

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 26, 2008.

**Tracey L. Thompson,**  
Acting Director, Office of Sustainable  
Fisheries, National Marine Fisheries Service.  
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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-X162

#### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, CA

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

**ACTION:** Notice of issuance of a letter of authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that a 1-year Letter of Authorization (LOA) has been issued to the Monterey Bay National Marine Sanctuary (MBNMS) to incidentally take, by Level B harassment only, California sea lions (*Zalophus californianus*) and Pacific harbor seals (*Phoca vitulina*) incidental to professional fireworks displays within the MBNMS in California waters.

**DATES:** This authorization is effective from July 4, 2008, through July 3, 2009.

**ADDRESSES:** The LOA and supporting documentation are available for review in the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, by contacting one of the individuals listed here (**FOR FURTHER INFORMATION CONTACT**), or online at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address and at the Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

**FOR FURTHER INFORMATION CONTACT:** Jeannine Cody, Jaclyn Daly, or Jolie Harrison, Office of Protected Resources, NMFS, (301) 713-2289, or Monica DeAngelis, Southwest Regional Office, NMFS, (562) 980-4023.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers 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. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Authorization shall be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements for monitoring and reporting of such taking.

Regulations governing the taking of California sea lions and Pacific harbor seals, by Level B harassment, incidental to commercial fireworks displays within the Monterey Bay National Marine Sanctuary (MBNMS) became effective on July 4, 2006, and remain in effect until July 3, 2011. For detailed information on this action, please refer to the original **Federal Register** notice (71 FR 40928, July 19, 2006). These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals during the fireworks displays within the Sanctuary boundaries. This will be the third LOA issued pursuant to these regulations.

## Summary of Request

On February 27, 2008, NMFS received a request for a LOA pursuant to the aforementioned regulations that would authorize, for a period not to exceed 1 year, take of marine mammals incidental to fireworks displays at the MBNMS. Justification for conducting fireworks displays within the MBNMS can be found in the proposed rule (71 FR 25544, May 1, 2006).

## Summary of Activity and Monitoring Under the Current LOA

For the City of Monterey Independence Day Fireworks Celebration, MBNMS was required to: (i) conduct counts of marine mammals present within the fireworks impact area immediately before and one day after the event; (ii) conduct behavioral observations of marine mammals present during the display; and (iii) conduct NMFS-approved acoustic monitoring of sound levels for the duration of the event. The regulations set forth in 50 CFR 216.115 (b)(1-2) specified that the behavioral census and acoustic study were one-time events. To fulfill these requirements, MBNMS contracted with a private environmental consulting firm to conduct the acoustic and behavioral study and submitted a 91-page report titled, "Marine Mammal Acoustic and Behavioral Monitoring for the Monterey Bay National Marine Sanctuary Fireworks Display 4 July 2007." to NMFS on November 8, 2007. Following is a summary of that report.

### Acoustic Monitoring

The acoustic technician used two separate systems to monitor sound levels in the environment on July 4, 2007. The first system, customized for recording low frequency sounds associated with impulsive noise such as explosions, consisted of a digital audio tape recorder and a microphone with a low frequency cut-off. The second acoustic monitoring system, a sound level meter, measured the sound pressure associated with fireworks shell detonations during the display.

Acoustic monitoring began at 6 p.m. on July 4, 2007. Consultants placed the monitoring equipment at the east end of the U.S. Coast Guard (USCG) pier approximately 800 meters from the fireworks launch site to measure ambient noise, sea lion vocalizations, fireworks detonations, and aircraft noise. From 6 p.m. to 9 p.m. PDT, the average sound level measured over one hour (Leq 1 hour) ranged from 58.8 to 59 decibels (dB) and included sounds from sea lions barking, random fireworks in the local area, and recreational boat traffic.

The fireworks display began at 9:15 p.m. PDT with two sets of fireworks detonations and ended with a grand finale of multiple explosions at 9:35 p.m. PDT. The average sound level measured during the hour containing the fireworks display was 72.9 dB (Leq 1 hour), approximately 14.0 dB greater than ambient levels recorded before the display.

During a fireworks display, aerial shells are launched from tubes (called mortars) at altitudes of 200 to 1,000 feet above sea level. As the shell travels skyward, a time-delay secondary fuse is burning that eventually ignites a burst charge at a predetermined altitude. When the burst charge detonates, it ignites and scatters incendiary chemicals that spectators view as fireworks. Fireworks launch noises are known to cause a startle response or initiate a flight to water response in marine mammals.

