

June 02, 2013

Michael Payne, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910
ITP.Goldstein@noaa.gov 0648-XC498

Re: RIN 0648-XC498: Takes of Marine Mammals Incidental to Specified Activities; Demolition and Construction Activities of the Children's Pool Lifeguard Station at La Jolla, California.

Dear Mr. Payne:

Thank you for the opportunity to comment on the National Marine Fisheries Service's (NMFS) proposed incidental harassment authorization (IHA) for the Demolition and Construction Activities of the Children's Pool Lifeguard Station at La Jolla, California.

I am very concerned that the demolition and construction activities as cited by NMFS will have a large impact on the La Jolla Pacific Harbor Seal Rookery and, that because of this, the IHA cannot legally be authorized under the Marine Mammal Protection Act (MMPA).

The IHA does not rely on available scientific studies regarding marine mammal impacts from the noise associated with these activities. In addition, the IHA authorizes the take of more than small numbers of marine mammals, which will have a greater than negligible impact on the La Jolla stock of the harbor seal.

The following are major changes that need to be made in the proposed IHA before the demolition/construction work can be approved:

Problem 1. The time line for demolition/construction as planned deleteriously impacts pregnant females and goes through the start of the pupping season which impacts critical life stages for the Pacific Harbor Seals. The IHA claims that project scheduling avoids sensitive life stages for Pacific harbor seals. Current plans are to continue construction past the start of the pupping season and past the time pregnant females appear on the beach. Construction should end no later than Nov 1 because of the presence of pregnant females. Pregnant females begin to appear in late October, early November. Pregnant females would be much more likely to be vulnerable to noise impacts. If pregnant females in their 3rd trimester are not allowed to rest on the beach, premature births and fetal mortality can occur. This is imperative as it could be devastating to the rookery. Current plans are to continue construction past the start of the pupping season. It is scheduled to run through December 31st which affects the pupping season, which officially begins December 15th. Allowing work to continue into the

pupping season is extremely dangerous for the seals.

Solution: Construction should end no later than Nov 1 because of the presence of pregnant females.

Problem 2. No attempts whatsoever to reduce the sound levels have been cited in the IHA. There are many things that can be done to reduce noise, including sound walls, mufflers and sound blankets on noise generating equipment.

Solution: Utilize all of the following practices to mitigate sound:

- Remove old tower from street piece by piece, not from beach. Do not allow pieces to fall onto beach.
- Pre-fabricate new tower to decrease on-site construction noise and shorten on-site construction time.
- Use mufflers and sound blankets on noise-generating equipment.
- Require that a sound barrier be placed around the construction site to reduce the noise level. This is done at many construction sites and consists of two layers of plywood with sound absorbing material in between. This sound barrier must be wider than it is tall.
- Closely monitor the seals reactions to noise levels, construction practices, machinery placement, and workers in a study. If construction results in flushing the seals, require that work be stopped until changes are made to reduce the impact. Should the impacts to the seals be greater than anticipated, require the City to work with NOAA to implement additional methods to reduce the impacts.

Problem 3. The assertion that these seals are habituated and, therefore, will not be impacted by noise is completely inaccurate. These seals react to both human disturbance and sound and, in particular, are not habituated at all to construction noise. Harbor seals have been reported to abandon a site based on human harassment. These seals are flushed or driven off the beach continually by people shouting, dogs barking, toilets being pumped, sirens, noise from air traffic, and other loud noises. The IHA, cites, and then ignores, research that indicates that prolonged exposure to demolition and construction activities has the potential to displace marine mammals from breeding areas for a prolonged period. The IHA fails to provide any research or scientific basis for the claim that these seals will not be displaced from the breeding area and that there will be no impact on pregnant females.

Solution: Request that the IHA provide evidence that these seals will not be displaced and that there will be no impact on pregnant females. Request that the number of takes be reduced to a smaller percentage of the population stock so as to meet the small numbers requirement of the MMPA.

Problem 4. The IHA requires monitoring and recording of the impacts of the noise from demolition/construction on the seals. However, this is not possible as long as humans are present on the beach because there is no way to distinguish between the impacts of the construction and the impacts from people. The City should be required to close the beach during construction to enable a more accurate determination as to what the impacts of the construction are on the seals.

Solution: Close the beach during construction. The beach should be closed completely during the Demolition/Construction of the Lifeguard Tower for public safety reasons and because the seals may undergo adverse impacts from the noise, equipment, and workers. The City can close the beach as part of the CDP for the construction without having to obtain CCC approval by barricading the stairs. The stairs are under City jurisdiction and the CDP for the construction is under the City and was never appealed to the CCC.

Problem 5. There is no monitoring planned post construction. A monitoring study needs to be performed after the construction ceases to ascertain that the seals return to the beach in the numbers consistent with pre-construction.

Solution: Include post construction monitoring study in IHA.

Problem 6: Possible long term impact of increased visitors and noise from bathrooms at beach level. Since the bathrooms in the new lifeguard tower are at beach level, it would be important to study the long term impacts on the seals from increased visitors and bathroom use.

Solution: Include study to assess the impact of noise from increased visitors and bathroom use in IHA.

I strongly feel that unless these problems are dealt with, the IHA cannot be approved as it stands. It would not satisfy either federal requirements under the MMPA or the San Diego City Municipal Code §63.0102(b)(10) of the municipal code.

Thank you for your attention to these matters.

Respectfully submitted,

Carol Archibald, PhD
3146 Ibsen Street
San Diego, CA 92106
(619) 225-9076

carchi7@sbcglobal.net



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

RIN 0648-XC498: Takes of Marine Mammals Incidental to Specified Activities; Demolition and Construction Activities of the Children's Pool Lifeguard Station at La Jolla, California.

CAROL ARCHIBALD <carchi7@sbcglobal.net>

Mon, Jun 3, 2013 at 4:16 AM

To: ITP.Goldstein@noaa.gov, UNEXPECTED_DATA_AFTER_ADDRESS@.syntax-error

Word document is attached.

June 02, 2013

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National Marine Fisheries Service
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Thank you for your attention to these matters.

Respectfully submitted,

Carol Archibald, PhD
3146 Ibsen Street
San Diego, CA 92106
(619) 225-9076

carchi7@sbcglobal.net



IHA.doc
43K



Children's Pool : 0648-xc498

Cheri Aspenleiter <cheriaspen@gmail.com>

Tue, May 28, 2013 at 10:35 PM

To: ITP.Goldstein@noaa.gov

Dear Mr. Goldstein,

I am writing to you in regards to the Children's Ocean Swimming pool in La Jolla CA. As you are aware there is plans to remodel the facility including the showers and toilets as well as the tower. I know that you are involved with the seals. You are a Federal Employee and I should think that you could not approve any project that was breaking Federal ADA Laws. As you are aware the Children's Ocean Swimming Pool was especially constructed to provide a safe entry and exit to the ocean for CHILDREN and for those "Handicapped in Life's Game" by Ellen Browning Scripps and the engineer Mr. Savage.

I hope you are also aware sir, that thousands of men and woman are coming home from the wars our country are sending them to without legs and other body parts. Do these Veterans not have the Rights to Swim in this pool that was especially built for them?

Wounded Warriors just may have the precedence to be able to have access Rights over the seals that have taken up residence at this Pool since Seal World started dropping off rehabbed seals there in the early 1990's.

They do have other beaches that they can go to.

The disabled wheel chair swimmer DOES NOT. This is IT. La Jolla Shores is touted as ADA friendly. It is NOT.

The surf alone is much too difficult for a child without the use of her legs. Try swimming out through the surf with out your legs sir, and with dozens of kayaks and body boards and other objects that could easily kill a legless swimmer.

The Children's Pool does indeed boast one of the very first ramps to the high water mark on ANY state beach in our country.

The ramp was in use for the disabled and health challenged public, including Children for decades. There is ample room to install an official ADA Ramp there. Simple. Why do you not support this for the disabled swimmers and Wounded Warriors sir? I fail to understand how you feel that feces is acceptable in what still is a Children's Bathing Pool and " pool for the infirm"? How in the World could you condone adding a Marine Mammal Park use to the original DEEDED uses as Human Ocean Swimming Pool for Children and Disabled? This is certainly baffling to those of us who have NO where else to access the ocean safely and to whom can be sited for simply swimming if a seal decides to join us and they do all the time, because they know us, they are no longer 'wild '. How can they be when they have literally imprinted on humans for generations there.? There does not seem to be room for seals and people, not with the chance of loosing our life's saving for being sued for flushing a seal if a child plays with a beach ball, or swims in the pool built for him or her. Please do the right thing sir and recommend that the designation of Marine Mammal Park be excluded from the uses of the Children's Ocean Swimming Pool built only for humans. Please recommend that Judge Pate's ordered to restore the pool to 1941 conditions be honored. So the Seals go to Seal Rock and Shell Beach, and S. Casa, and all the other beaches. The disabled do not have a choice. The legless swimmer only has Children's Pool.

I ask that you take the stand to do the right thing whether it is in your job description or not sir and stop this madness at the only human ocean swimming pool in the Continental United States built not for Marine Mammals to wallow in their own feces, which can not be healthy for them, but for crippled kids.

You must be aware that the City is including an ADA shower in the upcoming remodel. Why? Why would a shower be warranted if there is NO way to get to the beach to need that shower? It is a very cruel joke on the disabled sir and if you , as a Federal Employee and Agent for our Government approve anything at all for this pool knowing that ADA Laws are being circumvented then you are in breach of your position sir and should be very shamed to look the other way. It is a wrong doing that must stop.

I would also like to bring to your attention the fact that the mussel population is wiped out all around the Children's Pool area, including in between the Pool and Seal Rock and also the waters off South Casa Beach. I collect the spend empty mussel shells and early in the winter noticed that there were no more live ones. Last summer bunches of them, now I can not find any live ones at all and the shells are even gone. I am a volunteer

at Birch Aquarium sir and a docent on the Whale Boats, and I have also taught Earth Sciences. I may not be a Marine Mammal Expert as yourself but I know that mussels are an indicator species and all tide pool creatures eat them. Now what will they eat sir?

