving firing live gunnery rounds at targets on the water surface in EGTTR, small diameter bomb (SDB) and Griffin/Hellfire missile training involving the use of live missiles and SDBs in the EGTTR against small towed boats, and CV-22 training involving the firing of 0.50 caliber (cal.)/7.62 mm ammunition at flares floating on the EGTTR water surface; 4) 413<sup>th</sup> Flight Test Squadron (FLTS) Precision Strike Program (PSP) activities involving firing munitions at flare targets on the EGTTR water surface and Stand-Off Precision Guided Munitions (SOPGM) testing involving captive-carry, store separation, and weapon employment tests; 5) 780<sup>th</sup> Test Squadron (TS) activities involving PSW test missions (launch of munitions against targets in the EGTTR) and Longbow Littoral Testing (data collection on tracking and impact ability of the Longbow missile on small boats); 6) 96<sup>th</sup> Test Wing Inert Missions (developmental testing and evaluation for wide variety of air-delivered weapons and other systems using inert bombs); and 7) 96 Operations Group (OG) missions, which involve the support of air-to-surface missions for several user groups within EGTTR.

During these activities, ordnances may be delivered by multiple types of aircraft, including bombers and fighter aircraft. The actions include air-to-ground missiles (AGM); air intercept missiles (AIM); bomb dummy units (BDU); guided bomb units (GBU); projectile gun units (PGU); cluster bomb units (CBU); wind-corrected munitions dispensers (WCMD); (SDB) and laser small diameter bombs (LSDB); high explosive

incendiary units (HEI); joint direct attack munitions (JDAM) and laser joint direct attack munitions (LJDAM); research department explosives (RDX); joint air-to-surface stand-off missiles (JASSM); high altitude anti-submarine warfare weapons (inert); high-speed maneuverable surface targets; and gunnery rounds. Net explosive weight (NEW) of the live munitions ranges from 0.1 to 945 pounds (lb).

Eglin AFB testing and training activities involving live munitions are summarized in Table 1.

**Table 1. Live Munitions Planned for Testing and Training Activities in the EGTTR.**

Mission Groups	Mission Category Day	Munition	NEW (lb)	Detonation Type	Munitions/Day	Mission Days/Yr	Munitions /Yr	
86 FWS Maritime WSEP	A	GBU-10/ - 24/ - 31	945	Subsurface*	1	2	2	
		GBU-49	300	Surface	2		4	
		AGM-158 (JASSM)	240	Surface	2		4	
		GBU-12/ - 54 (LJDAM/ - 38/ - 32 (JDAM)	192	Subsurface*	5		10	
	B	AGM-65 (Maverick)	86	Surface	2	4	8	
		GBU-39 (SDB)	37	Surface	1		4	
		AGM-114 (Hellfire)	20	Subsurface*	5		20	
	C	AGM-176 (Griffin)	13	Surface	5	2	10	
		2.75 rocket	12	Surface	50		100	
		AIM-9X	7.9	Surface	1		2	
		PGU-12 HEI 30 mm	0.1	Surface	500		1,000	
	AFSOC AS gunnery	D	105 mm HE (FU)	4.7	Surface	30	25	750
			40 mm HE	0.87	Surface	64		1,600
30 mm HE			0.1	Surface	500	12,500		
25 mm HE			0.067	Surface	560	14,000		
E		105 mm HE (TR)	0.35	Surface	30	45	1,350	
		40 mm HE	0.87	Surface	64		2,880	
		30 mm HE	0.1	Surface	500		22,500	
		25 mm HE	0.067	Surface	560		25,200	
413 FLTS PSP	F	30 mm HE	0.1	Surface	33	3	99	
	G	105 mm FU	4.7	Surface	15	4	60	

gunnery	H	105 mm TR	0.35	Surface	15	4	60
413 FLTS SOPGM	I	AGM-176 (Griffin)	4.58	Surface	5	2	10
	J	AGM-114 (Hellfire)	20	Surface	5	2	10
	K	GBU-39 (SDB I)	36	Surface	3	2	6
	L	GBU-39 (LSDB)	36	Surface	5	2	10
780 TS PSW	M	AGM-158 (JASSM)	240	Surface	2	1	2
	N	GBU-39 (SDB I)	37	Surface	2	1	2
		GBU-39 (SDB I) Double shot*	74	Surface	2		2
	O	GBU-53 (SDB II)	22.84	Surface	2	1	2
780 TS other tests	P	Joint air- ground missile	27.41	Surface	1	1	1
	Q	LSDB and SDB II (live fuse only)	0.4	Surface	2	4	8
96 OG Future Missions	R	GBU-10/- 24	945	Subsurface*	1	1	1
		AGM-158 (JASSM)	240	Surface	1		1
		GBU-12 or - 54	192	Subsurface*	1		1
	S	AGM-65 (Maverick)	86	Surface	1	2	2
		GBU-39 (SDB I or LSDB)	37	Subsurface*	2		4
		AGM-114 (Hellfire)	29	Subsurface*	10		20
	T	105 mm HE (FU)	4.7	Surface	13	10	130
		40 mm HE	0.9	Surface	60		60
		Live fuse	0.4	Surface	20		200
		30 mm HE	0.1	Surface	500		5,000

FU = Full Up; TR = Training Round (lessened NEW)

\* Subsurface detonations occur at 10 feet water depth

### Information Solicited

Interested persons may submit information, suggestions, and comments concerning Eglin AFB's request (see **ADDRESSES**). Comments should be supported by data or literature citations as appropriate. We will consider all relevant information,

suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by Eglin AFB, if appropriate.

Dated: August 21, 2017.

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Cathryn E. Tortorici,

Acting Deputy Director, Office of Protected Resources,

National Marine Fisheries Service.

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