

Atmospheric Administration,
Commerce

ACTION: Issuance of Permit No:1417.

SUMMARY: Notice is hereby given of the following action regarding permits for takes of endangered and threatened species for the purposes of incidental take under the Endangered Species Act (ESA): NMFS has issued permit 1417 to Dr. Anne RudloeGulf Specimen Marine Laboratories, Inc.(GSML), Florida.

DATES: Effective May 15, 2003.

ADDRESSES: Requests for copies of the permit and environmental assessment should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Therese Conant (ph. 301-713-1401, fax 301-713-0376, e-mail Therese.Conant@noaa.gov), or Eric Hawk (ph. 727-570-5312, fax 727-570-5517, e-mail Eric.Hawk@noaa.gov).

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term "take" is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Background

NMFS published a notice of receipt and requested public comments on the GSML application for an incidental take permit on February 14, 2003 (68 FR 7505). No public comments were received.

Permit 1417 was issued on May 15, 2003, and will expire May 1, 2012. The permit will be reviewed and reauthorized on an annual basis. Permit 1417 authorizes the take of listed sea turtles incidental to otherwise lawful trawling activities in the Florida state waters of Gulf, Franklin and Wakulla Counties. Permit 1417 authorizes through May 1, 2012, an incidental take of up to a total of 3 sea turtles, all live, in any combination, of loggerhead, green, Kemp's ridley or leatherback sea turtles and up to 1 Gulf sturgeon, alive.

Dated: May 19, 2003.

David O'Brien,

*Acting Chief, Endangered Species Division,
Office of Protected Resources, National
Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040703H]

Small Takes of Marine Mammals Incidental to Specified Activities; Coastal Commercial Fireworks Displays

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

ACTION: Notice of proposed incidental harassment authorization and notice of receipt of application; request for comments.

SUMMARY: NMFS has received a request from The Monterey Bay National Marine Sanctuary (MBNMS) for a one-year authorization to take small numbers of California sea lions and harbor seals by Level B harassment incidental to permitting professional fireworks displays within the Sanctuary in California waters, and an application for the promulgation of regulations governing the incidental take of marine mammals for the same activity over a five-year period. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize the incidental harassment of small numbers of these two species and the application for regulations.

DATES: Comments and information must be received no later than June 26, 2003.

ADDRESSES: Comments on the proposed authorization and application should be addressed to Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225. A copy of the application may be obtained by writing to this address or by telephoning one of the contacts listed here. Comments cannot be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Sarah Hagedorn, Office of Protected Resources, NMFS, (301) 713-2322, ext 117; or Christina Fahy, Southwest Regional Office, NMFS, (562) 980-4023.

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 to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have 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, and if the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under Section 3(18)(A), 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; 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.

The term "Level A harassment" means harassment described in subparagraph (A)(i). The term "Level B harassment" means harassment described in subparagraph (A)(ii).

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On May 10, 2002, NMFS received an application from the MBNMS requesting a one-year Incidental Harassment

Authorization (IHA) under section 101(a)(5)(D) and regulations governing authorizations for a five-year period under section 101(a)(5)(A) of the MMPA for the possible harassment of harbor seals (*Phoca vitulina*) and California sea lions (*Zalophus californianus*) incidental to coastal fireworks displays resulting from permitting commercial companies to hold firework events. This document serves as Notice of NMFS' proposal to issue the one-year IHA and notice of receipt of the application for regulations.

The MBNMS adjoins 276 miles (444 km) or 25 percent of the central California coastline, and encompasses ocean waters from mean high tide to an average of 25 miles (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 has addressed many regulatory issues previously not encountered by the NMS program. Authorization of professional firework displays has been an issue that has required a steady refinement of policies and procedures toward this activity as more has been learned about its impacts to the environment.

Project Description

Since 1983, the MBNMS, a component of NOAA, has processed requests for the professional display of commercial-grade fireworks in the atmosphere and at ground or sea level, and these displays affect the Sanctuary. Sponsors of fireworks displays conducted in the MBNMS are required to obtain authorization due to discharge of spent pyrotechnic materials into NMS waters (see 15 CFR 922.132).

