

this listing in the **Federal Register**. However, information readily available in our files indicates that the best available science supports distinguishing the North Atlantic right whale (*Eubalaena glacialis*), North Pacific right whale (*Eubalaena japonica*), and southern right whale (*Eubalaena australis*) as three separate species (Rosenbaum *et al.*, 2000; Malik *et al.*, 2000; Schaeff *et al.*, 1997; Gaines *et al.*, 2005). Further, in 2000 the International Whaling Commission's Scientific Committee recommended the North Atlantic, North Pacific, and southern populations be considered separate species based on the prevailing right whale taxonomy. Lastly, in 2006 we completed a comprehensive status review of the northern right whale and concluded the northern right whale exists as two separate species, the North Atlantic right whale (*E. glacialis*) and the North Pacific right whale (*E. japonica*) (NMFS, 2006). We cited this report in the **Federal Register** in our proposed rules to list the North Pacific right whale (71 FR 77694; December 27, 2006) and North Atlantic right whale (71 FR 77704; December 27, 2006) as endangered under the ESA. A copy of the status review is also available at [http://www.nmfs.noaa.gov/pr/species/mammals/cetaceans/rightwhale\\_northern.htm](http://www.nmfs.noaa.gov/pr/species/mammals/cetaceans/rightwhale_northern.htm).

Second, the petitioner provides no information regarding the past and present abundance, distribution, and threats faced by the species in support of the assertion that the global populations of right whales should be listed as a single species. Information readily available in our files regarding the past and present abundance, distribution, and threats faced by the right whales supports the listing of three separate species. Our comprehensive review of the information regarding the past and present abundance, distribution, and threats in the 2006 northern right whale review (NMFS, 2006) also supports the listing of three separate species.

Third, the petitioner provides no information regarding the status of the species throughout all or a significant portion of its range to indicate the global populations of right whales should be listed as a single species. Information readily available in our files regarding the status of right whales supports the listing of three separate species as endangered. Our comprehensive review of the information regarding the status of right whales in the 2006 northern right whale review (NMFS, 2006) also supports the listing of three separate species.

### Petition Finding

Based on our review, we find the petition does not present substantial scientific or commercial information indicating the listing of the global populations of right whales as a single species may be warranted. As a result, we will not initiate a status review to determine whether the petitioned action is warranted. We will continue to fulfill our statutory obligations with regard to the conservation of all listed species of right whales, and we encourage the public to submit new information that will assist with these conservation efforts.

### References Cited

A complete list of all references is available upon request from the Office of Protected Resources (see **ADDRESSES**).

**Authority:** The authority for this action is the ESA, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 22, 2007.

**Samuel D. Rauch III,**

Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 021607A]

#### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Conducting Air-to-Surface Gunnery Missions in the Gulf of Mexico

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

**ACTION:** Notice of proposed issuance of an incidental take authorization; request for comments and information.

**SUMMARY:** NMFS has received a request from Eglin Air Force Base (Eglin AFB), for renewal of an authorization to harass marine mammals, incidental to conducting air-to-surface (A-S) gunnery missions in the Gulf of Mexico (GOM). As a result of this request, NMFS is proposing to reissue a 1-year authorization to take marine mammals by Level B harassment incidental to this activity. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to Eglin AFB to incidentally take, by harassment, several

species of cetaceans for a period of 1 year.

**DATES:** Comments and information must be postmarked no later than June 29, 2007.

**ADDRESSES:** Comments should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226. The mailbox address for providing email comments on this action is [PR1.021607A@noaa.gov](mailto:PR1.021607A@noaa.gov). Comments sent via email, including all attachments, must not exceed a 10-megabyte file size. A copy of Eglin's original 2003 application and its December, 2006 letter updating its request may be obtained by writing to this address, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) and is also available at: [http://www.nmfs.noaa.gov/prot\\_res/PR2/Small\\_Take/smalltake\\_info.htm#applications](http://www.nmfs.noaa.gov/prot_res/PR2/Small_Take/smalltake_info.htm#applications). A copy of the Final Programmatic Environmental Assessment (Final PEA) is available by writing to the Department of the Air Force, AAC/EMSN, Natural Resources Branch, 501 DeLeon St., Suite 101, Eglin AFB, FL 32542-5133.

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

#### SUPPLEMENTARY INFORMATION:

##### Background

Sections 101(a)(5)(A) and 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (MMPA) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not (where relevant) have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, 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.”

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take marine mammals by harassment. For the purposes of “military readiness activities” harassment is defined as:

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B harassment].

### Summary of Request

Eglin AFB originally petitioned NMFS on February 13, 2003, as a precautionary measure, for an authorization under section 101(a)(5) of the MMPA for the taking, by harassment, of marine mammals incidental to programmatic mission activities within the Eglin Gulf Test and Training Range (EGTTR). The EGTTR is described as the airspace over the GOM that is controlled by Eglin AFB. A notice of receipt of Eglin’s application and proposed IHA and request for 30-day public comment was published on January 23, 2006 (71 FR 3474). A 1-year IHA was subsequently issued to Eglin AFB for this activity on May 3, 2006 (71 FR 27695, May 12, 2006). A description of Eglin AFB’s A-S gunnery activity follows.

### Description of Activities

A-S gunnery missions, a “military readiness activity,” involve surface impacts of projectiles and small underwater detonations with the potential to affect cetaceans that may occur within the EGTTR. These missions typically involve the use of 25-mm (0.98 in), 40-mm (1.57 in), and 105-mm (4.13 in) gunnery rounds containing, 0.0662 lb (1.1 oz 30 g), 0.865 lb (13.8 oz, 392 g), and 4.7 lbs (2.1 kg) of explosive, respectively. Live rounds must be used to produce a visible surface splash that must be used to “score” the round; the impact of inert rounds on the sea surface would not be detected. The Air Force has developed a 105-mm training round (TR) that contains less than 10 percent of the amount of explosive material (0.35 lb; 0.16 kg) as compared to the “Full-Up” (FU) 105-mm (4.13 in) round. The TR was developed as one method to mitigate effects on marine life during

night-time A/S gunnery exercises when visibility at the water surface would be poor. However, the TR cannot be used in daytime since the amount of explosive material is insufficient to be detected from the aircraft.

Water ranges within the EGTTR that are typically used for the gunnery operations are located in the GOM offshore from the Florida Panhandle (areas W-151A, W-151B, W-151C, and W-151D as shown in Figure 1 in Eglin’s 2003 application). Data indicate that W-151A is the most frequently used water range due to its proximity to Hurlburt Field, but activities may occur anywhere within the EGTTR.

