than 200 m (656 ft) around a seismic vessel operating a large array of airguns. As a result, NMFS believes that injury or mortality is highly unlikely due to the injury zone being close to the airgun array (astern of the vessel), the establishment of conservative safety zones and shutdown requirements (see ''Mitigation Measures'') and the fact that there is a strong likelihood that baleen whales (bowhead and gray whales) would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of onset of TTS.

For pinnipeds, information indicates that for single seismic impulses, sounds would need to be higher than 190 dB rms for TTS to occur while exposure to several seismic pulses indicates that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations. This indicates to NMFS that the 190–dB safety zone provides a sufficient buffer to prevent PTS in pinnipeds.

In conclusion, NMFS believes that a marine mammal within a radius of <100 m (<328 ft) around a typical large array of operating airguns (larger than that to be used by PGS) may be exposed to a few seismic pulses with levels of >205 dB, and possibly more pulses if the marine mammal moved with the seismic vessel. However, there is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. The array to be used by PGS is of moderate size. Given the possibility that marine mammals close to an airgun array might incur TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS. Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. Relationships between TTS and PTS thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the area of seismic operations, the number of potential harassment takings is estimated to be small (less than 1.5 percent of any of the estimated population sizes) and has been mitigated to the lowest level practicable through incorporation of the measures mentioned previously in this document.

In addition, NMFS has determined that the location for seismic activity in the Beaufort Sea meets the statutory requirement for the activity to identify the ''specific geographical region'' within which it will operate. With regard to dates for the activity, PGS intends to work beginning upon receipt of the IHA (late-July) and ceasing activity by late-September.

Finally, NMFS has determined that the seismic activity by PGS in the Beaufort Sea in 2008 will not have an unmitigable adverse impact on the availability of marine mammals for subsistence uses. This determination is supported by the information in this **Federal Register** Notice, including: (1) the fall bowhead whale hunt in the Beaufort Sea will either be governed by the CAA between PGS and the AEWC and village whaling captains or by mitigation measures contained in the IHA; (2) the CAA and IHA conditions will significantly reduce impacts on subsistence hunters to ensure that there will not be an unmitigable adverse impact on subsistence uses of marine mammals; (3) because ringed seals are hunted mainly from October through June, although they are available year-round; however, the seismic survey will not occur during the primary period when these seals are typically harvested; (4) because spotted seals are hunted mainly during times outside of the project timeframe; and (5) because the project will begin in the east and move towards the west to avoid conflicts with the bearded seal hunt at Thetis Island, which usually ends in August.

Authorization

As a result of these determinations, NMFS has issued an IHA to PGS for conducting a seismic survey in the Beaufort Sea in 2008, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: July 30, 2008.

James H. Lecky,

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

[FR Doc. E8–18104 Filed 8–6–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ30

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Surf Zone Testing/ Training and Amphibious Vehicle Training and Weapons Testing

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

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting surf zone testing/training and amphibious vehicle training and weapons testing off the coast of Santa Rosa Island (SRI), has been issued to the Eglin Air Force Base (Eglin AFB) for a period of 1 year.

DATES: This authorization is effective from July 25, 2008, until July 24, 2009.

ADDRESSES: A copy of the application, IHA, and a list of references used in this document may be obtained by writing 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. A copy of the *Santa Rosa Island Mission Utilization Plan Programmatic Environmental Assessment* (SRI Mission PEA) (U.S. Air Force, 2005) 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: Shane Guan, Office of Protected Resources, NMFS, (301) 713–2289, ext 137.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and 101(a)(5)(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) 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.

An authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain 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. With respect to ''military readiness activities,'' the MMPA defines ''harassment'' as follows:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On November 21, 2005, Eglin AFB petitioned NMFS for an authorization under section 101(a)(5) of the MMPA for the taking, by harassment, of marine mammals incidental to programmatic mission activities on Eglin's SRI property, including the shoreline of the Gulf of Mexico (Gulf or GOM) to a depth of 30 feet (9.1 meters), which is also known as the surf zone. The distance from the island shoreline that corresponds to this depth varies from approximately 0.5 mile (0.8 km) at the western side of the Air Force property to 1.5 miles (2.4 km) at the eastern side, extending out into the inner continental shelf. Following notice and comment, NMFS issued an incidental harassment authorization (IHA) to Eglin AFB for a period of one year from December 11, 2006, to December 10, 2007 (71 FR 76989, December 22, 2006), with mitigation, monitoring, and reporting requirements. On October 16, 2007, NMFS received a request from Eglin AFB to renew the IHA for a period of one year.

Activities conducted in this area are addressed in the *Estuarine and Riverine Areas Programmatic Environmental Assessment* (U.S. Air Force, 2003a). The proposed action is for the 46th Test Wing Commander to establish a mission utilization plan for SRI based on historical and anticipated future use. Current and future operations are categorized as either testing or training and include: 1) Surf Zone Testing/Training; 2) Landing Craft Air Cushion (LCAC) Training and Weapons Testing; 3) Amphibious Assaults; and 4) Special Operations Training. A detailed description of the proposed activities is provided in the June 22, 2006, **Federal Register** notice of proposed IHA (71 FR 35870). There is no change of activities for the proposed renewal of the IHA, therefore, please refer to that **Federal Register** notice for detailed information of the activities.

Comments and Responses

A notice of receipt and request for public comment on the application and proposed authorization was published on March 28, 2008 (73 FR 16646). During the 30–day public comment period, NMFS received the comments from the Marine Mammal Commission (Commission).

Comment 1: The Commission recommends that NMFS issue the requested authorization, provided that it requires that operations be suspended immediately if a dead or seriously injured marine mammal is found in the vicinity of the operations and the death or injury could have occurred incidental to the proposed activities.

Response: NMFS concurs with the Commission's recommendation raised in the above comment.

Description of Marine Mammals Affected by the Activity

Marine mammal species potentially occurring within the proposed action area include the Atlantic bottlenose dolphin (*Tursiops truncatus*), the Atlantic spotted dolphin (*Stenella frontalis*), and the Florida manatee (*Trichechus manatus latirostris*). General information on Florida manatees can be found in the *Florida Manatee Recovery Plan* (U.S. Fish and Wildlife Service, 2001).

Atlantic bottlenose dolphins are distributed throughout the continental shelf, coastal, and bay-sound waters of the northern GOM and along the U.S. mid-Atlantic coast. The identification of a biologically-meaningful ''stock'' of bottlenose dolphins in the GOM is complicated by the high degree of behavioral variability exhibited by this species (Wells, 2003). Currently, bottlenose dolphins in the U.S. GOM are managed as 38 different stocks: one northern GOM oceanic stock, one northern GOM continental shelf stock, three northern GOM costal stocks (western, northern, and eastern Gulf), and 33 bay, sound, and estuarine stocks (Waring *et al.*, 2007). The identification of these stocks is based on descriptions of relatively discrete dolphin communities in these waters. A community includes resident dolphins that regularly share large portions of their ranges, exhibit similar distinct genetic profiles, and interact with each other to a much greater extent than with dolphins in adjacent waters. Bottlenose dolphin communities do not constitute closed demographic populations, as individuals from adjacent communities are known to interbreed. Nevertheless, the geographic nature of these areas and long-term stability of residency patterns suggest that many of these communities exist as functioning units of their ecosystems.