Professional pyrotechnic devices used in firework displays can be grouped into three general categories: aerial shells, low-level devices, and set piece displays. Aerial shells are launched from 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. The largest commercial aerial shells used within MBNMS reach a maximum altitude of 1000 ft (305 m) above ground level with a bursting radius of approx. 850 ft (260 m). Most of the incendiary elements and part of the shell casing 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 wind conditions. The bulk of debris will fall to the surface within a 0.5 statute mile (0.8 km) radius of the launch site. A unique type of aerial shell is known as a "salute" shell, the purpose of which is to produce a loud percussive audible effect which sounds similar to cannonfire when detonated. Low-level devices are similar to over-the-counter fireworks, which produce a fountain effect of light as burning particles shoot up out of a tube, producing a ball or trail of sparkling light. These fireworks are designed to produce effects between 0 and 200 ft (0 to 61 m) above ground level, and some may emit pulsing light patterns and/or sound effects. Some low-level devices may project small casings into the air, which will generally fall to the earth within a 600-ft (183-m) radius of the launch site. Set piece fireworks are mostly static in nature and remain close to the ground and are usually used in concert with low-level effects or aerial shells, typically employing bright flares, sparkling effects, and limited sound effects. These displays are designed to produce effects between 0 and 50 ft (0 to 15 m) above ground level. Depending on local conditions, fallout is generally confined within a 300-ft (91-m) radius of the launch site.

The MBNMS has issued 42 permits for professional fireworks displays since 1993, with a current average of 7 approvals per year. However, MBNMS 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. In general, fireworks displays will not exceed 20 minutes 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. The vast majority (95 percent) of fireworks displays authorized in the MBNMS between 1993 and 2001 have been aerial displays that usually include 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 7 minutes and includes 300 aerial shells and 550 low-level effects.

Initially, the MBNMS believed that it could minimize potential light, sound, and debris impacts to the NMS and marine mammals through permit conditions and has steadily refined 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 consultation with NMFS' Southwest Region, it appears that some fireworks displays result in incidental take of marine mammals by Level B harassment. NMFS believes that the nature of the incidental harassment will be the short-term flushing and evacuation of non-breeding haulout sites by California sea lions and Pacific harbor seals.

Description of Habitat and Marine Mammals Affected by the Activity

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. A description of MBNMS and its associated marine mammals can be found in the MBNMS application and Fireworks Assessment Report (2001), which are available upon request (see ADDRESSES).

Marine Mammal Impacts

The species of marine mammals that may be present in a fireworks display acute impact area (the area where sound, light, and debris effects have direct impacts on marine organisms and habitats) include the California sea lion, harbor seal, bottlenose dolphin (*Tursiops truncatus*), harbor porpoise (*Phocoena phocoena*), California gray whale (*Eschrichtius robustus*), and Southern sea otters (*Enhydra lutris neries*).

Marine mammals can be impacted by fireworks displays in three ways: light, sound, and debris. Pyrotechnic devices that operate at higher altitudes are more likely to have a larger impact area (such as aerial shells), while ground and low-level devices have more confined effects. Possible direct impacts to

marine mammals 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.

MBNMS staff have recovered uncharred casing remnants on ocean waters immediately after marine displays, including cardboard cylinders, disks, paper, plastic pieces, aluminum foil, cotton string, and even whole unexploded shells (duds or misfires). The debris and chemical residue fallout area is determined by wind conditions, weather, and other local variations. MBNMS does not expect this debris to impact marine mammals, because permit conditions and mitigation measures proposed by the Sanctuary will ensure that the debris resulting from fireworks displays will not alter ocean areas or haul-out sites used by California sea lions and harbor seals.

The applicant requests an authorization for incidental takes by Level B harassment only of California sea lions and harbor seals, which are the only two marine mammal species under NMFS' jurisdiction likely to be impacted by fireworks displays within the Sanctuary. The remaining species of marine mammals, though they may be present in the acute impact area, are not likely to be taken by harassment or any other type of take.

