[FR Doc. 06–4080 Filed 4–28–06; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 27, 37, 38

[Docket No. OST–2006–23985]

RIN 2105–AD54

Transportation for Individuals With Disabilities

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Extension of comment period on proposed rule.

SUMMARY: The Department is extending through July 28, 2006, the period for interested persons to submit comments to its proposed rule concerning modifications to the Department's Americans with Disabilities Act and related rules.

DATES: Comments must be received by July 28, 2006. Comments received after this date will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number [OST–2006–23985] by any of the following methods: (1) Federal eRulemaking Portal: *http://www.regulations.gov* (follow the instructions for submitting comments); (2) Web Site: *http://dms.dot.gov* (follow the instructions for submitting comments on the DOT electronic docket site); (3) Fax: 1–202–493–2251; (4) Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001; or (5) Hand Delivery: To the Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

You should include the agency name and docket number [OST–2006–23985] or the Regulatory Identification Number (RIN) for this notice at the beginning of your comment. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act section of this document. You may view the public docket through the Internet at *http://dms.dot.gov* or in person at the Docket Management System office at the above address.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, 400 7th Street, SW., Room 10424, Washington DC 29590. Phone: 202–366–9310. TTY: 202–755–7687. Fax: 202–366–9313. E-mail: *bob.ashby@dot.gov* .

SUPPLEMENTARY INFORMATION: On February 27, 2006, the Department of Transportation (DOT or Department) issued a notice of proposed rulemaking (NPRM) that proposed to amend the Department's Americans with Disabilities Act (ADA) rule and related regulations (71 FR 9761). The proposed amendments concerned a variety of subjects, including rail station platform accessibility and ADA paratransit system requirements. The NPRM also sought comment on several upcoming issues of interest concerning surface transportation accessibility. The comment closing dates were April 28 for the proposed amendments to the ADA and related rules and May 28 for the other issues on which the Department sought comment.

On April 7, 2006, Amtrak, supported by the Association of American Railroads, requested an extension of the comment period through July 28, 2006, citing concerns about the effects of proposed amendments concerning rail station platform accessibility on its statutory obligation to make its stations accessible by 2010.

The Department agrees that an extension of the comment period would be useful to permit Amtrak additional time to assess its situation with respect to rail station accessibility, as it may be affected by the proposed rule. In addition, such an extension will give other parties additional time to consider the issues the NPRM raises and provide thoughtful comments to the Department. Accordingly, the Department finds that good cause exists to extend the comment period on the proposed rule from April 28, 2006, to July 28, 2006. This extension applies to all parts of the NPRM.

Issued in Washington, DC, this 24th day of April, 2006.

Jeffrey A. Rosen,

General Counsel.

[FR Doc. 06–4069 Filed 4–28–06; 8:45 am]
BILLING CODE 4910–9X–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 060406098–6098–01; I.D. 030706D]

RIN 0648–AT46

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: Proposed rule; request for comments. Notice; availability of Environmental Assessment.

SUMMARY: NMFS has received a request from the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) for an authorization to take small numbers of marine mammals, by harassment, incidental to permitting professional fireworks displays within the Sanctuary in California waters. By this document, NMFS is proposing regulations to govern that take. In order to issue a Letter of Authorization (LOA) and issue final regulations governing the take, NMFS must determine that the taking will have a negligible impact on the species or stocks and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses.

DATES: Comments and information must be received no later than May 31, 2006.

ADDRESSES: Comments on the application and proposed rule may be submitted using the identifier 030706D, by any of the following methods:

E-mail: *PR1.030706D@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.

Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Hand-delivery or mailing of paper, disk, or CD-ROM comments should be addressed to: Stephen L. Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

A copy of the application containing a list of references used in this document may be obtained by writing to the above address, by telephoning the contact listed under **FOR FURTHER**

INFORMATION CONTACT, or at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this proposed rule may also be viewed, by appointment, during regular business hours at the above address. To help NMFS process and review comments more efficiently, please use only one method to submit comments.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this proposed rule should be sent to NMFS via the means stated above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: David Rostker, Washington, DC 20503, or by e-mail at *David__Rostker@omb.eop.gov*, or by fax at (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, ext 166, or Monica DeAngelis, NMFS, Southwest Regional Office, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

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) within a specified geographical region. The Secretary will allow an incidental take if certain findings are made and either 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 no more than 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 subsistence uses. The permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking shall be prescribed.

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 for certain categories of 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 May 10, 2002, NMFS received an application from the MBNMS requesting a 1–year Incidental Harassment Authorization (IHA) under section 101(a)(5)(D) and, subsequently, the issuance of regulations governing authorizations for a 5–year period under section 101(a)(5)(A) of the MMPA for the potential harassment of California sea lions (*Zalophus californianus*) and Pacific harbor seals (*Phoca vitulina*) incidental to coastal fireworks displays conducted at MBNMS under permits issued by MBNMS to commercial companies. On July 4, 2005, NMFS issued an IHA to MBNMS (70 FR 39235, July 7, 2005) and that IHA expires on July 3, 2006.

The MBNMS adjoins 276 mi (444 km) or 25 percent of the central California coastline, and encompasses ocean waters from mean high tide to an average of 25 mi (40 km) offshore between Rocky Point in Marin County and Cambria in San Luis Obispo County. Fireworks displays have been conducted over current MBNMS waters for many years as part of national and community celebrations (such as Independence Day and municipal anniversaries), and to foster public use and enjoyment of the marine environment. The marine venue for this activity is the preferred setting for fireworks in central California in order to optimize public access and avoid the fire hazard associated with terrestrial display sites. Many fireworks displays occur at the height of the dry season in central California, when area vegetation is particularly prone to ignition from sparks or embers.

In 1992, the MBNMS was the first national marine sanctuary (NMS) to be designated along urban shorelines and therefore has addressed many regulatory issues previously not encountered by the NMS program. ZZAuthorization of professional firework displays has required a steady refinement of policies and procedures toward this activity as more is learned about its impacts to the environment.

Specified Activities

Since 1993, the MBNMS, a component of NOAA, has processed requests for the professional display of fireworks that affect the Sanctuary. The MBNMS has determined that debris fallout (spent pyrotechnic materials) from fireworks events may constitute a discharge into the Sanctuary and thus a violate Sanctuary regulations, unless a ZZ authorization is issued by the Sanctuary. 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).

Professional pyrotechnic devices used in fireworks displays can be grouped into three general categories: aerial shells (paper and cardboard spheres or cylinders ranging from 2 in (5 cm) to 12 in (30 cm) in diameter and filled with incendiary materials), low-level comet and multi-shot devices similar to over-the-counter fireworks such as roman candles, and set piece displays that are mostly static in nature and are mounted on the ground.

Aerial shells are launched from tubes (called mortars), using black powder charges, to altitudes of 200 to 1000 ft (61 to 305 m) where they explode and ignite internal burst charges and incendiary chemicals. Most of the incendiary elements and shell casings burn up in the atmosphere; however, portions of the casings and some internal structural components and chemical residue fall back to the ground or water, depending on prevailing winds. An aerial shell casing is constructed of paper/cardboard or plastic and may include some plastic or paper internal components used to compartmentalize chemicals within the shell. Within the shell casing is a burst charge (usually black powder) and a recipe of various chemical pellets (stars) that emit prescribed colors when ignited. Some of the chemicals commonly used in the manufacturing of pyrotechnic devices are potassium chlorate, potassium perchlorate, potassium nitrate, sodium benzoate, sodium oxalate, ammonium, perchlorate, strontium nitrate, strontium carbonate, sulfur, charcoal, copper oxide, polyvinyl chloride, iron, titanium, shellac, dextrine, phenolic resin, and aluminum. Manufacturers consider the amount and composition of chemicals within a given shell to be proprietary information and only release aggregate descriptions of internal shell components. The arrangement and packing of stars and burst charges within the shell determine the type of effect produced upon detonation.

Attached to the bottom of an aerial shell is a lift charge of black powder. The lift charge and shell are placed at the bottom of a mortar that has been buried in earth/sand or affixed to a wooden rack. A fuse attached to the lift charge is ignited with an electric charge or heat source, the lift charge explodes,

and propels the shell through the mortar tube and into the air to a height determined by the amount of powder in the lift charge and the weight of the shell. As the shell travels skyward, a time-delay secondary fuse is burning that eventually ignites the burst charge within the shell at peak altitude. The burst charge detonates, igniting and scattering the stars, which may, in turn, possess small secondary explosions. Shells can be launched one at a time or in a barrage of simultaneous or quick succession launches. They are designed to detonate between 200 and 1000 ft (61 to 305) above ground level (AGL).

In addition to color shells (also known as designer or starburst shells), a typical fireworks show will usually include a number of aerial ''salute'' shells. The primary purpose of salute shells is to announce the beginning and end of the show and produce a loud percussive audible effect. These shells are typically two to three inches (five to seven centimeters) in diameter and packed with black powder to produce a punctuated explosive burst at high altitude. From a distance, these shells sound similar to cannon fire when detonated.

Low-level devices consist of stars packed linearly within a tube, and when ignited, the stars exit the tube in succession producing a fountain effect of single or multi-colored light as the stars incinerate through the course of their flight. Typically, the stars burn rather than explode, thus producing a ball or trail of sparkling light to a prescribed altitude where they simply extinguish. Sometimes they may terminate with a small explosion similar to a firecracker. Other low-level devices emit a projected hail of colored sparks or perform erratic low-level flight while emitting a high-pitched whistle. Some emit a pulsing light pattern or crackling or popping sound effects. In general, low-level launch devices and encasements remain on the ground or attached to a fixed structure and can be removed upon completion of the display. Common low-level devices are multi-shot devices, mines, comets, meteors, candles, strobe pots and gerbs. They are designed to produce effects between 0 and 200 ft (61 m) AGL.