If you really believe with all your education that Children's Pool should close for any amount of days ever to disabled swimmers or Children then I am seriously afraid for the Ecology of the Ocean. I was at a Whale Training recently and asked that World Renown Marine Mammal Expert from Scripps his opinion of the situation at The Children's Pool, he replied" I do not think its a good idea for people to try and manage Marine Mammals in an environment built for people". The very same benefactor started Scripps Institute of Oceanography and Scripps Pier, and the Community Center, the Library and the Bishops School and more. Ellen Scripps had a vision that was honored until the City decided not to maintain the wall and it is crumbling and soon may be condemned, then what will it be a crumbling seal pool pit, that is already smelling very bad sir.

Why is it that you and NOAH will not honor this gift to children and the disabled and insist on allowing the beach to become polluted with fecal bacteria that is not good for even the seals? Is it money? I know it is for those women who tell young people not to play in the playground that is the Children's Pool. Sea World is now rehabbing the very same mammals over and over I understand, that is Money.

Well thank you for taking the time, to read this letter from a disabled lady who just needs to swim for her health. Until you are disabled you will not realize how difficult it is.

If you take your position seriously you will know that you are in a position to right a terrible wrong. Please do for the disabled of the World and help to Restore Children's pool before the wall is condemned, open the sluice ways and honor the decision of Judge Pate in 2004 that was based upon science and logic . (see Valorie OSullivan V S.D.) If you read the court document you be reading the results of NOAH, Scripps, and all other environmental agencies who all recommended restoring the Pool, and dredging out the sand, and the seals would be just fine, it was determined. The exact same conditions exist now as then only worse, more seals and more pollution, less lobsters, crabs, and Garibaldi and mussels, and..... Unbalanced underwater ecology.

Again the seals do have other beaches to go to , the Wheelchair swimmer does not.

Thank you for any consideration sir.

Sincerely,

Ms. Cheryl Jacobs Aspenleiter
Pacific Beach, CA U.S.A.



0648-XC498

Deborah Saracini <debsaracini@yahoo.com>
Reply-To: Deborah Saracini <debsaracini@yahoo.com>
To: "ITP.Goldstein@noaa.gov" <ITP.Goldstein@noaa.gov>

Sun, Jun 2, 2013 at 12:15 AM

To: P. Michael Payne, Chief, Permits and Conservation Division

Mr. Payne,

The following are my comments with regard to the "Incidental Harassment Authorization" (IHA) permit, to allow the demolition and construction of the lifeguard station at Casa Beach/Children's Pool Beach in La Jolla:

- **THE BEACH MUST BE CLOSED DURING CONSTRUCTION.**

NOAA must require the City of San Diego to close Casa Beach during the lifeguard tower construction and maintain the closure for 60 days after completion of the project. Although the IHA requires monitoring and recording the impact of the construction on the seals, that is not possible as long as humans are present on the beach, since there is no way to distinguish between the impacts of the construction and the impacts from people.

- The contention that these seals are habituated to the presence of humans and therefore will not be impacted by the sound of construction is not accurate. These seals react to both human disturbance and sound and in particular are not habituated at all to construction noise.

- **PROVIDE ADEQUATE SOUND MITIGATION TO PROTECT THE SEALS' HEARING.**

There is no attempt to reduce the sound levels. Above 90 dB, seals' hearing can be permanently impaired. The IHA takes the position that because many of the La Jolla Seals are acclimated to humans watching them from distances of 50 feet or sometimes less, that the seal colony will therefore be unaffected by noise levels of 90 to 110 dB. There is no scientific basis to support this assertion.

The City should erect a sound barrier wall which would consist of a sound blanket or two layers of plywood with acoustic deadening material between them. Other methods to reduce noise include sound walls, mufflers and sound blankets on noise generating equipment.

- **CONSTRUCTION MUST CEASE BY NOVEMBER 1.**

Prolonged exposure to demolition and construction activities has the potential to displace marine mammals from breeding areas. The IHA allows construction to continue until December 31, which is two weeks after the start of the pupping season and long after the seals are in advanced stages of pregnancy. There is a much higher risk of premature and still births when the pregnant females are subjected to constant high levels of stress.

- **REQUIRE MONITORING TO CONTINUE FOR 60 DAYS AFTER THE COMPLETION OF CONSTRUCTION.**

There should be monitoring for at least 60 days after the construction ceases to be certain that the same number of seals frequent the beach, as did prior to the start of construction.

Thank you for your attention to these critical safeguards to preserve the health and well-being of the La Jolla seal colony during this potentially dangerous and disruptive event.

Respectfully yours,

Deborah Saracini
Del Mar, CA resident



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-XC498

Edward Kane <edwardkane64@gmail.com>
To: ITP.Goldstein@noaa.gov

Mon, Jun 3, 2013 at 11:58 AM

P. Michael Payne,
Chief Permits and Conservation Division

Subject: "Incidental Harassment Authorization" (IHA), which is issued
by the National Oceanic Atmospheric Association (NOAA)

Respectfully request consideration of the following:

THE BEACH MUST BE CLOSED DURING CONSTRUCTION.

Require the City of San Diego to close Casa Beach during the lifeguard tower construction and maintain the closure for 60 days after completion of the project. Although the IHA requires monitoring and recording the impact of the construction on the seals, that is not possible as long as humans are present on the beach because there is no way to distinguish between the impacts of the construction and the impacts from people.

The contention that these seals are habituated to the presence of humans and therefore will not be impacted by the sound of construction is not accurate. These seals react to both human disturbance and sound and in particular are not habituated at all to construction noise.

PROVIDE ADEQUATE SOUND MITIGATION TO PROTECT THE SEALS' HEARING.

There is no attempt to reduce the sound levels. Above 90 dB, seals' hearing can be permanently impaired. The IHA takes the position that because many of the La Jolla Seals are acclimated to humans watching them from distances of 50 feet or sometimes less, that the seal colony will therefore be unaffected by noise levels of 90 to 110 dB. There is no scientific basis to support this assertion.

The City should erect a sound barrier wall which would consist of a sound blanket or two layers of plywood with acoustic deadening material between them. Other methods to reduce noise include sound walls, mufflers and sound blankets on noise generating equipment.

Thank you for considering the above requests.

Sincerely,

Edward R. Kane
Resident of the city of San Diego



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

Re: 0648-XC498

Ellen Shively <ellenshively@sbcglobal.net>
Reply-To: Ellen Shively <ellenshively@sbcglobal.net>
To: ITP.Goldstein@noaa.gov

Mon, Jun 3, 2013 at 1:35 AM

From: Ellen Shively <ellenshively@sbcglobal.net>
To: ITP.Goldstein@noaa.gov
Sent: Sun, June 2, 2013 10:14:16 PM
Subject: 0648-XC498

Dear Sirs/Ma'am:

Attached is the comments for the Takes of Marine mammals Incidental to the Demolition and Construction of the lifeguard Tower at Children's Pool, La Jolla, Ca. Please add this to the Public Record. Thank you.

Ellen Shively



0648-XC498

Ellen Shively <ellenshively@sbcglobal.net>
Reply-To: Ellen Shively <ellenshively@sbcglobal.net>
To: ITP.Goldstein@noaa.gov

Mon, Jun 3, 2013 at 1:55 PM

TO: P. Michael Payne
Chief, Permits and Conservation Resources
NMFS
Project 0648-XC498

NMFS's proposal for approval of an IHA during construction of a lifeguard tower at Children's Pool is written in a mis-leading way. For the permit to be issued, several modifications should be required in order to comply with existing protections under Federal and State mandate and San Diego's Municipal Code.

1. On page 25958: The definition of negligible impacts:

The first assumption made is that the demolition and construction of the project over 107 days using high powered mechanical equipment which has never been tested around these animals in such close proximity is not reasonably expected to adversely affect the species rates of survival.

Comment: This assumption is based on unavailable evidence.

2. The definition of Level B Harassment, which is proposed in this IHA, allows that the activity will disrupt normal behavior patterns including feeding and sheltering (hauling out). The project is scheduled to last over a very long period of time – 148 days of actual construction activity – and seven months on site.

Comment: Given that these are wild animals, putting out maximum effort to find their own food supply and maintain their own health, the duration of the project is very likely to outstrip the animal's reserves – stress, lack of adequate haul out time to rest, reoxygenate, keep up their internal warmth and build up their strength, necessary every day. The colony only consists of around 250 harbor seals, the expected number of "takings" could very well cause desertion of the site and a high rate of mortality. Thus, recommend a change to the permit to include Level A, a more realistic "taking".

3. On page 25959: Extremely elaborate lifeguard station. Includes a kitchenette, second

observation/ready room and separate locker facilities for male/female lifeguards.

Comment: This project has been funded and approved, but few other lifeguard facilities are this expensive. This expansiveness will be built at the expense of the prolonged period of time the animals will be under duress.

4. Sound levels during all phases of the construction will not exceed 110 dBs

Comment: People living under the airline routes of San Diego Municipal Airport must stop conversations during many take off events. Readings are in the area of 85 db. The construction machinery will be blasting away for very long intervals – longer than it takes an airplane to make an ascent from the runway to over the homes on Point Loma. Far from being “unable to predict noticeable behavior reactions at this site”, it is very predictable that this frequent level of sound will cause possibly irreparable hearing loss. Hearing is one of the essential senses for an underwater mammal to navigate. It could result in permanent hearing loss for 100% of these unfortunate inhabitants.

Recommendation: Move the heavy noise making machinery far to the south side of the construction site so that the minimum exceeds the mean projected distance of 100 ft, rather than 50 ft. Allow for off-site preparation of materials as much as is possible. Double the normal sound barrier.

5. How Backhoe and Dump Trucks will be used not described.

Comment: the American way is to reduce actual physical labor. The plan does not reveal where the debris will be loaded onto the trucks.

Comment: The existing condemned tower is not that large that human laborers could not demolish this building within a few days using large hammers and wedges. Using a conveyor belt such as used at the airport, the debris could be transferred to the dump trucks at the street level rather than the trucks picking up the materials to be discarded at the sand level.

6. Building Shell timeframe:

Comment: The time frame signifies that the Building Shell will take 5 weeks (Aug 22 to Oct. 9) Can any parts of the new tower be pre-constructed off site?

7. On page 25961 - Quoting Doyle Hanan from 1996:

Dr. Hanan wrote that there 400-600 usable harbor seal haul out sites.