The AC-130 gunship aircraft normally transit from Hurlburt Field, FL to the water range at a minimum of 4,000 ft (1.2 km) above surface level. The AC-130 conducts at least two complete orbits at a minimum safe airspeed around a prospective target area at a maximum altitude of 1,500 ft (457 m), with a NMFS recommended to an operational altitude of approximately 4,500 to 10,000 ft (1372–3048 m). Ascent occurs over a 10–15 minute period. Eglin AFB has noted that the search area for these orbits ensures that no vessels (or protected species) are within an area of 5 nm (9.3 km) of the target. The AC-130 continues orbiting the selected target point as it climbs to the mission-testing altitude. During the low altitude orbits and the climb to testing altitude, aircraft crew visually scan the sea surface within the aircraft’s orbit circle for the presence of vessels and protected species. Primary responsibility for the surface scan is on the flight crew in the cockpit and personnel stationed in the tail observer bubble and starboard viewing window. The AC-130’s optical and electronic sensors are also employed for target clearance. If any marine mammals are detected within the AC-130’s orbit circle, either during initial clearance or after commencement of live firing, the aircraft will relocate to another target area and repeat the clearance procedures. A typical distance from the coast for this activity is at least 15 mi (24 km).

When offshore, the crews can scan a 5-nm (9.3-km) radius around the potential impact area to ensure it is clear of surface craft, marine mammals, and sea turtles. Scanning is accomplished using radar, all-light television (TV), infrared sensors (IR), and visual means. An alternative area would be selected if any cetaceans or vessels were detected within a 5-nm (9.3 km) search area. Once the scan is completed, Mk-25 flares are dropped and the firing sequence is initiated.

A typical gunship mission lasts approximately 5 hours without refueling and 6 hours when air-to-air refueling is accomplished. A typical mission includes: (1) 30 minutes for take off and to perform airborne sensor alignment, align electro-optical sensors (IR and TV) to heads-up display; (2) 1.5 to 2 hours of dry fire (no ordnance expended), and includes transition time; (3) 1.5 to 2 hours of live fire, and includes clearing the area and transiting to and from the range (actual firing activities typically do not exceed 30 minutes); (4) 1 hour air-to-air refueling, if and when performed; and (5) 30 minutes of transition work (take-offs, approaches, and landings-pattern work).

The guns are fired during the live-fire phase of the mission. The actual firing can last from 30 minutes to 1.5 hours but is typically completed in 30 minutes. The number and type of A-S gunnery munitions deployed during a mission varies with each type of mission flown. In addition to the 25-, 40-, and 105-mm rounds, marking flares are also deployed as targets. All guns are fired at a specific target in the water, usually an Mk-25 flare, starting with the lowest caliber ordnance or action with the least impact and proceeding to greater caliber sizes. To establish the test target area, two Mk-25 flares are deployed into the center of the 5-nm (9.3-km) radius cleared area (visually clear of aircraft, ships, and surface marine species) on the water’s surface. The flare’s burn time normally lasts 10 to 20 minutes but could be much less if actually hit with one of the ordnance projectiles; however, some flares have burned as long as 40 minutes. Live fires are a continuous event with pauses during the firing usually well under a minute and rarely from 2 to 5 minutes. Firing pauses would only exceed 10 minutes if surface boat traffic or marine protected species caused the mission to relocate; if aircraft, gun, or targeting system problems existed; or if more flares needed to be deployed. The Eglin Safety Office has described the gunnery missions as having 95-percent containment with a 99-percent confidence level within a 5-m (16.4-ft) area around the established flare target test area.

### Live-fire Event: 25-mm Round

The 25-mm (0.98-in) firing event in a typical mission includes approximately 500 to 1000 rounds. These rounds are first in short bursts. These bursts last approximately 2–3 seconds with approximately 100 rounds per burst. Based on the very tight target area and extremely small miss distance, these bursts of rounds all enter the

water within a 5-m (16.4-ft) area. Therefore, when calculations of the marine mammal Zone of Impact (ZOI) and take estimates are made later in this document for the 25-mm rounds, calculations will be based on the total number of rounds fired per year divided by 100.

#### *Live-fire Event: 40-mm Round*

The 40-mm (1.57 in) firing event of a typical mission includes approximately 10 seconds with approximately 20 rounds per burst. Based on the very tight target area and extremely small "miss" distance, these bursts of rounds all enter the water within a 5-m (16.4 ft) area. Therefore, when calculations of the marine mammal ZOI and take estimates are made later in this document for the 40-mm rounds, calculations will be based on the total number of rounds fired per year divided by 20.

#### *Live-fire Event: 105-mm Round*

The 105-mm firing event of a typical mission includes approximately 20 rounds. These rounds are not fired in bursts, but as single shots. The 105-mm firing event lasts approximately 5 minutes with approximately two rounds per minute. Due to the single firing event of the 105-mm round, the peak pressure of each single 105-mm round is measured at a given distance (90 m (295 ft) for the 105mm TR and 216 m (709 ft) for the 105mm FU).

As described in Eglin's 2003 application, gunnery testing in this request includes historical baseline yearly amounts in addition to proposed nighttime gunnery missions. Daytime gunnery testing uses the 105-mm FU round and nighttime gunnery training is proposed using the 105-mm TR. The number of 105-mm rounds including nighttime operations would amount to 1,742. As shown in detail in Tables 1 and 2 (see 71 FR 27695, May 12, 2006), Eglin proposes to conduct a total of 28 daytime missions and 263 nighttime missions annually, expending 3,832 rounds in daytime and 30,802 rounds nighttime (242 105-mm FU and 1,500 rounds would be the 105-mm TR).

#### **Description of Marine Mammals Affected by the Activity**

There are 29 species of marine mammals documented as occurring in Federal waters of the GOM. General information on these species can be found in Wursig et al. (2000) and in the NMFS Stock Assessment Reports (Waring et al., 2007). This latter document is available at: <http://www.nefsc.noaa.gov/nefsc/publications/tm/tm201/>

Of these 29 species of marine mammals, approximately 21 may be found within the EGTTR. These species are the Bryde's whale, sperm whale, dwarf sperm whale, pygmy sperm whale, Atlantic bottlenose dolphin, Atlantic spotted dolphin, pan-tropical spotted dolphin, Blainville's beaked whale, Cuvier's beaked whale, Gervais' beaked whale, Clymene dolphin, spinner dolphin, striped dolphin, killer whale, false killer whale, pygmy killer whales, Risso's dolphin, Fraser's dolphin, melon-headed whale, rough-toothed dolphin, and pilot whale. Supplementary information on those species that may be impacted by the A/S gunnery exercises are discussed in the Eglin application (Eglin AFB, 2003) and the Eglin's Final PEA.