Set piece or ground level fireworks are primarily static in nature and remain close to the ground. They are usually attached to a framework that may be crafted in the design of a logo or familiar shape, illuminated by pyrotechnic devices such as flares, sparklers and strobes. These fireworks typically employ bright flares and sparkling effects that may also emit limited sound effects such as cracking, popping, or whistling. Set pieces are usually used in concert with low-level effects or an aerial show and sometimes act as a centerpiece for the display. It may have some moving parts, but typically does not launch devices into the air. Set piece displays are designed to produce effects between 0 and 50 ft (15 m) AGL.

Each display is unique according to the type and number ofshells, the pace of the show, the length of the show, the acoustic qualities of the display site, and even the weather and time of day. The vast majority (97 percent) of fireworks displays ZZ authorized in the Sanctuary between 1993 and 2005 were aerial displays that usually included simultaneous low-level displays. An average large display will last 20 minutes and include 700 aerial shells and 750 low-level effects. An average smaller display lasts approximately seven minutes and includes 300 aerial shells and 550 low-level effects. There seems to be a declining trend in the total number of shells used in aerial displays, due to increasing shell costs and/or fixed entertainment budgets. Low-level displays sometimes compensate for the absence of an aerial show by squeezing a larger number of effects into a shorter timeframe. This results in a dramatic and rapid burst of light and sound effects at low level. A large low-level display may expend 4,900 effects within a 7–minute period, and a small display will use an average of 1,800 effects within the same timeframe. Some fireworks displays are synchronized with musical broadcasts over loudspeakers and may incorporate other non-pyrotechnic sound and visual effects.

The MBNMS has issued 67 permits for professional fireworks displays since 1993 (five in 2005) and 5 applications are currently being processed (as of March 2006). Four fireworks display applications have been directed to areas outside the Sanctuary. However, the MBNMS staff projects that as many as 20 coastal displays per year may be conducted in, or adjacent to, MBNMS boundaries in the future. The number of displays will be limited to not more than 20 events per year in four specific areas along 276 mi (444 km) of coastline. Fireworks displays will not exceed 30 minutes (with the exception of up to two displays per year, not to exceed 1 hour) in duration and will occur with an average frequency of less than or equal to once every two months within each of the four prescribed display areas.

Initially, the MBNMS believed that it could minimize potential light, sound, and debris impacts to the Sanctuary and marine mammals through permit conditions to limit the location, timing, and composition of professional fireworks events affecting the MBNMS. However, due to observations over the past several years and through consultation with NMFS' Southwest Region, it appears that some fireworks displays resulted in incidental take of marine mammals by Level B harassment. NMFS believes that the nature of the take will be the short-term flushing and evacuation of non-breeding haulout sites by California sea lions and Pacific harbor seals.

A more detailed description of the fireworks displays permitted by MBNMS may be found in the application or in MBNMS' 2001 Assessment of Pyrotechnic Displays and Impacts Within the MBNMS, which are available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

Description of Habitat and Marine Mammals Affected by the Activity

Habitat and Fireworks Display Areas

The Monterey Bay area is located in the Oregonian province subdivision of the Eastern Pacific Boreal Region. The six types of habitats found in the bay area are: (1) Submarine canyon habitat, (2) nearshore sublittoral habitat, (3) rocky intertidal habitat, (4) sandy beach intertidal habitat, (5) kelp forest habitat, and (6) estuarine/slough habitat. Monterey Bay supports a wide array of temperate cold-water species with occasional influxes of warm-water species, and this species diversity is directly related to the diversity of habitats.

Pyrotechnic displays within the Sanctuary are conducted from a variety of coastal launch sites - beaches, bluff tops, piers, offshore barges, and golf course sand traps and tee boxes. In the past, authorized displays have been confined to eight general locations in the Sanctuary. However, future permitted fireworks displays will be confined to only four general prescribed areas (with seven total sub-sites) within the Sanctuary, while displays along the remaining 95 percent of Sanctuary coastal waters will be prohibited. These sites were approved for fireworks events based on their proximity to urban areas and pre-existent high human use patterns, seasonal considerations such as the abundance and distribution of marine wildlife, and the acclimation of wildlife to human activities and elevated ambient noise levels in the area.

The four conditional display areas are located at Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Peninsula, and Cambria

(Santa Rosa Creek)(see Map A in the application). The number of displays will be limited to not more than 20 total events per year within these four specific areas combined, along the whole 276 mi (444 km) of coastline.

1. Half Moon Bay

Site Description: This site has been used annually for a medium-sized Independence Day fireworks display on July 4, which lasts about 20 minutes. The launch site is on a sandy beach inside and adjacent to the east outer breakwater, upon which the aerial shells are launched and aimed to the southwest. The marine venue adjacent to Pillar Point Harbor is preferred for optimal public access and to avoid the fire hazard associated with terrestrial display sites. The fireworks display occurs at the height of the dry season in central California, when area vegetation is particularly prone to ignition from sparks or embers.

Human Use Patterns: The harbor immediately adjacent to the impact area is home to a major commercial fishing fleet that operates at all times of the day and night throughout the year. The harbor also supports a considerable volume of recreational boat traffic. Half Moon Bay Airport is located adjacent to the harbor, and approach and departure routes pass directly over the acute impact area. The airport is commonly used by general aviation pilots for training, with an annual average attendance of approximately 15 flights per day. On clear sunny weekends, the airport may accommodate as many as 50 flights in a single day. Beachgoers and water sport enthusiasts use the beaches to the south of the launch site. The impact area is also used by recreational fishermen, surfers, swimmers, boaters, and personal watercraft operators. To the north, around Pillar Point is an area known as ''Mavericks'', considered a world-class surfing destination. Periodically, surfing contests are held at Mavericks. The impact area is also subjected to daily traffic noise from California Highway 1, which runs along the coast and is the primary travel route through the area.

Marine Mammals at Fireworks Sites: A considerable concentration of harbor seals are present to the north around Pillar Point and on the coast to the south of the launch site. Sea otters are not concentrated in the impact area, though some individuals may be present. It is possible that individual elephant seals may enter the area from breeding sites at Ano Nuevo Island and the Farallon Islands, but breeding occurs in the winter and displays in Half Moon Bay are limited to summer. Gray whales typically migrate west of the reefs extending south from Pillar Point.

2. Santa Cruz/Soquel

Site Description: Three separate fireworks display sites (Santa Cruz, Capitolas, and Aptos) are located within the Santa Cruz/Soquel area. The Santa Cruz launch site has been used annually for City anniversary fireworks displays in early October. The launch site is on a sandy beach, adjacent to the Santa Cruz Boardwalk and the San Lorenzo River and along the west bank. The aerial shells are aimed to the south.

The Capitola launch site has been used only once since 1993 for a 50–year City anniversary fireworks display on May 23, 1999. This display was the largest volume fireworks display conducted in the MBNMS to date, incorporating 1700 aerial shells and 1800 low-level effects and lasting 25 minutes. The launch site was on the Capitola Municipal Pier, adjacent to the City of Capitola. The aerial shells were aimed above the pier.

The Aptos site has been used annually for a large fundraiser for Aptos area schools in October. The launch site is on the Aptos Pier and part of a grounded cement barge at Seacliff State Beach. The aerial shells are aimed above and to the south of the pier. The large aerial show lasts for approximately 20 minutes.

Human Use Patterns: The harbor immediately adjacent to the Santa Cruz impact area is home to a commercial fishing fleet that operates at all times of the day throughout the year. The harbor primarily supports a large volume of recreational boater traffic. The launch site is in the center of the shoreline of a major urban coastal city. The beaches to the west of the launch site are adjacent to a large coastal amusement park complex and are used extensively by beachgoers and water sport enthusiasts from the local area as well as San Jose and San Francisco. The impact area is used by boaters, recreational fishermen, swimmers, surfers, and other recreational users. Immediately southwest of the launch site is a mooring field and the Santa Cruz Municipal Pier which is lined with retail shops, restaurants, and offices. To the west of the pier is a popular local surfing destination known as ''Steamer Lane.'' Surfing contests are routinely held at the site. During the period from sunset through the duration of the fireworks display, 40–70 vessels anchor within the acute impact area to view the fireworks. Vessels criss-cross through the waters south of the launch site to take up position. In addition, U. S. Coast Guard and harbor patrol vessels motor through the impact area to maintain a safety zone around the launch site.

The Capitola impact area is immediately adjacent to a small urban community. The beaches to the east and west of the launch site are used daily by beachgoers and water sport enthusiasts from the regional area. The impact area is used by boaters, recreational fishermen, swimmers, surfers, and other recreational users. To the east of the Pier is a mooring field and popular public beach.

The Aptos impact area is immediately adjacent to a recreational beach. The beaches to the east and west of the launch site are used daily by beachgoers and water sport enthusiasts from the regional area. The impact area is used by boaters, recreational fishermen, swimmers, surfers, and other recreational users, but typically at moderate to light levels of activity. To the east and west of the Pier are public use beach areas and private homes at the top of steep coastal bluffs. During the period from sunset through the duration of the fireworks display, 30–40 vessels anchor within the acute impact area to view the fireworks. Vessels criss-cross through the waters seaward of the cement barge to take up position. In addition, U. S. Coast Guard and State Park Lifeguard vessels motor through the impact area to maintain a safety zone around the launch site.

Marine Mammals at the Fireworks Sites: California sea lions routinely use the Santa Cruz Municipal Pier as a haulout and resting site. Gray whales typically migrate along a southerly course, west of Point Santa Cruz and away from the pier. Sea otters are moderately concentrated in the impact areas near the Capitola Municipal Pier and Aptos Pier, primarily in and around the nearshore kelp forests. At the seaward end of the Aptos Pier is a 400–foot (122–meter) grounded cement barge. The barge was set in position as an extension of the pier, but has since been secured against public access. The exposed interior decks of the barge have created convenient haulout surfaces for harbor seals. In a 2000 survey, the MBNMS recorded as many as 45 harbor seals hauled out on the barge in the month of October.