Comment: Dr Hanan's writings continually downplay the difficulties encountered by harbor seals in using inappropriate haul out sites. For example, he cites intertidal sandbars, rocky shores and beaches. There are no adjacent intertidal sandbars around this county, the harbor seals are not adept at climbing rocky shores because their short front flippers will not bear lifting their weight and the beaches which are suitable are largely occupied with

human recreationists. Therefore, the seals have no safe alternate places to go if this project causes their abandonment from this home.

It is also true that the harbor seal is not listed under the Endangered Species Act. However, it is poor policy to wait until an animal is at the brink of trouble to begin protections. Given the contamination of the ocean, or other unexpected catastrophic events, this fragment of a colony might well be a saving remnant if something were to happen to the waters off the other large harbor seal colonies of the Channel Islands, Point Mugu or Carpinteria. Do not downplay their important role.

8. On page 25963: Pinnipeds at this site (Children's Pool) have likely adapted or become habituated to human presence and associated noises.

Comment: This proposal does not describe normal human activities or noises such as from a honking horn or late night parties on the beach. The proposed activities planned herein will exceed any past experience and will potentially be the cause of a massive die off of this colony .

As far as habituation of normal activities around the lifeguard station, I assume the proponents of this project are aware of the frequency of flushes these animals endure on an almost daily basis as a result of an ill-conceived and ill-defined "shared use" policy. Humans regularly scare off the seals by moving in too close while entering the pool with diving gear, clapping their hands and allowing dogs to bark from as far away as the sidewalk. Clearly, the seals live in a perpetual state of being on guard for disturbances. One should only watch the "streaming live" WAN Conservancy earthcam to observe their guarded nervousness during their resting periods.

Recommendation: If these seals are subjected to noxious noise and construction activity, it would be a beneficent concession on the part of the City of San Diego to prohibit beach access during the construction time. Also it would be prudent for human safety, given that it is a children's play area. I can't imagine a city playground being open during construction and demolition of a building site.

9. "The City of San Diego expects the pinnipeds behavior to return to pre-demolition/construction soon after the building activities are over."

"The temporary impacts on the acoustic environment are not expected to have any permanent effects..."

"The proposed activities are planned to occur outside the harbor seal pupping and weaning periods."

Comment: These observations are controversial. Has the elevated stress level, the frequent episodes of flushings, the constant presence of humans on the beach keeping the pinnipeds from beaching ever been measured? Perhaps "pupping season" in this document is conveniently used as an isolated event. In the pregnancy cycle, the female is impregnated soon after weaning the pup. If the majority of births occur Feb, March and April, weaning occurs from mid March through mid May. Implantation occurs as early as mid April

through mid June. The earliest Second Trimester could occur as early as mid July. The earliest third trimester could occur in November.

Comment: The potential for threatening the viability of the pregnancy are definitely present during this period of construction. Therefore, the level of Incidental Harassment should be elevated to Level A.

10. On page 25965:

The pupping dates are incorrect. It lists January 1ST to May 1st. At this site, the dates have been expanded to include a buffer on either side of two weeks, so it is December 15th to May 15th.

Comment: Engineers have planned for the heaviest construction to be from October to November. However, for a pregnant seal, these activities impose yet another difficulty for hauling out and getting adequate rest, a daily requirement.

Dr. Hanan, as the PSO, is obligated to report on all observable reactions. His team must be willing to stop construction/demolition if the results are adverse to this colony. The proposal does not specify what time frame the seals are to be monitored prior to the project to assess "normal" reactions to activities often found at the beach. Such monitoring should begin weeks before the construction phase begins.

Comment: the WAN Conservancy camera can play a crucial part in this survey. It can monitor the beach 24/7 and can pick up on decreasing numbers of pinnipeds accessing the beach after hours of construction are finished daily and what the seals do before the work starts. The city should definitely employ the technical advantage of the surveillance camera all during the project.

What are the plans if the seals should abandon this site for a unspecified duration of time – days, weeks? Will the project be delayed over two seasons?

11. On page 25967

"There is a high likelihood that many of the harbor seals present during demolition and construction activities will not be flushed off the beach or rocks, as pinnipeds at this site are conditioned to human presence and loud noises."

Comment: Contrary to this statement, the seals are very disturbed by human presence and loud noises. The WAN Conservancy has been monitoring the Children's pool since January, and many, many instances of flushings have been recorded. Ther seals are habituated to people who keep a safe distance. The level of noise has never reached the peak of this proposal so to say that the expectancy is for "no disturbance" is unfounded.

CONCLUSIONS:

1. The level of potential damage to the pinniped colony is unrealistically described. Level A will occur in greater proportion than anticipated by conservative estimates.

2. The beach should be closed to humans during construction if the IHA is granted.
3. Construction practices should be modified to reduce the noise levels and activities, by placing large noise producing machinery further south to decrease the disturbances. Erect a very protective sound barrier wall.
4. Planning for ceasing work activity should be expected, depending on the behavior of the seals. Please include the human factor, as well as the construction activities, for monitoring purposes, if humans are allowed on the beach.
5. If the permit is given, include use of the WAN Conservancy camera to monitor minute by minute effects of Construction/Demolition.
6. Recommend modification of the lifeguard tower plans to modify the elaborate enlargement of a luxury station.
7. Anticipate dissipation of the colony due to lack of suitable alternate hauling out sites.

Thank you for taking these comments into consideration.

Ellen Shively

Sierra Club, SD Chapter

8304 Clairemont Mesa Blvd. #101

San Diego, Ca 92111



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-XC498

Emma Pettit <strawberryemma16@gmail.com>

Fri, May 31, 2013 at 7:36 PM

To: "ITP.Goldstein@noaa.gov" <ITP.Goldstein@noaa.gov>

THE BEACH MUST BE CLOSED DURING CONSTRUCTION.



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-XC498

Emma Pettit <strawberryemma16@gmail.com>

Fri, May 31, 2013 at 7:38 PM

To: "ITP.Goldstein@noaa.gov" <ITP.Goldstein@noaa.gov>

- PROVIDE ADEQUATE SOUND MITIGATION TO PROTECT THE SEALS' HEARING.
- CONSTRUCTION MUST CEASE BY NOVEMBER 1.
- THERE MUST BE MONITORING TO CONTINUE FOR 60 DAYS AFTER THE COMPLETION OF CONSTRUCTION.



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

Re: 0648-XC498 La Jolla lifeguard tower

gwest1@san.rr.com <gwest1@san.rr.com>
To: ITP.Goldstein@noaa.gov

Mon, May 20, 2013 at 11:59 AM

To: All appropriate parties.

RE: La Jolla lifeguard tower restoration

Please do what you can to ensure that this important safety issue is not overwhelmed by the sideshow of emotionally driven arguments.

As an active swimmer and diver for the past 40+ years, I know the value of this area, both to aquatic recreationalists, and the lifeguard service who will tell you the many reasons this is a vital lookout/response station.

I urge you to act in the interest of human safety and common sense in this matter.

Respectfully,
Garnet Lee West



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-XC498

Yahoo! <garytakessian34@yahoo.com>

Fri, May 31, 2013 at 10:54 AM

To: ITP.Goldstein@noaa.gov

Cc: "Dr.Jane j reldan" <jreldan@san.rr.com>

Dear Mr. Goldberg: We recommend that the beach be closed during the construction of the lifeguard stand. Also it should be closed for 60 days after completion in order to test the impact of construction on the seals. Thank You, Gary & Ilse Takessian



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-xc498 Potential seal harassment at Children's Pool, La Jolla, CA

James Hudnall <balaena@pacbell.net>
To: Michael Payne <ITP.Goldstein@noaa.gov>
Cc: James Hudnall <balaena@pacbell.net>

Fri, May 31, 2013 at 8:04 PM

Michael Payne, Chief
Permits and Conservation Department
Office of Protected Resources
National Marine Fisheries Service, Silver Springs, MD

Dear Mr. Payne,

Issuance of an "Incidental Take" permit to the City of San Diego for demolition and construction of a lifeguard tower at Children's Pool (or to any associated entity) should be withheld at this time because facts regarding the harbor seal rookery at Children's Pool Beach have been omitted and/or misrepresented by the applicant and associated associates.

1. Harbor seals utilize Children's Pool Beach ("CPB") on a 24-hour daily basis year round. The beach is a NMFS-recognized rookery.
2. The seals using this rookery are not habituated to the 85 dB noise specified in the applicant's permit request, nor are these seals habituated to the physical activities of demolition and construction specified in the permit request.
3. The Children's Pool rookery is the southernmost mainland harbor seal rookery in the western United States and the only harbor seal rookery in Southern California visible to our general public for educational and recreational purposes. Hundreds of thousands of people come to the bluffs above the beach and to the seawall to observe these seals each year.
4. Harbor seals utilize CPB differently at different times of the year. Detailed knowledge of the behavior of seals using this rookery would indicate that lifeguard tower demolition and construction should take place between July 15 and September 30, during daylight between the hours of 9 AM and 5 PM when most if not all of the seals have departed the beach to avoid the hot part of the day.

—James Hudnall
Charter member, Society for Marine Mammalogy
123 Sea View Drive
Port Angeles, WA 98362
[360-417-6630](tel:3604176630)



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-XC498

Jane Bradford <jbradford2@san.rr.com>
To: ITP.Goldstein@noaa.gov

Sat, Jun 1, 2013 at 12:44 PM

Please protect the seal colony by closing the during construction, give sound sound protection to the seals and finish by november 1. The seals are a valuable part of our environment and because they are especially vulnerable to loud noise and upheaval need all the protection you can give. Thank you.

Jane Bradford



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-XC498 IHA for lifeguard tower construction at Children's Pool Beach, La Jolla, CA 92037

Jane Reldan, M.D. <jreldan@san.rr.com>
To: ITP.Goldstein@noaa.gov

Mon, Jun 3, 2013 at 12:46 AM

P. Michael Payne, Chief
Permits and Conservation Division

Dear Mr. Payne,

The IHA in its current form is unacceptable. I am a 25 year resident of La Jolla and am commenting on the Children's Pool Lifeguard station construction planned in La Jolla, California.

1) As a physician, it is obvious to me that the access to the beach must be closed to remove the confounding factor of human harassment, while monitoring for construction harassment. I cite Dr. Pamela Yochem, 5/25/2005, La Jolla Cove Wall Replacement, Pacific Harbor Seal Monitoring, Final Report.

