



MARINE MAMMAL COMMISSION

27 March 2017

Ms. Jolie Harrison, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Dear Ms. Harrison:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the National Marine Fisheries Service's (NMFS) 17 March 2017 notice (82 Fed. Reg. 14184) and the letter of authorization application submitted by the Monterey Bay National Marine Sanctuary (MBNMS) seeking issuance of regulations under section 101(a)(5)(A) of the Marine Mammal Protection Act. The taking would be incidental to permitting commercial firework displays within MBNMS waters in California during a five-year period.

MBNMS proposes to permit commercial firework displays within the Sanctuary, as it has since 1993. Pyrotechnic devices used during the displays would include aerial shells, low-level launch devices, and ground-mounted displays. NMFS preliminarily has determined that, at most, the proposed activities temporarily would modify the behavior of small numbers of harbor seals, California sea lions¹, and northern elephant seals. It also anticipates that any impact on the affected species and stocks would be negligible. NMFS does not anticipate any take of marine mammals by death or serious injury and believes that the potential for disturbance will be at the least practicable level because of the proposed mitigation measures. The mitigation, monitoring, and reporting measures include—

- prohibiting firework displays from 1 March until 30 June of each year to minimize harassment during the pupping season;
- establishing four conditional firework display areas (i.e., Half Moon Bay, Santa Cruz/Soquel, northeastern Monterey Peninsula, and Cambria) and prohibiting display areas along the remaining 95 percent of MBNMS coastal areas;
- limiting firework displays to a maximum of 10 per year and the frequency to one or fewer every two months in each of the four areas;
- limiting the timeframe for each firework display to no more than 30 minutes, except for two displays that could last up to 1 hour each;

¹ After discussions with the Commission, NMFS indicated it plans to increase the number of takes of California sea lions at Santa Cruz/Soquel from 190 to 363 based on the maximum number of sea lions observed during monitoring activities in 2016. The total number of takes of California sea lions would increase to 3,983.

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- using ramp-up procedures (i.e., salute shells are not permitted within the first 5 minutes of the display);
- removing plastic and aluminum labels and wrappings from the devices prior to use;
- removing expended debris from the area on each of the two days after each firework display;
- using qualified observers to monitor for pinnipeds, to the maximum extent practicable, for 30 minutes immediately before² and for 30 minutes immediately after³ each firework display⁴;
- reporting injured and dead marine mammals to the National Marine Fisheries Service (NMFS) and the Southwest Regional Stranding Coordinator⁴; and
- submitting annual monitoring reports and a final monitoring report.

The Commission concurs with NMFS's preliminary finding and recommends that NMFS issue the final rule, subject to the inclusion of the proposed mitigation, monitoring, and reporting measures. Please contact me if you have questions regarding the Commission's recommendation.

Sincerely,



Rebecca J. Lent, Ph.D.
Executive Director

² If it is not possible to conduct the census immediately before the fireworks display, it would be conducted the day before the event, at or near the same time of the scheduled start of the display the following day.

³ If it is not possible to conduct the census immediately after the fireworks display, it would be completed no more than 24 hours following the display and at a similar tidal stage.

⁴ NMFS clarified that these details absent from the various measures stipulated in the proposed rule would be incorporated into the final rule.