

NIST will accept the submission of proposals containing research activities involving human subjects. The human subjects research activities in a proposal will require approval by Institutional Review Boards (IRBs) possessing a current registration filed with DHHS and to be performed by institutions possessing a current, valid Federal-wide Assurance (FWA) from DHHS that is linked to the cognizant IRB. In addition, NIST as an institution requires that IRB approval documentation go through a NIST administrative review; therefore, research activities involving human subjects are not authorized to start within an award until approval for the activity is issued in writing from the NIST Grants Officer. NIST will not issue a single project assurance (SPA) for any IRB reviewing any human subjects protocol proposed to NIST.

President Obama has issued Exec. Order No. 13,505, 74 FR 10667 (March 9, 2009), revoking previous executive orders and Presidential statements regarding the use of human embryonic stem cells in research. NIST will follow any guidance issued by the National Institutes of Health (NIH) pursuant to the executive order and will develop its own procedures based on the NIH guidance before funding research using human embryonic stem cells. NIST will follow any additional policies or guidance issued by the current Administration on this topic.

**Research Projects Involving Vertebrate Animals:** Any proposal that includes research involving vertebrate animals must be in compliance with the National Research Council's "Guide for the Care and Use of Laboratory Animals" which can be obtained from National Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20055. In addition, such proposals must meet the requirements of the Animal Welfare Act (7 U.S.C. 2131 *et seq.*), 9 CFR parts 1, 2, and 3, and if appropriate, 21 CFR part 58. These regulations do not apply to proposed research using pre-existing images of animals or to research plans that do not include live animals that are being cared for, euthanized, or used by the project participants to accomplish research goals, teaching, or testing. These regulations also do not apply to obtaining animal materials from commercial processors of animal products or to animal cell lines or tissues from tissue banks.

**Reporting Requirements:** Reporting requirements are described in the Department of Commerce Financial Assistance Standard Terms and Conditions dated March, 2008, found on the Internet at: <http://>

[oamweb.osec.doc.gov/docs/GRANTS/DOC%20STCsMAR08Rev.pdf](http://oamweb.osec.doc.gov/docs/GRANTS/DOC%20STCsMAR08Rev.pdf).

The references in Sections A.01 and B.01 of the Department of Commerce Financial Assistance Standard Terms and Conditions, dated March, 2008, to "Federal Financial Report (SF-269)" and "SF-269" are hereby replaced with "Federal Financial Report (SF-425)" and "SF-425," respectively, as required by the Office of Management and Budget (OMB) (73 FR 61175, October 15, 2008). As authorized under 15 CFR 14.52 and 24.41, the OMB approved SF-425 shall be used in the place of the SF-269 and SF-272 under the uniform administrative requirements and elsewhere under awards in this program where such forms are referenced.

**Limitation of Liability:** NIST anticipates making awards for the program listed in this notice. In no event will NIST or the Department of Commerce be responsible for proposal preparation cost if these programs(s) fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not obligate NIST or the Department of Commerce to award any specific project or to obligate any available funds.

**Executive Order 12866:** This funding notice was determined to be not significant for purposes of Executive Order 12866.

**Executive Order 13132 (Federalism):** It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

**Executive Order 12372:** Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

**Paperwork Reduction Act:** The standard forms in the application kit involve a collection of information subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF-LLL, and CD-346 has been approved by OMB under the respective Control Numbers 0348-0043, 0348-0044, 0348-0040, 0348-0046, and 0605-0001.

**Administrative Procedure Act/Regulatory Flexibility Act:** Notice and comment are not required under the Administrative Procedure Act (5 U.S.C. 553) or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Because notice and comment are not required under 5 U.S.C. 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and

has not been prepared for this notice, 5 U.S.C. 601 *et seq.*

Dated: April 21, 2009.

**Patrick Gallagher,**

*Deputy Director, NIST.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XO87

#### Taking of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Training Operations Conducted within the Gulf of Mexico Range Complex

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

**ACTION:** Notice; receipt of an application for regulations and a letter of authorization; request for comments and information.

**SUMMARY:** NMFS has received a request from the U.S. Navy (Navy) for authorizations for the take of marine mammals incidental to training and operational activities conducted by the Navy Atlantic Fleet within Gulf of Mexico (GOMEX) Range Complex for the period beginning December 3, 2009 and ending December 2, 2014. Pursuant to the implementing regulations of the Marine Mammal Protection Act (MMPA), NMFS is announcing our receipt of the Navy request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the Navy application and request.

**DATES:** Comments and information must be received no later than May 28, 2009.

**ADDRESSES:** Comments on the applications 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. The mailbox address for providing email comments is [PR1.0648-XO87@noaa.gov](mailto:PR1.0648-XO87@noaa.gov). NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size. Copies of the Navy application may be obtained by writing to the address specified above (See **ADDRESSES**), telephoning the

contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

**FOR FURTHER INFORMATION CONTACT:** Shane Guan, Office of Protected Resources, NMFS, (301) 713-2289, ext. 137.

**SUPPLEMENTARY INFORMATION:**

**Background**

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) 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) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may 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, 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.