3. Monterey Peninsula

Site Description: Two separate fireworks display sites (City of Monterey and Pacific Grove) are located within the Monterey Peninsula Area. Each Independence Day, the City of Monterey launches approximately 750 shells and an equal number of low-level effects from a barge anchored approximately

1000 ft (305 m) east of Municipal Wharf II and 1000 feet (305 meter) north of Del Monte Beach. The aerial shells are aimed above and to the northeast. The City's display lasts approximately 20 minutes and is accompanied by music broadcasted from speakers on Wharf II. The marine venue adjacent to Monterey Harbor is preferred for optimal public access and to avoid the fire hazard associated with terrestrial display sites. The fireworks display occurs at the height of the dry season in central California, when area vegetation is particularly prone to ignition from sparks or embers. Since 1999, a Monterey New Year's festival has used the City's launch barge for an annual fireworks display. The medium-size aerial display lasts approximately 8 minutes. In addition, three private displays (1993, 1998, and 2000) have been authorized from a launch site on Del Monte Beach. The 1993 display was an aerial display. Subsequent displays have been low-level displays, lasting approximately 7 minutes. Map D shows the location of and habitats found within the Monterey Fireworks Launch Sites.

The Pacific Grove site has been used annually for a ''Feast of Lanterns'' fireworks display in late July. The Feast of Lanterns is a community event that has been celebrated in the City of Pacific Grove for over 95 years. The fireworks launch site is at the top of a rocky coastal bluff adjacent to an urban recreation trail and public road. The aerial shells are aimed to the northeast. The small aerial display lasts approximately twenty minutes and is accompanied by music broadcasted from speakers at Lover's Cove. The fireworks are part of a traditional outdoor play that concludes the festival. The marine venue is preferred for optimal public access and to avoid the fire hazard associated with terrestrial display sites. The fireworks display occurs at the height of the dry season in central California, when area vegetation is particularly prone to ignition from sparks or embers.

Human Use Patterns: The Monterey fireworks impact area lies directly under the approach/departure flight path for Monterey Peninsula Airport (MRY) and is commonly exposed to noise and exhaust from general aviation, commercial, and military aircraft at approximately 500 ft (152 m) altitude. The airport supports approximately 280 landings/takeoffs per day in addition to touch-and-goes (landing and takeoff training). Commercial and recreational vessels operate in the area during day and night hours from the adjacent harbor. A 30–station mooring field lies within the acute impact area between the launch barge and Municipal Wharf II. The moorings are completely occupied during the annual fireworks event. Auto traffic and emergency vehicles are audible from Lighthouse and Del Monte Avenues, main transportation arteries along the adjacent shoreline. The impact area is utilized by thousands of people each week for boating, kayaking, scuba diving, fishing, swimming, and harbor operations. During the period from sunset through the duration of the fireworks display, 20–30 vessels anchor within the acute impact area to view the fireworks. Vessels criss-cross through the waters south of the launch site to take up position. In addition, U. S. Coast Guard and harbor patrol vessels motor through the impact area to maintain a safety zone around the launch site.

The Pacific Grove launch site is in the center of an urban shoreline, adjacent to a primary public beach in Pacific Grove. The shoreline to the east and west of the launch site is lined with residences and a public road and pedestrian trail. The impact area is used by boaters, recreational fishermen, swimmers, surfers, divers, beachgoers, tidepoolers, and others. The center of the impact area is in a cove with 30–40 ft (9–12 m) coastal bluffs. Immediately north of the launch site is a popular day use beach area. On a clear summer day, the beach may support up to 500 visitors at any given time. Surfing activity is common immediately north of the site. During the period from sunset through the duration of the fireworks display, 10–20 vessels anchor within the acute impact area to view the fireworks. A U. S. Coast Guard vessel motors through the impact area to maintain a safety zone seaward of the launch site.

Marine Mammals at the Fireworks Sites: The largest concentration of wildlife near the Monterey impact area are California sea lions and marine birds resting at the Monterey breakwater approximately 700 yards (640 meters) northwest of the center of the impact area. Several sea otters are present within Monterey Harbor and the acute impact area during the time of the fireworks display. Otters outside the harbor are most concentrated to the northwest of the Monterey breakwater; however, otters routinely forage and loiter within the acute impact area and along the shoreline to the north.

Sea otters and pups routinely forage and loiter within the Pacific Grove acute impact area in moderate numbers. Harbor seals routinely use offshore rocks and wash rocks for haulout and also forage in the area.

4. Cambria

Site Description: The site has been used annually for a small Independence Day fireworks display on July 4, which lasts approximately 20 minutes. The launch site is on a sandy beach at Shamel County Park, and the aerial shells are aimed to the west. Immediately north of the launch site is the mouth of Santa Rosa Creek and Lagoon. The marine venue is preferred for optimal public access and to avoid the fire hazard associated with terrestrial display sites. The fireworks display occurs at the height of the dry season in central California, when area vegetation is particularly prone to ignition from sparks or embers.

Human Use Patterns: The impact area is immediately adjacent to a county park and recreational beach. The impact area is used by boaters, recreational fishermen, swimmers, surfers, and beachgoers. The shoreline south of the launch site is lined with hotels, abuts a residential neighborhood, and is part of San Simeon State Beach.

Marine Mammals at the Fireworks Site: The impact area includes low concentrations of harbor seals. Sea otters and sea lions are present in the impact area in moderate numbers. It is possible that individual elephant seals may enter the area from breeding sites to the north at Point Piedras Blancas, but breeding occurs in the winter and displays at Cambria are limited to the summer. Gray whales migrate along the coast in this area and may pass through the acute impact area, but July is not peak gray whale migration period.

Marine Mammals Potentially Affected by the Activity

Twenty-six species of marine mammals may be found in the Monterey Bay area (see Table 1 in the MBNMS application). Only six of these species, however, are likely to be present in the acute impact area (the area where sound, light, and debris effects have direct impacts on marine organisms and habitats) during a fireworks display. These species include the California sea lion, Pacific harbor seal, southern sea otter (*Enhydra lutris neries*) bottlenose dolphin (*Tursiops truncatus*), harbor porpoise (*Phocoena phocoena*), and the California gray whale (*Eschrichtius robustus*). The northern elephant seal (*Mirounga angustirostris*) is rarely seen in the area.

Though the three abovementioned cetaceans (bottlenose dolphins, harbor porpoises, and California Gray whales) are known to frequent nearshore areas within the Sanctuary, they have never been reported in the vicinity of a

fireworks display, nor have there been any reports to the MBNMS of strandings or injured/dead animals discovered after any display. Since sound does not transmit well between air and water, these animals would likely not encounter the effects of fireworks except when surfacing for air. NMFS does not anticipate any take of cetaceans and they are not addressed further in this document.

Past Sanctuary observations have not detected any disturbance to sea otters as a result of the fireworks displays; however, past observations have not included specific surveys for this species. Sea otters do frequent all general display areas. Sea otters and other species may temporarily depart the area prior to the beginning of the fireworks display due to increased human activities. Some sea otters in Monterey harbor have become quite acclimated to very intense human activity, often continuing to feed undisturbed as boats pass simultaneously on either side and within 20 ft (6 m) of the otters. It is therefore possible that select individual otters may have a higher tolerance level than others to fireworks displays. Otters in residence within the Monterey harbor display a greater tolerance for intensive human activity than their counterparts in more remote locations. The MBNMS consulted with the U.S. Fish and Wildlife Service (USFWS) pursuant to section 7 of the Endangered Species Act (ESA) regarding effects on southern sea otters because the USFWS is the agency with jurisdiction over sea otters. The USFWS concluded in a biological opinion that take of sea otters is not likely.

The northern elephant seal is seen so infrequently in the areas with fireworks displays that they are not likely to be impacted by fireworks displays. Therefore, the only species likely to be harassed by the fireworks displays are the California sea lion and the Pacific harbor seal.

Additional information regarding these species can be found in Folkens' Guide to the Marine Mammals of the World (2002) and in the NMFS stock assessments on the NMFS website: *http://www.nmfs.noaa.gov/pr/PR2/Stock__Assessment__Program/individual__sars.html*. Information relevant to the distribution, abundance and behavior of the species that are most likely to be impacted by fireworks displays within the MBNMS, is provided below.

California Sea Lions

The population of California sea lions ranges from southern Mexico to southwestern Canada (Caretta *et al.*, 2004). In the United States, after pupping in late May to June, they breed during July, primarily in the Channel Islands of California. Most individuals of this species breed on the Channel Islands off southern California (100 mi (161 km) south of the MBNMS) and off Baja and mainland Mexico (Odell, 1981), although a few pups have been born on Ano Nuevo Island (Keith *et al.*, 1984). Following the breeding season on the Channel Islands, most adult and sub-adult males migrate northward to central and northern California and to the Pacific Northwest, while most females and young animals either remain on or near the breeding grounds throughout the year or move southward or northward, as far as Monterey Bay.

Since nearing extinction in the early 1900's, the California sea lion population has increased and is now robust and growing at a current rate of 5.4 to 6.1 percent per year (based on pup counts) with an estimated ''minimum'' population (U.S. west coast) of 138,881 animals. The actual population level may be as high as 237,000 to 244,000 animals. The population is not listed as ''endangered'' or ''threatened'' under the ESA, nor is this species a ''depleted'' or a ''strategic stock'' under the MMPA.

