§ 216.249 Modifications to 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 issued pursuant to §§216.106 and 216.247 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 §216.248, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.242(c), a Letter of Authorization issued pursuant to §§216.106 and 216.247 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.

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

SOURCE: 71 FR 67822, Nov. 24, 2006, unless otherwise noted.


§ 216.250 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by U.S. citizens engaged in U.S. Air Force Precision Strike Weapon missions within the Eglin Air Force Base Gulf Test and
Training Range within the northern Gulf of Mexico. The authorized activities as specified in a Letter of Authorization issued under §§216.106 and 216.257 include, but are not limited to, activities associated with (1) the Joint Air-to-Surface Stand-off Missile (JASSM) exercise for a maximum of two live shots (single) and 4 inert shots (single) annually and (2) the small-diameter bomb (SDB) exercise for a maximum of six live shots a year, with two of the shots occurring simultaneously and a maximum of 12 inert shots, with up to two occurring simultaneously.

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

§ 216.251 Effective dates.

Regulations in this subpart are effective from December 26, 2006 until December 27, 2011.

§ 216.252 Permissible methods of taking.

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

(b) The taking of marine mammals under a Letter of Authorization is limited to the species listed in §216.250(b) and is limited to a total of 1 mortality, 2 takes by Level A harassment, and 53 takes by Level B harassment annually.

§ 216.253 Prohibitions.

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

(a) Take any marine mammal not specified in §216.250(b);

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

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

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

§ 216.254 Mitigation.

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

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

(2) For the SDB, the holder of the Letter of Authorization must establish and monitor a safety zone for marine mammals with a radius of no less than 5.0 nm (9.3 km) for single bombs and 10 nm (18.5 km) for double bombs and a buffer zone from the outer edge of the safety zone with a radius of at least 2.5 nm (4.6 km) for single bombs and 5 nm (8.5 km) for double bombs.

(b) Prior to a JASSM or SDB launch:

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