

## National Marine Fisheries Service/NOAA, Commerce

## §216.115

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 these regulations 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), all the mitigation measures contained in the Letter of Authorization issued under §§216.106 and 216.117 must be implemented, including but not limited to:

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

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

(3) Limiting the duration of authorized 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) Implementing the following special conditions for fireworks when authorizing fireworks displays at the MBNMS:

(i) Delay of aerial "salute" effects until five minutes after the commencement of any fireworks display.

(ii) Removal of all plastic labels and wrappings from pyrotechnic devices prior to use.

(iii) Required recovery of all fireworks related debris from the launch site and affected beaches on the evening of the display and again on the morning after.

(b) The mitigation measures that the individuals conducting the fireworks are responsible for shall be included as a requirement in any 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 48 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 2007;

(2) A one-time acoustic measurement of the Monterey Fourth of July Celebration in 2007;

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(3) Counts of pinnipeds in the impact area prior to all displays at all locations; and

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

(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) and 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 these regulations or 120 days after the expiration of these regulations if renewal of the regulations 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 these regulations, the U.S. citizen (as defined by §216.103) conducting the activity identified in §216.110(a) must apply for and obtain either an initial Letter of Authorization in accordance with §§216.117 or a renewal under §216.118.

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### §216.117 Letters 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, subject to annual renewal pursuant to the 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 Sanctuary Authorizations issued to the individuals conducting fireworks displays, any requirements of the LOA for which the individuals conducting fireworks are responsible.

### §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,