#### **Potential Impacts to Marine Mammals**

A/S gunnery operations may potentially impact marine mammals at the water surface. Marine mammals could potentially be harassed, injured or killed by exploding and non-exploding projectiles, and falling debris (Eglin, 2002 (Final PEA)). However, based on analyses provided in the Eglin Final PEA and in Eglin's Supplemental Information Request (2003), NMFS concurs with Eglin that gunnery exercises are not likely to result in any injury or mortality to marine mammals.

Explosive criteria and thresholds for assessing impacts of explosions on marine mammals were discussed by NMFS in detail in its issuance of an IHA for Eglin's Precision Strike Weapon testing activity (70 FR 48675, August 19, 2005) and are not repeated here. Please refer to that document for this background information.

#### **Estimation of Take and Impact**

##### *Direct Physical Impacts (DPI)*

Potential impacts resulting from air-to-surface test operations include DPI resulting from ordnance. DPI could result from inert bombs, gunnery ammunition, and shrapnel from live missiles falling into the water. Marine mammals and sea turtles swimming at the surface could potentially be injured or killed by projectiles and falling debris if not sighted and firing discontinued. Small arms gunnery operations may offer a worst case scenario for evaluating DPI of EGTTR operations, mainly due to the comparatively large number of rounds expended. Some contain small amounts of explosives, but the majority do not. The assumptions made by Eglin for DPI calculations can be found in Eglin's Final PEA under Alternative 1 for this action. Approximately 606 small-arms gunnery firing events

comprise the estimated level of potential DPI events, as shown in Table 4 in the **Federal Register** notice for the previous IHA on this action (71 FR 27695, May 12, 2006).

DPI impacts are anticipated to affect only marine species at or very near the ocean surface. As a result, to calculate impacts, Eglin used corrected species densities (Table 4-23 in Eglin's Final PEA) to reflect the surface interval population, which is approximately 10 percent of densities calculated for distribution in the total water column. As shown in Table 5 in the **Federal Register** notice for the previous IHA on this action (71 FR 27695, May 12, 2006) and correcting PEA Table 4-23), the impacts to marine mammals and sea turtles at the surface that could potentially be injured or killed by projectiles and falling debris was determined to be very low, and mitigation measures that Eglin will employ under this action would reduce even these low levels.

In addition to small arms, Eglin calculated the potential for other non-explosive items (inert bombs, missiles, and drones) to impact marine mammals and sea turtles. The number of annual events expected are 551 bombs, 1183 missiles, and 99 drones (Table 6). As shown in Eglin's Final PEA and Table 7 in the **Federal Register** notice for the previous IHA on this action (71 FR 27695, May 12, 2006), the potential for any DPI to marine mammals and sea turtles is extremely remote and can, therefore, be discounted.

Similar to non-gunnery/non-small arms DPI impacts, DPI impacts from gunnery activities may also affect marine mammals and sea turtles in the surface zone. Again, DPI impacts are anticipated to affect only marine species at or near the ocean surface. Tables 8 and 9 in the **Federal Register** notice for the previous IHA on this action (71 FR 27695, May 12, 2006) demonstrate that the potential for any DPI from gunnery activities are extremely remote and can be discounted.

##### *Marine Mammal Take Estimates from Gunnery Activities*

Estimating the impacts to marine mammals from underwater detonations is difficult due to complexities of the physics of explosive sound under water and the limited understanding with respect to hearing in marine mammals. Detailed assessments were made in the notice for the previous IHA on this action (71 FR 27695, May 12, 2006) and in this **Federal Register** notice. These assessments used, and improved upon, the criteria and thresholds for marine mammal impacts that were developed

for the shock trials of the *USS SEAWOLF* submarine and the destroyer *USS Winston S. Churchill* (DDG-81) (Navy, 1998; 2001). The criteria and thresholds used in those actions were adopted by NMFS for use in calculating incidental takes from explosives.

Criteria for assessing impacts include: (1) Mortality, as determined by exposure to a certain level of positive impulse pressure (expressed as pounds per square inch per millisecond or psi-msec); (2) injury, both hearing-related and non-hearing related; and (3) harassment, as determined by a temporary loss of some hearing ability and behavioral reactions. Due to the small amounts of net explosive weight for each of the rounds fired in the EGTR and the mitigation measures, mortality resulting from sounds generated in the water column was determined to be highly unlikely and was not considered further by Eglin AFB or NMFS.

Criteria and methods for calculation for permanent and temporary threshold shift and Level B harassment (behavioral response) to noise from the air-to-surface gunnery exercises was provided by NMFS in detail in its **Federal Register** notices on the previous IHA for this action (71 FR 3474 (January 23, 2006), 71 FR 27695 (May 12, 2006)). Criteria for assessing impacts include: (1) mortality, as determined by exposure to a certain level of positive impulse pressure (expressed as pounds per square inch per millisecond or psi-msec); (2) injury, both hearing-related and non-hearing related; and (3) harassment, as determined by a temporary loss of some hearing ability and behavioral reactions. Due to the small amounts of net explosive weight (NEW) for each of the rounds fired in the EGTR and the mitigation measures, mortality resulting from sounds generated in the water column was determined to be highly unlikely and is not considered further.

Permanent hearing loss is considered an injury and is termed permanent threshold shift (PTS). NMFS, therefore, categorizes PTS as Level A harassment. Temporary loss of hearing ability is termed a temporary threshold shift (TTS), meaning a temporary reduction of hearing sensitivity which abates following noise exposure. TTS is considered non-injurious and is categorized as a Level B type of harassment. NMFS recognizes dual criteria for TTS, one based on peak pressure and one based on the greatest 1/3 octave sound exposure level (SEL) or energy flux density level (EFDL), with the more conservative (i.e., larger) of the two criteria being selected for

impacts analysis (note: SEL and EFDL are used interchangeably, but with increasing scientific preference for SEL). The peak pressure metric used in the shock trials to represent TTS was 12 pounds per square inch (psi) which, for the NEW used, resulted in a zone of possible Level B harassment approximately equal to that obtained by using a 182 decibel (dB) re 1 microPa<sup>2</sup>-s, total EFDL/SEL metric. The 12-psi metric is largely based on anatomical studies and extrapolations from terrestrial mammal data (see Ketten, 1995; Navy, 1999 (Appendix E, *Churchill* FEIS; and 70 FR 48675 (August 19, 2005)) for background information). However, the results of a more recent investigation involving marine mammals suggest that, for charges considerably smaller than those used in the Navy shock trials, the 12-psi metric is not an adequate predictor of the onset of TTS.