In any season, California sea lions are the most abundant pinniped in the area (Bonnell *et al.*, 1983), primarily using the central California area to feed during the non-breeding season. After breeding farther south along the coast and migrating northward, populations peak in the Monterey Bay area in fall and winter and are at their lowest numbers in spring and early summer. A minimum of 12,000 California sea lions are probably present at any given time in the MBNMS region. Ano Nuevo Island is the largest single haul-out site in the Sanctuary, hosting as many as 9,000 California sea lions at times (Weise, 2000; Lowry, 2001).

Pacific Harbor Seals

Harbor seals are distributed throughout the west coast of the United States, inhabiting near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. They generally do not migrate, but have been known to travel extensive distances to find food or suitable breeding areas (Caretta *et al.*, 2004). In California, approximately 400–500 harbor seal haulout sites are widely distributed along the mainland and on offshore islands (Caretta *et al.*, 2004).

The harbor seal population in California is healthy and growing at a current rate of 3.5 percent per year with an estimated ''minimum'' population (California) of 25,720 animals (Caretta *et al.*, 2004). The California population is estimated at 27,863 animals. The population is not listed as ''endangered'' or ''threatened'' under the ESA; nor is this species a ''depleted'' or a ''strategic stock'' under the MMPA.

Harbor seals are residents in the MBNMS throughout the year, occurring mainly near the coast. They haul out at dozens of sites along the coast from Point Sur to Ano Nuevo. Within MBNMS, tagged harbor seals have been documented to move substantial distances (10–20 km (3.9–7.8 mi)) to foraging areas each night (Oxman, 1995; Trumble, 1995). The species does breed in the Sanctuary, and pupping within the Sanctuary occurs primarily during March and April followed by a molt during May and June. Peak abundance on land within the Sanctuary is reached in late spring and early summer when they haul out to breed, give birth to pups, and molt (MBNMS FEIS, 1992).

Potential Effects of Activities on Marine Mammals

Acoustic and Light Effects

The primary causes of disturbance are sound effects and light flashes from exploding fireworks. Pyrotechnic devices that operate at higher altitudes are more likely to have a larger acute impact area (such as aerial shells), while ground and low-level devices have more confined effects. Acute impact area is defined as the area where sound, light, and debris effects have direct impacts on marine organisms and habitats. Direct impacts include, but are not limited to, immediate physical and physiological impacts such as abrupt changes in behavior, flight response, diving, evading, flushing, cessation of feeding, and physical impairment or mortality.

The largest commercial aerial shells used within the Sanctuary are 10–12 in (25–30 cm) in diameter and reach a maximum altitude of 1000 ft (305 m) AGL. The bursting radius of the largest shells is approximately 850 ft (259 m). The acute impact area can extend from 1 to 2 miles (1.6–3.2 km) from the center of the detonation point depending on the size of the shell, height of the explosions, type of explosions, wind direction, atmospheric conditions, and local topography.

Aerial shells produce flashes of light that can be brilliant (exceeding 30,000 candela) and can occur in rapid succession. Loud explosive and crackling sound effects stem primarily from salutes (described earlier) and bursting charges at altitude. People and

wildlife on the ground and on the surface of the water can feel the sound waves and the accompanying rapid shift of ambient atmospheric pressure. This pressure wave has been known to activate car alarms that detect vibration. Sounds attenuate farther from high altitude shells than low altitude shells since they are not as easily masked by buildings and landforms, allowing the sound envelope to ensonify more surface area on the ground and water. The sound from the lifting charge detonation is vectored upward through the mortar tube opening and reports as a dull thump to bystanders on the ground, far less conspicuous than the high-level aerial bursts. The intensity of an aerial show can be amplified by increasing the number of shells used, the pace of the barrage, and the length of the display.

Low-level devices reach a maximum altitude of 200 ft (61 m) AGL. The acute impact area can extend to 1 mi (1.6 km) from the center of the ignition point depending on the size and flight patterns of projectiles, maximum altitude of projectiles, the type of special effects, wind direction, atmospheric conditions, and local structures and topography. Low-level devices also produce brilliant flashes and fountains of light and sparks accompanied by small explosions, popping, and crackling sounds. Since they are lower in altitude than aerial shells, sound and light effects impact a smaller area. Low-level devices do not typically employ large black powder charges like aerial shells, but are often used in large numbers in concert with one another and in rapid succession, producing very intense localized effects.

Set pieces are stationary, do not launch any encased effects into the air, and produce effects between 0 and 50 ft (15 m) AGL. Small pellets of a pyrotechnic composition, such as those from sparklers or roman candles may be expelled a short distance into the air. Loud, but not explosive, noises, such as crackling, popping, or whistling may emanate from a set piece, though they are usually used in concert with low-level effects and aerial displays. Depending on the size and height of the structure, the number and type of effects, wind direction, and local topography, the acute impact area can extend up to 0.5 mile (0.8 km) from the center of the ignition point, though fallout is generally confined within a 300 ft (91 m) radius. Residue may include smoke, airborne particulates, fine solids, and slag.

The primary impact to wildlife noted in past observation reports by Sanctuary staff is the disturbance of marine mammals and seabirds from the light and sound effects of the exploding aerial shells. The loud sound bursts and pressure waves created by the exploding shells appear to cause more wildlife disturbance than the illumination effects. In particular, the percussive aerial salute shells have been observed to elicit a strong flight response in California sea lions and marine birds in the vicinity of the impact area (within 0.45 mi (0.72 km) of the launch site).

Physical Impairment

In 2001, the MBNMS and USFWS monitored the July 4 City of Monterey fireworks display with the most thorough effort to date. Monitors recorded species abundance before, during, and after the event and measured the decibel level of exploding fireworks. A hand-held decibel meter was located aboard a vessel adjacent to the Monterey Breakwater, approximately one half mile from the fireworks launch site. The highest sound pressure level (SPL) reading observed on the decibel meter during the fireworks display was 82 decibels. In the Vandenburg Airforce Base (VAFB) studies discussed below, not all harbor seals left a haul-out during a launch unless the Sound Exposure Level was 100 decibels or above (which, in the case of the VAFB launch locations and durations, is equivalent to an SPL of 89 to 95 decibels), and only short-term effects were detected. SEL is an energy metric that takes duration of the sound into account, and since the rocket sounds last more than one second, SEL is higher than SPL in this situation. The typical decibel levels for the display ranged from 70 to 78 decibels (SPL), and no salute effects were used in the display. An ambient noise level of 58 decibels was recorded at the survey site 30 minutes following the conclusion of the fireworks. MBNMS' proposed regulations for take of marine mammals include an acoustic monitoring requirement to measure sound levels at the breakwater, where sea lions typically haul out, during the 2006 City of Monterey fourth of July celebration, which will include aerial salutes.

Permanent (auditory) threshold shift (PTS) occurs when there is physical damage to the sound receptors in the ear. In some cases there can be total or partial deafness, while in other cases the animal has an impaired ability to hear sounds in specific frequency ranges. Although there is no specific evidence that exposure to fireworks can cause PTS in any marine mammals, physical damage to a mammal's ears can potentially occur if it is exposed to sound impulses that have very high peak pressures, especially if they have very short rise times (time required for sound pulse to reach peak pressure from the baseline pressure). Such damage can result in a permanent decrease in functional sensitivity of the hearing system at some or all frequencies.

Temporary (auditory) threshold shift (TTS) is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). When an animal experiences TTS, its hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. Richardson *et al.* (1995) note that the magnitude of TTS depends on the level and duration of noise exposure, among other considerations. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends.

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to fireworks. Based on current information, NMFS precautionarily sets impulsive sounds equal to or greater than 190 dB re 1 microPa (rms) as the exposure thresholds for onset of Level A harassment (injury) for pinnipeds, under water (NMFS, 2000). If measured by an inanimate receiver 190 dB re 1 microPa (rms) would equal an A-weighted sound intensity level of 128 dB re 20 microPa, which are the units used for airborne sound. However, environmental conditions and the ear of the receiving animal may alter how the sound is received in air versus water, and precise exposure thresholds for airborne sounds have not been determined.

Some factors that contribute to onset of PTS are as follows: (1) Exposure to single very intense noises, (2) repetitive exposure to intense sounds that individually cause TTS but not PTS, and (3) recurrent ear infections or (in captive animals) exposure to certain drugs. Given the frequency, duration, and intensity of sounds (maximum measured 82 dB for larger aerial shells) that marine mammals may be exposed to, it is unlikely that they would sustain temporary, much less permanent, hearing impairment during fireworks displays.

In order to determine if harbor seals experience any change in their hearing sensitivity as a result of launch noise, researchers at VAFB conducted Auditory Brainstem Response (ABR)

testing on 10 harbor seals prior to, and after, the launches of 3 Titan IV rockets (one of the loudest launch vehicles at the south VAFB haul-out site). Detailed analysis of the changes in waveform latency and waveform replication of the ABR measurements showed that there were no detectable changes in the seals' hearing sensitivity as a result of the launch noise, which ranged from an A-weighted SPL of 111.4 to 111.2 dB and an A-weighted SEL from 96.6 to 103.6 (SRS Technologies, 2001).

Behavioral Disturbance

In some display locations, marine mammals and other wildlife may avoid or temporarily depart the impact area during the hours immediately prior to the beginning of the fireworks display due to increased human recreational activities associated with the overall celebration event (noise, boating, kayaking, fishing, diving, swimming, surfing, picnicking, beach combing, tidepooling, etc.), and as a fireworks presentation progresses, most marine mammals and birds generally evacuate the impact area. In particular, a flotilla of recreational and commercial boats usually gathers in a semi-circle within the impact area to view the fireworks display from the water. From sunset until the start of the display, security vessels of the U.S. Coast Guard and/or other government agencies often patrol throughout the waters of the impact area to keep vessels a safe distance from the launch site.