2) The number of takes on Page 3 of 12,783 is outrageous. This means flushing the seals with sound over 90 decibels, that is known to permanently injure their hearing, during the estimated 106 days of construction, flushing 120 seals daily. There are only ~250 seal in this colony, and a flush of over 100 seals happens very rarely. Much more commonly the seals will alert, move closer to the waterline, or a few at a time enter the water with disturbances. Yochem, P.K. 2005, as above.

3) Stewart, B.S. 1996, 1997, 1998, Behavioral Responses of Pinnipeds to

Noise review sound level impacts. There is no provision by the City of San Diego to provide any sound mitigation. This is critical since seals orient by sound as well as by visual cues, both on land and in the water. The City must erect a sound barrier and use sound blankets and mufflers on noise generating equipment.

4) Since the seals are pregnant by the time construction starts, they must have peace and quiet after November 1, prior to the start of the pupping season 12/15. The seals are at higher risk for still births, premature births, and site abandonment if disturbed during pregnancy. Yochem P.K. and B.S. Stewart 1998, Behavioral ecology and demography of seals and sea lions at the Seal Rock Marine Mammal Reserve.

5) Monitoring must continue for 60 days after the end of construction to ensure that the same number of seals frequent the beach after construction as before construction began.

Thank you in advance, for taking my concerns seriously, and answering them individually,

Jane Reldan, MD

Jane Reldan, M.D.

7946 Ivanhoe Ave, Ste 312

La Jolla, CA 92037

858.459.6600 phone

858.459.6605 fax

jreldan@san.rr.com



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-XC498

Janice Stanger <janicekstanger@yahoo.com>

Sun, Jun 2, 2013 at 1:58 AM

Reply-To: Janice Stanger <janicekstanger@yahoo.com>

To: "ITP.Goldstein@noaa.gov" <ITP.Goldstein@noaa.gov>

The seals at Casa Beach in La Jolla, CA must be protected while a new lifeguard tower is being constructed:

- Noise levels must be mitigated to protect the hearing of the seals. Physical barriers and other methods can do this.
- The beach should be totally closed to people during construction.
- All construction must cease by Nov 1, and not be continued until all the seal pups are weaned. The noise of construction can cause miscarriages and stillbirths, and helpless baby seals will die

Thanks for your work protecting seals.

Sincerely,

Janice Stanger, Ph.D.

Author of The Perfect Formula Diet

www.perfectformuladiet.com



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

Fw:PUBLIC COMMENT ON FEDERAL REGISTER IS Lajolla using subterfuge to kill all seals - they want them driven out

jean public <jeanpublic1@mail.com>
To: ITP.GOLDSTEIN@noaa.gov

Wed, May 15, 2013 at 12:13 PM

> ----- Original Message -----

> From: jean public

> Sent: 05/15/13 11:59 AM

> To: TPGOLDSTEN@NOAA.GOV, HUMANELINES@HSUS.ORG, INFO@COK.NET,
INFO@MERCYFORANIMALS.ORG

> Subject: Fw:PUBLIC COMMENT ON FEDERAL REGISTER IS Lajolla using subterfuge to kill all seals - they want them driven out

>

> LAJOLLY RESIDENTS HAVE BEEN COMPLAINING ABOUT SHARING A BEACH WITH THESE ANIMALS FOR YEARS - IS THIS A PLAN TO EXTERMINATE THEM. AND WHY WOULD YOU PUT SEWAGE INTO THE WATERS NEAR A CHILDRENS POOL. THIS ALLEGED BUILDING MAKES NO SENSE. THIS APPEAR TO BE SUBTERFUGE TO KILL SEALS IN A LOCATION WHERE PRACTICALLY EVERY RESIDENT HAS ITS OWN POOL TO SWIM IN. THEY DONT WANT TO HAVE THE SEALS EVEN NEARBY. I AM ON THE SIDE OF THE SEALS AND OTHER MARINE MAMMALS THAT NEED THIS PLACE TO HAUL OUT. LET THE RICH RESIDENTS OF LA JOLLA USE THEIR POOLS AND DENY THIS PLAN TO EXTERMINATE SEALS. THEY SHOULD NOT GET AWAY WITH THIS FAKE PLAN WHICH WILL KILL SEALS. THIS COMMENT IS FOR THE PUBLIC RECORD. JEAN PUBLIC

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> > [Federal Register Volume 78, Number 86 (Friday, May 3, 2013)]

> > [Notices]

> > [Pages 25958-25970]

> > From the Federal Register Online via the Government Printing Office

> > [www.gpo.gov]

> > [FR Doc No: 2013-10529]

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> > DEPARTMENT OF COMMERCE

> >

> > National Oceanic and Atmospheric Administration

> >

> > RIN 0648-XC498

> >

> >

> > Takes of Marine Mammals Incidental to Specified Activities;

> > Demolition and Construction Activities of the Children's Pool Lifeguard

> > Station at La Jolla, California

> >

> > AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and
> > Atmospheric Administration (NOAA), Commerce.
> >
> > ACTION: Notice; proposed Incidental Harassment Authorization; request
> > for comments.
> >
> > -----
> >
> > SUMMARY: NMFS has received an application from the City of San Diego
> > for an Incidental Harassment Authorization (IHA) to take small numbers
> > of marine mammals, by Level B harassment, incidental to demolition and
> > construction activities of the Children's Pool Lifeguard Station in La
> > Jolla, California. NMFS has reviewed the application, including all
> > supporting documents, and determined that it is adequate and complete.
> > Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting
> > comments on its proposal to issue an IHA to the City of San Diego to
> > incidentally harass, by Level B harassment only, three species of
> > marine mammals during the specified activities.
> >
> > DATES: Comments and information must be received no later than June 3,
> > 2013.
> >
> > ADDRESSES: Comments on the application should be addressed to P.
> > Michael Payne, Chief, Permits and Conservation Division, Office of
> > Protected Resources, National Marine Fisheries Service, 1315 East-West
> > Highway, Silver Spring, MD 20910. The mailbox address for providing
> > email comments is ITP.Goldstein@noaa.gov. Please include 0648-XC498 in
> > the subject line. NMFS is not responsible for email comments sent to
> > addresses other than the one provided here. Comments sent via email,
> > including all attachments, must not exceed a 10-megabyte file size.
> > All comments received are a part of the public record and will
> > generally be posted to
> > <http://www.nmfs.noaa.gov/pr/permits/incidental.htm> without change. All
> > Personal Identifying Information
> > (for example, name, address, etc.) voluntarily submitted by the
> > commenter may be publicly accessible. Do not submit Confidential
> > Business Information or otherwise sensitive or protected information.
> > A copy of the application containing a list of the references used
> > in this document may be obtained by writing to the address specified
> > above, telephoning the contact listed below (see FOR FURTHER
> > INFORMATION CONTACT), or visiting the Internet
> > at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>. Documents cited
> > in this
> > notice, including the IHA application, may be viewed, by appointment,
> > during regular business hours, at the aforementioned address.
> >
> > FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison,
> > Office of Protected Resources, NMFS, [301-427-8401](tel:301-427-8401).
> >
> > SUPPLEMENTARY INFORMATION:
> >
> > Background
> >
> > Sections 101(a)(5)(D) of the MMPA, as amended (16 U.S.C.
> > 1371(a)(5)(D)), directs the Secretary of Commerce (Secretary) to allow,
> > upon request, the incidental, but not intentional, taking of small
> > numbers of marine mammals of a species or population stock, by United

> > States citizens who engage in a specified activity (other than
> > commercial fishing) within a specified geographical region if certain
> > findings are made and, if the taking is limited to harassment, a notice
> > of a proposed authorization is provided to the public for review.
> > Authorization for the incidental taking of small numbers of marine
> > mammals shall be granted if NMFS finds that the taking will have a
> > negligible impact on the species or stock(s), will not have an
> > unmitigable adverse impact on the availability of the species or
> > stock(s) for subsistence uses (where relevant). The authorization must
> > set forth the permissible methods of taking, other means of effecting
> > the least practicable adverse impact on the species or stock and its
> > habitat, and requirements pertaining to the mitigation, monitoring and
> > reporting of such takings. 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."
> > Section 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.
> > Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for
> > NMFS's 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 public comment period, NMFS must either issue or deny the
> > authorization.
> > Except with respect to certain 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]. 16 U.S.C. 1362(18).
> >
> > Summary of Request
> >
> > On December 3, 2012, NMFS received an application from the City of
> > San Diego, Engineering and Capital Projects Department, requesting an
> > IHA. A revised IHA application was submitted on April 1, 2013. The
> > requested IHA would authorize the take, by Level B (behavioral)
> > harassment, of small numbers of Pacific harbor seals (*Phoca vitulina*
> > *richardii*), California sea lions (*Zalophus californianus*), and northern
> > elephant seals (*Mirounga angustirostris*) incidental to demolition and
> > construction activities of the Children's Pool Lifeguard Station at La
> > Jolla, California. The demolition and construction operations are
> > proposed to take place during June to December, 2013 in La Jolla,
> > California. Additional information on the demolition and construction
> > activities at the Children's Pool Lifeguard Station is contained in
> >
> > [[Page 25959]]
> >
> > the application, which is available upon request (see ADDRESSES).
> >
> > Description of the Proposed Specified Activity
> >
> > The Children's Pool was created in 1932 by building a breakwater