Finneran *et al.* (2002) measured TTS in a bottlenose dolphin and a beluga whale exposed to single underwater impulses produced by a seismic water gun in San Diego Bay. The water gun was chosen over other seismic sources, such as air guns, because the impulses contain more energy at high frequencies where odontocete hearing thresholds are relatively low (i.e., more sensitive). Hearing thresholds were measured at 0.4, 4, and 30 kilohertz (kHz). A relatively small and short-term level of masked TTS (MTTS) (7 dB at 0.4 kHz and 6 dB at 30 kHz) occurred in the beluga whale at a peak pressure of 160 kilopascals (kPa), which is equivalent to 23 psi, 226 dB re 1 micro Pa peak-peak pressure, and 186 dB re 1 microPa<sup>2</sup>-s. The maximum experimental peak pressure exposure of 207 kPa (30 psi, 228 dB re 1 microPa peak-peak pressure, 188 dB re 1 microPa<sup>2</sup>-s) did not cause any measurable masked TTS in the bottlenose dolphin. The results of these field experiments represent the most current science available for the relationship between peak pressure and TTS in marine mammals. It is also considered precautionary for this project since the bottlenose dolphin did not incur an MTTS at the higher level of 30 psi. Therefore, until additional information becomes available, 23 psi is considered an appropriate and conservative metric for predicting the onset of pressure-related TTS from small explosive charges.

Documented behavioral reactions occur at noise levels below those considered to cause TTS in marine mammals (Finneran *et al.*, 2002; Schlundt *et al.*, 2000; Finneran and Schlundt, 2004). In controlled experimental situations, behavioral

effects are typically defined as alterations of trained behaviors. Behavioral effects in wild animals are more difficult to define but may include decreased ability to feed, communicate, migrate, or reproduce. Abandonment of an area due to repeated noise exposure is also considered a behavioral effect. Analyses in subsequent sections of this document refer to such behavioral effects as "sub-TTS Level B harassment." Schlundt *et al.* (2000) exposed bottlenose dolphins and beluga whales to various pure-tone sound frequencies and intensities in order to measure underwater hearing thresholds. Masking is considered to have occurred because of ambient noise environment in which the experiments took place. Sound levels were progressively increased until behavioral alterations were noted (at which point the onset of TTS was presumed). It was found that decreasing the sound intensity by 4 to 6 dB greatly decreased the occurrence of anomalous behaviors. The lowest sound pressure levels, over all frequencies, at which altered behaviors were observed, ranged from 178 to 193 dB re 1 micro Pa for the bottlenose dolphins and from 180 to 196 dB re 1 micro Pa for the beluga whales. Thus, it is reasonable to consider that sub-TTS (behavioral) effects occur at approximately 6 dB below the TTS-inducing sound level, or at approximately 176 dB in the greatest 1/3 octave band EFDL/SEL.

Table 10 in the **Federal Register** notice for the previous IHA on this action (71 FR 27695, May 12, 2006) summarizes the relevant thresholds for levels of noise that may result in injury, TTS or behavioral harassment to marine mammals. Mortality and injury thresholds are designed to be conservative by considering the impacts that would occur to the most sensitive life stage (e.g., a dolphin calf). Table 11 published in the **Federal Register** notice for the previous IHA on this action (71 FR 27695, May 12, 2006) provides the estimated ZOI radii for the EGTR ordnance. At this time, there is no empirical data or information that would allow NMFS to establish a peak pressure criterion for sub-TTS behavioral disruption.

As mentioned previously, the EGTR live fire events are continuous events with pauses during the firing usually well under a minute and rarely from 2 to 5 minutes. Live fire typically occurs within a 30 minute time frame, including all ordnance fired: 25-mm (Phase I), 40-mm (Phase II), and 105-mm (Phase III), and where the 105-mm ordnance are fired as separate rounds with up to 30-second intervals, the 25-mm and the 40-mm are often fired in

multiple bursts. These burst include multiple rounds (25 to 100) within a 10- to 20-second time frame. Eglin notes that even if animal avoidance once firing commences is not considered, an average swim speed (1.5 m/s) of animals would not allow sufficient time for new animals to re-enter the Level B harassment ZOI (23 psi) within the time frame of a single burst. As such, only the peak pressure of a single round is measured per burst and experienced at a given distance (49 m (161 ft; Phase I), 122 m (400 ft; Phase II)).

For daytime firing it is assumed that the average swim speed per cetacean is approximately 3 knots or 1.5 m/sec. As a conservative scenario, Eglin assumes that there is one animal present within or near the 216-m ZOI (FU 105-mm round ZOI) which may be potentially ensonified within the 23-psi TTS exposure at the time that the 105-mm live firing begins. Density distributions have assumed an even distribution of approximately 4.38 animals/km<sup>2</sup> or approximately 500 m (1640 ft) apart (all species) for the analyses for take estimates. At this density distribution and typical swim speed, the next available cetacean would approach the perimeter of the 216-m (709 ft) ZOI (23-psi TTS ZOI) in approximately 5.5 minutes, assuming a straight line path. With live fire events of the 105-mm occurring at a rate of approximately 2 rounds per minute, nearly one half (or 10 rounds) of the total 105-mm rounds (20 rounds) would potentially be expended within this 5.5 minute time frame. If the concept of marine mammal avoidance of an area once firing commences is not considered, an average swim speed of 1.5 m/s (4.9 f/s)

would allow sufficient time for new animals to re-enter the 23-psi TTS impact area. Allowing for a potential 2 minute break in firing after 10 rounds are expended, it is, therefore, conservative and reasonable to assume that nearly 3 to 4 individual animals could be exposed to the 23-psi TTS sound level during a typical 20 round firing event. Therefore, the ZOI and Level B harassment take estimate calculations are based on the total number of rounds fired per year divided by 5, or approximately 20 percent. This approach assumes that although single animals may be ensonified more than once due to the time required to exit the 23 psi TTS ZOI, animals are not considered to be "taken" more than once for the purposes of estimating take levels.