Within the proposed action area, at least three Atlantic bottlenose dolphin stocks are expected to occur: the northern GOM northern coastal, the Pensacola Bay/East Bay stock, and the Choctawhatchee Bay stock (Waring *et al.*, 2007). The best population size estimates available for these stocks are more than 13 years old; therefore, the current population size for each stock is considered unknown (Wade and Angliss, 1997). These data are insufficient to determine population trends for all of the GOM bay, sound and estuary bottlenose dolphin communities. The relatively high number of bottlenose dolphin deaths that occurred during mortality events (mostly from stranding) since 1990 raises a concern that some of the stocks are stressed. Human-caused mortality and serious injury for each of these stocks is not known, but considering the evidence from stranding data, the total human-caused mortality and serious injury exceeds 10 percent of the total known potential biological removal (PBR) or pervious PBR, and, therefore, it is probably not insignificant. For these reasons, each of these stocks is listed as a strategic stock under the MMPA.

The Atlantic spotted dolphin is endemic to the Atlantic Ocean in temperate to tropical waters (Perrin *et al.*, 1994). In the GOM, this species occurs primarily from continental shelf waters 10 - 200 m (32.8 - 656.2 ft) deep to slope waters <500 m (1,640 ft) deep (Fulling *et al.*, 2003). Atlantic spotted dolphins were seen in all seasons during GulfCet aerial surveys of the northern GOM from 1992 to 1998 (Hansen *et al.*, 1996; Mullin and Hoggard, 2003). It has been suggested that this species may move inshore

seasonally during spring, but data supporting this hypothesis are limited (Fritts *et al.*, 1983). The best available abundance estimate for the northern GOM stock of the Atlantic spotted dolphin is 30,947 (NMFS, 2005).

More detailed information on Atlantic bottlenose and spotted dolphins can be found in the NMFS Stock Assessment Reports at: *http://www.nefsc.noaa.gov/nefsc/publications/tm/tm201/tm201.pdf*.

Potential Impacts to Marine Mammals

Potential impacts to marine mammals may occur due to underwater noise and direct physical impacts (DPI). Noise is produced by underwater detonations in the surf zone and by the operation of amphibious vehicles. DPI could result from collisions with amphibious vehicles and from ordnance live fire. However, with implementation of the mitigation actions proposed later in this document, the potential for impacts to marine mammals are anticipated to be de minimus (U.S. Air Force, 2005).

Explosive criteria and thresholds for assessing impacts of explosions on marine mammals are summarized here in Table 1 and were discussed in detail in NMFS's notice of issuance of an IHA for Eglin's Precision Strike Weapon testing activity (70 FR 48675, August 19, 2005). Please refer to that document for background information.

Estimation of Take and Impact

Surf Zone Detonation

Surf zone detonation noise impacts are considered within two categories: overpressure and acoustics. Underwater explosive detonations produce a wave of pressure in the water column. This pressure wave potentially has lethal and injurious impacts, depending on the proximity to the source detonation. Humans and animals receive the acoustic signature of noise as sound. Beyond the physical impacts, acoustics may cause annoyance and behavior modifications (Goertner, 1982).

The impacts on marine mammals from underwater detonations were discussed by NMFS in detail in its notice of receipt of application for an IHA for Eglin's Air-to-Surface Gunnery mission in the Gulf (71 FR 3474, January 23, 2006) and is not repeated here. Please refer to that document for this background information.

A maximum of one surf zone testing/training mission would be completed per year. The impact areas of the proposed action are derived from mathematical calculations and models that predict the distances to which threshold noise levels would travel. The equations for the models consider the amount of net explosive, the properties of detonations under water, and environmental factors such as depth of the explosion, overall water depth, water temperature, and bottom type.

The end result of the analysis is an area known as the Zone of Influence (ZOI). A ZOI is based on an outward radial distance from the point of detonation, extending to the limit of a particular threshold level in a 360–degree area. Thus, there are separate ZOIs for mortality, injury (hearing-related injury and slight, non-fatal lung injury), and harassment (temporary threshold shift, or TTS, and sub-TTS). Given the radius, and assuming noise spreads outward in a spherical manner, the entire area ensonified (i.e., exposed to the specific noise level being analyzed) is estimated.

