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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**[Docket No. 170831846-8105-02]**

**RIN 0648-BH21**

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

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

**ACTION:** Notice of issuance of Letter of Authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notice is hereby given that a Letter of Authorization (LOA) has been issued to the United States Air Force (USAF) 96<sup>th</sup> Civil Engineer Group/Environmental Planning Office (96 CEG/CEIEA) at Eglin Air Force Base (AFB) to take marine mammals incidental to testing and training activities in the Eglin Gulf Test and Training Range (EGTTR) in the Gulf of Mexico over the course of five years. These activities are considered military readiness activities pursuant to the MMPA, as amended by the National Defense Authorization Act of 2004 (NDAA).

**DATES:** This LOA is valid from February 13, 2018 through February 12, 2023.

**ADDRESSES:** The LOA and supporting documents may be obtained online at: [www.nmfs.noaa.gov/pr/permits/incidental/military.htm](http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm). In case of problems accessing

these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

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

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 101(a)(5)(A) of the MMPA directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers 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. Under the MMPA, the term “take” means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals. NMFS has been delegated the authority to issue regulations and Letters of Authorizations allowing the take of marine mammals incidental to specified activities.

The NDAA (Pub. L. 108-136) removed the “small numbers” and “specified geographical region” limitations indicated above 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).”

An authorization for incidental taking 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 takings are set forth. NMFS has defined “negligible impact” in 50 CFR 216.103 as “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

Regulations governing the taking of individuals of two species of marine mammals, by Level A and Level B harassment, incidental to Eglin AFB testing and training activities in the EGTTTR are valid from February 13, 2018 through February 12, 2023 and are codified at 50 CFR part 218, subpart G. The regulations include mitigation, monitoring, and reporting requirements. Pursuant to those regulations, NMFS issued a five-year LOA on February 8, 2018. For detailed information on this action, please refer to the February 8, 2018 Federal Register notice (83 FR 5545) and 50 CFR part 218, subpart G.

### **Summary of Request**

On April 15, 2017, NMFS received a request for regulations from Eglin AFB for the taking 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 (NM) off the coast of Florida) for a period of five years. On August 24, 2017, we published a notice of receipt of Eglin AFB’s

application in the *Federal Register* (82 FR 40141), requesting comments and information for thirty days related to Eglin AFB's request. We subsequently published a notice of proposed rulemaking in the *Federal Register* on December 27, 2017 (82 FR 61372), again requesting public comments. To support issuance of the LOA, NMFS adopted the USAF's 2015 *Eglin Gulf Test and Training Range Environmental Assessment* and issued a Finding of No Significant Impact (FONSI) on February 2, 2018. The final rule (83 FR 5545, February 8, 2018) and Eglin AFB's EA include a complete description of the specified training activities incidental to which NMFS is authorizing take of marine mammals. Air-to-surface exercises involving surface and subsurface live munition detonations are the stressors most likely to result in impacts on marine mammals that could rise to the level of harassment.

### **Authorization**

We have issued a LOA to Eglin AFB authorizing the take of marine mammals, by harassment, incidental to testing and training activities on the EGTTR. The level and type of take authorized by the LOA is the same as the level and type of take analyzed in and covered by the final rule (83 FR 5545, February 8, 2018). Take by mortality or serious injury is not anticipated or authorized. Take of marine mammals will be minimized through implementation of mitigation and monitoring measures, including: mission delay during live ordnance mission activities if protected species, large schools of fish, or large flocks of birds are observed feeding at the surface within the zone of influence; mission delay if daytime weather and/or sea conditions preclude adequate monitoring for detecting marine mammals and other marine life; aborting activities for remainder of day if one or more sperm or baleen whales are detected during pre-mission monitoring

activities; and ramp-up procedures will be implemented for gunnery operations. Eglin AFB is required to also comply with monitoring and reporting measures under 50 CFR 218.65 which includes use of vessel-based monitoring, aerial-based monitoring and video-based monitoring via live high-definition video feed; employment of marine mammal monitors who have completed Eglin's Marine Species Observer Training; and submission of monitoring reports that will record all occurrences of marine mammals and any behavior or behavioral reactions observed, any observed incidents of injury or behavioral harassment, and any required mission delays. Additionally, the rule and LOA include an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. For full details on the mitigation, monitoring, and reporting requirements, please refer to the final rule (83 FR 5545; February 8, 2018).

Issuance of the LOA is based on findings, described in the preamble to the final rule, that the total taking of marine mammals incidental to the testing and training activities in the EGTTR will have a negligible impact on the affected marine mammal species or stocks and will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

The LOA will remain valid through February 12, 2023, provided Eglin AFB remains in conformance with the conditions of the regulations and the LOA, including the mitigation, monitoring, and reporting requirements described in 50 CFR part 218, subpart G and the LOA.

Dated: February 28, 2018.

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Donna Wieting,  
Director, Office of Protected Resources,  
National Marine Fisheries Service.

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