California sea lions primarily use the Central California area to feed during the non-breeding season. 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. A minimum of 12,000 sea lions are probably present at any given time within the entire MBNMS region. Number of sea lions peak in the Monterey Bay area in fall and winter and are at their lowest in spring and early summer.

Harbor seals are distributed throughout the west coast of California, and are residents in the MBNMS throughout the year, occurring mainly near the coast. In general, they do not migrate, preferring instead to forage within several miles of their haul-out sites. Within the Sanctuary, harbor seals often move substantial distances to foraging areas each night. Pupping within MBNMS occurs primarily during March and April followed by a molt during May and June.

Past monitoring efforts by the MBNMS staff have identified only a short-term harassment of animals by fireworks displays, with the primary causes of disturbance being light flashes and sound effects from exploding fireworks. Typical decibel levels for displays containing no "salute" effects range from 70 to 78 dB. Studies conducted at Vandenberg Air Force Base (VAFB) to determine responses by California pinnipeds to the effects of periodic rocket launches (which have light and sound effects similar to that of pyrotechnic displays but with much greater intensity) have demonstrated the temporary flushing of animals from haul out sites, their eventual return, and no detectable changes in the seals' hearing sensitivity as a result. Incidental takes of marine mammals are limited to Level B harassment of California sea lions and harbor seals due to the temporary evacuation of usual and accustomed haul-out sites. Sea lions have been observed evacuating haul-out areas upon initial detonation of fireworks and 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 to noise and visual disturbances compared to harbor seals - adult sea lions have likely habituated to many sources of disturbance and are, therefore, tolerant of nearby human activities. For both pinniped species, pups and juveniles are more likely to be harassed when exposed to disturbance compared to older animals. Please refer to MBNMS Fireworks Assessment Report (2001) and Fireworks Guidelines (2002) for information on quantitative survey results, related research studies, and observations made by MBNMS staff as well as details on how exploding fireworks impact marine mammals and how animals respond (see **ADDRESSES**).

However, because of mitigation measures proposed, the MBNMS expects that only Level B incidental harassment may occur incidental to coastal fireworks displays and that these events would result in no detectable impact on marine mammal species or stocks or on their habitats. There is no anticipated impact on the MBNMS or on the availability of the species or stocks for subsistence uses because there is no subsistence harvest of marine mammals in California.

Number of animals taken by Level B harassment during fireworks displays is expected to vary due to factors such as tidal stage, seasonal shifting prey stocks, climatic phenomenon (such as El Nino events), and the number, timing, and

location of future displays. At all four designated display sites combined, twenty fireworks events per year could harass an average annual total of 2,630 California sea lions (6,170 maximum) and an average annual total of 302 harbor seals (1,065 maximum) within the MBNMS. Please refer to the MBNMS Fireworks Assessment Report (2001) for further information regarding estimated incidental take numbers by display area and fireworks events (see **ADDRESSES**).

Mitigation

The MBNMS has worked with the United States Fish and Wildlife Service (USFWS) and NMFS Southwest Region to craft a set of permitting guidelines designed to minimize fireworks impacts in order to protect MBNMS resources, as well as outline the locations, frequency, and conditions under which the MBNMS will authorize marine fireworks displays. The MBNMS plans to retain these permitting requirements and assess displays on a case-by-case basis, implementing general and special restrictions unique to each fireworks event as necessary.

The fireworks guidelines are designed to prevent an incremental proliferation of fireworks displays and disturbance throughout the MBNMS and minimize area of impact by confining displays to primary traditional use 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. Future permitted fireworks displays will be confined to four prescribed areas within the MBNMS and prohibited from the remaining 95% of coastal areas. The conditional display areas are located at Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Peninsula, and Cambria (Santa Rosa Creek). An equal number of private and public displays will be considered for authorization within each display area. Remote areas and locations where professional fireworks have not traditionally been conducted will not be considered for fireworks approval. In general, fireworks displays will not exceed 20 minutes in duration and will occur with an average frequency of less than or equal to one display every two months within each of four prescribed display areas. Please refer to the MBNMS Fireworks Assessment Report (2001) and Fireworks Guidelines (2002) for general information on frequency and duration of typical fireworks displays within the

Sanctuary, strategies for minimizing impacts, as well as maps and detailed descriptions of prohibited and conditional display areas (see **ADDRESSES**).

