UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

Finding of No Significant Impact for an Environmental Assessment on the Issuance of Letters of Authorization to Take Marine Mammals, by Level B Harassment, Incidental to Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida

National Marine Fisheries Service

BACKGROUND

The National Marine Fisheries Service (NMFS) received an application from the U.S. Department of the Air Force, Headquarters 96th Air Base Wing (U.S. Air Force), Eglin Air Force Base (Eglin AFB) for the promulgation of regulations and the issuance of Letters of Authorization (LOAs) for Naval Explosive Ordnance Disposal School (NEODS) training operations at Eglin Air Force Base (Eglin AFB), Florida. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS must authorize the incidental taking by harassment of affected marine mammal species or stocks if it determines that the taking will have a negligible impact on the affected species or stocks of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks of marine mammals intended for subsistence uses. Any authorization for such activity shall set the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings. NMFS has satisfied those requirements for these authorizations for the take of marine mammals, by Level B harassment only, incidental to the Eglin AFB's activity and NMFS's preferred alternative for the NEODS training operations at Eglin AFB, Florida.

NMFS proposes to issue the authorizations for the takes of Atlantic bottlenose dolphins (*Tursiops truncatus*), by Level B harassment, pursuant to the U.S. Air Force's use of explosives during NEODS training operations at Eglin AFB, Florida, in the northern Gulf of Mexico (GOM) and NMFS has analyzed that action and NMFS's promulgation of regulations and issuance of LOAs in a supporting Environmental Assessment (EA) titled *Environmental Assessment on the Promulgation of Regulations and the Issuance of Letters of Authorization to Take Marine Mammals, By Level B Harassment, Incidental to Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida* prepared for the subject action. The EA evaluates three alternatives:

(1) promulgation of a five-year rule and issuance of one year LOAs authorizing incidental take of Atlantic bottlenose dolphins during NEODS training operations at Eglin AFB (preferred alternative);
(2) no action alternative (status quo); and
(3) promulgation of a five-year rule and issuance of one-year LOAs with an additional aerial monitoring requirement.

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In July, 2005, NMFS issued an Environmental Assessment (EA) and an associated Finding of No Significant Impact (FONSI) specific to the NEODS training operations within the Eglin Gulf Test and Training Range (EGTTR), Florida. These documents contain a detailed description of the proposed action and reasonable alternatives, the affected physical and biological environment, and appropriate mitigation and monitoring measures as well as reporting. However, these documents do not adequately address impacts to Essential Fish Habitat (EFH) and other activities occurring within the action area that may have individually insignificant but cumulatively significant impacts to the human environment. Therefore, a supplemental EA was prepared in 2007 to address these issues despite that the training operation protocol has not changed. In March, 2012, NMFS issued a new *Environmental Assessment on the Promulgation of Regulations and the Issuance of Letters of Authorization to Take Marine Mammals, By Level B Harassment, Incidental to Naval Explosive Ordnance Disposal School Training Operations at Eglin Air Force Base, Florida* specific to the U.S. Air Force's NEODS training operations at Eglin AFB and NMFS's promulgation of regulations and issuance of annual LOAs under the MMPA.

National Environmental Policy Act (NEPA) regulations at 40 CFR 1508.27 and NOAA Administrative Order 216-6 require NMFS to consider both context and intensity when determining whether an action will have a significant impact on the quality of the human environment. Context means that the impacts must be analyzed in several contexts, such as society as a whole (human, national), the affected regions and interests, and the locality.

SUMMARY OF THE ACTION

As a summary of the analyses under NEPA and the MMPA, the proposed NEODS training operations is limited in duration, will likely result in some minor avoidance behavior (Level B harassment) by bottlenose dolphins, and the monitoring and mitigation measures assessed in the EA that would be required as part of the IHA will eliminate any potential for injury (Level A harassment), serious injury, or mortality of marine mammals. The use of explosives during the NEODS training operations will have no more than a negligible impact on the affected marine mammal species or stocks and is not likely to jeopardize the continued existence of any endangered or threatened species listed under the Endangered Species Act (ESA).

