

(c) The incidental take of marine mammals under the activities identified in §217.110(c) is limited to the following species, by the indicated method of take and the indicated number:

(1) Level B Harassment:

(i) Atlantic bottlenose dolphin (*Tursiops truncatus*)—2,200 (an average of 444 annually);

(ii) Atlantic spotted dolphin (*Stenella frontalis*)—1,765 (an average of 353 annually);

(iii) Pantropical spotted dolphin (*S. attenuate*)—15 (an average of 3 annually);

(iv) Spinner dolphin (*S. longirostris*)—15 (an average of 3 annually);

(v) Dwarf or pygmy sperm whale (*Kogia simus* or *Kogia breviceps*)—10 (an average of 2 annually).

(2) Level A Harassment:

(i) Atlantic bottlenose dolphin (*Tursiops truncatus*)—25 (an average of 5 annually);

(ii) Atlantic spotted dolphin (*Stenella frontalis*)—20 (an average of 4 annually).

§217.113 Prohibitions.

No person in connection with the activities described in §217.110 shall:

(a) Take any marine mammal not specified in §217.112(c);

(b) Take any marine mammal specified in §217.112(c) other than by incidental take as specified in §217.112(c)(1) and (c)(2);

(c) Take a marine mammal specified in §217.112(c) 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 this subpart or a Letter of Authorization issued under §§216.106 and 217.117 of this chapter.

§217.114 Mitigation.

(a) The activities identified in §217.110(c) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in §217.110(c), the mitigation measures contained in the Letter of Authorization issued under §§216.106 and 217.117 of this chapter must be implemented.

(b) Precision Strike Weapon Missions:

(1) Safety Zones:

(i) For the JASSM, the Air Force 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.

(ii) 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 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 (9.3 km) for double bombs.

(2) For PSW missions, the holder of the Letter of Authorization must comply with the monitoring requirements, including pre-mission monitoring, set forth in §217.115(c).

(3) When detonating explosives:

(i) If any marine mammals or sea turtles are observed within the designated safety zone or the buffer zone prescribed in the condition in paragraph (b)(1) of this section or that are on a course that will put them within the safety zone prior to JASSM or SDB launch, the launching must be delayed until all marine mammals are no longer within the designated safety zone.

(ii) If any marine mammals are detected in the buffer zone and subsequently cannot be reacquired, the mission launch will not continue until the next verified location is outside of the safety zone and the animal is moving away from the mission area.

(iii) If large Sargassum rafts or large concentrations of jellyfish are observed within the safety zone, the mission launch will not continue until the Sargassum rafts or jellyfish that caused the postponement are confirmed to be outside of the safety zone due to the current and/or wind moving them out of the mission area.

(iv) If weather and/or sea conditions preclude adequate aerial surveillance for detecting marine mammals or sea turtles, detonation must be delayed until adequate sea conditions exist for aerial surveillance to be undertaken.

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Adequate sea conditions means the sea state does not exceed Beaufort sea state 3.5 (i.e., whitecaps on 33 to 50 percent of surface; 0.6 m (2 ft) to 0.9 m (3 ft) waves), the visibility is 5.6 km (3 nm) or greater, and the ceiling is 305 m (1,000 ft) or greater.

(v) To ensure adequate daylight for pre- and post-detonation monitoring, mission launches may not take place earlier than 2 hours after sunrise, and detonations may not take place later than 2 hours prior to sunset, or whenever darkness or weather conditions will preclude completion of the post-test survey effort described in §217.115.

(vi) If post-detonation surveys determine that a serious injury or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed with the National Marine Fisheries Service and appropriate changes to avoid unauthorized take must be made prior to conducting the next mission detonation.

(vii) Mission launches must be delayed if aerial or vessel monitoring programs described under §217.115 cannot be fully carried out.

(c) Air-to-Surface Gunnery Missions:

(1) Sea State Restrictions:

(i) If daytime weather and/or sea conditions preclude adequate aerial surveillance for detecting marine mammals and other marine life, air-to-surface gunnery exercises must be delayed until adequate sea conditions exist for aerial surveillance to be undertaken. Daytime air-to-surface gunnery exercises will be conducted only when sea surface conditions do not exceed Beaufort sea state 4 (i.e., wind speed 13–18 mph (11–16 knots); wave height 1 m (3.3 ft)), the visibility is 5.6 km (3 nm) or greater, and the ceiling is 305 m (1,000 ft) or greater.

(ii) [Reserved]

(2) Pre-mission and Mission Monitoring:

(i) The aircrews of the air-to-surface gunnery missions will initiate location and surveillance of a suitable firing site immediately after exiting U.S. territorial waters (>12 nm).

