

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the FEDERAL REGISTER within 30 days of a determination.

**§ 217.67 Renewals and modifications of Letters of Authorization.**

(a) An LOA issued under §§216.106 of this chapter and 217.66 for the activity identified in §217.60(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in §217.67(c)(1)); and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in §217.67(c)(1)) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the FEDERAL REGISTER, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§216.106 of this chapter and 217.66 for the activity identified in §217.60(a) may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with the USAF regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of

the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from the USAF's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the FEDERAL REGISTER and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §217.62(c), an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the FEDERAL REGISTER within 30 days of the action.

**§§ 217.68–217.69 [Reserved]**

**Subpart H [Reserved]**

**Subpart I—Taking of Marine Mammals Incidental to Naval Explosive Ordnance Disposal School (NEODS) Training Operations**

SOURCE: 77 FR 16736, Mar. 22, 2012, unless otherwise noted.

**§ 217.80 Specified activity and specified geographical region.**

(a) Regulations in this subpart apply only to the incidental taking of those marine mammals specified in paragraph (b) of this section by the United States Air Force, Headquarters 96th Air Base Wing, Eglin Air Force Base, and those persons who engage in activities described in paragraphs (a)(1) through (7) of this section and the area

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set forth in paragraph (b) of this section.

(1) NEODS missions involving underwater detonations of small, live explosive charges adjacent to inert mines in order to disable the mine function,

(2) Live training events occurring eight times annually, averaging one event occurring every 6 to 7 weeks,

(3) Four of the training events involving 5-lb charges, and four events involving 10-lb charges,

(4) Up to 20 5-lb detonations and twenty 10-lb detonations annually, for a total of 40 detonations,

(5) The five charges occurring for each training event shall be detonated individually with a maximum separation time of 20 minutes between each detonation,

(6) Mine shapes and debris shall be recovered and removed from the Gulf of Mexico waters when training is completed, and

(7) Each training team has two days to complete their entire evolution (*i.e.*, detonation of five charges). If operations cannot be completed on the first live demolition day, the second live demolition day shall be utilized to complete the evolution.

(b) The incidental take of marine mammals at Eglin Air Force Base, within the Eglin Military Complex, including three sites in the Eglin Gulf Test and Training Range at property off Santa Rosa Island, Florida, in the northern Gulf of Mexico, under the activity identified in paragraph (a) of this section, is limited to the following species: Atlantic bottlenose dolphins (*Tursiops truncatus*).

(1) The latitude/longitude of corners of W-151 in the Eglin Gulf Test and Training Range are:

- (i) 30.24006° North, -86.808838° West
- (ii) 29.539011° North, -84.995536° West
- (iii) 28.03949° North, -85.000147° West
- (iv) 28.027598° North, -85.199395° West
- (v) 28.505304° North, -86.799043° West

(2) The latitude/longitude of corners of W-151A in the Eglin Gulf Test and Training Range are:

- (i) 30.24006° North, -86.808838° West
- (ii) 30.07499° North, -85.999327° West
- (iii) 29.179968° North, -85.996341° West
- (iv) 29.384439° North, -86.802579° West

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### § 217.81 Effective dates.

Regulations in this subpart are effective from April 23, 2012, through April 24, 2017.

### § 217.82 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to § 216.106 of this chapter and § 217.87, the U.S. Department of the Air Force, Headquarters 96th Air Base Wing, Eglin Air Force Base (U.S. Air Force), its contractors, and clients, may incidentally, but not intentionally, take marine mammals by Level B harassment, within the area described in § 217.80, provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The incidental taking of marine mammals is authorized for the species listed in § 217.80(b) and is limited to Level B harassment.

(c) The incidental taking of an average of 10 individuals annually and 50 individuals during the 5-year rule, for Atlantic bottlenose dolphins.

(d) The U.S. Air Force shall suspend NEODS training operations until it obtains additional authorization for the take of marine mammals if:

(1) A marine mammal is injured, seriously injured, or killed during training operations;

(2) The injury, serious injury, or death could be associated with the activities; and

(3) After coordination and concurrence with NMFS, the U.S. Air Force determines that supplementary measures are unlikely to reduce the risk of injury, serious injury or death to a very low level, require the U.S. Air Force to suspend its activities until an authorization for such taking has been obtained.

### § 217.83 Prohibitions.

Notwithstanding takings contemplated in § 217.80 and authorized by a Letter of Authorization issued under §§ 216.106 of this chapter and 217.87, no person in connection with the activities described in § 217.80 may:

(a) Take any marine mammal not specified in § 217.80(b);