NMFS NEPA analysis also takes into account mitigation and monitoring measures that NMFS considered in the EA, incorporated into the IHA (preferred alternative) to ensure the least practicable adverse impact on the affected species and stocks of marine mammals. The monitoring and mitigation measures are:

(1) the time of detonation will be limited to daylight hours (i.e., an hour after sunrise and an hour before sunset);

(2) NEODS missions would be delayed if the Beaufort sea state is greater than scale number three (i.e., if whitecaps cover more than 50 percent of the surface or waves are greater than 0.9 m (3 ft) to ensure visibility of marine mammals to observers);

(3) time delays longer than 10 minutes will not be used and initiation of the timer device will not start until the ZOI is clear of marine mammals for 30 minutes;
(4) observers on boats and/or helicopters will conduct monitoring pre-mission throughout the mission, and post-mission for the presence of marine mammals and other protected species indicators;(5) NEODS missions would be delayed if marine mammals and/or if large concentrations of protected species indicators are observed within the ZOI;
(6) after a delay due to the aforementioned wildlife being detected in the ZOI, the mission would not be continued until the wildlife in question is confirmed to be outside the ZOI, the animal(s) are moving away from the mission area, and the animal(s) does not re-enter the ZOI for 30 minutes; and
(7) post-mission monitoring would be conducted to report any injured, seriously injured or dead marine mammals.

Therefore, based on the best scientific evidence available, specified methods of taking, and implementing the monitoring and mitigation measures to achieve the least practicable adverse impact, NMFS believes that the NEODS training operations will not result in injury (Level A harassment), serious injury, or mortality of bottlenose dolphins. Eglin AFB will count the marine mammals present and the number disturbed during NEODS training operations, as well as make behavioral observations, and submit a report to NMFS upon completion of the project.

EA ANALYSIS

The Federal action described in the EA includes the promulgation of regulations, issuance of LOAs, and the conducting of NEODS training operations at Eglin AFB from March, 2012 to March, 2017. The EA contains analysis of the impact of issuing LOAs and conducting NEODS training operations, such as those proposed by Eglin AFB and NMFS, on various marine resources and human activities.

For the purposes of this finding, NMFS relied on the information and evidence provided in the U.S. Air Force's MMPA application and Biological Assessment (BA) to analyze the potential significance of the impact of NEODS training operations on marine mammals, sea turtles, fish, wildlife resources, and their habitats. The application and BA analyzed the potential for significant impacts of these activities on environmental resources (specifically marine mammals) and identified monitoring and mitigation measures to avoid and/or minimize those impacts.

ALTERNATIVES SELECTION

This FONSI specifically evaluates the significance of the U.S. Air Force's and NMFS's preferred alternative (NMFS to promulgate a five-year rule and issue one-year LOAs authorizing incidental take of Atlantic bottlenose dolphins during U.S. Air Force's NEODS training operations at Eglin AFB) as described and presented in the EA to NMFS as the specified activity for which the U.S. Air Force requested the promulgation of regulations and LOAs in the application.

SIGNIFICANCE REVIEW

National Oceanic and Atmospheric Administration Administrative Order (NAO) 216-6 (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality (CEQ) regulations at 40 C.F.R. 1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

1) *Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or Essential Fish Habitat (EFH) as defined under the Magnuson-Stevens Act and identified in FMPs?*

Response: NMFS recognizes that this action will have some negative impacts and some beneficial impacts. The local area that will be subject to blasting is small relative to the entire Florida coast, and it is subject to human activity. Short-term exposure to the sound and pressure waves created by the demolition of explosive charges will not have significant impacts on ocean and coastal habitats that might constitute EFH or marine mammal habitats. The addition of the noise produced by the NEODS training operations is comparatively minor in terms of total additional acoustic energy and brief, in terms of the infrequent duration of the proposed effort.