Similarly, as a conservative approach for nighttime firing, Eglin assumes that there is one animal present within or near the 90-m (295-ft) ZOI (105-mm TR ZOI) which may be potentially ensonified within the 23-psi TTS exposure zone at the time that the 105-mm round live firing phase begins. Density distributions have assumed an even distribution of approximately 4.38 animals/km<sup>2</sup> (all species) for the approach of impact analyses for estimation of take. At this density distribution and typical swim speed, the next available cetacean would approach the perimeter of the 90-m (295-ft) ZOI (23-psi TTS ZOI) in approximately 5.5 minutes or the same time as with the 216-m ZOI (used for the 105-mm FU). The difference is the amount of time it takes the animal to exit the ZOI or in other words, how long the animals resides within the ZOI on a straight line

path. With live fire events of the 105-mm round occurring at a rate of approximately 2 rounds per minute, nearly one half (or 10 rounds) of the total 105-mm rounds (20 rounds) would potentially be expended within this 5.5-minute time frame. If the concept of marine mammal avoidance of an area once firing commences is not considered, an average swim speed (1.5 m/s) of animals would allow sufficient time for new animals to re-enter the 23-psi TTS impact area. Allowing for a potential 2-min break in firing after 10 rounds are expended, it is conservative and reasonable to assume that nearly 3 to 4 individual animals may be potentially exposed to the 23-psi TTS sound level during a typical 20 round firing event. Therefore, the ZOI and take estimate calculations are based on the total number of rounds fired per year divided by 5, or approximately 20 percent. This approach assumes that, although single animals may be ensonified more than once due to the time required to exit the 23-psi TTS ZOI, individual animals are not considered to be "taken" more than once for the purposes of estimating take levels.

Based on this discussion, Table 1 in this **Federal Register** document provides Eglin AFB's estimates of the annual number of marine mammals, by species, potentially taken by Level B harassment, by the gunnery mission noise. It should be noted that these estimates are derived without consideration of the effectiveness of Eglin AFB's proposed mitigation measures (except use of the training round (TR)), which are discussed in the next section.

TABLE 1. YEARLY ESTIMATED NUMBER OF MARINE MAMMALS AFFECTED BY THE GUNNERY MISSION NOISE

Species	Adjusted Density (#/km <sup>2</sup> )	Level A Harassment Injurious 205 dB* EFD For Ear Rupture	Level B Harassment Non-injurious 182 dB* EFD for TTS	Level B Harassment Non-Injurious 23 psi For TTS	Level B Harassment Non-Injurious 176 dB* EFD For Behavior
Bryde's whale	0.007	<0.001	0.010	0.4	0.041
Sperm whale	0.011	<0.001	0.016	0.0	0.064
Dwarf/pygmy sperm whale	0.024	<0.001	0.035	1.5	0.139
Cuvier's beaked whale	0.10	<0.001	0.015	0.6	0.058
Mesoplodon spp.	0.019	<0.001	0.028	1.2	0.110
Pygmy killer whale	0.030	<0.001	0.044	1.9	0.174
False killer whale	0.026	<0.001	0.038	1.6	0.151
Short-finned pilot whale	0.027	<0.001	0.039	1.7	0.157
Rough-toothed dolphin	0.028	<0.001	0.041	1.7	0.163
Bottlenose dolphin	0.810	0.006	1.177	50.1	4.706

TABLE 1. YEARLY ESTIMATED NUMBER OF MARINE MAMMALS AFFECTED BY THE GUNNERY MISSION NOISE—Continued

Species	Adjusted Density (#/km <sup>2</sup> )	Level A Harassment Injurious 205 dB* EFD For Ear Rupture	Level B Harassment Non-injurious 182 dB* EFD for TTS	Level B Harassment Non-Injurious 23 psi For TTS	Level B Harassment Non-Injurious 176 dB* EFD For Behavior
Risso's dolphin	0.113	0.001	0.164	7.0	0.657
Atlantic spotted dolphin	0.677	0.005	0.984	41.9	3.934
Pantropical spotted dolphin	1.077	0.008	1.565	66.7	6.258
Striped dolphin	0.237	0.002	0.344	14.7	1.377
Spinner dolphin	0.915	0.007	1.330	56.6	5.316
Clymene dolphin	0.253	0.002	0.368	15.7	1.470
Unidentified dolphin**	0.053	<0.001	0.077	3.3	0.308
Unidentified whale	0.008	<0.001	0.012	0.5	0.046
All marine mammals	4.325	0.032	6.29	271.1	25.13

km<sup>2</sup>=square kilometers; NA=not applicable  
 dB-dB re 1  $\mu$ Pa<sup>2</sup> -s  
 \*\*Bottlenose dolphin/Atlantic spotted dolphin

### Proposed Mitigation Measures

Under its recent IHA, Eglin AFB employed a number of mitigation measures in an effort to substantially decrease the number of animals potentially affected. The proposed mitigation for this proposed IHA is substantially similar with a few modifications. Eglin AFB states that it is committed to assessing the mission activity for opportunities to provide operational mitigation (i.e., ramping up and using nighttime training rounds), while potentially sacrificing some mission flexibility.

#### Visual Mitigation

Areas to be used in gunnery missions are visually monitored for marine mammal presence from the AC-130 aircraft prior to commencement of the mission. If the presence of one or more marine mammals is detected, the target area will be avoided. In addition, monitoring will continue during the mission. If marine mammals are detected at any time, the mission will be either immediately halted and/or relocated as necessary or suspended until the marine mammal has left the area. Daytime and nighttime visual monitoring will be supplemented with IR and TV monitoring. As nighttime visual monitoring is generally considered to be ineffective at any height, the EGTTR missions will incorporate the TR.

#### Development of the TR

The largest type of ammunition used during typical gunnery missions is the 105-mm (4.13-in) round containing 4.7

lbs (2.1 kg) of high explosive (HE). This is several times more HE than that found in the next largest round (40 mm/1.57 in). As a mitigation technique, the Air Force developed a 105-mm TR that contains only 0.35 lb (0.16 kg) of HE. The TR was developed to significantly reduce the effects of nighttime operations, when visual surveying for marine mammals is of limited effectiveness. Use of the TR at night dramatically reduces the risk of harassment, and Eglin AFB anticipates a 96 percent reduction in impact by using the 105-mm TR.