The radius of each threshold is shown for each shallow water surf zone mine clearing system in Table 1. The radius is assumed to extend from the point of detonation in all directions, allowing calculation of the affected area.

The number of takes is estimated by applying marine mammal density to the ZOI (area) for each detonation type. Species density for most cetaceans is based on adjusted GulfCet II aerial survey data, which is shown in Table 2. GulfCet II data were conservatively adjusted upward to approximately two standard deviations to obtain 99 percent confidence, and a submergence correction factor was applied to account for the presence of submerged, uncounted animals. However, the calculation is an overestimate, since up to half of the ZOI would be over land and very shallow surf, which is not considered marine mammal habitat.

TABLE 1. ZONES OF IMPACT FOR UNDERWATER EXPLOSIVE FROM FOUR MINE CLEARING SYSTEMS (ACOUSTIC UNITS ARE RE 1 MICROPA^2)

Criteria	Threshold	ZOI Radius (m)			
		SABRE 232 lb NEW	MK–5 MCS 1,750 lb NEW	DET 130 lb	MK–82 ARRAY 1,372 lb
Level B Behavior	176 dB 1/3 Octave SEL*	1,440	2,299	1,252	2,207
Level B TTS Dual Criterion	182 dB 1/3 Octave SEL	961	1,658	796	1,544
Level A PTS	205 dB SEL	200	478	155	436
Level B Dual Criteria	23 psi	857	1,788	761	1,557
Level A Injury	13 psi-msec	60	100	58	86
Mortality	30.5 psi-msec	45	68	42	60

*SEL - Sound energy level

TABLE 2. CETACEAN DENSITIES FOR GULF OF MEXICO SHELF REGION

Species	Individuals/km^2	Dive profile - % at surface	Adjusted density (Individuals/km^2)*
Bottlenose dolphin	0.148	30	0.810
Atlantic spotted dolphin	0.089	30	0.677
Bottlenose or Atlantic dolphin	0.007	30	0.053
Total	0.244		1.54

* Adjusted for undetected submerged animals to approximately two standard deviations.

Table 3 lists the noise-related dolphin take estimates resulting from surf zone detonations that are the subject of this proposed IHA. The estimates in each category are based on different types of explosives at different ranges and therefore, each category is associated with a degree of take. The take numbers represent the combined total of Atlantic bottlenose and Atlantic spotted dolphins, and do not consider any mitigation measures. The use of combined Atlantic bottlenose and Atlantic spotted dolphin numbers is because of the difficulty in distinguish them from each other in the field. Implementation of mitigation measures discussed below would significantly decrease the number of takes, although a quantitative assessment of take reduction is not possible. Discussion of the amount of take reduction is provided below.

TABLE 3. TAKE ESTIMATES FROM NOISE IMPACTS TO DOLPHINS (ACOUSTIC UNITS ARE RE 1 MICROPA^2)

Criteria	Threshold	SABRE	MK–5 MCS	DET	MK–82 Array	Total Takes*
Sub-TTS (behavioral level)	176 dB 1/3 Octave SEL	10	26	8	24	68
Level B Harassment TTS (dual criterion)	182 dB 1/3 Octave SEL	5	13	3	12	33
Level B TTS (dual criterion)	23 psi	4	15	3	12	34
Level A PTS	205 dB Total SEL	0	1	0	1	2
Level A Non-lethal Injury	13 psi-msec	0	0	0	0	0
Mortality	30.5 psi-msec	0	0	0	0	0

*Estimated exposure with no mitigation measures in place

Noise from LCAC

Noise resulting from LCAC operations was considered under a transit mode of operation. The LCAC uses rotary air screw technology to power the craft over the water, therefore, noise from the engine is not emitted directly into the water. The Navy's acoustic in-water noise characterization studies show the noise emitted from the LCAC into the water is very similar to that of the MH–53 helicopter operating at low altitudes. Based on the Air Force's Excess Sound Attenuation Model for the LCAC's engines under ground runup condition, the data estimate that the maximum noise level (98 dBA) is at a point 45 degrees from the bow of the craft at a distance of 61 m (200 ft) in air. Maximum noise levels fall below 90 dBA at a point less than 122 meters (400 ft) from the craft in air (U.S. Air Force, 1999).

