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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF006

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Commercial Fireworks Displays at the Monterey Bay National Marine Sanctuary, California

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

ACTION: Notice; receipt of application for letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) for authorization to take small numbers of marine mammals incidental to professional fireworks displays permitted within the Sanctuary in California waters, over the course of five years, from July 4, 2017 through July 3, 2022. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of MBNMS's request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on MBNMS's application and request.

DATES: Comments and information must be received no later than [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: Comments on the application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National

Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Daly@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *www.nmfs.noaa.gov/pr/permits/incidental/construction.htm* without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jaclyn Daly, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Availability

A copy of MBNMS's application may be obtained by writing to the address specified above (see ADDRESSES), telephoning the contact listed above (see FOR FURTHER INFORMATION CONTACT), or visiting the internet at:

http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) 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) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review. Authorization for incidental takings may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: “any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).”

Summary of Request

On September 16, 2016, NMFS received an application from the MBNMS requesting authorization to take, by Level B harassment, two species of marine mammals incidental to commercial fireworks displays conducted under sanctuary authorization permits issued by the MBNMS. After addressing NMFS comments on the original application, the MBNMS submitted a revised application on October 18, 2016. NMFS found this application to be adequate and complete.

Marine mammals would be exposed to elevated levels of sound as a result of permitted fireworks displays, as well as increased human activity associated with those displays. Because the specified activities have the potential to take marine mammals present within the action area, the MBNMS requests authorization to take, by Level B harassment only, California sea lions (*Zalophus californianus*) and harbor seals (*Phoca vitulina*).

Specified Activities

Since 1993, the MBNMS, a component of NOAA's Office of National Marine Sanctuaries, has processed requests for the professional display of fireworks that affect resources within the sanctuary. The MBNMS has determined that debris fallout (i.e., spent pyrotechnic materials) from fireworks events may constitute a discharge into the sanctuary and thus violate sanctuary regulations, unless a permit is issued by the superintendent. Therefore, sponsors of fireworks displays conducted in the MBNMS are required to obtain sanctuary authorization prior to conducting such displays (see 15 CFR 922.132).

Since the MBNMS began issuing permits for fireworks discharge in 1993, it has received a total of 102 requests for professional fireworks displays, the majority of which

have been associated with large community events such as Independence Day and municipal festivals. The number of fireworks displays within the Sanctuary remained relatively constant although there has been a slight decrease of the number of displays since the economic downturn of 2008. The MBNMS has permitted, on average, approximately five fireworks displays per year; however, only 2 to 4 displays were hosted annually between 2009 and 2015. Since 2005, the MBNMS has requested, and subsequently been authorized under section 101 (a)(5)(A or D) of the MMPA, to take marine mammals incidental to up to 20 fireworks events per year. However, for this application, the MNBMS, at the request of NMFS, re-evaluated the possibility of 20 events occurring per year based on the trend in fireworks permit applications. As such, the MBNMS has modified the number of anticipated displays that would occur under the requested regulations to no more than ten events per year.

The location, mitigation, and monitoring measures contained within previous authorizations would remain in effect. Fireworks displays would be limited to the same four specific areas along 276 miles (444 kilometers) of coastline: Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Peninsula, and Cambria (Santa Rosa Creek). This effectively limits permitted fireworks displays to approximately five percent of the MBNMS coastline. The MBNMS would also retain the March 1 through June 30 moratorium on fireworks which corresponds to the peak spring breeding season for marine wildlife. Each fireworks displays would not exceed 30 minutes in duration (with the exception of up to two displays per year, each not to exceed one hour) and would occur with an average frequency of less than or equal to once every two months within each of the four prescribed display areas.

A more detailed description of the fireworks displays permitted by MBNMS and anticipated behavioral reactions of marine mammals may be found in MBNMS' application, MBNMS' Assessment of Pyrotechnic Displays and Impacts within the MBNMS 1993-2001 (2001), Marine Mammal Acoustic and Behavioral Monitoring for the MBNMS Fireworks Display, 4 July 2007 (2007), and multiple monitoring reports which are available at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning MBNMS's request (see ADDRESSES). All information, suggestions, and comments related to MBNMS's request and NMFS' potential development and implementation of regulations governing the incidental taking of marine mammals by the MBNMS will be considered by NMFS in developing, if appropriate, regulations governing the issuance of letters of authorization.

Dated: November 4, 2016.

Donna S. Wieting,
Director,
Office of Protected Resources,
National Marine Fisheries Service.

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