#### Ramp-Up

Eglin incorporated a ramp-up procedure by beginning with the smallest round (or the round having least impact) and proceeding to subsequently larger size rounds (in this case the lowest caliber of munition up to the 105-mm FU round). Theoretically, this allows animals to perceive steadily increasing sounds and to react, if necessary. Alerting animals in advance of injurious sound waves by transmitting low-power "warning" signals a short time before the action provides a safeguard where there is a potential for the risk of injury.

#### Other Mitigation

Under the previous IHA, NMFS required additional mitigation measures to protect marine life. These requirements are:

- (1) Test firing will be conducted only when sea surface conditions are sea state 3.5 or less on the Beaufort scale.
- (2) Prior to each firing event, the aircraft crew will conduct a visual

survey of the 5-nm (9.3-km) wide prospective target area to attempt to sight any protected species that may be present (e.g., marine mammals, sea turtles, and Sargassum rafts). The AC-130 gunship will conduct at least two complete orbits at a minimum safe airspeed around a prospective target area at a maximum altitude of 1,500 ft (457 m), with a recommended altitude of 1,000 ft (305 m). Provided protected species are not detected, the AC-130 can then continue orbiting the selected target point as it climbs to the mission testing altitude. During the low altitude orbits and the climb to testing altitude, the aircraft crew will visually scan the sea surface within the aircraft's orbit circle for the presence of listed and non-listed marine mammals and sea turtles. Primary emphasis for the surface scan will be upon the flight crew in the cockpit and personnel stationed in the tail observer bubble and starboard viewing window. The AC-130's optical and electronic sensors will also be employed for target clearance. If any marine mammals are detected within the AC-130's orbit circle, either during initial clearance or after commencement of live firing, the aircraft will relocate to another target and repeat the clearance procedures. If multiple firing events occur within the same flight, these clearance procedures will precede each event.

(3) The aircrews of the air-to-ground gunnery missions will initiate location and surveillance of a suitable firing site immediately after exiting U.S. territorial waters (> 12 nm, 22 km). This would potentially restrict most gunnery

activities to the shallower continental shelf waters of the GOM where marine mammal densities are typically lower, and thus potentially avoid the slope waters where the more sensitive species (e.g., endangered sperm whales) typically reside.

(4) Observations will be accomplished using all-light TV, IR sensors, and visual means for at least 60 minutes prior to each exercise.

(5) Aircrews will utilize visual, night vision goggles (NVGs), and other onboard sensors to search for marine mammals while performing area clearance procedures during night-time pre-mission activities.

(6) If any marine mammals are sighted during pre-mission surveys or during the mission, activities will be immediately halted until the area is clear of all marine mammals for 60 minutes or the mission location relocated and resurveyed.

### Monitoring and Reporting

The NMFS Biological Opinion on this action recommended certain monitoring measures to protect marine life. As a result, NMFS imposed these same requirements under the previous IHA:

(1) Eglin will develop and implement a marine species observer-training program in coordination with NMFS. This program will primarily provide expertise to Eglin's testing and training community in the identification of protected marine species during surface and aerial mission activities in the GOM. Additionally, the A-S gunnery mission aircrews will participate in the species observation training. As a result, designated crew members will be selected to receive training as protected species observers. Observers will receive training in protected species survey and identification techniques through a NMFS-approved training program.

(2) Aircrews will initiate the post-mission clearance procedures beginning at the operational altitude of approximately 15,000 to 20,000 ft (4572 to 6096 m) elevation, and initiating a spiraling descent down to an observation altitude of approximately 1,500 ft. (457 m) elevation. Rates of descent will occur over a 3 to 5 minute time frame.

(3) Eglin will track their use of the EGTR for test firing missions and protected species observations, through the use of mission reporting forms.

(4) A-S gunnery missions will coordinate with next-day flight activities to provide supplemental post-mission observations for marine mammals in the operations area of the previous day.

(5) A summary annual report of marine mammal observations and A-S activities will be submitted to the NMFS Southeast Regional Office (SERO) and the Office of Protected Resources either at the time of a request for renewal of an IHA or 90 days after expiration of the current IHA if a new IHA is not requested.

(6) If any dead or injured marine mammals are observed or detected prior to testing, or injured or killed during live fire, a report must be made to the NMFS by the following business day.

(7) Any unauthorized takes of marine mammals (i.e., injury or mortality) must be immediately reported to the NMFS representative and to the respective stranding network representative.

### Proposed Modifications to the Mitigation and Monitoring Requirements

Eglin AFB has requested several modifications to its IHA to be incorporated into the new IHA.

As of October 27, 2006, two A-S gunnery missions have been attempted (one of the missions was ultimately aborted due to sea state). As a result of flying live missions over the ocean, aircrews have requested a modification to three components of the 2006 IHA requirements. These components are: (1) protected species surveys, (2) ramp-up procedures, and (3) sea state restrictions.

#### *Protected Species Surveys-Altitude and Equipment*

Currently, pre-mission surveys for marine mammals and other protected species must be commenced at a maximum altitude of 1,500 ft (457 m)(with 1,000 ft (305 m) recommended) during the day and at 2,000 ft (610 m)(1,500 ft (457 m) recommended) at night. Visual scans, as well as all applicable instruments, are to be used to survey for protected species at the water surface. Aircrews have reported that these altitudes are not safe, and that the onboard instrumentation used for surveys actually performs better at a higher altitude.

The propeller-driven AC-130 aircraft, which is used for all A-S gunnery missions, is among the largest and heaviest in the Air Force, weighing up to approximately 150,000 lbs (68040 kg) depending on equipment configuration. If an emergency situation, such as a malfunction of one or more engines, occurred during the protected species surveys, the aircraft would likely lose altitude initially. The AC-130 does not perform well with less than a full compliment of engines. At 1,000 to 2,000 ft (305 to 610 m), the pilots would

have little time to recover before striking the water surface, which would result in potential human fatalities and certain loss of the aircraft. The AC-130 is typically flown at a minimum altitude of 4,500 ft (1372 m). Eglin AFB notes that the 2004 National Defense Authorization Act amendments to the MMPA explicitly require consideration of personnel safety during military readiness activities.

AC-130 gunships are equipped with low-light TV cameras and ANIAAQ-26 Infrared Detection Sets (IDS). The TV cameras operate in a range of electromagnetic radiation of 532 to 980 nanometers (visible and near-visible light), and the IDS system operates in the IR portion of 7.5 to 11.7 micrometers. IR systems are capable of detecting differences in temperature from thermal energy (heat) radiated from living bodies, or from reflected and scattered thermal energy. In contrast to typical night-vision devices, visible light is not necessary for object detection. IR systems are equally effective during day or night use.