Due to the large difference of acoustic impedance between air and water, much of the acoustic energy would be reflected at the surface. Therefore, the effects of noise from LCAC to marine mammals would be negligible.

Collision with Vessels

During the time that amphibious vehicles are operating in (or, in the case of LCACs, just above) the water, encounters with marine mammals are possible. A slight possibility exists that such encounters could result in a vessel physically striking an animal. However, this scenario is considered very unlikely. Dolphins are extremely mobile and have keen hearing and would likely leave the vicinity of any vehicle traffic. The largest vehicles that would be moving are LCACs, and their beam measurement can be used for conservative impact analyses. The operation which potentially uses the largest number of LCACs is Amphibious Ready Group/Marine Expeditionary Unit (ARG/MEU) training. Based on analysis in the *ARG/MEU Readiness Training Environmental Assessment* (U.S. Air Force, 2003b), LCAC activities (over 10 days) could potentially impact 22.25 square miles of the total water surface area. The estimated number of bottlenose dolphins in this area is 6.9, with an approximately equal number of Atlantic spotted dolphins. These species would easily avoid collision because the LCACs produce noise that would be detected some distance away, and therefore would be avoided as any other boat in the Gulf. In addition, Amphibious Assault Vehicles (AAVs) move very slowly and could be easily avoided. The potential for amphibious craft colliding with marine mammals and causing injury or death is therefore considered remote.

Live Fire Operations

Live fire operations with munitions directed towards the Gulf have the potential to impact marine mammals (primarily bottlenose and Atlantic spotted dolphins).

A maximum of two live fire operations would be conducted in a year, and are associated with expanded Special Operations training on SRI. Small caliber weapons between 5.56 mm and .50 caliber with low-range munitions would be allowed only within designated live fire areas. The average range of the munitions is approximately 1 km (0.54 nm). If a given live fire area was 1 km (0.54 nm) wide, then approximately 1.5 dolphins could be vulnerable to a munitions strike. However, even the largest live fire area on SRI is considerably less than 1 km (0.54 nm) wide. If live fire is conservatively estimated to originate from a section of beach 0.2 km (0.11 nm) wide, only 0.3 dolphins would be within the area of potential DPI (using Table 2 density estimates). Finally, the mitigation measures discussed below would further reduce the likelihood of direct impacts to marine mammals due to live fire operations.

Given the infrequency of the surf zone detonation (maximum of once per year) and the amphibious vehicle and weapon testing (maximum of twice per year), NMFS believes there is no potential for long-term displacement or behavioral impacts of marine mammals within the proposed action area.

Mitigation Measures

Eglin AFB will employ a number of mitigation measures in an effort to substantially decrease the number of animals potentially affected. Visual monitoring of the operational area can be a very effective means of detecting the presence of marine mammals. This is particularly true of the species most likely to be present (bottlenose and Atlantic spotted dolphins) due to their tendency to occur in groups, their relatively short dive time, and their relatively high level of surface activity. In addition, the water clarity in the northeastern GOM is typically very high. It is often possible to view the entire water column in the water depth that defines the action area (30 feet or 9.1 m).

For the surf zone testing/training, missions will only be conducted under daylight conditions of suitable visibility and sea state of number three or less. Prior to the mission, a trained observer aboard a helicopter will survey (visually monitor) the test area, which is a very effective method for detecting sea turtles and cetaceans. In addition, shipboard

personnel will provide supplemental observations when available. The size of the area to be surveyed will depend on the specific test system, but it will correspond to the ZOI for Level B behavioral harassment (176 dB 1/3 octave SEL) listed in Table 1. The survey will be conducted approximately 250 feet (76 m) above the sea surface to allow observers to scan a large distance. If a marine mammal is sighted within the ZOI, the mission will be suspended until the animal is clear of this area. Surf zone testing will be conducted between 1 November and 1 March whenever possible.