NMFS does not anticipate that the proposed activity would cause substantial damage to the ocean and coastal habitats and/or EFH. Underwater detonations would disturb only a small area of the sea floor. Hard bottom habitats and artificial reefs would be avoided and mines would only be placed on sandy bottoms. In addition, there will be visual monitoring for the area during time of detonation. Gulf sturgeon (*Acipenser oxyrinchus desotoi*) critical habitat extends from the mean high-water line to one mile offshore. All NEODS training would occur one to three nautical miles offshore of Test Site A-15, A-10, or A-3 for training; therefore, critical habitat for this species would not be physically affected.

While the proposed NEODS testing would occasionally introduce small quantities of chemical compounds into the marine water, these would rapidly disperse and are insignificant considering the size and fluidity of the GOM. In addition, testing sites are alternated, minimizing any cumulative effects from multiple detonations.

On July 27, 2007, Eglin AFB initiated consultation with NMFS Southeast Region Office (SERO on the effects to EFH from NEODS missions. On August 6, 2007, NMFS SERO concurred with Eglin AFB's 2004 Biological Assessment and NMFS 2005 EA that NEODS training activities are not likely to adversely affect EFH within the action area and determined that NMFS does not have any conservation measures to offer with respect to EFH. Based on the concurrence of the SERO and the mitigation measures

listed above, NMFS OPR has determined that EFH and coastal habitats are not likely to be adversely affected from NEODS training activities.

Overall, the impacts from explosive detonations will be localized and instantaneous. Impacts to the habitats of fish species are not expected to be detrimental. NMFS and the U.S. Air Force expect the effects of the explosives used during NEODS training operations to the coastal habitat and/or EFH to not be significant.

2) *Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?*

Response: NMFS and the U.S. Air Force do not expect the proposed action of promulgation of regulations, issuance of LOAs, and the NEODS training operations to have a substantial impact on biodiversity, ecosystem function, or loss or modification of habitat for the populations of marine mammals in the affected area (the northern GOM). The impacts of the NEODS training operations on marine mammals are specifically related to the acoustic activities, and these are expected to be temporary in nature, infrequent, and not result in substantial impact to marine mammals or their role in the ecosystem. The regulations and LOAs anticipate, and authorize, Level B (behavioral) harassment only, in the form of temporary behavioral disturbance, of Atlantic bottlenose dolphins. Neither injury (Level A harassment), serious injury, nor mortality of marine mammals is anticipated or authorized during NEODS training operations, and the Level B harassment is not expected to affect biodiversity or ecosystem function.

Ordnances will be detonated in approximately 60 ft of water on a sandy bottom habitat. If benthic fauna are present, they could be disturbed, displaced, or killed from the explosion. However, the charges are small (2.3 kg [5 lb] and 4.6 kg [10 lb] weights) and the operations are rotated between three sites within the EGTTR to minimize impacts to one location.

The potential for the NMFS action and U.S. Air Force's NEODS training operations to affect other ecosystem features and biodiversity components are analyzed in the EA. NMFS's evaluation indicated that any direct or indirect effects of the actions would not result in a substantial impact on biodiversity or ecosystem function. In particular, the potential for effects to these resources are considered here with regard to the potential effects on diversity or functions that may serve as essential components of marine mammal habitats. Most effects are considered to be short-term, infrequent, and unlikely to affect normal ecosystem function or predator/prey relationships; therefore, NMFS believes that there will not be a substantial impact on marine life biodiversity or on normal function of the nearshore or offshore ecosystems of the northern GOM.

3) *Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?*

Response: NMFS does not expect the proposed action (i.e., promulgation of regulations, issuance of LOAs, and NEODS training operations) to have a substantial adverse impact on public health or safety. The distance from the coastal shoreline, depth of explosions, and use of skilled personnel during training operations effectively eliminates the possibility of any humans being inadvertently exposed to explosions and damaging sound levels that might have adverse effects. The applicant would separately be responsible for ensuring that all appropriate measures associated with the NEODS training operations, including the use of explosives, are adhered to.

4) *Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?*

Response: NMFS has determined that the proposed NEODS training operations may result and the LOAs would authorize some Level B harassment (in the form of short-term and localized changes in behavior) of Atlantic bottlenose dolphins. No injury (Level A harassment), serious injury, or mortality of marine mammals is anticipated or authorized. Behavioral effects may include temporary and short-term displacement of cetaceans from with certain ensonified zones from the test sites from explosive detonations in the action area. The monitoring and mitigation measures required for the activity are designed to minimize the exposure of marine mammals to sound. The monitoring and mitigation measures that are planned are described in the "Summary of Action" section above.