Non-nesting marine birds (especially pelicans, cormorants, and gulls) are among the first wildlife to evacuate the area at the start of fireworks displays. Past observations by the MBNMS indicate that virtually all birds within the acute impact area depart in a burst of flight within one minute of the start of a fireworks display, including low-level displays. However, staff have also repeatedly observed that Brandt's cormorants nesting at the Monterey Breakwater remain on their nests (over 200 nests) throughout the large July 4th aerial display that is launched each year from a barge approximately 0.5 mi (.8 km) away. Most non-nesting marine birds on the breakwater evacuate the area until the conclusion of the display. Their numbers return to normal levels by the following morning. During a 1998 display in Monterey, MBNMS staff observed a marine bird swim within 210 ft (64 m) of the launch site during the fireworks display. The bird remained on the water as the pyrotechnic effects were ignited aboard the barge and made no effort to swim away from the launch site. No injuries, fatalities, or negative impacts to marine birds have been detected during several years of monitoring and observations by the MBNMS.

Sea lions have been observed evacuating haul-out areas upon initial detonation of fireworks, and then returning to the haul-out sites within 4 to 15 hours following the end of the fireworks display. Harbor seals have been seen to remain in the water after initial fireworks detonation around the haul-out site. Sea lions in general are more tolerant of noise and visual disturbances than harbor seals - adult sea lions have likely habituated to many sources of disturbance and are therefore much more tolerant to nearby human activities. For both pinniped species, pups and juveniles are more likely to be harassed when exposed to disturbance than older animals.

In general, marine wildlife depart or avoid surface waters and haul-out sites within a 1000–yard radius of the center of the impact area during fireworks displays. Even short, low-level displays can cause a flight response in wildlife within the acute impact area.

NMFS and MBNMS found no peer-reviewed literature that specifically investigates the response of California sea lions and harbor seals to commercial fireworks displays. Similarly, general harassment or injury thresholds for exposure to airborne sounds have not been set. However, extensive studies have been conducted at VAFB to determine responses by California pinnipeds to the effects of periodic rocket launches, the light and sound effects of which would be roughly similar to the effects of pyrotechnic displays, but of greater intensity. This ongoing scientific research program has been conducted since 1997 to determine the long-term cumulative impacts of space vehicle launches on the haul-out behavior, population dynamics and hearing acuity of harbor seals at VAFB. In addition, when sonic boom prediction models projected that a sonic boom would hit one of the northern Channel Islands, pinniped populations were studied at identified haul-out sites in order to determine the impact of the boom on pinniped behavior.

The response of harbor seals to rocket launch noise at VAFB depended on the intensity of the noise (dependent on the size of the vehicle and its proximity) and the age of the seal (SRS Technologies 2001). Not surprisingly, the highest noise levels are typically from launch vehicles with launch pads closest to the haul-out sites. The percentage of seals leaving the haul-out increases with noise level up to approximately 100 decibels (dB) A-weighted SEL, after which almost all seals leave, although recent data has shown that an increasing percentage of seals have remained on shore, and those that remain are adults. Given the high degree of site fidelity among harbor seals, it is likely that those seals that remained on the haul-out site during rocket launches had previously been exposed to launches; that is, it is possible that adult seals have become acclimated to the launch noise and react differently than the younger inexperienced seals. Of the 20 seals tagged at VAFB, 8 (40 percent) were exposed to at least 1 launch disturbance but continued to return to the same haul-out site. Three of those seals were exposed to 2 or more launch disturbances. Most of the seals exposed to launch noise (n=6, 75 percent) appeared to remain in the water adjacent to the haul-out site and then returned to shore within 2 to 22 minutes after the launch disturbance. Of the two remaining seals that left the haul-out after the launch disturbance, both had been on shore for at least 6 hours and returned to the haul-out site on the following day (SRS Technologies, 2001).

The launches at VAFB do not appear to have had long-term effects on the harbor seal population in this area. The total population of harbor seals at VAFB is estimated to be 1,040 animals and has been increasing at an annual rate of 12.6 percent. Since 1997, there have been five to seven space vehicle launches per year and there appears to be only short-term disturbance effects to harbor seals as a result of launch noise (SRS Technologies, 2001). Harbor seals will temporarily leave their haul-out when exposed to launch noise; however they generally return to the haul-out within one hour.

On San Miguel Island, when California sea lions and elephant seals were exposed to sonic booms from vehicles launched on VAFB, sea lion pups were observed to enter the water, but usually remained playing in the water for a considerable period of time. Some adults approached the water, while elephant seals showed little to no reaction. This short-term disturbance to sea lion pups does not appear to have caused any long-term effects to the population.

The conclusions of the five-year VAFB study are almost identical to the MBNMS observations of pinniped response to commercial fireworks displays. Observed impacts have been limited to short-term disturbance only.

Results of Past Monitoring of Pinnipeds During Fireworks at MBNMS

Past monitoring by the MBNMS has identified at most only a short-term

behavioral disturbance of animals by fireworks displays, with the primary causes of disturbance being sound effects and light flashes from exploding fireworks. Additionally, the VAFB study of the effects of rocket-launch noise, which is more intense than fireworks noise, on California sea lions and Pacific harbor seals indicated only short-term behavioral impacts. With the mitigation measures proposed below, any takes will be limited to the temporary incidental harassment of California sea lions and Pacific harbor seals due to evacuation of usual and accustomed haul-out sites for as little as 15 minutes and as much as 15 hours following any fireworks event. Most animals depart affected haul-out areas at the beginning of the display and return to previous levels of abundance within 4 to 15 hours following the event. This information is based on observations made by Sanctuary staff over an 8–year period (1993–2001) and a quantitative survey made in 2001. Empirical observations have focused on impacts to water quality and selected marine mammals and birds in the vicinity of the displays. No observations were made in upland areas (beyond the jurisdiction of the Sanctuary) due to limited staff resources.

Sea lions in general are more tolerant to noise and visual disturbances than harbor seals. In addition, pups and juveniles are more likely to be harassed when exposed to disturbance than the older animals. Adult sea lions have likely habituated to many sources of disturbance and are therefore much more tolerant of human activities nearby. Of all the display sites in the Sanctuary, California sea lions are only present in significant concentrations at Monterey. The following is an excerpt from a 1998 MBNMS staff report on the reaction of sea lions to a large aerial fireworks display in Monterey:

In the first seconds of the display, the sea lion colony becomes very quiet, vocalizations cease, and younger sea lions and all marine birds evacuate the breakwater. The departing sea lions swim quickly toward the open sea. Most of the colony remains intact until the older bulls evacuate, usually after a salvo of overhead bursts in short succession. Once the bulls depart, the entire colony follows suit, swimming rapidly in large groups toward the open sea. A select few of the largest bulls may sometimes remain on the breakwater. Sea lions have been observed attempting to haul out onto the breakwater during the fireworks display, but most are frightened away by the continuing aerial bursts.

Sea lions begin returning to the breakwater within 30 minutes following the conclusion of the display but have been observed to remain quiet for some time. The colony usually reestablishes itself on the breakwater within 2–3 hours following the conclusion of the display, during which vocalization activity returns. Typically, the older bulls are the first to renew vocalization behavior (within the first hour), followed by the younger animals. By the next morning, the entire colony seems to be intact and functioning with no visible sign of abnormal behavior.

In the 2001 Monterey survey (discussed earlier), most animals were observed to evacuate haul-out areas upon the initial report from detonated fireworks. Surveys continued for 4.5 hours after the initial disturbance and numbers of returning California sea lions remained at less than 1 percent of pre-fireworks numbers. When surveys resumed the next morning (13 hours after the initial disturbance), sea lion numbers on the breakwater equaled or exceeded pre-fireworks levels. MBNMS staff have been opportunistically monitoring sea lions at the City of Monterey's Fouth of July celebration for more than 10 years. Following is a summary of their general observations: sea lions begin leaving the breakwater as soon as the fireworks begin, clear completely off after an aerial salute or quick succession of loud effects, usually begin returning within a few hours of the end of the display, and are present on the breakwater at pre-firework numbers by the following morning.

Up to 15 harbor seals may typically be present on rocks in the outer Monterey harbor in early July. The seal haulout area is approximately 2,100 ft (640 m)(horizontal distance) from the impact zone for the aerial pyrotechnic display. Only two harbor seals were observed on and near the rocks adjacent to Fisherman's Wharf prior to the 2001 display. Neither were observed to haul out after the initial fireworks detonation, but remained in the water around the haul-out. The haul-out site was only surveyed until the conclusion of the fireworks display, therefore, no animal return data is available. However, the behavior of the seals after the initial disturbance and during the fireworks display is similar to the response behavior of seals during the VAFB rocket launches, where they loitered in the water adjacent to their haul-out site during the launch and returned to shore within 2 to 22 minutes after the launch disturbance.

MBNMS staff monitored harbor seal reactions to a coastal fireworks display at Aptos in October 2000 and did not see any harbor seals during and immediately after the event. Based on the reaction of the birds and the noise of the display, observers believed that the seals evacuated the area on and around the cement ship. Harbor seals were sighted hauled out on the ship and in the water the following morning.

A private environmental consultant has monitored the Aptos fireworks display each October from 2001 through 2005 (per California Coastal Commission permit conditions) and concluded that harbor seal activity returns to normal at the site by the day following the display. Surveys have detected no evidence of injury or mortality in harbor seals as a result of the annual 30–minute fireworks display at the site.

Since harbor seals have a smaller profile than sea lions and are less vocal, their movements and behavior are often more difficult to observe at night. In general, harbor seals are more timid and easily disturbed than California sea lions. Thus, based on past observations of sea lion disturbance thresholds and behavior, it is very likely that harbor seals evacuate exposed haul outs in the acute impact area during fireworks displays, though they may loiter in adjacent surface waters until the fireworks have concluded.