Navy personnel will only conduct live fire testing with sea surface conditions of sea state 3 or less on the Beaufort scale, which is when there is about 33 - 50 percent of surface whitecaps with 0.6 - 0.9 m (2 - 3 ft) waves. During daytime missions, small boats will be used to survey for marine mammals in the proposed action area before and after the operations. If a marine mammal is sighted within the target or closely adjacent areas, the mission will be suspended until the area is clear. No mitigation for marine mammals would be feasible for nighttime missions, however, given the remoteness of impact, the potential that a marine mammal is injured or killed is unlikely.

Monitoring and Reporting

The Eglin AFB will train personnel to conduct aerial surveys for protected species. The aerial survey/monitoring team will consist of an observer and a pilot familiar with flying transect patterns. A helicopter provides a preferable viewing platform for detection of protected marine species. The aerial observer must be experienced in marine mammal surveying and be familiar with species that may occur in the area. The observer will be responsible for relaying the location (latitude and longitude), the species if known, and the number of animals sighted. The aerial team will also identify large schools of fish, jellyfish aggregations, and any large accumulation of Sargassum that could potentially drift into the ZOI. Standard line-transect aerial surveying methods will be used. Observed marine mammals will be identified to species or the lowest possible taxonomic level possible.

The aerial and (potential) shipboard monitoring teams will have proper lines of communication to avoid communication deficiencies. Observers will have direct communication via radio with the lead scientist, who will review the range conditions and recommend a Go/No-Go decision to the Officer in Tactical Command, who makes the final Go/No-Go decision.

Specific stepwise mitigation procedures for SRI surf zone missions are outlined below. All ZOIs (mortality, injury, TTS) would be monitored.

Pre-mission Monitoring:

The purposes of pre-mission monitoring are to (1) evaluate the test site for environmental suitability of the mission (e.g., relatively low numbers of marine mammals, etc.) and (2) verify that the ZOI is free of visually detectable marine mammals and other living marine resources. On the morning of the test, the lead scientist will confirm that the test site can support the mission and that the weather is adequate to support observations. (1) One Hour Prior to Mission

Approximately one hour prior to the mission, or at daybreak, the appropriate vessel(s) will be on-site near the location of the earliest planned mission point. Personnel onboard the vessel will assess the suitability of the test site, based on visual observation of marine mammals. This information will be relayed to the Lead Scientist.

(2) Fifteen Minutes Prior to Mission

Aerial monitoring will commence at the test site 15 minutes prior to the start of the mission. The entire ZOI will be surveyed by flying transects through the area. Shipboard personnel will also monitor the area as available. All marine mammal sightings will be reported to the Lead Scientist, who will enter all pertinent data into a sighting database.

(3) Go/No-Go Decision Process

The Lead Scientist will record sightings and bearing for all protected species detected. This will depict animal sightings relative to the mission area. The Lead Scientist will have the authority to declare the range fouled and request a hold until monitoring indicates that the ZOI is and will remain clear of detectable animals.

The mission will be postponed if any marine mammal is visually detected within the ZOI for Level B behavioral harassment. The delay will continue until the marine mammal is confirmed to be outside the ZOI for Level B behavioral harassment on its own.

In the event of a postponement, pre-mission monitoring will continue as long as weather and daylight hours allow. Aerial monitoring is limited by fuel and the on-station time of the monitoring aircraft.

Post-mission monitoring:

Post-mission monitoring is designed to determine the effectiveness of pre-mission mitigation by reporting any sightings of dead or injured marine mammals. Post-detonation monitoring will commence immediately following each detonation and continue for 15 minutes. The helicopter will resume transects in the area of the detonation, concentrating on the area down current of the test site.