Taking these measures into account, effects on marine mammals from the preferred alternative are expected to be limited to avoidance of the area around the NEODS training operations and short-term behavioral changes, falling within the MMPA definition of "Level B harassment." No injury (Level A harassment), serious injury, or mortality is anticipated, nor is it authorized. The incidental take is anticipated to have a negligible impact on the species or stock.

The U.S. Air Force requested informal section 7 consultations with NMFS SERO on May 9, 2010 and NMFS SERO concurred that the action may affect, but is not likely to adversely affect, ESA-listed species or designated critical habitat under NMFS jurisdiction in a letter to the U.S. Air Force dated July 28, 2010.

5) *Are significant social or economic impacts interrelated with natural or physical environmental effects?*

Response: The human environment around the project site will not be significantly affected. Based on the EA, there are no significant social or economic impacts anticipated that are interrelated with natural or physical environmental effects of promulgating regulations and issuing the LOAs as well as the NEODS training operations at Eglin AFB. Socioeconomic impacts associated with the NEODS training operations itself and effects on resources such as transportation, recreational resources, and military navigation were considered and evaluated, as appropriate, as part of the NMFS EA. The

primary impacts of the natural and physical environment are expected to be acoustic and temporary in nature, and not interrelated with significant social or economic impacts.

Numerous fisheries and commercial vessels operate within the GOM as well as recreational boaters. However, the explosions take place within the EGTTR, which can be already limited to recreational and commercial boating. Therefore, any natural or physical environmental effects (e.g., acoustical harassment, disturbance to the sea floor) caused by NEODS training operations are not expected to result in any significant social or economic impacts (i.e., disruption to any fishery/commercial operations) due to the infrequency and small scale of explosions, monitoring and mitigation measures set forth by NMFS, and ownership of the test site area.

Analysis in the EA determined that, while noise would extend beyond the Eglin Reservation boundary, the levels would be below the threshold for moderate risk of annoyance to the public. Associated hazardous pollutants from explosive detonations should be contained within the area of concern. As a result, there would be no adverse health effects on low income or minority populations. There would be no environmental justice impacts. The primary impacts to the natural and physical environment are expected to be acoustic and temporary in nature (and not significant), and not interrelated with significant social or economic impacts.

6) *Are the effects on the quality of the human environment likely to be highly controversial?*

Response: Although there is some lack of agreement within the scientific and stakeholder communities about the potential effects of noise on marine mammals, there is not a substantial dispute about the size, nature, or effect of NMFS's proposed action and the U.S. Air Force's NEODS training operations. The existence of some disagreement about the effects of noise was demonstrated by a National Research Council (NRC, 2005) report and by the lack of consensus among participants in the Marine Mammal Commission's Advisory Committee on Acoustic Impacts on Marine mammals (MMC, 2006). Over the past several years, comments and concerns regarding effects of noise from NEODS training operations have been received. After reviewing the comments submitted on the U.S. Air Force's NEODS training operations and NMFS's proposed promulgation of regulations and issuance of LOAs, and having analyzed the effects of these actions, NMFS has determined its actions are in full compliance with the MMPA and ESA. As noted elsewhere in this FONSI and in NMFS's final rule determination, NMFS is requiring, as proposed by the U.S. Air Force, a detailed mitigation and monitoring program designed to gather additional data and reduce impacts on affected marine mammal stocks to the lowest level practicable.

No substantial dispute exists as to the projects size, nature, or affect. For several years, NMFS has been issuing IHAs to the U.S. Air Force for NEODS training operations at Eglin AFB. NMFS issued annual Incidental Harassment Authorizations (IHA) to Eglin AFB for similar activities in 2005 (70 FR 51341; August 30, 2005), 2006 (71 FR 60693; October 16, 2006), 2007 (72 FR 58290; October 15, 2007), and 2008 (73 FR 56800;

September 30, 2008). The past missions have been delayed due to safety issues concerning bringing demolition charges under a bridge and no missions have occurred to date under any of the IHAs.

