than by incidental, unintentional Level B harassment;
(c) Take a marine mammal specified in §217.13(b) of this chapter if such tak-
ing 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 require-
ments of this subpart or a LOA issued under §§216.106 and 217.17 of this chapter.

§ 217.15 Mitigation.
(a) The activity identified in §217.11(a) of this chapter must be con-
ducted in a manner that minimizes, to the greatest extent practicable, ad-
verse impacts on marine mammals and their habitats. When conducting the
activities identified in §217.11(a) of this chapter, the mitigation measures con-
tained in the LOA issued under §§216.106 and 217.17 of this chapter must be implemented. These mitigation
measures include but are not limited to:
(1) Limiting the location of the au-
thorized fireworks displays to the four
specifically designated areas at Half
Moon Bay, the Santa Cruz/Soquel area,
the northeastern Monterey Break-
water, and Cambria (Santa Rosa
Creek);
(2) Limiting the frequency of author-
zied fireworks displays to no more than
twenty total displays per year and no
more than one fireworks display every
2 months in each of the four prescribed areas;
(3) Limiting the duration of author-
zized 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 author-
ization requirements and general and
special restrictions for each event, as
determined by MBNMS. Standard re-
quirements include, but are not limited
to, the use of a ramp-up period, where-
in salutes are not allowed in the first 5
minutes of the display; the removal of
plastic and aluminum labels and wrap-
\-ings; and post-show reporting and cleanup. MBNMS shall continue to as-
sess displays and restrict the number of aerial salute effects on a case-by-
case basis, and shall implement general and special restrictions unique to each
fireworks event as necessary.
(b) The mitigation measures that the
individuals conducting the fireworks are responsible for will be included as a
requirement in fireworks display au-
thorizations issued by MBNMS to the
individual entities.

§ 217.16 Requirements for monitoring
and reporting.
(a) MBNMS is responsible for ensur-
ing that all monitoring required under a LOA is conducted appropriately, in-
cluding, but not limited to:
(1) A census of all pinnipeds in the
impact area on the day prior to all dis-
plays, with observations to occur for
no less than 30 minutes, and
(2) Reporting to NMFS of all marine
mammal injury, serious injury, or mor-
tality observed in the vicinity of the
display area. Monitoring for injury, se-
rious injury, or mortality shall occur
no later than the morning after each
fireworks display, and shall occur for
no less than 30 minutes.
(b) Unless specified otherwise in the
LOA, MBNMS must submit a draft an-
nual monitoring report to the Director,
Office of Protected Resources, NMFS,
no later than 60 days after the conclu-
sion of each calendar year. This report
must contain:
(1) An estimate of the number of ma-
rine mammals disturbed by the author-
zied activities.
(2) Results of the monitoring re-
quired in §217.16(a) of this chapter, and
any additional information required by the
LOA. A final annual monitoring re-
port must be submitted to 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.
(c) A draft comprehensive monitoring
report on all marine mammal moni-
toring conducted during the period of
these regulations must be submitted to
the Director, Office of Protected Re-
sources, NMFS at least 120 days prior
to expiration of these regulations. A
final comprehensive monitoring report
must be submitted to the NMFS within

(a) To incidentally take marine mammals pursuant to these regulations, MBNMS must apply for and obtain a LOA.

(b) A LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, MBNMS must apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, MBNMS must apply for and obtain a modification of the LOA as described in §217.18 of this chapter.

(e) The LOA shall set forth:
   (1) Permissible methods of incidental taking;
   (2) Means of effecting the least practicable adverse impact (i.e., mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and
   (3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of a LOA shall be published in the Federal Register within 30 days of a determination.

§ 217.18 Renewals and modifications of Letters of Authorization.

(a) A LOA issued under §§216.106 and 217.17 of this chapter for the activity identified in §217.11(a) of this chapter shall be renewed or modified upon request by the applicant, provided that:

   (1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in §217.18(c)(1) of this chapter), and

   (2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in §217.18(c)(1) of this chapter) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the Federal Register, including the associated analysis illustrating the change, and solicit public comment before issuing the LOA.

(c) A LOA issued under §§217.106 and 217.17 of this chapter for the activity identified in §217.11(a) of this chapter may be modified by NMFS under the following circumstances:

   (i) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with MBNMS regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

   (ii) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

      (A) Results from MBNMS’s monitoring from the previous year(s).

      (B) Results from other marine mammal and/or sound research or studies.

      (C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

   (ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are