The monitoring team will attempt to document any marine mammals that were found dead or injured after the detonation, and, if practicable, recover and examine any dead animals. The species, number, location, and behavior of any animals observed by the observation teams will be documented and reported to the Lead Scientist.

Post-mission monitoring activities will also include coordination with marine animal stranding networks. The NMFS maintains stranding networks along coasts to collect and circulate information about marine mammal standings.

In addition, NMFS requires Eglin to monitor the target area for impacts to marine mammals and to report on their activities. NMFS' Biological Opinion on this action has recommended certain monitoring measures to protect marine life. The following requirements are listed under the IHA:

(1) Eglin shall continue to implement a marine species observer-training program in coordination with NMFS. This program primarily provides expertise to Eglin's testing and training community in the identification of marine mammals and other protected marine species during surface and aerial mission activities in the GOM. Additionally, personnel involved in the surf zone and amphibious vehicle and weapon testing/training will participate in the proposed species observation training. Observers will receive training in protected species survey and identification techniques through a NMFS-approved training program.

(2) Eglin will track its use of the surf zone and amphibious vehicle and weapon testing/training for test firing missions and protected resources observations, through the use of an observer training sheet.

(3) A summary annual report of marine mammal observations and surf zone and amphibious vehicle and weapon testing/training activities shall be submitted to the NMFS Southeast Regional Office (SERO) and the Headquarters Office of Protected Resources by January 31 of each year.

(4) If a dead or injuried marine mammal is observed before or after testing, a report must be made to the NMFS by the following business day.

(5) 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.

ESA

On March 18, 2005, the U.S. Air Force (USAF), Eglin AFB, requested initiation of formal consultation on all potential environmental impacts to ESA-listed species from all Eglin AFB mission activities on SRI and within the surf zone near SRI. These missions include the surf zone detonation and amphibious vehicle and weapon testing/training that are the subject of this proposed IHA. On October 12, 2005, NMFS issued a Biological Opinion, concluding that the surf zone and amphibious vehicle and weapon testing/training 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. Eglin AFB also consulted with the FWS for the SRI programmatic program regarding ESA-listed species and critical habitat under FWS jurisdiction. On December 1, 2005, FWS issued a Biological Opinion and concluded that the proposed mission activities are not likely to adversely affect these ESA-listed species based on Eglin's commitment to incorporate measures to avoid and minimize impacts to these species.

NEPA

In March, 2005, the USAF prepared the *Santa Rosa Island Mission Utilization Plan Programmatic Environmental Assessment* (SRI Mission PEA). NMFS reviewed this PEA and determined that it satisfies, in large part, the standards under the Council on Environmental Quality's regulations and NOAA Administrative Order 216–6 for implementing the procedural provisions of the NEPA (40 CFR sec. 1508.3). On May 9, 2007, and April 4, 2008, Eglin AFB submitted additional information for consideration in re-assessing the cumulative impacts associated with the proposed issuance of this IHA. However, these analyses did not address the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. Therefore, NMFS prepared its own supplemental EA to update the cumulative impacts analysis. A Finding of Non-Significant Impact statement is issued on July 24, 2008.

Determinations

NMFS has determined that the surf zone and amphibious vehicle and weapon testing/training that are proposed by Eglin AFB off the coast of SRI, is unlikely to result in the mortality or injury of marine mammals (see Tables 2 and 3) and, would result in, at worst, a temporary modification in behavior by marine mammals. While behavioral modifications may be made by these species as a result of the surf zone detonation and amphibious vehicle training activities, any behavioral change is expected to have a negligible impact on the affected species or stocks. As there is no subsistence use of these marine mammal species in the action area, any behavioral change will have no impact on subsistence use. Also, given the infrequency of the testing/training missions (maximum of once per year for surf zone detonation and maximum of twice per year for amphibious assault training involving live fire), there is no potential for long-term displacement or long-lasting behavioral impacts of marine mammals within the proposed action area. In addition, the potential for temporary hearing impairment is very low and would be mitigated to the lowest level practicable through the incorporation of the mitigation measures mentioned in this document.