The ANIAAQ-26 IDS system produces a composite video signal which is displayed on an onboard television monitor. The IDS provides imagery and accurate line-of-sight information for an operator to detect, acquire, identify, and track targets. Additional capabilities include providing imagery suitable for reconnaissance and low-level navigation. The IDS is capable of detecting very small thermal differences (the exact thermal sensitivity is classified). Three fields-of-view (FOV) are available for the IDS. All are typically used during a mission to survey the area and acquire targets. These are:

- Wide FOV (1.80 magnification) aides in low altitude flight, navigation, and area search, and also provides sufficient resolution to recognize typical terrain features such as roads, rivers, and bridges.
- Medium FOV (10.8 magnification) provides for immediate target area orientation and target detection.
- Narrow FOV (42.9 magnification) provides small target identification, target recognition, and precise line-of-sight angular adjustments. A 2X FOV (85.80 magnification) provides electronic magnification of the Narrow FOV.

The IDS provides pointing information regarding its optical line-of-sight, and features a continuous 360-degree azimuth Field of Regard (FOR) and +60 degree up-look to -105 degree down-look elevation FOR. The line-of-sight is inertial-stabilized with regard to

airplane angular motions and is directed to pointing angles via programmed commands, operator commands, or position commands from the avionics systems.

IR and low-light TV systems are used during both daytime and nighttime missions (ambient light is sufficient for the TV system at night). The IDS is the primary detection system and is used during all gunship missions. Low-light TV and visual surveys are used to supplement the IDS system as appropriate. The magnification of the TV system is comparable to that of the IDS. Although the IDS is capable of detecting infrared emissions at altitudes in excess of 12,500 ft (3810 m), an altitude range of 6,000 to 9,000 ft (1829 to 2743 m) affords the optimal slant range for overall sensor performance and target orientation.

The sensor suite is considered superior to the human eye for detecting targets on the water surface, even at altitudes as low as 1,000 ft (305 m). This is particularly true for night observations. IR systems have been used to detect whales and dolphins (Baldacci et al., 2005). Although the central portion of cetacean bodies are insulated with blubber, peripheral areas such as the flukes and fins are relatively poorly insulated. These areas may be detected thermally. Also, the movement of a cetacean's body at the surface causes heat to be radiated at different angles, resulting in an apparent temperature difference that can be detected by IR sensors. Additional areas of thermal discrimination include the blowhole, the blow, and areas of water disturbance where water of different temperatures is mixed. However, high humidity, rain, fog, high waves, and whitecap conditions can decrease the effectiveness of IR detection. Figure 1 in Eglin's January 22, 2007 renewal request shows examples of all FOVs for the IDS system, as an operator would see them on a monitor. All examples represent a 7.8-ft (2.4 m) dolphin at 6,000 ft (1829 m) altitude (above ground level, or AGL) and at a slant range of 8,000 ft (2438 m). All four FOVs would be used during protected species surveys. Based on the above discussion, the AC-130 aircrews recommend a protected species survey altitude of 6,000 ft (1829 m), using all sensors, for both day and night missions.

The gunship sensor suite provides the best daytime and nighttime performance in normal weather and sea conditions at this altitude range. At lower altitudes, the sensors' area of coverage is smaller for any given field of view. In addition, the sensors' effectiveness is diminished due to magnification factors. For

example, at an altitude of 1,000 ft (305 m), the 2X and Narrow FOV settings would cause over-magnification, resulting in decreased ability to discriminate targets. In addition to considerations of sensor performance, a 6,000-ft (1829-m) survey altitude would be significantly safer than the current 1,000- to 2,000-ft (305- to 610-m) range.

Eglin AFB therefore proposes a revised protocol for protected species surveys. The AC-130 gunship would travel to a potential mission location at an altitude of 6,000 ft (1829 m). After arriving at the site, the aircrew would initiate a surface vessel and protected species survey at a 6,000 ft (1829 m) altitude. The aircraft would circle the target site and continue the survey for 15 minutes. During the survey, aircrews would use the ANIAAQ-26 IDS to search the water surface for vessels and marine species. The low-light TV system would be used to supplement the IDS system. For missions conducted during daylight hours, the aircrew would visually scan the water surface as well. The live fire phase of the mission would not begin until the site is determined to be clear of vessels and protected species during the 15-minute survey. If a marine mammal, sea turtle or Sargassum bed is identified during the pre-mission survey or during the mission, or if any object besides the target is detected but cannot conclusively be identified, the mission would be paused or relocated as appropriate. Aircrews would conduct a post-mission survey for 5 minutes at an altitude of 6,000 ft (1829 m) using the IDS and low-light television systems and, for daytime missions, visual scans. Eglin AFB considers that the protocol described here would provide effective mitigation to the risks posed to protected species during A-S gunnery missions. In summary, Eglin AFB believes that sensor-based observation effectiveness at 6,000 ft (1829 m) altitude is superior to visual survey effectiveness at 1,000 ft (305 m) altitude and should replace the previous mitigation measure.

#### *Ramp-up Procedures*

The 2006-2007 IHA stipulates that ramp-up procedures are to be used during A-S gunnery missions. This process involves beginning with the smallest gunnery round, which has the least impact, and proceeding to subsequently larger size rounds. The rationale is that this process may allow animals to perceive steadily increasing noise levels and to react, if necessary, before the noise reaches a threshold of significance. The gunships' weapons are

used in two activity phases. First, the guns are checked for functionality and calibrated. This step requires an abbreviated period of live fire. After the guns are determined to be ready for use, the mission proceeds under various test and training scenarios. This second phase involves a more extended period of live fire and can incorporate use of one or any combination of the munitions available (25-, 40-, and 105-millimeter rounds). Eglin AFB believes the 2006-2007 IHA is somewhat ambiguous regarding whether the ramp-up procedure is required only for the first (calibrating) phase or throughout the entire mission. Eglin AFB proposes that the ramp-up procedure be required for the initial gun calibration, and that after this phase the guns may be fired in any order. Eglin believes this process complies with the intent of the ramp-up requirement. Marine species will have opportunity to respond to increasing noise levels. If an animal leaves the area during ramp-up, it is unlikely to return while the live-fire mission is proceeding. This protocol would allow a more realistic training experience. In combat situations, gunship crews would not likely fire the complete ammunition load of a given caliber gun before proceeding to another gun. Rather, a combination of guns would likely be used as required by an evolving situation. An additional benefit of this protocol is that mechanical or ammunition problems on an individual gun can be resolved while live fire continues with functioning weapons. This diminishes the possibility of a lengthy pause in live fire which, if greater than 10 minutes, would necessitate re-initiation of protected species surveys.