Peak sound level (peak) is the greatest instantaneous sound level reached during a sound event and is denoted in the units of Pascals (Pa). The loudest sound recorded during the event was associated with a detonation of a 10-inch shell (9:18 p.m. PDT) measured at 133.9 dB re: 20  $\mu$ Pa (peak). Sound exposure level (SEL) is a measure of the total sound energy in a sound event if that event could be compressed into one second. The detonation of the 10-inch shell had an unweighted SEL of 105.0 dB re: (20  $\mu$ Pa)<sup>2</sup> -s. The second loudest sound recorded was associated with an 8-inch shell (9:23 p.m. PDT) measured at 127.0 dB re: 20  $\mu$ Pa (peak) with an unweighted SEL of 90.1 dB re: (20  $\mu$ Pa)<sup>2</sup> -s.

Overall, the fireworks launch noises generated in the display were low- to mid-frequency and ranged from 97 to 107 dB re: 20  $\mu$ Pa and the majority of the fireworks detonations ranged from 112 to 124 dB re: 20  $\mu$ Pa.

#### *Behavioral Monitoring*

A NMFS-approved marine mammal observer conducted a visual census of the California sea lion and Pacific harbor seal haulout sites on July 4, 2007. The observer conducted the census aboard the MBNMS vessel P/B Shark Cat in the vicinity of the southern side of the jetty and the western end of Monterey Harbor. The observer used high quality binoculars during the daytime and night vision goggles during night time hours. The observer counted species present; recorded the location, age, class, and gender of the species; and measured tidal height, wind speed, and air temperature.

Visual monitoring for California sea lions began at 4:27 p.m. PDT on July 4, 2007, and continued until 11:05 p.m. PDT, almost two hours after the conclusion of the fireworks display. Visual monitoring for Pacific harbor seals began at 6:50 p.m. and ended at 10:47 p.m. PDT. The weather and harbor state provided optimal conditions for both daytime and night observations.

#### *Pre-Event Monitoring*

Pre-event behavioral monitoring for California sea lions began at 4:27 p.m. and continued to 10:45 p.m. PDT. Most sea lions were hauled out on the north and south sides of the jetty to the east of the USCG pier. The observer enumerated a total of 258 sea lions located on the north (n=115) and south (n=133) sides of the jetty and underneath the USCG pier (n=10) from 7:40 to 8:18 p.m. PDT. Most were yearlings or juveniles (2 to 4 years old). Two sub adult males (approximately 5 to 6 years old) were also observed and appeared to be practicing holding a water territory. With the exception of the sub adult males, the observer found it difficult to determine the gender of the other sea lions. For the next thirty minutes, the number of sea lions hauled out was steady (n=258) until approximately 8:45 p.m. PDT when several boats passed by the end of the jetty and shot off their own fireworks and firecrackers, causing 86 sea lions to enter the water. At this point, the number of seal lions hauled out on the jetty decreased to a total of 172, with 59 sea lions on the north side of the jetty and 103 seal lions on the south side. The number of sea lions hauled out by the USCG pier remained constant at ten.

Pre-event behavioral monitoring for the Pacific harbor seals began at 6:50 p.m. PDT and continued to 8:38 p.m. PDT. From 6:50 to 8 p.m. PDT, eight harbor seals were hauled out on exposed rocks just offshore of the western end of the harbor. As the tide was up to 0.8 meters, there were few places for the harbor seals to haul out. At 8:38 p.m. PDT, the observer recorded four harbor seals hauled out and two harbor seals in the water.

#### *Monitoring During the Display*

Behavioral monitoring during the fireworks display began at 9:16 p.m. and continued until 9:37 p.m. PDT. By 9:16 p.m. PDT, approximately 166 sea lions had already flushed from the jetty and under the USCG pier most likely due to recreational boaters shooting fireworks near the jetty, kayakers, and extraneous fireworks noise. This left only six sea lions (2 to 3 year olds) resting under the USCG pier at the start of the fireworks display. By the fourth fireworks detonation, all remaining sea lions had entered the water. This last flush is likely correlated with an 8-inch shell detonated at 9:16 p.m. PDT. Despite the detonations, the observer noted that the sea lions entered the water at a relatively slow rate without injury.

There were 18 different instances of sea lion vocalizations recorded

throughout the fireworks display. The first recording of sea lion vocalizations occurred at 9:19 p.m. PDT, one second after an explosion with crackles. The last group of vocalizations was recorded at 9:36 p.m. PDT, about one minute after the fireworks finale.