With respect to military readiness activities, the MMPA defines harassment 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**

On October 2, 2008, NMFS received an application from the Navy requesting an authorization for the take of marine mammal species/stocks incidental to the proposed training operations within the GOMEX Range Complex over the course of 5 years. These training activities are classified as military readiness activities. The Navy states that these training activities may cause various impacts to marine mammal species in

the proposed GOMEX Range Complex Study Area. The Navy requests an authorization to take 9 species of cetaceans annually by Level B harassment, and 1 individual each of pantropical spotted dolphin and spinner dolphin by Level A harassment (injury). Please refer to the take table on page 6-17 of the LOA application for detailed information of the potential exposures from explosive ordnance (per year) for marine mammals in the GOMEX Range Complex.

**Description of the Specified Activities**

The GOMEX Study Area encompasses areas at sea, undersea, and Special Use Airspace (SUA) in the northern Gulf of Mexico off the coast of the U.S. (Figures 1 and 2 of the LOA application). The portions of the GOMEX Study Area to be considered for the proposed action consist of the BOMBEX Hotbox (surface and subsurface waters) located within the Pensacola Operation Area (OPAREA), SUA warning areas W-151A/B/C and W-155A/B (surface waters), and underwater detonation (UNDET) Area E3 (surface and subsurface waters), located within the territorial waters off Padre Island, Texas, near Corpus Christi NAS. The portions of the GOMEX Study Area addressed in the Navy LOA application encompass:

- 1,496 nm<sup>2</sup> (5,131 km<sup>2</sup>) of sea space (BOMBEX Hotbox, where high explosives occur, and UNDET Area E3 where underwater detonations occur); and
- 11,714 nm<sup>2</sup> (40,178 km<sup>2</sup>) of SUA warning areas (vessel movements only)

The BOMBEX Hotbox is an in-water operating and maneuvers area with defined air, ocean surface, and subsurface areas. The BOMBEX Hotbox is located in the offshore waters of the northeastern Gulf of Mexico (GOM) adjacent to Florida and Alabama. The northernmost boundary of the BOMBEX Hotbox is located 23 nm (42.6 km) from the coast of the Florida panhandle at latitude 30° N, the eastern boundary is approximately 200 nm (370.4 km) from the coast of the Florida peninsula at longitude 86° 8' W.

The SUA warning areas, W-151A/B/C and W-155A/B, are in-water operating and maneuver areas with defined air and ocean surface. W-151A/B/C and W-155A/B are located in and above the offshore waters of the northeastern GOM adjacent to Florida and Alabama.

The UNDET Area E3 is a defined surface and subsurface area located in the waters south of Corpus Christi NAS and offshore of Padre Island, Texas. The westernmost boundary is located 7.5 nm (13.9 km) from the coast of Padre Island at 97° 9'33" W and 27° 24'26" N at the

Western most corner. It lies entirely within the territorial waters (0 to 12 nm, or 0 to 22.2 km) of the U.S. and the majority of it lies within Texas state waters (0 to 9 nm, or 0 to 16.7 km). It is a very shallow water training area with depths ranging from 20 to 26 m.

In the application submitted to NMFS, the Navy requests an authorization to take marine mammals incidental to conducting training operations within the GOMEX Range Complex. These training activities consist of surface warfare. Although vessel movement is also a component of the proposed GOMEX Range Complex training activities, the Navy concludes that it is unlikely marine mammals would be taken by vessel movement with the implementation of mitigation and monitoring measures described in the LOA application.

*Surface Warfare*

Surface Warfare (SUW) supports defense of a geographical area (e.g., a zone or barrier) in cooperation with surface, subsurface, and air forces. SUW operations detect, localize, and track surface targets, primarily ships. Detected ships are monitored visually and with radar. Operations include identifying surface contacts, engaging with weapons, disengaging, evasion, and avoiding attack, including implementation of radio silence and deceptive measures. For the proposed GOMEX Range Complex training operations, SUW events involving the use of explosive ordnance include air-to-surface Bombing Exercises [BOMBEX (A-S)] and surface-to-surface Gunnery Exercises (GUNEX) that occur at sea.

(A) Bombing Exercise (Air-to-Surface) [BOMBEX (A-S)]

Strike fighter aircraft, such as F/A-18s, deliver explosive bombs against at-sea surface targets with the goal of destroying the target. BOMBEX (A-S) training in the GOMEX Study Area occurs only during daylight hours in the BOMBEX Hotbox area.