> > wall which created a protected pool for swimming. This pool has
 > > partially filled with sand, but still has open water for swimming, as
 > > well as a beach for sunbathing and walking. The Children's Pool and
 > > nearby shore areas are used by swimmers, sunbathers, SCUBA divers and
 > > snorkelers, shore/surf fishermen, school classrooms, tide pool
 > > explorers, kayakers, surfers, boogie and skim boarders, seal, bird and
 > > nature waters as well as other activities by the general public. Over
 > > the last three years (2010 through 2012), an average of 1,556,184
 > > people have visited the Children's Pool and lifeguards have taken an
 > > average of 8,147 preventive actions and 86 water rescues annually
 > > (CASA, 2010; 2011; 2012). The existing lifeguard facility was built in
 > > 1967, it is old, deteriorating from saltwater intrusion, and no longer
 > > serves neither the needs of the lifeguard staff nor the beach-going
 > > public. The structure was condemned on February 22, 2008 due to its
 > > deteriorated conditions and the lack of structural integrity;
 > > therefore, it can no longer be used in its current state. Since the
 > > existing building is no longer viable, a temporary lifeguard tower was
 > > moved in, but because of basic year-round working condition needs for
 > > the lifeguards and the demand for lifeguard services, a new station is
 > > required. The proposed project includes the demolition of the existing
 > > lifeguard station and construction of a new, three-story, lifeguard
 > > station on the same site. The new facility will have an observation
 > > tower, first aid room, male/female locker rooms, and a second
 > > observation/ready room area, an accessible ramp to the new proposed
 > > unisex public restrooms on the lower floor, a public viewing area, and
 > > a plaza in front of the lifeguard station. The new lifeguard station
 > > facilities will provide a 270[deg] view of beaches, bluffs, and reefs
 > > for continued service to the public onshore as well as in the water.
 > > Sound levels during all phases of the project will not exceed 110
 > > dB re 20 [mu]Pa at five feet from the sound sources. The 110 dB
 > > estimate is based on equipment manufacturers estimates obtained by the
 > > construction contractor. The City of San Diego utilized the published
 > > manufacturers data based on the proposed equipment (i.e., a 980 Case
 > > backhoe, dump truck, air compressor, electric screw guns, jackhammer,
 > > concrete saw, and chop saws) to be utilized on the project site.
 > > Operation of the equipment is the primary activity within the
 > > demolition and construction of activities that is likely to affect
 > > marine mammals by potentially exposing them to in-air (i.e., airborne
 > > or sub-aerial) noise. It is difficult to predict what activities might
 > > cause noticeable behavioral reactions with Pacific harbor seals at this
 > > site. Children's Pool is a highly disturbed hauling-out site and seals
 > > at this location do not respond to stimuli as observed with other
 > > harbor seals in other areas (Hanan & Associates, 2004; 2011) (see
 > > <http://www.youtube.com/watch?v=4IRUYVTULsg>). During the working day,
 > > the
 > > City of San Diego estimates there will be sound source levels above 90
 > > dB re 20 [mu]Pa during 106 days, including 27 days of 100 to 110 dB re
 > > 20 [mu]Pa at the demolition and construction site. The contractor used
 > > published or manufacturer's measurements to estimate sound levels. On
 > > average, pinnipeds will be about 30.5 meters (m) (100 feet [ft]) or
 > > more from the construction site with a potential minimum of about 15.2
 > > m (50 ft) and a peak of about 83 dB re 20 [mu]Pa at the mean hauling-
 > > out distance (30.5 m). The City of San Diego used the formula and
 > > online calculator on the Web site:
 > > <http://sengpielaudio.com/calculator-distance.htm> and measured
 > > distances from the sound source to determine
 > > the area of potential impacts from in-air sound. No studies of ambient

> > sound levels have been conducted at the Children's Pool, the City of
> > San Diego intends to measure in-air background noise levels in the days
> > immediately prior to construction.
> > The existing lifeguard station is located on a bluff above
> > Children's Pool (32[deg]50'50.02" North, 117[deg]16'42.8" West)
> > nearby reef and beach areas (see detailed maps and photographs on pages
> > 30 to 31 of the "Mitigated Negative Declaration" in the IHA
> > application). The building has deteriorated significantly and must be
> > removed. A backhoe will be used for demolishing the existing structure,
> > and materials will be loaded into dump trucks to be hauled offsite.
> > Material will be hauled to a local landfill where it will be separated
> > into recycled content and waste. In its place, a new lifeguard station
> > is scheduled to be constructed within and adjacent to the existing
> > facility. The new three-story, building will contain beach access level
> > public restrooms and showers, lifeguard lockers, and sewage pump room;
> > second level containing two work stations, ready/observation room,
> > kitchenette, restroom, and first aid station; and third "observation"
> > level will include a single occupancy observation space, radio storage
> > closet, and exterior catwalk. Interior stairs will link the floors. The
> > existing below grade retaining walls will remain in place and new
> > retaining walls will be constructed for a ramp from street level to the
> > lower level for emergency vehicle beach access and pedestrian access to
> > the lower level restrooms and showers. A 5.6 m (18. 5 ft) wall would be
> > located along the north end of the lower level. The walls would be
> > designed for a minimum design life of 50 years and would not be
> > undermined from ongoing coastal erosion. The walls would not be readily
> > viewed from Coast Boulevard, the public sidewalks or the surrounding
> > community.
> > Lower level improvements include new beach access restrooms and
> > showers, lifeguard lockers, and a sewage pump room. The plaza level
> > plan includes two work stations, a ready/observation room, kitchenette,
> > restroom and first aid station. The observation level includes a single
> > occupancy observation space, radio storage closet, and exterior
> > catwalk. The existing plaza would be reconfigured to provide a 3.1 m
> > (10 ft) wide ramp for emergency vehicles to the beach and for
> > pedestrians to the lower level accessible restrooms and showers.
> > Enhanced paving, seating and viewing space, drinking fountains, adapted
> > landscaping and water efficient irrigation is also included. No
> > material is expected to enter or be washed into the marine environment
> > that may affect water quality, as the City of San Diego has developed
> > the U.S. Environmental Protection Agency's National Pollutant Discharge
> > Elimination System and the Stormwater Pollution Prevention Plan,
> > required for the demolition and construction activities.
> > Demolition and construction of the new lifeguard station is
> > estimated to take approximately 7 months (148 actual construction days
> > of the 214 total days) and be completed by December 23, 2013.
> > Demolition and construction activities will occur Monday through Friday
> > (no work will occur on holidays) during daylight hours only (i.e., 8:30
> > a.m. to 3:30 p.m.), as stipulated in the "Mitigated Negative
> > Declaration" and local ordinances. Demolition and construction
> > activities are divided into phases:
> > (1.) Mobilization and temporary facilities;
> > (2.) Demolition and site clearing;
> > (3.) Site preparation and utilities;
> > (4.) Building foundation;
> > (5.) Building shell;
> > (6.) Building exterior;

- > > (7.) Building interior;
- > >
- > > [[Page 25960]]
- > >
- > > (8.) Site improvements; and
- > > (9.) Final inspection and demobilization.
- > > Detail summary (phases overlap in time):
- > > (1.) Mobilization and temporary facilities:
- > > Install--temporary perimeter fencing, temporary utilities and
- > > foundation, temporary life guard tower, temporary office trailer,
- > > temporary sanitary facilities, and temporary sound wall/visual barrier.
- > > Equipment--truck, backhoe, trailer, small auger, hand/power tools,
- > > and concrete truck.
- > > Timeframe--June 3 to June 18, 2013.
- > > (2.) Demolition and site clearing:
- > > Dismantle and remove existing station, remove hardscape and
- > > landscape, trucks expected to haul-off less than 5 loads of debris via
- > > Coast Boulevard.
- > > Equipment--excavator, hydraulic ram, jackhammer, trucks, and hand/
- > > power tools.
- > > Timeframe--June 19 to July 5, 2013.
- > > (3.) Site preparation and utilities:
- > > Rough grade building site and modify underground utilities.
- > > Equipment--loader, backhoe, and truck.
- > > Timeframe--July 8 to July 30, 2013.
- > > (4.) Building foundation:
- > > Dig/shore foundation, pour concrete, waterproofing, and remove
- > > shoring.
- > > Equipment--backhoe, concrete pump/truck, hand/power tools, small
- > > drill rig, and crane.
- > > Timeframe--July 23 to August 21, 2013.
- > > (5.) Building shell:
- > > Pre-cast concrete panel walls, panel walls, rough carpentry and
- > > roof framing, wall board, cable railing, metal flashing, and roofing.
- > > Equipment--crane, truck, fork lift, hand/power tools.
- > > Timeframe--August 22 and October 9, 2013.
- > > (6.) Building exterior:
- > > Doors and windows, siding paint, light fixtures, and plumbing
- > > fixtures.
- > > Equipment--truck, hand/power tools, and chop saw.
- > > Timeframe--4 weeks.
- > > (7.) Building interiors:
- > > Walls, sewage lift station, rough and finish mechanical electrical
- > > plumbing structural (MEPS), wall board, door frames, doors and paint.
- > > Equipment--truck, hand/power tools, and chop saw.
- > > Timeframe--October 3 to November 22, 2013.
- > > (8.) Site improvements:
- > > Modify storm drain, concrete seat walls, curbs, and planters, fine
- > > grade, irrigation, hardscape, landscape, hand rails, plaques, and
- > > benches.
- > > Equipment--backhoe, truck, hand/power tools, concrete pump/truck,
- > > and fork lift.
- > > Timeframe--October 3 to November 22, 2013.
- > > (9.) Final inspection, demobilization:
- > > System testing, remove construction equipment, inspection, and
- > > corrections.
- > > Equipment--truck, and hand/power tools.

> > Timeframe--October 18 to December 23, 2013.

> > If the City of San Diego's demolition and construction activities

> > are not completed in 2013, then they would submit another IHA

> > application for 2014. Additional details regarding the proposed

> > demolition and construction activities of the Children's Pool Lifeguard

> > Station can be found in the City of San Diego's IHA application. The

> > IHA application can also be found online at:

> > <http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications>.

> >

> > Proposed Dates, Duration, and Specific Geographic Region

> >

> > The La Jolla Children's Pool Lifeguard Station is located at 827

> > [frac12] Coast Boulevard, La Jolla, California 92037 (32[deg] 50'

> > 50.02" North, 117[deg] 16'42.8" West. Because the City of San Diego

> > is already requiring a moratorium on all construction activities during

> > harbor seal pupping and weaning (i.e., January 1st to May 30th; see

> > page 5 of the Negative Declaration in the IHA application), work on

> > this proposed project can only be performed between June 1st and

> > December 31st of any year. The City of San Diego is planning to begin

> > the project at the Children's Pool in La Jolla, California on June 1,

> > 2013, with site preparation (see page 30 to 31 of the Negative

> > Declaration in the IHA application) followed by demolition of the

> > existing station and construction of the new lifeguard station to be

> > completed by December 23, 2013. The locations and distances (in ft)

> > from the demolition/construction site to the Children's Pool haul-out

> > area, breakwater ledge/rocks haul-out area, reef haul-out area, and

> > Casa Beach haul-out area can be found in the City of San Diego's IHA

> > application.