The observer reported that all of the remaining harbor seals at the western end of the harbor had flushed at the beginning of the fireworks display after hearing the first set of detonations.

#### *Post-Event Monitoring*

Post-event behavioral monitoring of the sea lion sites began at 9:37 p.m. PDT. The first sea lion (a sub-adult male) to return to the jetty hauled out at 9:55 p.m. PDT, approximately 21 minutes after the conclusion of the fireworks. According to the report, it was practicing holding a territory at the end of the jetty. By 10:30 p.m. PDT, the sub-adult male was accompanied by three additional sea lions. No information was given as to the age, gender, or class of the three. The observer noted that no sea lions returned to the USCG pier (the last occupied haulout site for sea lions pre-event) after the fireworks display.

Behavioral monitoring of the harbor seal site continued until 10:47 p.m. PDT, 70 minutes after the conclusion of the fireworks display. No animals were observed in the water nor on land.

On July 5, 2007 observers conducted a follow-up census from 8:10 to 09:12 a.m. PDT. The census revealed up to 291 California sea lions and 31 harbor seals at their respective haul out sites. No injured or dead animals were observed that day.

These data indicate that California sea lions and Pacific harbor seals were temporarily displaced from haulout sites during the City of Monterey Independence Day Fireworks Celebration. Several factors contributed to displacement including: noise associated with recreational boaters shooting fireworks near the jetty; increased presence of kayakers in the harbor; extraneous fireworks in the local area; and the display coinciding with a high tide leaving smaller areas for haulout. Acoustic data indicated that, although sea lions flushed into the water, they remained in the harbor during the fireworks display as the recording equipment captured over 18 instances of sea lion vocalizations during the display. In conclusion, the fireworks display caused a short-term disruption in behavior as the sea lions and harbor seals continued to use the haul out sites post event.

In addition to the acoustic and behavioral studies conducted during the

City of Monterey Independence Day Fireworks Celebration, the MBNMS submitted an annual monitoring report on four other professional fireworks displays at MBNMS in 2007. A summary of that report follows.

For each display, observers conducted pre-event surveys to document abundance and distribution of local marine mammal populations within the fireworks area. Following the fireworks display, observers conducted post-event monitoring to record the presence of injured or dead marine mammals, and other wildlife. Pre-event monitoring of the Cambria Independence Day Fireworks on July 3 found no animals present at the site and a post-event census on July 5 found no dead or injured mammals or birds. Observers monitored the Pillar Point Harbor area for the Half Moon Bay Independence Day Fireworks on July 4 and recorded one harbor seal, one sea otter (*Enhydra lutris*), and 712 brown pelicans (*Pelecanus occidentalis*) pre-event. Post-event monitoring on July 5 revealed no dead or injured mammals or birds. The Pacific Grove Feast of Lanterns Fireworks display consisted of enumerating all marine mammals observed within 400 meters of the fireworks launch site. On July 27, observers found eight harbor seals, one sea otter and reported no dead or injured mammals post event on July 29.

In summary, the total number of potentially harassed animals was 258 sea lions and 17 harbor seals for all fireworks displays. No dead or injured marine mammals were reported for all events. Similar to the results of the 2006 LOA monitoring report, these results support NMFS' initial findings that fireworks display will result in no more than Level B harassment of small numbers of California sea lions and

harbor seals. These effects are limited to short-term behavioral changes, including temporary abandonment of haulouts to avoid sound and light flashes of professional fireworks displays.

#### Authorization

NMFS has issued an LOA to MBNMS authorizing the Level B harassment of marine mammals incidental to the coastal commercial fireworks display within the Sanctuary. Issuance of this LOA is based on the results of the MBNMS 2007 monitoring report which verify that the total number of potentially harassed sea lions and harbor seals was well below the authorized limits as stated in the final rule (71 FR 40928, July 19, 2006). Based on these findings and the information discussed in the preamble to the final rule, the activities described under this LOA will have a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses. No mortality or injury of affected species is anticipated.

Dated: June 26, 2008.

**James H. Lecky,**

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

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Revised Non-Foreign Overseas Per Diem Rates

**AGENCY:** DoD, Per Diem, Travel and Transportation Allowance Committee, DoD.

**ACTION:** Notice of Revised Non-Foreign Overseas Per Diem Rates.

**SUMMARY:** The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 260. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 260 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

**DATES:** *Effective Date:* July 1, 2008.

**SUPPLEMENTARY INFORMATION:** This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 259. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows.

Dated: June 23, 2008.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer,  
Department of Defense.*

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