

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](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) to 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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**BILLING CODE 3510-22-S**

## 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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