> >

> > Description of Marine Mammals in the Area of the Proposed Specified

> > Activity

> >

> > Three species of pinnipeds are known to or could occur in the

> > proposed Children's Pool action area and off the Pacific coastline (see

> > Table 1 below). Pacific harbor seals, California sea lions, and

> > northern elephant seals are the three species of marine mammals that

> > occur and are likely to be found within the proposed activity area;

> > thus, they are likely to be exposed to effects of the specified

> > activities. NMFS and the City of San Diego do not expect incidental

> > take of other marine mammal species. A variety of other marine mammals

> > have on occasion been reported from the coastal waters of southern

> > California. These include gray whales, killer whales, bottlenose

> > dolphins, Steller sea lions, northern fur seals, and Guadalupe fur

> > seals. However, none of these species have been reported to occur in

> > the proposed action area. Table 1 below outlines the cetacean and

> > pinnipeds species, their habitat, and conservation status in the

> > nearshore area of the general region of the proposed project area.

> >

> > Table 1--The Habitat, Abundance, and Conservation Status of Marine

> > Mammals Inhabiting the General Region of the Proposed Action Area in

> > the Pacific

> > Ocean Off the

> > Southern Coast of California

> > -----

> > Best population

> > Species Habitat estimate

> > (minimum) \1\ ESA \2\ MMPA \3\

> > Population trend
> > -----
> > Mysticetes:
> > Gray whale (*Eschrichtius* Coastal and shelf..... 19,126
> > (18,107)..... DL--Eastern Pacific NC--Eastern Pacific
> > Increasing over past
> > robustus).
> > stock. stock. several
> > decades.
> >
> > EN--Western Pacific D--Western Pacific
> >
> > stock. stock.
> > Odontocetes:
> > Killer whale (*Orcinus orca*).... Widely distributed.... 354
> > (354)--West Coast NL..... NC.....
> > Increasing--West
> >
> > Transient stock.
> > Coast Transient
> >
> > stock.
> >
> > [[Page 25961]]
> >
> >
> >
> > EN--Southern resident D--Southern Resident
> >
> > population. and AT1 Transient
> >
> > populations.
> > Bottlenose dolphin (*Tursiops* Offshore, inshore, 323
> > (290)--California NL..... NC.....
> > Stable.
> > truncatus). coastal, estuaries. Coastal stock.
> > Long-beaked common dolphin Inshore..... 107,016
> > (76,224)-- NL..... NC.....
> > Increasing.
> > (*Delphinus capensis*). California stock.
> > Pinnipeds:
> > Pacific harbor seal (*Phoca* Coastal..... 30,196
> > (26,667)-- NL..... NC.....
> > Increased in
> > vitulina richardii).
> > California stock.
> > California 1981 to
> >
> > 2004.
> > Northern elephant seal Coastal, pelagic when 124,000
> > (74,913)-- NL..... NC.....
> > Increasing through
> > (*Mirounga angustirostris*). not migrating.
> > California breeding
> > 2005, now stable.
> > stock.
> > California sea lion (*Zalophus* Coastal, shelf..... 296,750

> > (153,337)-- NL..... NC.....
> > Increasing.
> > californianus). U.S. stock.
> > Steller sea lion (Eumetopias Coastal, shelf..... 72,223
> > (58,334)-- T--Eastern U.S. stock D..... Overall
> > increasing,
> > jubatus). Eastern
> > U.S. stock.
> > decreasing in
> >
> >
> > California.
> >
> > EN--Western U.S.
> >
> > stock.
> > Northern fur seal (Callorhinus Pelagic, offshore..... 9,968
> > (5,395)--San NL..... NC--San Miguel Island
> > Increasing.
> > ursinus). Miguel
> > Island stock. stock.
> > Guadalupe fur seal Coastal, shelf..... 7,408
> > (3,028)--Mexico T..... D.....
> > Increasing.
> > (Arctocephalus townsendi). to California.
> > -----
> > NA = Not available or not assessed.
> > \1\ NMFS Marine Mammal Stock Assessment Reports
> > \2\ U.S. Endangered Species Act: EN = Endangered, T = Threatened, DL =
> > Delisted, and NL = Not listed.
> > \3\ U.S. Marine Mammal Protection Act: D = Depleted, S = Strategic,
> > and NC = Not classified.e rocks and beaches at or near the Children's
> > Pool in La
> > Jolla, California, are almost exclusively Pacific harbor seal
> > hauling-out sites. On rare occasions, one or two California sea lions
> > or a single
> > juvenile northern elephant seal, have been observed on the sand or
> > rocks at or near the Children's Pool (i.e., breakwater ledge/rocks
> > haul-out area,
> > reef haul-out area, and Casa Beach haul-out area). These sites are
> > not usual haul-out locations for California sea lions and/or northern
> > elephant
> > seals. The City of San Diego commissioned two studies of harbor seal
> > abundance trends at the Children's Pool. Both studies reported rare
> > appearances
> > of California sea lions and northern elephant seals (Yochem and
> > Steward, 1998; Hanan & Associates, 2004).
> >
> > Pacific Harbor Seal
> >
> > Harbor seals are widely distributed in the North Atlantic and North
> > Pacific. Two subspecies exist in the Pacific Ocean: P. v. stejnegeri in
> > the western North Pacific near Japan, and P. v. richardii in the
> > eastern North Pacific. The subspecies in the eastern North Pacific
> > Ocean inhabits near-shore coastal and estuarine areas from Baja
> > California, Mexico, to the Pribilof Islands in Alaska. These seals do
> > not make extensive pelagic migrations, but do travel 300 to 500 km (162

> > to 270 nautical miles [nmi]) on occasion to find food or suitable
> > breeding areas (Herder, 1986; Harvey and Goley, 2011). Previous
> > assessments of the status of harbor seals have recognized three stocks
> > along the west coast of the continental U.S.: (1) California, (2)
> > Oregon and Washington outer coast waters, and (3) inland waters of
> > Washington. An unknown number of harbor seals also occur along the west
> > coast of Baja California, at least as far south as Isla Asuncion, which
> > is about 100 miles south of Punta Eugenia. Animals along Baja
> > California are not considered to be a part of the California stock
> > because it is not known if there is any demographically significant
> > movement of harbor seals between California and Mexico and there is no
> > international agreement for joint management of harbor seals. In
> > California, approximately 400 to 600 harbor seal haul-out sites are
> > distributed along the mainland and on offshore islands, including
> > intertidal sandbars, rocky shores, and beaches (Hanan, 1996; Lowery et
> > al., 2008). Harbor seals are one of the most common and frequently
> > observed marine mammals along the coastal environment.
> > Pacific harbor seals haul-out on nearby beaches and rocks (i.e.,
> > breakwater ledge/rocks haul-out area, reef haul-out area, and Casa
> > Beach haul-out area) below the lifeguard tower at Children's Pool. It
> > is one of the three known haul-out sites for this species in San Diego
> > County. They haul-out, give birth to pups, nurse, and molt their pelage
> > on the beach and often forage for food in nearby areas. Harbor seal
> > numbers have increased since 1979 and seals are documented to give
> > birth on these beaches during January through May (Hanan, 2004; 2011).
> > Several studies have identified seal behavior and estimated seal
> > numbers including patterns of daily and seasonal area use (Yochem and
> > Stewart, 1998; Hanan & Associates, 2004, 2011; Linder, 2011). Males,
> > females, and pups (in season) of all ages and stages of development are
> > observed at the Children's Pool and adjacent areas.
> > Harbor seals haul-out on the sand, rocks, and breakwater base at/
> > near the Children's Pool in numbers of 0 to 15 seals to a maximum of
> > about 150 to 200 seals depending on the time of day, season, and
> > weather conditions. These animals have been observed in this area
> > moving to/from the Children's Pool, exchanging with the rocky reef
> > directly west of and adjacent to the breakwater and with Seal Rock,
> > which is about 150 m (492 ft) west of the Children's Pool. Harbor seals
> > have also been reported on
> >

> > [[Page 25962]]

> >
> > the sandy beach just southwest of the Children's Pool. Because space is
> > limited behind the breakwater at Children's Pool, it is unlikely that
> > the number of seals would ever exceed 250 individuals (Linder, 2011).
> > At low tide, additional space for hauling-out is available on the rocky
> > reef areas outside the retaining wall and on beaches immediately
> > southward. Haul-out times vary by time of year, from less than an hour
> > to many hours. There have been no foraging studies at this site, but
> > harbor seals have been observed in nearshore waters and kelp beds
> > nearby, including La Jolla Cove.
> > Radio-tagging and photographic studies have revealed that only a
> > portion of seals utilizing a hauling-out site are present at any
> > specific moment or day (Hanan, 1996, 2005; Gilbert et al., 2005; Harvey
> > and Goley, 2011; and Linder, 2011). These radio-tagging studies
> > indicate that harbor seals in Santa Barbara County haul-out about 70 to
> > 90% of the days annually (Hanan, 1996), the City of San Diego expects
> > harbor seals to behave similarly at the Children's Pool. Tagged and

> > branded harbor seals from other haul-out sites have been observed by
> > Dr. Hanan at the Children's Pool. Harbor seals have been observed with
> > red-stained heads and coats, which are typical of some harbor seals in
> > San Francisco Bay, indicating that seals tagged at other locations and
> > haul-out sites do visit the Children's Pool. A few seals have been
> > tagged at the Children's Pool and there are no reports of these tagged
> > animals at other sites (probably because of very low re-sighting
> > efforts and a small sample size [10 individuals radio-tagged]), which
> > may indicate a degree of site-fidelity (Yochem and Stewart, 1998).
> > These studies further indicate that seals are constantly moving along
> > the coast including to/from the offshore islands and that there may be
> > as many as 600 harbor seals using Children's Pool during a year, but
> > certainly not all at one time.
> > The City of San Diego has fitted a polynomial curve to the number
> > of expected harbor seals hauling-out at the Children's Pool by month
> > (see Figure 1 of the IHA application and below) based on counts at the
> > Children's Pool by Hanan & Associates (2004, 2011), Yochem and Stewart
> > (1998), and the Children's Pool docents (Hanan & Associates, 2004). A
> > three percent annual growth rate of the population was applied to
> > Yochem and Stewart (1998) counts to normalize them to Hanan &
> > Associates and docent counts in 2003 to 2004.
> > A complete count of all harbor seals in California is impossible
> > because some are always away from the haul-out sites. A complete pup
> > count (as is done for other pinnipeds in California) is also not
> > possible because harbor seals are precocial, with pups entering the
> > water almost immediately after birth. Population size is estimated by
> > counting the number of seals ashore during the peak haul-out period
> > (May to July) and by multiplying this count by a correction factor
> > equal to the inverse of the estimated fraction of seals on land. Based
> > on the most recent harbor seal counts (2009) and including a revised
> > correction factor, the estimated population of harbor seals in
> > California is 30,196 individuals (NMFS, 2011), with an estimated
> > minimum population of 26,667 for the California stock of harbor seals.
> > Counts of harbor seals in California increased from 1981 to 2004. The
> > harbor seal is not listed under the ESA and the California stock is not
> > considered depleted or strategic under the MMPA.

