

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.230(b), a Letter of Authorization may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days of the action.

### Subpart V [Reserved]

EFFECTIVE DATE NOTE: At 71 FR 67822, Nov. 24, 2006, subpart V was added and reserved, effective Dec. 26, 2006 through Dec. 27, 2011.

### Subpart W—Taking Marine Mammals Incidental to Conducting Precision Strike Weapon Missions in the Gulf of Mexico

SOURCE: 71 FR 67822, Nov. 24, 2006, unless otherwise noted.

EFFECTIVE DATE NOTE: At 71 FR 67822, Nov. 24, 2006, subpart W, consisting of §§ 216.250 through 216.259 was added, effective Dec. 26, 2006 through Dec. 27, 2011.

#### § 216.250 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by U.S. citizens engaged in U.S. Air Force Precision Strike Weapon missions within the Eglin Air Force Base Gulf Test and Training Range within the northern Gulf of Mexico. The authorized activities as specified in a Letter of Authorization issued under §§ 216.106 and 216.257 include, but are not limited to, activities associated with (1) the Joint Air-to-Surface Stand-off Missile (JASSM) exercise for a maximum of two live shots (single) and 4 inert shots (single) annually and (2) the small-diameter bomb (SDB) exercise for a maximum of six live shots a year, with two of the shots occurring simultaneously and a maximum of 12 inert shots, with up to two occurring simultaneously.

(b) The incidental take by Level A harassment, Level B harassment, or mortality of marine mammals under the activity identified in this section is

limited to the following species: Atlantic bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphins (*Stenella frontalis*), dwarf sperm whales (*Kogia simus*) and pygmy sperm whale (*Kogia breviceps*).

#### § 216.251 Effective dates.

Regulations in this subpart are effective from December 26, 2006 until December 27, 2011.

#### § 216.252 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.257, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by Level A and Level B harassment, including lethal take within the area described in § 216.250(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The taking of marine mammals under a Letter of Authorization is limited to the species listed in § 216.250(b) and is limited to a total of 1 mortality, 2 takes by Level A harassment, and 53 takes by Level B harassment annually.

#### § 216.253 Prohibitions.

Notwithstanding takings contemplated in § 216.250 and authorized by a Letter of Authorization issued under §§ 216.106 and 216.257, no person in connection with the activities described in § 216.250 shall:

(a) Take any marine mammal not specified in § 216.250(b);

(b) Take any marine mammal specified in § 216.250(b) other than by incidental, unintentional Level A or Level B harassment or mortality;

(c) Take a marine mammal specified in § 216.250(b) 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 these regulations or a Letter of Authorization issued under §§ 216.106 and 216.257.