Non-Acoustic Effects

Chemical Residue

Possible indirect impacts to marine mammals and other marine organisms include those resulting from chemical residue or physical debris emitted into the water. When an aerial shell detonates, its chemical components burn at high temperatures, which usually promotes efficient incineration. Pyrotechnic vendors have stated that the chemical components are incinerated upon successful detonation of the shell. However, by design, the chemical components within a shell are scattered by the burst charge, separating them from the casing and internal shell compartments.

Chemical residue is produced in the form of smoke, airborne particulates, fine solids, and slag (spent chemical waste material that drips from the deployment canister/launcher and cools to a solid form). The fallout area for chemical residue is unknown, but is probably similar to that for solid debris. Similar to aerial shells, the chemical components of low-level devices produce chemical residue that can migrate to ocean waters as a result of fallout. The point of entry would likely be within a small radius (about 300 ft (91 m)) of the launch site.

The MBNMS has found only one scientific study directed specifically at the potential impacts of chemical residue from fireworks upon the environment. A 1992 Florida study (DeBusk et al., 1992) indicates that

chemical residues (fireworks decomposition products) do result from fireworks displays and can be measured under certain circumstances. The report, prepared for the Walt Disney Corporation in 1992, presented the results of a 10–year study of the impacts of fireworks decomposition products (chemical residue) upon an aquatic environment. Researchers studied a small lake in Florida subjected to two thousand fireworks shows over a ten-year period to measure key chemical levels in the lake. The report concluded that detectable amounts of barium, strontium, and antimony had increased in the lake but not to levels considered harmful to aquatic biota. The report further suggested that ''environmental impacts from fireworks decomposition products typically will be negligible in locations that conduct fireworks displays infrequently'' and that ''the infrequence of fireworks displays at most locations, coupled with a wide dispersion of constituents, make detection of fireworks decomposition products difficult.'' The MBNMS staff spoke with one of the authors of the report who hypothesized that had the same study been conducted in California, the elevated metal concentrations in the lake would not have even been detectable against natural background concentrations of those same metals, due to naturally higher metal concentrations in the western United States. Based on the findings of this report and the lack of any evidence that fireworks displays within the Sanctuary have degraded water quality, the MBNMS believes that chemical residue from fireworks does not pose a significant risk to the marine environment. No negative impacts to water quality have been detected.

Debris

The fallout area for the aerial debris is determined by local wind conditions. In coastal regions with prevailing winds, the fallout area can often be projected in advance. This information is calculated by pyrotechnicians and fire department personnel in selection of the launch site to abate fire and public safety hazards. Mortar tubes are often angled to direct shells over a prescribed fallout area, away from spectators and property. Generally, the bulk of the debris will fall to the surface within a 0.5 mi (0.8 km) radius of the launch site. In addition, the tops of the mortars and other devices are usually covered with household aluminum foil to prevent premature ignition from sparks during the display and to protect them from moisture. The shells and stars easily punch through the thin aluminum foil when ignited, scattering pieces of aluminum in the vicinity of the launch site. Through various means, the aluminum debris and garbage generated during preparation of the display may be swept into ocean waters.

Some low-level devices may project small casings into the air (such as small cardboard tubes used to house flaming whistle and firecracker type devices). These casings will generally fall to earth within a 200-yard (183-meter) radius of the launch site, since they do not attain altitudes sufficient for significant lateral transport by winds. Though typically within 300 ft (91 m), the acute impact area for set piece devices can extend to a 0.5 mi (0.8 km) radius from the center of the ignition point depending on the size and height of the fixed structure, the number and type of special effects, wind direction, atmospheric conditions, and local structures and topography. Like aerial shells, low-level pyrotechnics and mortars are often covered with aluminum foil to protect them from weather and errant sparks, pieces of which are shredded during the course of the show and initially deposited near the launch site.

The explosion in a firework separates the cardboard and paper casing and compartments, scattering some of the shell's structural pieces clear of the blast and burning others. Some pieces are immediately incinerated, while others burn up or partially burn on their way to the ground. Many shell casings simply part into two halves or into quarters when the burst charge detonates and are projected clear of the explosion. However, during the course of a display, some devices will fail to detonate after launch (duds) and fall back to earth/sea as an intact sphere or cylinder. Aside from post display surveys and recovery, there is no way to account for these misfires. The freefalling projectile could pose a physical risk to any wildlife within the fallout area, but the general avoidance of the area by wildlife during the display and the low odds for such a strike probably present a negligible potential for harm. Whether such duds pose a threat to wildlife (such as curious sea otters) once adrift is unknown. After soaking in the sea for a period of time, the likelihood of detonation rapidly declines. Even curious otters are unlikely to attempt to consume such a device. At times, some shells explode in the mortar tube (referred to as a flower pot) or far below their designed detonation altitude. It is highly unlikely that mobile organisms would remain close enough to the launch site during a fireworks display to be within the effective danger zone for such an explosion.

The MBNMS has conducted surveys of solid debris on surface waters, beaches, and subtidal habitat and has discovered no visual evidence of acute or chronic impacts to the environment or wildlife. Aerial displays generally produce a larger volume of solid debris than low-level displays. The MBNMS fireworks permits (discussed later) require the permittee to clean area beaches of fireworks debris for up to 2 days following the display. In some cases, debris has been found in considerable quantity on beaches the morning following the display.

The MBNMS staff have recovered many substantial uncharred casing remnants on ocean waters immediately after marine displays. Other items found in the acute impact area are cardboard cylinders, disks, and shell case fragments; paper strips and wading; plastic wading, disks, and tubes; aluminum foil; cotton string; and even whole unexploded shells (duds or misfires). In other cases, virtually no fireworks debris was detected. This variance is likely due to several factors, such as type of display, tide state, sea state, and currents. In either case, due to the requirement for the permittee to clean up following the displays, NMFS does not believe the small amount of remaining debris is likely to significantly impact the environment, including marine mammals or their habitat.

Increased Boat Traffic

Increased boat traffic is often an indirect effect of fireworks displays as boaters move in to observe the event. The more boats there are in the area, the larger the chance that a boat could potentially collide with a marine mammal or other marine wildlife. The number of boats present at any one event is largely dependent upon weather, sea state, distance of the display from safe harbors, and season. At the MBNMS, some events have virtually no boat traffic, while others may have as many as 40 boats ranging in size from 10 to 65 ft (3 to 20 m) in length.

Prior to and during fireworks displays at the MBNMS, boats typically enter the observation area at slow speed (less than 8 kts (15 km/hr)) due to the other vessels present and limited visibility (i.e., most fireworks displays occur at night). The U.S. Coast Guard and/or other federal agency vessels are on site to enforce safe boating laws and keep vessels out of the debris fallout area during the display. Most boaters anchor prior to the display, while others drift

with engines in neutral for convenient repositioning.

MBNMS staff have observed boat traffic during several fireworks displays and generally found that boaters are using good boating and safety practices. They have also never witnessed the harassment, injury, or death of marine mammals or other wildlife as a result of vessels making way at these events. In general, as human activity increases and concentrates in the viewing areas leading up to the display, wildlife avoid or gradually evacuate the area. As noted before, the fireworks venues are marine areas with some of the highest ambient levels of human activity in the MBNMS. Many resident animals are accustomed to stimuli such as emergency sirens, vehicle noise, boating, kayaking, swimming, tidepooling, crowd noise, etc. Due to the gradual nature of the increase in boat traffic, it's infrequent occurrence and short duration, and the slow speed of the boats, NMFS does not believe the increased boat traffic is likely to significantly impact the human environment, including marine mammals.

Because of mitigation measures proposed, which are outlined below, NMFS preliminarily finds that only Level B harassment may occur incidental to authorized coastal fireworks displays and that these events will result in no more than a negligible impact on marine mammal species or their habitats. NMFS also preliminarily finds that no impact on the availability of the species or stocks for subsistence uses will occur because there is no subsistence harvest of marine mammals in California.

Mitigation

The MBNMS has worked with the USFWS and NMFS Southwest Region for over five years to craft a set of Sanctuary fireworks authorization guidelines (available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*) designed to minimize fireworks impacts on the marine environment, as well as outline the locations, frequency, and conditions under which the MBNMS will ZZ authorize marine fireworks displays.

The guidelines include five broad approaches for managing fireworks displays and will be implemented by the MBNMS:

(1) *Establish a sanctuary-wide seasonal prohibition to safeguard reproductive periods:* MBNMS has established a Sanctuary-wide seasonal prohibition to safeguard pinniped reproductive periods. Fireworks events will not be authorized between March 1 and June 30 of any year, since this period is the primary reproductive season for many marine species.

(2) *Establish four conditional display areas and prohibit displays along the remaining 95 percent of Sanctuary coastal areas:* Traditional display areas are located adjacent to urban centers where wildlife has often acclimated to human disturbances, such as low-flying aircraft, emergency vehicles, unleashed pets, beach combing, recreational and commercial fishing, surfing, swimming, boating, and personal watercraft operations. Remote areas and areas where professional fireworks have not traditionally been conducted will not be considered for fireworks approval. Future permitted fireworks displays will be confined to four prescribed areas of the Sanctuary while prohibiting displays along the remaining 95 percent of Sanctuary coastal areas. The conditional display areas (described earlier in detail) are located at Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Peninsula, and Cambria (Santa Rosa Creek).

(3) *Create a per-annum limit on the number of displays allowed in each display area:* If properly managed, a limited number of fireworks displays conducted in areas already heavily impacted by human activity can occur with sufficient safeguards to prevent any long-term or chronic impacts upon local natural resources. There is a per-annum limit of 20 displays along the entire Sanctuary coastline in order to prevent cumulative negative environmental effects from fireworks proliferation. Additionally, displays will be authorized at a frequency equal to or less than 1 every two months in each area and an equal number of private and public displays will be considered for authorization within each display area.