Authorization

NMFS has issued an IHA, pursuant to section 101(a)(5)(D), to Eglin AFB for conducting surf zone and amphibious vehicle and weapon testing/training off the coast of SRI in the northern GOM provided the previously mentioned mitigation, monitoring, and reporting requirements are implemented.

Dated: July 24, 2008.

James H. Lecky,

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

[FR Doc. E8–18136 Filed 8–6–08; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2008–0035]

Clarification of Patent Regulations Currently in Effect, and Revision in Applicability Date of Provisions Relating to Patent Applications Containing Patentably Indistinct Claims

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) is publishing this notice to clarify which patent-related regulations are currently in effect. The USPTO is identifying the applicability date of those regulatory provisions relating to applications containing patentably indistinct claims which are enjoined in *Tafas* v. *Dudas*, 530 F. Supp. 2d 786 (E.D. Va. 2008). Should the injunction be lifted, those regulations will apply only to applications filed on or after any new effective date that would be published by the USPTO in the future.

DATES: *Effective Date:* August 7, 2008.

FOR FURTHER INFORMATION CONTACT: The Office of Patent Legal Administration, by telephone at (571) 272–7704, or by e-mail at *PatentPractice@uspto.gov.*

SUPPLEMENTARY INFORMATION: In 2007, the United States Patent and Trademark Office (USPTO) published a final rule revising the rules of practice in patent cases in title 37 of the Code of Federal Regulations (CFR) relating to continuing applications and requests for continued examination practices, and for the examination of claims in patent applications. *See Changes to Practice for Continued Examination Filings, Patent Applications Containing Patentably Indistinct Claims, and Examination of Claims in Patent Applications,* 72 FR 46716 (Aug. 21, 2007), 1322 *Off. Gaz. Pat. Office* 76 (Sept. 11, 2007) (Claims and Continuations Final Rule).

The Claims and Continuations Final Rule amended existing 37 CFR 1.17(f), 1.26(a) and (b), 1.52(d)(2), 1.53(b) and (c)(4), 1.75(b) and (c), 1.76(b)(5), 1.78, 1.104(a)(1) and (b), 1.110, 1.114(a) and (d), 1.136(a)(1), 1.142(a), 1.145, and 1.495(g), and added new 37 CFR 1.105(a)(1)(ix), 1.114(f), (g), and (h), 1.117, 1.142(c), 1.265, and 1.704(c)(11).

With respect to 37 CFR 1.704(c)(11), the Claims and Continuations Final Rule redesignated existing 37 CFR 1.704(c)(11) as 37 CFR 1.704(c)(12) and added a new 37 CFR 1.704(c)(11).

The changes in the Claims and Continuations Final Rule were permanently enjoined by the district court in *Tafas* v. *Dudas*, 530 F. Supp. 2d 786 (E.D. Va. 2008). That decision is currently on appeal to the U.S. Court of Appeals for the Federal Circuit.

The provisions of 37 CFR 1.17(f), 1.26(a) and (b), 1.52(d)(2), 1.53(b) and (c)(4), 1.75(b) and (c), 1.76(b)(5), 1.78, 1.104(a)(1) and (b), 1.110, 1.114(a) and (d), 1.136(a)(1), 1.142(a), 1.145, 1.495(g), and 1.704(c)(11) in effect as of August 7, 2008 are the provisions of 37 CFR 1.17(f), 1.26(a) and (b), 1.52(d)(2), 1.53(b) and (c)(4), 1.75(b) and (c), 1.76(b)(5), 1.78, 1.104(a)(1) and (b), 1.110, 1.114(a) and (d), 1.136(a)(1), 1.142(a), 1.145, 1.495(g), and 1.704(c)(11) in effect on October 31, 2007, and may be found in the July 2007