



MARINE MAMMAL COMMISSION

20 June 2011

Mr. 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

Dear Mr. Payne:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the Monterey Bay National Marine Sanctuary's application seeking to renew its authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act to take small numbers of marine mammals by harassment. The taking would be incidental to permitting commercial fireworks displays within the Sanctuary waters of California. The fireworks displays would occur from 4 July 2011 to 3 July 2012. The Commission also has reviewed the National Marine Fisheries Service's 20 May 2011 *Federal Register* notice (76 Fed. Reg. 29186) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions. The Commission previously commented on a similar incidental harassment authorization and proposed five-year regulations that expire on 3 July 2011.

RECOMMENDATION

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue the requested authorization, subject to inclusion of the proposed mitigation and monitoring measures.

RATIONALE

The Monterey Bay National Marine Sanctuary plans to continue to permit commercial fireworks displays within the Sanctuary. Those displays have been permitted and monitored since 1993. Pyrotechnic devices would include aerial shells, low-level launch devices, and ground-mounted displays. The sizes of the launch devices would range from 5–30 cm and would detonate from ground-level to 305 m in altitude. Use of the pyrotechnic devices and increased presence of humans would be the main sources of disturbance of marine mammals.

The Service preliminarily has determined that, at most, the proposed activities temporarily would modify the behavior of small numbers of California sea lions and harbor seals. It also anticipates that any impact on the affected species and stocks would be negligible. The Service 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 and monitoring measures. The measures include—

- (1) prohibiting fireworks displays from 1 March until 30 June 2012 to protect pinnipeds during their reproductive period;

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- (2) establishing four conditional 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 Sanctuary coastal areas;
- (3) limiting the displays to a maximum of 20 per year and the frequency to one or fewer every two months in each of the four areas;
- (4) limiting the timeframe for each display to less than 30 minutes, except for two displays that could last up to one hour each;
- (5) using ramp-up procedures (i.e., salute shells are not permitted within the first five minutes of the display);
- (6) removing plastic and aluminum labels and wrappings from the devices prior to use;
- (7) removing expended debris from the area for two days after the display;
- (8) using qualified observers to monitor before and after the displays; typically this has been the day before and the day after the events;
- (9) providing a monitoring report to the Service; and
- (10) reporting injured and dead marine mammals to the National Marine Fisheries Service and local stranding network.

The Marine Mammal Commission concurs with the National Marine Fisheries Service's preliminary finding and recommends that the Service issue the requested authorization, subject to inclusion of the proposed mitigation and monitoring measures.

Please contact me if you have questions regarding the Commission's recommendation.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director