On January 15, 2010, NMFS published a notice of receipt (75 FR 2490) of the U.S. Air Force's application in the *Federal Register* and determined that the entire application was adequate and complete in accordance with 50 C.F.R. 216.104(b)(i), as well as requested public submission of comments, information, and suggestions on the application. NMFS received public comments from a private citizen and the Marine Mammal Commission (Commission), and considered them as it prepared the proposed rule.

On October 1, 2010, NMFS published a notice of proposed rulemaking (75 FR 60694) of the U.S. Air Force's NEODS training operations in the *Federal Register* and requested public submissions of information, suggestions, and comments on the proposed rule. NMFS received public comments from two private citizens and the Commission, and considered them as it prepared the final rule.

Generally, the Commission comments recommended that NMFS approve the requested promulgation of regulations and issuance of LOAs, provided that NMFS: require the U.S. Air Force to describe in detail the environmental parameters and procedures used to determine the safety zones and subsequent takes and incorporate these in the final rule; before issuing the final rule, require the U.S. Air Force to re-estimate the safety zones and associated takes based on the Level A harassment (injury) threshold of 13 psi-msec and the Level B harassment (non-TTS) threshold of 177 dB re 1 μPa^2-sec; before issuing the final rule, provide additional justification for its preliminary determination that the mitigation and monitoring measures would be sufficient to detect, with a high level of confidence, all marine mammals within or entering the identified safety zones, this would include describing detection probability as a function of distance from the vessel and describing changes in detection probability under various sea state and weather conditions; condition the final rule and any LOA issued under the rule to require suspension of the proposed activities if a marine mammal is seriously injured or killed and the injury or death could be associated with the proposed activities and, if supplementary measures are unlikely to reduce the risk of 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; and ensure that numerous discrepancies in the application and proposed rule are corrected in the final rule. Generally, the two private citizens were opposed to NMFS's issuance of an Incidental Take Authorization to the U.S. Air Force for their NEODS training operations at Eglin AFB.

These comments were considered by NMFS in developing the final rule and issuance of LOAs, and specific responses will be provided in the *Federal Register* notice announcing the issuance of the final rule.

7) *Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, EFH, or ecologically critical areas?*

Response: NMFS promulgation of regulations and issuance of LOAs and the U.S. Air Force's proposed action of the NEODS training operations are not expected to significantly impact any unique areas as described here. The U.S. Air Force does not expect substantial impacts to unique areas, nor does NMFS expect the authorization to have a significant effect on marine mammals that may be important resources in such areas. Similarly, NMFS does not expect any substantial impacts to EFH as described in the response to question 1 (above). Detailed information about the affected environment, marine mammals, marine life, and other wildlife resources are provided in the EA.

To the extent that marine mammals are important features of these resource areas, the potential temporary behavioral disturbance of marine mammals might result in short-term behavioral effects on cetaceans within ensonified zones, but no long-term displacement of marine mammals, endangered species, or their prey is expected as a result of the action or the Incidental Take Authorization for marine mammals.

8) *Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?*

Response: The effects of the proposed action on the human environment are no likely to be uncertain or involve unique or unknown risks associated with the proposed NEODS training operations. The exact mechanisms of how different sounds may affect certain marine organisms are not fully understood, but there is no substantial dispute about the size, nature, or effect of this particular action. While NMFS's judgments on impact thresholds are based on limited data, enough is known for NMFS and the regulated entity (here the U.S. Air Force) to develop precautionary measures to minimize the potential for significant impacts on biological resources. The multiple mitigation and monitoring requirements required of the U.S. Air Force and designed to ensure the least practicable impact on the affected species or stocks of marine mammals and also to gather additional data to inform future decision-making. NMFS has been authorizing take for similar types of activities using explosives for years, and monitoring reports received pursuant to the requirements of the authorizations have indicated that there were no unanticipated adverse impacts that occurred as a result of the previously conducted explosive detonations. For the same reason, these monitoring and mitigation measures would also be considered to minimize impacts to other protected species that occur in the action area. The effects on the human environment from the NEODS training operations are not likely to be highly uncertain or involve unique or unknown risks.