(4) *Retain permitting requirements and general and special restrictions for each event:* Fireworks displays will not exceed 30 minutes with the exception of two longer displays per year that will not exceed 1 hour. The Sanctuary will continue to assess displays on a case-by-case basis, using specially developed terms and conditions to address concerns unique to fireworks displays (e.g., restricting the number of aerial ''salute'' effects used as well as requiring a ''ramp-up'', wherein ''salutes'' are not allowed in the first 5 minutes of the display; requiring the removal of plastic and aluminum labels and wrappings; and requiring post-show reporting and cleanup). Such terms and conditions have evolved over 12 years, as the Sanctuary has sought to improve its understanding of the potential impacts that fireworks displays have upon marine wildlife and the environment. The MBNMS will implement general and special restrictions unique to each fireworks event as necessary.

(5) *Institute a 5-year permit system for annual displays:* The Sanctuary intends to institute a 5-year permit system for fireworks displays that occur annually at fixed locations in a consistent manner, such as municipal Independence Day shows.

The MBNMS fireworks guidelines are designed to prevent an incremental proliferation of fireworks displays and disturbance throughout the Sanctuary and minimize area of impact by confining displays to primary traditional use areas. They also effectively remove fireworks impacts from 95 percent of the Sanctuary's coastal areas, place an annual quota and multiple permit conditions on the displays authorized within the remaining 5 percent of the coast, and impose a sanctuary-wide seasonal prohibition on all fireworks displays. The guidelines were developed in order to assure that protected species and habitats are not jeopardized by fireworks activities. They have been well received by local fireworks sponsors who have pledged their cooperation in protecting Sanctuary resources. The MBNMS Fireworks Guidelines are available at the NMFS website at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

Monitoring

The MBNMS has monitored commercial fireworks displays for potential impacts to marine life and habitats for 12 years. In July 1993, the MBNMS performed its initial field observations of professional fireworks at the annual Independence Day fireworks display conducted by the City of Monterey. Subsequent ''documented'' field observations were conducted in Monterey by the MBNMS staff in July 1994, July 1995, July 1998, March 1998 (private display), October 2000 (private display), July 2001, and July 2002. Documented field observations have also been made at Aptos each October from 2000 to 2005. The MBNMS staff have observed additional displays at Monterey, Pacific Grove, Capitola, and Santa Cruz, but those observations were primarily for permit compliance purposes, and written assessments of environmental impacts were not generated. Though monitoring techniques and intensity have varied over the years and visual monitoring of wildlife abundance and behavioral responses to nighttime displays is challenging, observed impacts have

been consistent. Wildlife activity nearest to disturbance areas returns to normal (pre-display species distribution, abundance, and activity patterns) within 12–15 hours, and no signs of wildlife injury or mortality have ever been discovered as a result of managed fireworks displays.

Of all the past authorized fireworks display sites within the Sanctuary, the City of Monterey site has received the highest level of Sanctuary monitoring effort. The City of Monterey has hosted a marine fireworks display each July 4th since 1988 (5 years prior to designation of the MBNMS). The display is the longest running and largest annual commercial fireworks display within the Sanctuary. The Monterey breakwater (approximately one half statute mile from the pyrotechnic launch site) was constructed in the 1930s and, along with other natural rock formations, has been a regular haul-out site for California sea lions and harbor seals for many decades. For this reason, the Monterey site has been studied and surveyed by government and academic researchers for over 20 years. Consequently, the Monterey site has the best background data available for assessing status and trends of key marine mammal populations relative to annual fireworks displays. Therefore, the MBNMS proposes that Monterey be monitored as necessary to assess how local California sea lion and harbor seal distribution and abundance are affected by an annual fireworks display.

The Sanctuary proposes conducting a visual census of the Monterey breakwater and Harbor Rocks on July 4–5, either in 2006 or 2007, to update annual abundance, demographic response patterns, and departure and return rates for California sea lions and harbor seals relative to the July 4 fireworks display. Data will be collected by an observer aboard a kayak or small boat and from ground stations (where appropriate). The observer will use binoculars, counters, and data sheets to census animals. The pre and post fireworks census data will be analyzed to identify any significant temporal changes in abundance and distribution that might be attributed to impacts from the annual fireworks display. The data will also be added to past research statistics on the abundance and distribution of stocks at Monterey Harbor.

It should be noted, however, that annual population trends at any given pinniped haul-out site can be influenced by a myriad of environmental and biological factors, ranging from predation upon pups at distant breeding colonies to fluctuating prey stocks due to El Nino events. These many variables make it difficult to measure and differentiate the potential impact of a single stimulus on long-term population trends.

The Sanctuary also proposes to conduct one-time acoustic monitoring at the 2006 or 2007 City of Monterey Fourth of July fireworks display in conjunction with the behavioral monitoring described above. The procedures for this monitoring will be outlined and described in the preamble to the final rule, the regulations, and subsequent LOAs.

In addition to the comprehensive behavioral monitoring to be conducted at the Monterey Bay Breakwater in 2006, MBNMS will require its applicants to conduct a pre-event census of local marine mammal populations within the fireworks impact area. Each applicant will also be required to conduct post-event monitoring in the acute fireworks impact area to record injured or dead marine mammals brown pelicans, and other wildlife.

Reporting

MBNMS must submit a draft annual monitoring report to NMFS within 60 days after the conclusion of each calendar year. MBNMS must submit a final annual monitoring report to the NMFS within 30 days after receiving comments from NMFS on the draft report. If no comments are received from NMFS, the draft report will be considered to be the final report. In addition, the MBNMS will continue to incorporate updated census data from government and academic surveys into its analysis and will make its information available to other marine mammal researchers upon request. Lastly, MBNMS must submit a draft comprehensive monitoring report to NMFS 120 days prior to the expiration of the regulations if renewal is requested, or 120 days after the expiration of the regulations, if renewal is not requested. MBNMS must submit the final comprehensive monitoring report to NMFS within 30 days after receiving comments from NMFS on the draft comprehensive monitoring report. Again, if no comments are received from NMFS, the draft report will be considered to be the final report.

Numbers of Marine Mammals Expected to be Harassed

As discussed above, the two marine mammal species NMFS believes likely to be taken by Level B harassment incidental to fireworks displays authorized within the Sanctuary are the California sea lion (*Zalophus californianus*) and the Pacific harbor seal (*Phoca vitulina richardsi*), due to the temporary evacuation of usual and accustomed haul-out sites. Both of these species are protected under the MMPA, and neither is listed under the ESA. Numbers of animals that may be taken by Level B harassment are expected to vary due to factors such as tidal state, seasonality, shifting prey stocks, climatic phenomenon (such as El Nino events), and the number, timing, and location of future displays. The estimated take of sea lions and harbor seals was determined by using a synthesis of information, including data gathered by MBNMS biologists at the specific display sites, results of independent surveys conducted in the MBNMS, and population estimates from surveys covering larger geographic areas. More detailed information regarding the estimates of take of sea lions and harbor seals may be found in the application at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

Stage structure of California sea lions within the Sanctuary varies by location, but generally, the majority are adult and sub-adult males. Weise (2000) reported on the stage structure of California sea lions at two historic fireworks display areas within the MBNMS, and speculated that juveniles may haul out at the Monterey jetty in large numbers due to a need for a more protected haul-out location. He also reported that most animals on Ano Nuevo Island appeared to be adult males and suggested that the stage structure may vary between mainland haul-out sites and offshore islands and rocks. At all four designated display sites combined, twenty fireworks events per year could disturb an average total of 2,630 California sea lions, with the maximum being 6,170 animals out of a total estimated population of 237,000–244,000. These numbers are small relative to the population size (1.1–2.6%).

For harbor seals, an average of 302 and a maximum of 1,065 harbor out of a total estimated population of 27,836 could be disturbed within the Sanctuary as a result of twenty fireworks events per year at all four designated display sites combined. These numbers are small relative to the population size (1.1–3.8%). Nicholson (2000) studied the stage structure of harbor seals on the northeast Monterey Peninsula (an area with the largest single concentration of animals within the Sanctuary) for two years. For the final spring season of the study, survey numbers equate to a stage structure comprising 38 percent adult females, 15 percent adult males, 34 percent sub-adults, and 13 percent yearlings or juveniles.

With the incorporation of mitigation measures proposed later in this document, the MBNMS expects that only Level B incidental harassment may occur associated with the proposed permitted coastal fireworks displays, and that these events will result in no detectable impact on marine mammal species or stocks or on their habitats.

Possible Effects of Activities on Marine Mammal Habitat

Impacts on marine mammal habitat are part of the consideration in making a finding of negligible impact on the species and stocks of marine mammals. Habitat includes, but is not necessarily limited to, rookeries, mating grounds, feeding areas, and areas of similar significance. The amount of debris and chemical residue resulting from fireworks displays authorized within the MBNMS is determined by the size and contents of the different fireworks, as well as the wind conditions, weather, and other local variations. Implementation of the MBNMS Fireworks Guidelines, which require that permittees clean up the affected area after each fireworks display, will be required by the LOAs and Sanctuary Authorizations. No evidence of water quality deterioration has been found in relation to prior MBNMS fireworks displays and this document discusses the 1992 Walt Disney report, which found that environmental impacts from fireworks decomposition products typically will be negligible in locations that conduct fireworks displays infrequently. Because of the aforementioned mitigation measure and report, NMFS does not expect the debris and residue resulting from authorized fireworks displays to significantly impact marine mammals or marine mammal habitat in the MBNMS.