For the proposed BOMBEX (A-S), two aircraft will approach an at-sea target from an altitude of between 15,000 ft (4,572 m) to less than 3,000 ft (914.4 m) and release a high explosive (HE) 1,000-pound (lb) bomb on the target. MK-83 bombs would be used. MK-83 bombs have a net explosive weight (NEW) of 415.8 lbs. The typical bomb release altitude is below 3,000 ft (914.4 m) and the target is usually a flare. The time in between bomb drops is approximately 3 minutes.

(B) Gunnery Exercise (Surface-to-Surface) [GUNEX (S-S)] Boat

Gunnery Exercise (S-S) is a part of quarterly reservist training and operational activities for the Mobile Expeditionary Security Group (MESG) that operates out of Corpus Christi Naval Air Station (NAS). The MESG

trains with M3A2 (0.5-lb NEW) anti-swimmer concussion grenades. The M3A2 grenades are small and contain high explosives in an inert metal or plastic shell. They detonate at about 3 m (9.8 ft) under the water surface within 4 to 5 seconds of being deployed. The detonation depth may be shallower depending upon the speed of the boat at

the time the grenade is deployed. GUNNERY (S-S) training in the GOMEX Study Area may occur during day or evening hours in the UNDET Area E3.

Table 1 below summarizes the level of Surface Warfare training activities planned in the GOMEX Range Complex for the proposed action.

TABLE 1. LEVEL OF SURFACE WARFARE TRAINING ACTIVITIES PLANNED IN THE GOMEX RANGE COMPLEX PER YEAR

Operation	Platform	System/ Ordnance	Number of Events	Training Area	Potential Time of Day
Bombing Exercise (BOMBEX) (Air-to-Surface, At-Sea)	F/A-18	MK-83 [1,000-lb High Explosive (HE) bomb] 415.8 lbs NEW	1 event (4 bombs)	BOMBEX Hotbox	Daytime only
Gunnery Exercise (GUNEX) (Surface-to-Surface) - Boat	Vessels such as combat rubber raiding craft, rigid hull inflatable boats, and patrol craft	M3A2 concussion grenades (8-oz HE grenade) 0.5 lbs NEW	4 events (20 grenades)	UNDET Area E3	Day or night

#### Vessel Movement

Vessel movements are associated with most training and operational activities in the GOMEX Study Area. Currently, the number of Navy vessels operating in the GOMEX Study Area varies based on training schedules and can range from 0 to about 10 vessels at any given time. Vessel sizes range from small boats (<35 ft, or 10.7 m) for a harbor security boat to 1,092 ft (332.8 m) for a CVN (carrier vessel nuclear) and speeds generally range from 10 to 14 knots, but may be considerably faster, for example an aircraft carrier aking wind while launching and recovering aircraft, and for small boat operations. Operations involving vessel movements occur intermittently and are variable in duration, ranging from a few hours up to 2 weeks. These operations are widely dispersed throughout the GOMEX Study Area, which is an area encompassing 11,714 nm<sup>2</sup> (40,178 km<sup>2</sup>). Most vessel movements occur in the offshore OPAREAs, but vessel movements associated with MESG training in the UNDET Area E3 and Commander Naval Installations Command (CNIC) harbor security group training in the Panama City OPAREA occur between shore and 12 nm (22.2 km), including the nearshore zone (<3 nm, or 5.6 km). The Navy logs about 180 total vessel days within the GOMEX Study Area during a typical year. Consequently, the density of Navy vessels within the GOMEX Study Area at any given time is low (i.e., less than 0.0113 ships/nm<sup>2</sup> (0.0386 km<sup>2</sup>)).

#### Proposed Monitoring and Mitigation Measures

The Navy is developing an Integrated Comprehensive Monitoring Program (ICMP) for marine species to assess the effects of training activities on marine species and investigate population trends in marine species distribution and abundance in various range complexes and geographic locations where Navy training occurs. The primary tools available for monitoring include visual observations, acoustic monitoring, photo identification and tagging, and oceanographic and environmental data collection.

A list of proposed mitigation measures and standard operating procedures is described in the application for the proposed training operations. These mitigation measures include personnel training for watchstanders and lookouts in marine mammal monitoring, operating procedures for collision avoidance and a series of measures for specific at-sea training events including surface-to-surface gunnery, etc. A detailed description of the monitoring and mitigation measures is provided in the application.

#### Information Solicited

Interested persons may submit information, suggestions, and comments concerning the Navy request (see ADDRESSES). All information, suggestions, and comments related to the Navy GOMEX Range Complex request and NMFS potential

development and implementation of regulations governing the incidental taking of marine mammals by the Navy training activities will be considered by NMFS in developing, if appropriate, the most effective regulations governing the issuance of letters of authorization.

Dated: April 22, 2009.

**James H. Lecky,**

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

[FR Doc. E9-9647 Filed 4-27-09; 8:45 am]

**BILLING CODE 3510-22-S**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 11:00 a.m., Friday, May 1, 2009.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, 202-418-5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. E9-9696 Filed 4-24-09; 11:15 am]

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