> >
> > California Sea Lion

> >
> > The California sea lion is now considered to be a full species,
> > separated from the Galapagos sea lion (*Zalophus wolfebaeki*) and the
> > extinct Japanese sea lion (*Zalophus japonicus*) (Brunner, 2003; Wolf et
> > al., 2007; Schramm et al., 2009). The breeding areas of the California
> > sea lion are on islands located in southern California, western Baja
> > California, and the Gulf of California. Genetic analysis of California
> > sea lions identified five genetically distinct geographic populations:
> > (1) Pacific Temperate, (2) Pacific Subtropical, (3) Southern Gulf of
> > California, (4) Central Gulf of California, and (5) Northern Gulf of
> > California (Schramm et al., 2009). In that study, the Pacific Temperate
> > population included rookeries within U.S. waters and the Coronados
> > Islands just south of U.S./Mexico border. Animals from the Pacific
> > Temperate population range north into Canadian waters, and movement of
> > animals between U.S. waters and Baja California waters has been
> > documented, though the distance between the major U.S. and Baja
> > California rookeries is at least 740.8 km (400 nmi). Males from western
> > Baja California rookeries may spend most of the year in the U.S.
> > The entire population cannot be counted because all age and sex

> > classes are never ashore at the same time. In lieu of counting all sea
> > lions, pups are counted during the breeding season (because this is the
> > only age class that is ashore in its entirety), and the numbers of
> > births is estimated from the pup count. The size of the population is
> > then estimated from the number of births and the proportion of pups in
> > the population. Censuses are conducted in July after all pups have been
> > born. There are no rookeries at or near the Children's Pool. Population
> > estimates for the U.S. stock of California sea lions, range from a
> > minimum of 153,337 to an average estimate of 296,750 animals. They are
> > considered to be at carrying capacity of the environment. The
> > California sea lion is not listed under the ESA and the U.S. stock is
> > not considered depleted or strategic under the MMPA.

> >

> > Northern Elephant Seal

> >

> > Northern elephant seals breed and give birth in California (U.S.)
> > and Baja California (Mexico), primarily on offshore islands (Stewart et
> > al., 1994), from December to March (Stewart and Huber, 1993). Males
> > feed near the eastern Aleutian Islands and in the Gulf of Alaska, and
> > females feed further south, south of 45[ordm] North (Stewart and Huber,
> > 1993; Le Boeuf et al., 1993). Adults return to land between March and
> > August to molt, with males returning later than females. Adults return
> > to their feeding areas again between their spring/summer molting and
> > their winter breeding seasons.
> > Populations of northern elephant seals in the U.S. and Mexico were
> > all originally derived from a few tens or a few hundreds of individuals
> > surviving in Mexico after being nearly hunted to extinction (Stewart et
> > al., 1994). Given the very recent derivation of most rookeries, no
> > genetic differentiation would be expected. Although movement and
> > genetic exchange continues between rookeries when they start breeding
> > (Huber et al., 1991). The California breeding population is now
> > demographically isolated from the Baja California population. The
> > California breeding population is considered in NMFS stock assessment
> > report to be a separate stock.

> > A complete population count of elephant seals is not possible
> > because all age classes are not ashore at the same time. Elephant seal
> > population size is typically estimated by counting the number of pups
> > produced and multiplying by the inverse of the expected ratio of pups
> > to total animals (McCann, 1985). Based on the estimated 35,549 pups
> > born in California in 2005 and an appropriate multiplier for a rapidly
> > growing population, the California stock was approximately 124,000 in
> > 2005. The minimum population size for northern elephant seals can be
> > estimated very conservatively as 74,913, which is equal to twice the
> > observed pup count (to account for the pups and their mothers),

> >

> > [[Page 25963]]

> >

> > plus 3,815 males and juveniles counted at the Channel Islands and
> > central California sites in 2005 (Lowry, NMFS unpublished data). Based
> > on trends in pup counts, northern elephant seal colonies were
> > continuing to grow in California through 2005, but appear to be stable
> > or slowly decreasing in Mexico (Stewart et al., 1994). Northern
> > elephant seals are not listed under the ESA and are not considered as
> > depleted or a strategic stock under the MMPA.

> > Further information on the biology and local distribution of these
> > marine mammal species and others in the region can be found in the City
> > of San Diego's application, which is available upon request (see

> > ADDRESSES), and the NMFS Marine Mammal Stock Assessment Reports, which
> > are available online at: <http://www.nmfs.noaa.gov/pr/sars/>.

> >

> > Potential Effects on Marine Mammals

> >

> > The City of San Diego requests authorization for Level B harassment
> > of three species of marine mammals (i.e., Pacific harbor seals,
> > California sea lions, and northern elephant seals) incidental to the
> > use of equipment and its propagation of in-air noise from various
> > acoustic mechanisms associated with the proposed demolition and
> > construction activities of the Children's Pool Lifeguard Station at La
> > Jolla, California discussed above. Behavioral disturbance may
> > potentially occur as well incidental to the visual presence of humans
> > and demolition/construction activities; however, pinnipeds at this site
> > have likely adapted or become habituated to human presence at this
> > site. Large numbers of people come to the site to view the pinnipeds at
> > all hours and they perform many activities that can disturb pinnipeds
> > at other sites, but this often does not occur at Children's Pool as
> > they seem to have habituated to human presence and associated noises
> > (Hanan & Associates, 2004; 2011). Lifeguards at the Children's Pool and
> > nearby areas estimate that an average of 1,556,184 people per year or
> > 129,682 per month visit the site from 2010 to 2012. A maximum of 15
> > personnel, at any one time, are expected to be part of the proposed
> > demolition and construction activities. Several species of marine
> > mammals may potentially occur in the proposed specified geographic area
> > and thus may be affected by the proposed action. Pacific harbor seals
> > are the most common species, the California sea lion and northern
> > elephant seal are observed occasionally, and thus considered likely to
> > be exposed to sound associated with the demolition and construction
> > activities.
> > Current NMFS practice, regarding exposure of marine mammals to
> > high-level in-air sounds, as a threshold for potential Level B
> > harassment, is at or above 90 dB re 20 [micro]Pa for harbor seals and
> > at or above 100 dB re 20 [micro]Pa for all other pinniped species
> > (Lawson et al., 2002; Southall et al., 2007). NMFS does not expect
> > exposure of marine mammals to high-level underwater sounds from
> > demolition and construction activities that would be considered for
> > potential Level B harassment. The acoustic mechanisms involved entail
> > in-air non-impulsive noise caused by the demolition and construction
> > activities. Expected in-air noise levels are anticipated to result in
> > elevated sound intensities near the proposed demolition and
> > construction activities. No other mechanisms are expected to affect
> > marine mammal use of the area. The other activities, would not affect
> > any haul-out and would not entail noise, and activity surrounding the
> > water materially different from normal operations at the lifeguard
> > station, to which the animals are likely already habituated.
> > Since no demolition or construction activities will be performed
> > during the pupping and weaning season (i.e., January through May),
> > there will be no impacts on birthing rates or pup survivorship at the
> > Children's Pool. There will be no in-water demolition and construction
> > activities in or near the water so pinniped activities in the water
> > should not be affected. Additionally, pinnipeds utilizing the
> > Children's Pool beach as a haul-out site are a very small portion of
> > the species and/or stock populations and any impacts would have little
> > effect at the species and/or stock population levels.
> > As noted above, current NMFS practice, regarding exposure of marine
> > mammals to high-level in-air sounds, as a potential threshold for Level

> > B harassment, is at or above 90 dB re 20 [micro]Pa for harbor seals and
> > at or above 100 dB re 20 [micro]Pa for all other pinniped species.
> > Pinnipeds at Children's Pool are likely already exposed to and
> > habituated to loud noise and human presence, and thus may have areas of
> > effect comparable to the radius of effect calculated for noise from the
> > demolition and construction activities. Behavioral considerations
> > suggest that the pinnipeds would be able to determine that a noise
> > source does not constitute a threat if it is more than a certain
> > distance away, and the sound levels involved are not high enough to
> > result in injury (Level A harassment). Nonetheless, these data suggest
> > that demolition and construction activities may affect pinniped
> > behavior throughout the Children's Pool area, i.e., within
> > approximately a few hundred feet of the proposed activity. The nature
> > of that effect is unpredictable, but logical responses on the part of
> > the pinnipeds include tolerance (noise levels would likely not be loud
> > enough to induce temporary threshold shift in harbor seals), or
> > avoidance by using haul-outs or by foraging outside of the immediate
> > Children's Pool area.
> > In-Air Noise--The principal source of in-air noise would be from a
> > 980 Case backhoe, dump truck, air compressor, electric screw guns,
> > jackhammer, concrete saw, and chop saws used for the proposed
> > demolition and construction activities. Background noise levels near
> > the Children's Pool are likely already elevated due to normal
> > activities. Marine mammals at Children's Pool haul-outs are presumably
> > habituated to the daily coming and going of humans, automobiles, and to
> > other existing activities at the proposed action area. These activities
> > may occur at any time of the day for periods of up to several hours at
> > a time. There have been no studies for ambient sound levels at the
> > Children's Pool.
> > There are so many human visitors to the Children's Pool site at all
> > hours of the day and night, season, and weather that human scent and
> > visual presence are generally not considered issues (Hanan, 2004;
> > 2011). At this site, the Pacific harbor seals are most disturbed when
> > people get very close to them on the beach (i.e., probably 2 to 3 m
> > [6.6 to 9.8 ft]). However, the City of San Diego wants to be authorized
> > for incidental take coverage in case pinnipeds alert to the novel
> > presence or sounds of equipment not previously experienced by pinnipeds
> > at this location. The contractors will not directly approach the
> > Pacific harbor seals during the proposed demolition and construction
> > activities.
> > At the individual level, a newly arrived pinniped (moved in from
> > another area) may not have habituated to humans and noise as pinnipeds
> > that have been on site for awhile. These recent arrivals may alert to
> > these stimuli, perhaps flushing into the water. However, after a few
> > days of using the beach at Children's Pool, the City of San Diego would
> > expect the pinnipeds to habituate and not react to humans (unless close
> > to them) or noises at the demolition and construction activities site.
> > Although harbor seals could also be affected by in-air noise and
> > activity associated with demolition and construction at the lifeguard,
> > seals at Children's Pool haul-outs are
> >
> > [[Page 25964]]
> >
> > presumably habituated to human activity to some extent due to the daily
> > coming and going of humans, and to other existing activities in the
> > area. These activities may occur at any time of the day and may produce
> > noise for periods of up to several hours at a time. The operation of

