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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC111

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 5-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 harbor seals (*Phoca vitulina*) incidental to professional fireworks displays within the MBNMS.

DATES: This authorization is effective from July 4, 2012, through July 3, 2017.

ADDRESSES: The LOA and supporting documentation are available for review in the Permits, and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, by contacting the individual listed below (FOR FURTHER INFORMATION CONTACT), or online at:

<http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

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

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 et seq.) directs the Secretary of Commerce (Secretary) upon request, to allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking of marine mammals by United States 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.

The Secretary shall grant the authorization for incidental taking if NMFS finds, after notice and opportunity for public comment, that the total of such taking during each five-year (or less) period concerned, will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings 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."

In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species for subsistence uses. The regulations must include requirements for monitoring and reporting of such taking.

Regulations governing the taking of California sea lions and harbor seals, by Level B harassment, incidental to commercial fireworks displays within the Monterey Bay National Marine Sanctuary (MBNMS) became effective on July 4, 2012, and remain in effect until July 3, 2017. For detailed information on this action, please refer to the original Federal Register notice (77 FR 31537, May 29, 2012). These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals during the fireworks displays within the Sanctuary boundaries.

Summary of Request

On July 7, 2011, we received a request for new regulations and a subsequent 5-year LOA that would authorize take of marine mammals incidental to fireworks displays at the MBNMS. We first issued an incidental harassment authorization (IHA) under section 101(a)(5)(D) of the MMPA to MBNMS on July 4, 2005 (70 FR 39235; July 7, 2005), and subsequently issued 5-year regulations governing the annual issuance of LOAs under section 101(a)(5)(A) of the MMPA (71 FR 40928; July 19, 2006). Upon expiration of those regulations, NMFS issued MBNMS an IHA (76 FR 29196; May 20, 2011), which expired on July 3, 2012. A full description of fireworks displays within the MBNMS can be found in the proposed rule (77 FR 19976; April 3, 2012).

Under all previous authorizations, MBNMS conducted activities as described, implemented the required mitigation measures, and conducted the required monitoring. The total number of potentially harassed pinnipeds for all fireworks displays has been well below the authorized limits as stated in the authorizations.

No injuries or fatalities to marine mammals have been reported as resulting from any of the events. Hence, monitoring results have supported our findings that fireworks displays will

result in no more than Level B behavioral harassment of small numbers of California sea lions and harbor seals and that the effects will be limited to short-term behavioral changes, including temporary abandonment of haul-out areas to avoid the sights and sounds of commercial fireworks.

Authorization

NMFS has issued an LOA to MBNMS authorizing the Level B harassment of marine mammals incidental to coastal commercial fireworks displays within the Sanctuary. Issuance of this LOA is based on the results of past monitoring reports which verify that the total number of potentially harassed sea lions and harbor seals was well below the authorized limits. 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 injury, serious injury, or mortality of affected species is anticipated.

Dated: July 17, 2012.

Wanda Cain,
Acting Director,
Office of Protected Resources,
National Marine Fisheries Service.

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