9) *Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?*

Response: The U.S. Air Force's proposed NEODS training operations at Eglin AFB and NMFS's action of promulgating regulations and issuing LOAs are interrelated. These actions are not expected to result in cumulatively significant impacts when considered in relation to other separate actions with individually insignificant effects.

The EA analyzes the impacts of the NEODS training operations in light of other human activities within the action area. The U.S. Air Force concluded that although the explosive charges from the NEODS training operations have higher source levels than the sounds generated from some other human activities in the action area, NEODS missions would involve underwater detonations of small, live explosive charges adjacent to inert mines. The NEODS may conduct up to eight two-day demolition training events annually; these missions may occur at any time of the year. Each demolition training event involves a maximum of five detonations. Up to 20 five-pound (lb) charges (five lbs net explosive weight [NEW] per charge) and 20 ten-lb charges (ten lbs NEW per charge) would be detonated annually in the GOM, approximately three nautical miles (5.6 kilometers) offshore of Eglin AFB. In contrast to other noise sources that occurs continuously over extended periods of time (e.g., oil and gas development, vessel noise). Thus, NMFS and the U.S. Air Force concludes that the impacts of the proposed NEODS training operations in the northern GOM are expected to be no more than minor and short term.

Human activities in the northern GOM include commercial and recreational fishing, oil and gas development, military readiness activities, and vessel traffic. These activities, when conducted separately or in combination with other activities, can affect marine mammals in the action area. Any cumulative effects caused by the addition of the NEODS training operations impacts on marine mammals will be extremely limited and will not rise to the level of "significant," especially considering the limited frequency of the of the proposed activities and the location of the proposed action area offshore of the coast. Any such effects related to the cumulation of human activities near the action area will have no more than a negligible impact on the marine mammal populations encountered. The U.S. Navy has completed an extensive cumulative impacts analysis in the Gulf of Mexico Range Complex Final Environmental Impact Statement (EIS)/Overseas EIS with regard to the impacts of that proposal, and NMFS considered that analysis when evaluating cumulative impacts for the proposed action here.

NMFS has issued Incidental Take Authorizations for other military readiness activities (to the U.S. Air Force and the U.S. Navy) that may have resulted in the harassment of marine mammals, but the activities are dispersed both geographically (throughout the world) and temporally, are relatively short term in nature, and all include required monitoring and mitigation measures to minimize impacts.

10) *Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?*

Response: The actions proposed by the U.S. Air Force and NMFS are not likely, directly or indirectly, to adversely affect districts, sites, highways, or other significant scientific, cultural, or historical resources. There are no known cultural or archeological resources located within the project area. The NEODS training operations will involve underwater detonations of small, live explosive charges adjacent to inert mines in the northern GOM. Therefore, NMFS anticipates no loss or destruction of significant

scientific, cultural or historical resources because the action is not expected to alter any physical resources.

11) *Can the proposed action reasonably be expected to result in the introduction or spread of non-indigenous species?*

Response: The potential for the introduction or spread of non-indigenous species is low, as the NEODS training operations consist entirely of a crew, watercraft, and demolition equipment operating within a localized area. Therefore, NMFS does not expect the proposed action to result in the introduction or spread of a non-indigenous species, as all international and national preventative measures would be implemented, if necessary.

12) *Is the proposed action likely to establish a precedent for future actions with significant effect or represents a decision in principle about a future consideration?*

Response: The proposed action will not set a precedent for future actions with significant effects or represent a decision in principle. To ensure compliance with statutory and regulatory standards, NMFS actions under sections 101(a)(5)(A) of the MMPA must be considered individually and be based on the best available information, which is continuously evolving. Moreover, each action for which an Incidental Take Authorization is sought must be considered in light of the specific circumstances surrounding the action, and mitigation and monitoring measures may vary depending on those circumstances. As mentioned above, NMFS has issued many authorizations for explosive detonations, and this project has no unique aspects that suggest it would be a precedent for any future actions.