In addition, there is an annual limit of 20 displays along the entire Sanctuary coastline to prevent cumulative adverse environmental effects from fireworks. The MBNMS intends on instituting a 5-year permit system for displays that will occur annually at a fixed location and in a consistent manner, such as municipal Independence Day shows. Also, MBNMS has established a seasonal prohibition to safeguard pinniped reproductive periods. Fireworks events will not be authorized between March 1 and June 30 of each year, since this period is the primary reproductive season for many marine species. After considering the factors within each display application, other permit conditions that may be deemed appropriate are to limit the number of aerial "salute" effects used, require the removal of plastic labels and wrappings, and to require post-show reporting and cleanup.

The MBNMS guidelines 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 seasonal prohibition on all fireworks displays within the MBNMS. The guidelines were developed to minimize the impacts of fireworks activities on protected species and habitats, and they have been well received by local fireworks sponsors, who have pledged their cooperation in protecting MBNMS resources. Please refer to the MBNMS Fireworks Guidelines (2002) for details on permit conditions and regulations (see **ADDRESSES**).

Monitoring

Of all the past authorized fireworks display sites within the MBNMS, the City of Monterey site has received the highest level of monitoring effort. The City of Monterey has hosted a marine fireworks display each July 4th since 1988, which is the longest running and largest annual commercial fireworks display within the MBNMS. Because the Monterey Breakwater and natural rock formations near the display area serve as regular haul-out sites for California sea lions and harbor seals, the Monterey site has been studied and censused 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. For this reason, the MBNMS proposes that Monterey be monitored as an indicator site to further determine how local California sea lion and harbor seal distribution and abundance are affected by an annual fireworks display.

The MBNMS has monitored commercial fireworks displays for potential impacts to marine life and habitats since 1993. The Sanctuary will conduct a visual census of the Monterey Breakwater and rocks within Monterey Harbor on July 4 and July 5 each year to determine 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 observers aboard kayaks or small boats and from ground stations (where appropriate), using 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.

Reporting

A draft final report must be submitted to NMFS within 60 days after the conclusion of the annual fireworks permit season. A final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

Endangered Species Act

Under section 7 of the Endangered Species Act (ESA), NOAA will consult with the U.S. Fish & Wildlife Service (USFWS) on the proposed issuance of an IHA regarding possible fireworks impacts to sea otters within the MBNMS. Consultation will be concluded prior to the issuance of an IHA.

National Environmental Policy Act

NOAA prepared a Final Environmental Impact Statement and Master Plan for the MBNMS (FEIS) in June 1992. That document is available for viewing at on the internet (see Electronic Access). NMFS is reviewing this FEIS to determine whether supplemental documentation is needed prior to making a final determination on issuance of an IHA.

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of fireworks displays, as described in this document and in the application for an IHA, would 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 involving relatively small numbers of pinnipeds. Although seals and sea lions may modify their behavior, including temporarily vacating haulouts to avoid the sight and sound of commercial fireworks, these fireworks are expected to have a negligible impact on the animals. In addition, 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.

Proposed Authorization

NMFS proposes to issue a 1-year IHA to the MBNMS for the potential harassment of small numbers of harbor seals and California sea lions incidental to permitted coastal fireworks displays within the MBNMS, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed IHA and the application for regulations request (see **ADDRESSES**).

Electronic Access

Additional information on harbor seals and California sea lions found in Central California waters can be found in Forney et al. (2002), which is available online at:

http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/individual_sars.html.

The MBNMS's FEIS is also available online at:

http://www.mbnms.nos.noaa.gov/intro/mbnms_eis/welcome.html.

Dated: May 16, 2003.

Donna Wieting,

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

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