



MEMORANDUM FOR: The Record

FROM: *for* Donna S. Wieting  
Director, Office of Protected Resources

SUBJECT: Categorical Exclusion for the Issuance of a 5-Year Letter of Authorization to the Monterey Bay National Marine Sanctuary

NOAA Administrative Order (NAO) 216-6A requires all proposed projects to be reviewed with respect to environmental consequences on the human environment. This memorandum addresses the determination that the issuance of a letter of authorization (LOA) qualifies to be categorically excluded from further National Environmental Policy Act (NEPA) review.

### Proposed Federal Action

The National Marine Fisheries Service (NMFS) proposes to issue a LOA to the Monterey Bay National Marine Sanctuary (Sanctuary) pursuant to Section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 Code of Federal Regulations (CFR) Part 216). The LOA will be valid from July 4, 2017 to July 3, 2022 and authorizes takes, by Level B harassment, of harbor seals (*Phoca vitulina*) (570 annually; 2,850 over the five-year period) and California sea lions (*Zalophus californianus*) (3,983 annually; 19,915 over the five-year period), incidental to conducting commercial fireworks displays in the Sanctuary. NMFS' proposed action is a direct outcome of the applicant's request summarized below.

### Description of Applicant(s) Incidental Take Authorization Request

On September 16, 2016, the Sanctuary submitted an application to NMFS requesting an LOA for the possible harassment of small numbers of marine mammals incidental to commercial fireworks displays conducted under sanctuary authorization permits issued by the Sanctuary. This type of activity involves increased levels of noise and light during commercial fireworks displays permitted in five locations within the Sanctuary. Fireworks displays are no longer than 30 minutes, with the exception of 2 displays, which can be no longer than one hour.

### Applicable Categorical Exclusion

Based on the information presented in this document and the application, the issuance of a LOA to the Sanctuary for take, by Level B harassment, of small numbers of marine mammals incidental to commercial fireworks displays is consistent with activities identified in categorical exclusion (CE) B4 and there are no extraordinary circumstances with the potential for significant environmental effects that would preclude the issuance of a LOA from being categorically excluded. The following summarizes the relevant factors supporting a CE determination for this action.



## Determination Summary

In determining whether a CE is appropriate for a given incidental take authorization (ITA), NMFS considers the applicant's specified activity (commercial fireworks displays) and the potential extent and magnitude of "takes" of marine mammals associated with that activity along with the extraordinary circumstances listed in the Companion Manual for NAO 216-6A. The evaluation whether extraordinary circumstances (if present) have the potential for significant environmental effects is limited to the decision NMFS is responsible for, which is issuance of an ITA (NMFS' action). While there may be environmental effects associated with the underlying action, potential effects of NMFS' action are limited to those that would occur due to the authorization of incidental take of marine mammals. NMFS prepared numerous Environmental Assessments (EAs) analyzing the environmental impacts of the categories of activities encompassed by CE B4, which resulted in Findings of No Significant Impacts. These EAs demonstrate the issuance of a given ITA for these categories of activities does not affect other aspects of the human environment because NMFS' action only affects the marine mammals that are the subject of the ITA. These EAs also address factors in 40 CFR 1508.27 regarding the potential for significant impacts and demonstrate the issuance of ITAs for the categories of activities encompassed by CE B4 do not individually or cumulatively have a significant effect on the human environment. For these reasons, only circumstances which are present and relevant to the issuance of this LOA are evaluated herein.

### 1. Extent and Magnitude of Incidental Take

The issuance of a LOA to the Sanctuary is expected to result in minor, short-term behavioral effects. Acoustic and visual stimuli associated with the fireworks displays has the potential to cause harbor seals and California sea lions in the vicinity of the launch area to be behaviorally disturbed.

A summary of the status of the two pinniped species potentially affected by the Sanctuary's activities is listed in Table 1 and additional information can be found in NMFS' Stock Assessment Reports which are available at: <http://www.nmfs.noaa.gov/pr/sars>. The effects from the proposed action are considered minor and temporary; therefore population-level impacts are not expected.

**Table 1. Marine Mammals Potentially Present In the Monterey Bay National Marine Sanctuary.**

Species	Stock	Status (ESA, MMPA strategic)	Stock Abundance (CV, N <sub>min</sub> , most recent abundance survey)	PBR	Occurrence
California sea lion ( <i>Zalophus californianus</i> )	U.S.	-; N	296,750 (n/a; 153,337; 2011)	9,200	Year round
Harbor seal ( <i>Phoca vitulina</i> )	California	-; N	30,968 (n/a; 27,348; 2012)	1,641	Year round

Finally, the mitigation measures in the LOA are designed to minimize the potential for adverse impacts and mitigate the extent of any unavoidable adverse impacts to marine mammals. The Sanctuary will be required to submit annual reports in which they must provide an accounting of

the numbers of marine mammals taken. NMFS can modify the LOA if there is reason to believe the activity is having or has the potential to have an adverse effect on the species or stock.

## 2. Other Relevant Factors

The issuance of this LOA will not result in highly controversial environmental effects or result in environmental effects that are uncertain, unique or unknown because the impacts to the environment are considered negligible. In addition, these proposed activities are well-understood and documented; prior authorizations and analysis demonstrates issuance of an ITA for this type of action only affects the marine mammals that are the subject of the authorization. NMFS has issued incidental take authorizations to the Sanctuary since 2005. NMFS first issued an incidental harassment authorization (IHA) under section 101(a)(5)(D) of the MMPA to MBNMS on July 4, 2005 (70 FR 39235; July 7, 2005), and subsequently issued 5-year regulations governing the annual issuance of LOAs under section 101(a)(5)(A) of the MMPA (71 FR 40928; July 19, 2006). Upon expiration of those regulations, NMFS issued MBNMS an IHA (76 FR 29196; May 20, 2011) followed by regulations and a 5-year LOA which expire on July 3, 2017 (77 FR 31537; May 29, 2012).

The issuance of this LOA will not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects because NMFS actions under the MMPA Section 101(a)(5)(A) are considered individually and is based on the best available scientific information, which is continuously evolving. Therefore, issuance of an ITA to a specific individual or organization for a given activity does not guarantee or imply NMFS will authorize others to conduct similar activities. Subsequent requests for ITAs are evaluated upon their own merits relative to the criteria established in the MMPA and 50 CFR Part 216 on a case-by-case basis.

NMFS compliance with environmental laws, regulations and Executive Orders (EOs) is based on NMFS proposed action and the nature of the applicants proposed activities. There are no other environmental laws, regulations, EOs, consultations, federal permits or licenses applicable to NMFS for issuance of this authorization to the Sanctuary.