13) *Can the proposed action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?*

Response: NMFS does not expect the proposed action to violate any Federal, State, or local law, or requirements imposed for the protection of the environment, as the U.S. Air Force has fulfilled their section 7 responsibilities under the ESA (see response to question 4 above) and the MMPA (by submitting an application for the promulgation of regulations and associated issuance of LOAs) for this action. The promulgation of regulations and issuance of LOAs does not authorize actual NEODS training operations, only the allowance of takes of marine mammals incidental to the specified activity. The applicant has applied for and is responsible for ensuring that all appropriate permits are secured to ensure that the underlying action constitutes an otherwise lawful activity. There are no other laws or requirements that would be threatened by this authorization.

14) *Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?*

Response: NMFS has issued Incidental Take Authorizations for other military readiness activities involving the use of explosive detonations that may have resulted in

the harassment of marine mammals, but they are dispersed both geographically (throughout the world) and temporally, are short-term in nature, and all use monitoring and mitigation measures to minimize impacts to marine mammals and other protected species. NMFS does not believe the effects of this action combined with the other activities to cumulatively have significant impacts.

NMFS does not anticipate that the proposed action will result in cumulative adverse effects that could have a substantial effect on any non-target species, as outlined in responses to questions 4 and 9 of this document. No species are targeted during these training exercises; however, incidental takes could occur for bottlenose dolphins based on their distribution within the GOM. These takes, approximately 10 takes annually over the 5 year rule (50 total), are not expected to have a substantial effect on these species to do the low numbers and manner of take, by acoustical harassment.

As described in the EA, anthropogenic activities such as commercial and recreational fishing, oil and gas development, military readiness activities, and vessel noise all have the potential to take marine mammals in the GOM to varying degrees either through behavioral disturbance (detonations, vessel noise, and low-, mid-, high-frequency sonar) or more direct forms of injury or death (vessel collisions, oil spills, or entanglement in fishing gear). Impacts from the proposed NEODS training operations off the coast of Florida in the northern GOM are, however, expected to be minor, short-term, and incremental when viewed in light of other human activities in the action area. The U.S. Air Force's NEODS training operations are unlikely to cause any large-scale or prolonged effects. Thus, the combination of the U.S. Air Force's training operations with other existing anthropogenic activities is expected to produce only a negligible increase in overall disturbance effects on marine mammals. The NEODS training operations will add little to activities in the proposed action area, take of bottlenose dolphins by behavioral disturbance are authorized, and no take by injury, serious injury, or mortality is anticipated or authorized. Therefore the proposed action is not expected to contribute to or result in a cumulatively significant impact to marine mammals or other marine resources.

Because of the number of missions and relatively short time that the action area will be ensonified, NMFS anticipates that the proposed action will not result in cumulative adverse effects that could have a substantial effect on the target or non-target species, such as cetaceans in the area (see responses to questions 4 and 9 above). The NEODS training operations would also not be expected to have a substantial cumulative effect on any seabirds, fish, or invertebrate species. Although some loss of fish and other marine life might occur as a result of being in close proximity to the explosive charges, this loss is not expected to be significant. Due to the relatively infrequent missions the NEODS training operations will be conducted in the area, small charge weights, and implementation of required monitoring and mitigation measures, NMFS does not anticipate that the proposed action will result in cumulative adverse effects that could have a substantial effect on marine mammals or other marine species.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting EA prepared for the promulgation of regulations and issuance of annual LOAs for the taking of Atlantic bottlenose dolphins, by Level B harassment, during the NEODS training operations at Eglin AFB, Florida, it is hereby determined that the promulgation of regulations and issuance of the LOAs for NEODS training operations (EA Preferred Alternative) will not significantly impact the quality of the human environment as described in the EA. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Therefore, NMFS has issued a Finding of No Significant Impact regarding the five year regulations establishing a framework to authorize the incidental take of an average of 10 Atlantic bottlenose dolphins annually in accordance with the issuance of LOAs for NEODS training operations. Accordingly, preparation of an EIS or Supplemental EIS for this action is not necessary.

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Date