#### *Sea State Restrictions*

The 2006-2007 IHA states that air-to-surface gunnery missions are to be conducted only in sea states of 3 or less on the Beaufort scale. A sea state of 3 or less, with a maximum wind speed of 10 knots (11.5 mph, 18.5 km/hr) which is considered a gentle breeze, is fairly common off the Gulf coast of Florida; however, a large portion of time can be categorized as a sea state of 4 (1-16 knots (13-18 mph, 21-29 km/hr) which is considered a moderate breeze). Therefore, the availability of the EGTR for gunship use is limited during anything over sea state 3, especially during the winter. Eglin AFB proposes gunship missions be allowed in sea states up to 4 on the Beaufort scale. This sea state encompasses wind speed up to a maximum of 16 knots (18 mph, 29 km/hr). Under these conditions, whitecaps are fairly frequent on the sea surface,

but sea spray does not occur. Sea spray, whitecaps, and large waves can decrease the effectiveness of LR detection. However, missions are not conducted if such conditions make observation of the gunnery target problematic. It is expected that marine species can be observed in weather conditions that allow observation of the gunnery target flare. Wave height is difficult to determine from the air, particularly at night. Therefore, Eglin proposes that wind speed, as provided by accepted forecasting outlets such as the National Weather Service, be considered the determining factor for weather restrictions.

### Preliminary Conclusions

For reasons described in this **Federal Register** document, NMFS has preliminarily determined that Eglin AFB's A-S Gunnery activity will not result in the mortality or serious injury of marine mammals and, would result in, at worst, a temporary elevation in hearing sensitivity (known as temporary threshold shift or TTS). As indicated in Table 1, Eglin AFB and NMFS estimated in 2006 that up to 271 marine mammals may incur this form of Level B harassment annually. Also, these gunnery exercises have the potential to result in a temporary modification in behavior by marine mammals. In 2006, NMFS estimated that up to 25 marine mammals may experience a behavioral response to these exercises during the time-frame of an IHA (see Table 1). These air-to-surface gunnery activities are expected to have a negligible impact on the affected species or stocks. In addition, the potential for TTS is very low and will be mitigated to the lowest level practicable through the incorporation of the mitigation measures mentioned in this document. NMFS believes that the proposed modifications to the current mitigation requirements will not result in an increase in Level B harassment levels estimated in 2006. The previously discussed modifications (protected species survey altitude, ramp-up procedures and sea state conditions) to the mitigation measures in Eglin's existing IHA for the A-S gunnery exercises in the EGTTTR, is unlikely to change NMFS' 2006 determination.

### Endangered Species Act (ESA)

Consultation under section 7 of the ESA on Eglin AFB's A-S Gunnery Missions in the EGTTTR was completed on December 18, 1998. Consultation was reinitiated by Eglin AFB with NMFS on February 13, 2003, and concluded on October 20, 2004. A NMFS Biological Opinion issued on October 20, 2004,

concluded that the A-S gunnery exercises in the EGTTTR are unlikely to jeopardize the continued existence of species listed under the ESA that are within the jurisdiction of NMFS or destroy or adversely modify critical habitat. NMFS has preliminarily determined that this action, including the modifications to the mitigation and monitoring measures, does not have effects beyond that which was analyzed in that previous consultation, it is within the scope of that action and reinitiation of consultation is not necessary. However, prior to issuance of this IHA, NMFS will make a final determination whether additional consultation is necessary.

### National Environmental Policy Act (NEPA)

The U.S. Air Force (USAF) made a Finding of No Significant Impact (FONSI) determination on August 18, 2003, based on information contained within its November, 2002 Final PEA, that implementation of the subject action is not a major Federal action having significant effects on the environment within the meaning of NEPA. The USAF determined, therefore, that an environmental impact statement (EIS) would not be prepared. NMFS noted that Eglin AFB had prepared a Final PEA for the EGTTTR activity and made this Final PEA available upon request on January 23, 2006 (71 FR 3474). In accordance with NOAA Administrative Order 216-6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS reviewed the information contained in Eglin AFB's Final PEA and determined that Eglin AFB's Final PEA accurately and completely describes the proposed action, the alternatives to the proposed action, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. Accordingly, NMFS adopted Eglin AFB's Final PEA under 40 CFR 1506.3 and made its own FONSI. The NMFS FONSI also took into consideration updated data and information contained in the NMFS' **Federal Register** document noting issuance of an IHA to Eglin AFB for this activity (71 FR 27695, May 12, 2006), and previous notices (71 FR 3474 (January 23, 2006); 70 FR 48675 (August 19, 2005)). NMFS has preliminarily determined that the current proposed action will not result in a significant modification in the previously reviewed activity and, therefore, a new EA, supplemental EA or an EIS for the

issuance of an IHA to Eglin AFB for this activity is not necessary.

### Proposed Authorization

NMFS proposes to reissue an IHA to Eglin AFB for conducting A-S gunnery exercises within the EGTTTR in the northern GOM provided the mitigation, monitoring, and reporting requirements described in this **Federal Register** notice are incorporated. NMFS has preliminarily determined that the proposed activity is unlikely to result in injury or mortality to marine mammals, and would have a negligible impact on the affected marine mammal species or stocks. The MMPA provision relating to impacts on subsistence are not relevant.

### Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed IHA (see **ADDRESSES**).

Dated: May 24, 2007.

**James H. Lecky,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XA39**

### Taking and Importing of Marine Mammals

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

**ACTION:** Notice; affirmative finding renewal.

**SUMMARY:** The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) has renewed the affirmative finding for the Republic of Ecuador under the Marine Mammal Protection Act (MMPA). This affirmative finding will allow yellowfin tuna harvested in the eastern tropical Pacific Ocean (ETP) in compliance with the International Dolphin Conservation Program (IDCP) by Ecuadorian-flag purse seine vessels or purse seine vessels operating under Ecuadorian jurisdiction to be imported into the United States. The affirmative finding was based on review of documentary evidence submitted by the Republic of Ecuador and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the U.S. Department of State.