(ii) Prior to each firing event, the aircraft crew will conduct a visual and/or instrument survey of the 5-nm (9.3-km) wide prospective target area to lo-

cate any marine mammals that may be present.

(A) The AC-130 gunship will conduct at least two complete orbits at a minimum safe airspeed around a prospective target area at an altitude of approximately 6,000 ft (1,829 m).

(B) If marine mammals are not detected, the AC-130 can then continue orbiting the selected target point as it climbs to the mission testing altitude.

(C) During the low altitude orbits and the climb to testing altitude, aircraft crew will scan the sea surface within the aircraft's orbit circle for the presence of marine mammals.

(D) The AC-130's optical and electronic sensors must be employed for target detection, especially at night when visibility will be poor.

(E) If any marine mammals are detected within the AC-130's orbit circle, either during initial clearance or after commencement of live firing, the mission will be immediately halted and relocated as necessary or suspended until the marine mammal has left the area. If relocated to another target area, the clearance procedures described in paragraph (c)(2)(ii) of this section must be repeated.

(F) If multiple firing events occur within the same flight, these clearance procedures must precede each event.

(iii) If no marine mammals are detected, gunnery exercises may begin with the deployment of MK-25 flares into the center of the designated 5-nm target area.

(3) Operational Mitigation Measures:

(i) Ramp-up air-to-surface gunnery firing activities by beginning with the lowest caliber monition and proceeding to the highest, which means the munitions would be fired in the following order: 25 mm; 40 mm; and 105 mm.

(ii) Air-to-surface gunnery exercises conducted after sunset must use the 105-mm training round instead of the 105-mm full up round.

(iii) One mission per year may be conducted beyond the 200 m isobaths, which is south of a line delineating the shelf break with coordinates of 29°42.73' N, 86°48.27' W and 29°12.73' N, 85°59.88' W (Figure 1-12 in Eglin AFB's LOA application). The single mission beyond the shelf break will occur during daylight hours only.

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(4) Post-mission Monitoring:

(i) 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 then initiate a spiraling descent down to an observation altitude of approximately 6,000 ft (1,829 m) elevation. Rates of descent will occur over a 3- to 5-minute time frame.

(ii) If post-detonation surveys determine that an injury or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed with the National Marine Fisheries Service and appropriate changes to avoid unauthorized take must be made, prior to conducting the next air-to-surface gunnery exercise.

§217.115 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §§216.106 and 217.117 of this chapter for activities described in §217.110(c) is required to conduct the monitoring and reporting measures specified in this section and §217.114 and any additional monitoring measures contained in the Letter of Authorization.

(b) The Holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, National Marine Fisheries Service, or designee, by letter or telephone (301-427-8401), at least 2 weeks prior to any modification to the activity identified in §217.110(c) that has the potential to result in the serious injury, mortality or Level A or Level B harassment of a marine mammal that was not identified and addressed previously.

(c) Monitoring Procedures for PSW Missions:

(1) The Holder of this Authorization must:

(i) Designate qualified on-site individual(s) to record the effects of mis-

sion launches on marine mammals that inhabit the northern Gulf of Mexico;

(ii) Have on-site individuals, approved in advance by the National Marine Fisheries Service, to conduct the mitigation, monitoring and reporting activities specified in this subpart and in the Letter of Authorization issued pursuant to §§216.106 and 217.117 of this chapter.

(iii) Conduct aerial surveys to reduce impacts on protected species. The aerial survey/monitoring team will consist of two experienced marine mammal observers, approved in advance by the Southeast Region, National Marine Fisheries Service. The aircraft will also have a data recorder who would be responsible for relaying the location, the species if possible, the direction of movement, and the number of animals sighted.

(iv) Conduct shipboard monitoring to reduce impacts to protected species. Trained observers will conduct monitoring from the highest point possible on each mission or support vessel(s). The observer on the vessel must be equipped with optical equipment with sufficient magnification (e.g., 25x power "Big-Eye" binoculars).

(2) The aerial and shipboard monitoring teams will maintain proper lines of communication to avoid communication deficiencies. The observers from the aerial team and operations vessel will have direct communication with the lead scientist aboard the operations vessel.

(3) Pre-mission Monitoring: Approximately 5 hours prior to the mission, or at daybreak, the appropriate vessel(s) would be on-site in the primary test site near the location of the earliest planned mission point. Observers on-board the vessel will assess the suitability of the test site, based on visual observation of marine mammals and sea turtles, the presence of large Sargassum mats, seabirds and jellyfish aggregations and overall environmental conditions (visibility, sea state, etc.). This information will be relayed to the lead scientist.

(4) Three Hours Prior to Mission:

(i) Approximately three hours prior to the mission launch, aerial monitoring will commence within the test