



MARINE MAMMAL COMMISSION

11 April 2012

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 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 the Sanctuary waters of California. The firework displays would occur from 4 July 2012 to 3 July 2017. The Commission also has reviewed the National Marine Fisheries Service's 3 April 2012 *Federal Register* notice (77 Fed. Reg. 19976) 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.

RECOMMENDATION

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue the final rule but condition it to require the Sanctuary to conduct monitoring for at least 30 minutes on the evening of each firework display and the morning after each display.

RATIONALE

The Monterey Bay National Marine Sanctuary plans to continue to permit commercial firework displays within the Sanctuary. Those displays have been permitted and monitored since 1993. Pyrotechnic devices used during the firework displays would include aerial shells, low-level launch devices, and ground-mounted displays. The sizes of the launch devices would range from 5 to 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. Those measures include—

- prohibiting firework displays from 1 March until 30 June of each year to protect pinnipeds during their reproductive period;

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- 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;
- 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;
- limiting the timeframe for each display to less than 30 minutes, except for two displays that could last up to one hour each;
- using ramp-up procedures (i.e., salute shells are not permitted within the first five minutes of the display);
- removing plastic and aluminum labels and wrappings from the devices prior to use;
- removing expended debris from the area for two days after the display;
- using qualified observers to monitor before and after the displays;
- reporting injured and dead marine mammals to the National Marine Fisheries Service and local stranding network; and
- submitting annual monitoring reports and a final monitoring report.

Monitoring measures

The proposed rule states that the Sanctuary would monitor the impact area before all firework displays and the morning after each display. However, the proposed rule does not stipulate when the pre-monitoring observations would occur or for what period of time. Typically, the Sanctuary has monitored the impact area the day before the displays for approximately 30 minutes. The Commission believes that monitoring (1) is essential to estimating the number of actual takes and to document any injuries or deaths and (2) should occur as close to the fireworks detonation time as possible. As such, the Marine Mammal Commission concurs with the National Marine Fisheries Service's preliminary finding and recommends that the Service issue the final rule but condition it to require the Sanctuary to conduct monitoring for at least 30 minutes on the evening of each firework display and the morning after each display.

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

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director