Possible Effects of Activities on Subsistence Needs

There are no subsistence uses for Pacific harbor seals in California waters, and thus, there are no anticipated effects on subsistence needs.

ESA

As mentioned earlier, the Steller sea lion and several species of federally listed cetaceans may be present at MBNMS at different times of the year and could potentially swim through the fireworks impact area during a display. In a 2001 consultation with MBNMS, the Southwest Region, NMFS, concluded that this action is not likely to adversely affect federally listed species under NMFS' jurisdiction. There is no designated critical habitat in the area. This action will not have effects beyond those analyzed in that consultation.

The USFWS is responsible for regulating the take of the southern sea otter, the brown pelican, and the western snowy plover. The MBNMS consulted with the USFWS pursuant to section 7 of the ESA regarding impacts to these species. The USFWS issued a biological opinion on June 22, 2005, which concluded that the authorization of fireworks displays, as proposed, is not likely to jeopardize the continued existence of endangered and threatened species within the Sanctuary or to destroy or adversely modify any listed critical habitat. The USFWS further found that MBNMS would be unlikely to take any southern sea otters, and therefore issued neither an incidental take statement under the ESA nor an IHA. The USFWS found that an incidental take of brown pelicans was possible and issued an incidental take statement containing terms and conditions to protect the species. The USFWS concluded that the authorization of fireworks events, as proposed, is not likely to jeopardize the continued existence of the western snowy plover or destroy or adversely modify critical habitat of the species.

National Environmental Policy Act

NOAA prepared a Final Environmental Impact Statement and Master Plan for the MBNMS in June 1992; however, this document did not address the authorization of fireworks on the Sanctuary. In 2006, MBNMS and NMFS jointly prepared a draft Environmental Assessment (EA) on the Issuance of Regulations Authorizing Incidental Take of Marine Mammals and Issuance of National Marine Sanctuary Authorizations for Coastal Commercial Fireworks Displays within the Monterey Bay National Marine Sanctuary. The draft EA will be made available for public comment concurrently with this proposed rule (see **ADDRESSES**).

Preliminary Determination

NMFS has preliminarily determined that the fireworks displays, as described in this document and in the application for regulations and subsequent LOAs, will result in no more than Level B harassment of small numbers of California sea lions and harbor seals. The effects of coastal fireworks displays will be limited to short term and localized changes in behavior, including temporarily vacating haulouts to avoid the sight and sound of commercial fireworks. NMFS has also preliminarily determined that any takes will have no more than a negligible impact on the affected species and stocks. No take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document. Additionally, the MBNMS fireworks displays will not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence use, as there are no subsistence uses for California sea lions or Pacific harbor seals in California waters.

Classification

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act

Pursuant to the procedures established to implement section 6 of E.O. 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Pursuant to the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires Federal agencies to prepare an analysis of a proposed rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. section 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The MBNMS is the entity that will be affected by this rulemaking, not a small governmental jurisdiction, small organization or small business, as defined by the Regulatory Flexibility Act. Any requirements imposed by a Letter of Authorization issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, will be applicable only to the MBNMS. The MBNMS is part of the National Oceanic and Atmospheric Administration, National Ocean Service, a Federal agency responsible for managing the national marine sanctuary program. Because this action, if adopted, would directly affect the MBNMS and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties,

Reporting and recordkeeping requirements, Seafood, transportation.

Dated: April 25, 2006.

James W. Balsiger,

Assistant Administrator for Regulatory Affairs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart J is added to part 216 to read as follows:

Subpart J—Taking Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, California

Sec.

Subpart J—Taking Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, CA

§ 216.110 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by the MBNMS and those persons it authorizes to display fireworks within the Monterey Bay National Marine Sanctuary.

(b) The incidental take, by Level B harassment only, of marine mammals under the activity identified in this section is limited to the following species: California sea lions (*Zalophus californianus*) and Pacific harbor seals (*Phoca vitulina*).

§ 216.111 Effective dates.

Regulations in this subpart are effective from July 4, 2006, through July 3, 2011.

§ 216.112 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.117, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by Level B harassment only, within the area described in § 216.110(a), provided the activity is in compliance with all terms, conditions, and requirements of this subpart and the appropriate Letter of Authorization.

(b) The activities identified in § 216.110(a) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The taking of marine mammals is authorized for the species listed in § 216.110(b) and is limited to the Level B Harassment of no more than 6,170 California sea lions and 1,065 harbor seals annually.

§ 216.113 Prohibitions.

Notwithstanding takings contemplated in § 216.110 and authorized by a Letter of Authorization issued under §§ 216.106 and 216.117, no person in connection with the activities described in § 216.110 may:

(a) Take any marine mammal not specified in § 216.110(b);

(b) Take any marine mammal specified in § 216.110(b) other than by incidental, unintentional Level B harassment;

(c) Take a marine mammal specified in § 216.110(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or a Letter of Authorization issued under §§ 216.106 and 216.117.

§ 216.114 Mitigation.

(a) The activity identified in § 216.110(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.110(a), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 216.117 must be implemented. These mitigation measures include (but are not limited to):

(1) Limiting the location of the permitted fireworks displays to the four specifically designated areas at Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Breakwater, and Cambria (Santa Rosa Creek);

(2) Limiting the frequency of permitted fireworks displays to no more than 20 total displays per year and no more than one fireworks display every two months in each of the four prescribed areas;

(3) Limiting the duration of permitted individual fireworks displays to no longer than 30 minutes each, with the exception of two longer shows not to exceed 1 hour;

(4) Prohibiting fireworks displays at MBNMS between March 1 and June 30 of any year; and

(5) Continuing to implement the 2006 MBNMS Fireworks Guidelines when permitting fireworks displays at the MBNMS, which include additional restrictions, such as the requirement for permittees to clean up debris following the event.

(b) The mitigation measures that the individuals conducting the fireworks are responsible for will be included as a requirement in the authorization the MBNMS issues to the individuals.

§ 216.115 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §§ 216.106 and 216.117 for activities described in § 216.110(a) is required to cooperate with the National Marine Fisheries Service (NMFS), and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. The Holder of the Letter of Authorization must notify the Director, Office of Protected Resources, National Marine Fisheries Service, or designee, by telephone (301–713–2289), within 24 hours if the authorized activity identified in § 216.110(a) is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified in § 216.110(b).

(b) The Holder of the Letter of Authorization must conduct all monitoring and/or research required under the Letter of Authorization including, but not limited to:

(1) A one-time comprehensive pinniped census at the City of Monterey Fourth of July Celebration in 2006 or 2007,

(2) A one-time acoustic measurement of the Monterey Fourth of July Celebration,

(3) Counts of pinnipeds in the impact area prior to all displays, and

(4) Reporting to NMFS of all marine mammal injury or mortality encountered during debris cleanup the morning after each fireworks display.

(c) Unless specified otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must submit a draft annual monitoring report to the Director, Office of Protected Resources, NMFS, no later than 60 days after the

conclusion of each calendar year. This report must contain;

(1) An estimate of the number of marine mammals disturbed by the authorized activities,

(2) Results of the monitoring required in § 216.115 (b), and (c) any additional information required by the Letter of Authorization. A final annual monitoring report must be submitted to the NMFS within 30 days after receiving comments from NMFS on the draft report. If no comments are received from NMFS, the draft report will be considered to be the final annual monitoring report.

(d) A draft comprehensive monitoring report on all marine mammal monitoring and research conducted during the period of these regulations must be submitted to the Director, Office of Protected Resources, NMFS at least 120 days prior to expiration of this subpart or 120 days after the expiration of this subpart if renewal of this subpart will not be requested. A final comprehensive monitoring report must be submitted to the NMFS within 30 days after receiving comments from NMFS on the draft report. If no comments are received from NMFS, the draft report will be considered to be the final comprehensive monitoring report.

§ 216.116 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to this subpart, the U.S. citizen (as defined by § 216.103) conducting the activity identified in § 216.110(a) (MBNMS) must apply for and obtain either an initial Letter of Authorization in accordance with §§ 216.117 or a renewal under § 216.118.

§ 216.117 Letter of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 216.118.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

(d) The U.S. Citizen, i.e., the MBNMS, operating under an LOA must clearly describe in any permits issued to the individuals conducting fireworks displays, any requirements of the LOA that the individuals conducting fireworks are responsible for.

§ 216.118 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 216.117 for the activity identified in § 216.110(a) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.116 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt of the monitoring reports required under § 216.115(b), and the Letter of Authorization issued under § 216.117, which has been reviewed and accepted by NMFS; and

(3) A determination by the NMFS that the mitigation, monitoring and reporting measures required under § 216.114 and the Letter of Authorization issued under §§ 216.106 and 216.117, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 216.118 indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register**.

§ 216.119 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§ 216.106 and 216.117 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.118, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.110(b), a Letter of Authorization issued pursuant to §§ 216.106 and 216.117 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

[FR Doc. E6–6504 Filed 4–28–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 042406G]

Notice of Public Hearings for Measures to End Bottomfish Overfishing in the Hawaii Archipelago

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

ACTION: Notice of public hearings.

SUMMARY: NMFS announces three public hearings on the Draft Supplemental Environmental Impact Statement, Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region, Measures to End Bottomfish Overfishing in the Hawaii Archipelago (DSEIS). The DSEIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, the Council on Environmental Quality NEPA regulations, and NOAA Administrative Order Series 216–6 Environmental Review Procedures for Implementing the National Environmental Policy Act.

DATES: The public hearings will be held May 18, 22, and 25, 2005, respectively. For specific dates, times and locations of the public hearings, and the agenda see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The DSEIS is accessible electronically through the NMFS Pacific Islands Regional Office Web site at *http://swr.nmfs.noaa.gov/pir* or at the Western Pacific Fishery