> > loud equipment are above and outside of the range of normal activity at
> > the Children's Pool and have the potential to cause seals to leave a
> > haul-out at the Children's Pool. This would constitute Level B
> > harassment (behavioral). In view of the relatively small area that
> > would be affected by elevated in-air noise and the proximity to the
> > haul-out sites, it appears probable that some seals could show a
> > behavioral response, despite their habituation to current levels of
> > human-generated noise; incidental take by this mechanism may occur
> > during the demolition and construction activities.
> > Harbor seal presence in the activity area is perennial, with daily
> > presence at a nearby haul-out during the months when the activity would
> > occur. The potentially affected seals include adults of both sexes. The
> > harbor seals at Children's Pool may be residents, non-migratory,
> > exhibit site fidelity at the haul-out sites. It is likely that many
> > seals in the population would be affected more than once over the
> > course of the proposed demolition and construction period; therefore,
> > it is possible that some measure of adaptation or habituation would
> > occur on the part of the seals, whereby they would tolerate elevated
> > noise levels and/or utilize haul-outs relatively distant from the
> > demolition and construction activities. This strategy is possible, but
> > it is difficult to predict whether the harbor seals would show such a
> > response. Project scheduling avoids sensitive life history phases of
> > harbor seals. Project activities producing in-air noise would commence
> > in June. Project activities producing in-air noise are scheduled to
> > terminate at the end of December, which is before female seals begin to
> > seek sites suitable for pupping.
> > Effects on California Sea Lions and Northern Elephant Seals--
> > California sea lions and northern elephant seals, although abundant in
> > northern California waters, have seldom been recorded at the Children's
> > Pool. Their low abundance in the area may be due to the presence of a
> > large and active harbor seal population there, which likely competes
> > with the California sea lions and northern elephant seals for foraging
> > resources. Any California sea lions that visit the action area during
> > construction activities would be subject to the same type of impacts
> > described above for harbor seals. There is a possibility of behavioral
> > effects related to project acoustic impacts, in the event of California
> > sea lion and northern elephant seal presence in the activity area.
> > California sea lions and northern elephant seals have been seen in the
> > activity area, albeit infrequently, and there are no quantitative
> > estimates of the frequency of their occurrence. Assuming that they are
> > present, it is possible California sea lions and northern elephant
> > seals might be subject to behavioral harassment.
> > The potential effects to marine mammals described in this section
> > of the document do not take into consideration the proposed monitoring
> > and mitigation measures described later in this document (see the
> > "Proposed Mitigation" and "Proposed Monitoring and Reporting"
> > sections) which, as noted are designed to effect the least practicable
> > adverse impact on affected marine mammal species or stocks.
> >
> > Anticipated Effects on Marine Mammal Habitat
> >
> > All construction activities are beyond or outside the habitat areas
> > where harbor seals and other pinnipeds are found. Visual barriers will
> > be erected to shield construction activities from the potential
> > acoustic effects and visual perception of pinnipeds. The general public
> > will not be excluded from the beaches and areas outside the demolition
> > and construction zone. Because the public occasionally harasses the

> > harbor seals with various activities, the NMFS-qualified monitor will
> > make observations and attempt to attribute any observed harassment to
> > the public or to the demolition and construction activities and give
> > all details in the observation report. If any short-term, temporary
> > impacts to habitat due to sounds or visual presence of equipment and
> > workers did occur, the City of San Diego would expect pinniped behavior
> > to return to pre-demolition and construction conditions soon after the
> > proposed activities are completed which is anticipated to occur before
> > the next pupping season. This site is already very disturbed by member
> > of the public who come to the area during the day and night to view the
> > pinnipeds. The City of San Diego and NMFS do not project any loss or
> > modification of physical habitat for these species. Any potential
> > temporary loss or modification of habitat due to in-air noise or visual
> > presence of equipment and workers during the proposed activities is
> > expected by the City of San Diego and NMFS to be quickly restored after
> > demolition and construction activities end and all equipment and
> > barriers are removed.
> > The anticipated adverse impacts upon habitat consist of temporary
> > changes to the in-air acoustic environment, as detailed in the IHA
> > application. These changes are minor, temporary, and of limited
> > duration to the period of demolition and construction activities. No
> > aspect of the proposed project is anticipated to have any permanent
> > effect on the location of pinniped haul-outs in the area, and no
> > permanent change in seal or sea lion use of haul-outs and related
> > habitat features is anticipated to occur as a result of the proposed
> > project. The temporary impacts on the acoustic environment are not
> > expected to have any permanent effects on the species or stock
> > populations of marine mammals occurring at the Children's Pool. The
> > area of habitat affected is small and the effects are temporary, thus
> > there is no reason to expect any significant reduction in habitat
> > available for foraging and other habitat uses.
> > NMFS anticipates that the action will result in no impacts to
> > marine mammal habitat beyond rendering the areas immediately around the
> > Children's Pool less desirable during demolition and construction
> > activities of the Children's Pool Lifeguard Station as the impacts will
> > be localized. Impacts to marine mammals, invertebrates, and fish
> > species are not expected to be detrimental.

> >

> > Proposed Mitigation

> >

> > In order to issue an Incidental Take Authorization (ITA) under
> > section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible
> > methods of taking pursuant to such activity, and other means of
> > effecting the least practicable adverse impact on such species or stock
> > and its habitat, paying particular attention to rookeries, mating
> > grounds, and areas of similar significance, and on the availability of
> > such species or stock for taking for certain subsistence uses.
> > The City of San Diego has established the Children's Pool as a
> > shared beach for pinnipeds and people. During the pupping season a rope
> > is placed along the upper part of the beach to designate how close
> > people can come to the haul-out area. Swimming and other water
> > activities are still allowed as long as there is no direct harassment
> > of the pinnipeds. The proposed demolition and construction activities
> > are planned to occur outside the harbor seal pupping and weaning
> > periods. Visual and acoustic barriers will be constructed. The visual
> > and acoustic barrier will likely be constructed of plywood, 1.8 to
> >

> > [[Page 25965]]

> >

> > 2.4 m (6 to 8 ft) tall. The barriers will be placed at the site with
> > input from NMFS Southwest Regional Office (SWRO) personnel so that they
> > will hide as advantageously as possible the demolition and construction
> > activities that may be seen by pinnipeds. The barriers may dampen the
> > acoustic sound sources, but are not expected to exclude sound from the
> > environment. As the site is a beach with construction along the cliff
> > and on flat areas above the cliff, a complete barrier cannot likely be
> > constructed to hide all demolition and construction activities for the
> > proposed project. Once the walls of the lifeguard station's building
> > are in place, much of the demolition and construction activities will
> > take place above the Children's Pool beach (i.e., out of sight) as well
> > as inside the building (i.e., a visual and partial sound barrier).
> > There will be no activities in the ocean or closer to the water's edge
> > and since harbor seals mate underwater in the ocean, there will be no
> > impacts on mating activities. California sea lions and northern
> > elephant seals are such infrequent users of this area and their
> > rookeries are so far away (at least 104.6 km [65 miles] at offshore
> > islands) that there will be no adverse impact on these species.
> > The activity proposed by the applicant includes a variety of
> > measures calculated to minimize potential impacts on marine mammals,
> > including:
> > Construction shall be prohibited during the Pacific harbor
> > seal pupping season (January 1st to May 1st) and for an additional four
> > weeks to accommodate lactation and weaning of late season pups. Thus,
> > construction shall be prohibited from January 1st to June 1st.
> > Heavy construction (highest sound levels) shall be
> > scheduled during the annual period of lowest haul-out of occurrence,
> > October to November.
> > Construction shall be scheduled during the daily period of
> > lowest haul-out occurrence, from approximately 8:30 a.m. to 3:30 p.m.
> > Harbor seals typically have the highest daily or hourly haul-out period
> > during the afternoon from 3:00 p.m. to 6:00 p.m.
> > A visual and acoustic barrier will be erected and
> > maintained for the duration of the project to shield demolition and
> > construction activities from beach view. The temporary barrier shall
> > consist of 1/2 to 3/4 inch (1.3 to 1.9 centimeters [cm]) plywood
> > constructed 1.8 to 2.4 meters (m) (6 to 8 feet [ft]) high depending on
> > the location.
> > Use of trained PSOs to detect, document, and minimize
> > impacts (i.e., possible shut-down of noise-generating operations
> > [turning off the equipment so that in-air sounds associated with
> > construction no longer exceed levels that are potentially harmful to
> > marine mammals]) to marine mammals.
> >
> > Timing Constraints for In-Air Noise
> >
> > To minimize in-air noise impacts on marine mammals, underwater
> > construction activities shall be limited to the period when the species
> > of concern will be least likely to be in the project area. The
> > construction window for demolition and construction activities shall be
> > from June 1, 2013 to December 23, 2013. Avoiding periods when the
> > highest number of marine mammal individuals are in the action area is
> > another mitigation measure to protect marine mammals from demolition
> > and construction activities.
> > More information regarding the City of San Diego's monitoring and

> > mitigation measures, for the demolition and construction activities at
> > the Children's Pool Lifeguard Station can be found in the IHA
> > application.
> > NMFS has carefully evaluated the applicant's proposed mitigation
> > measures and considered a range of other measures in the context of
> > ensuring that NMFS prescribes the means of effecting the least
> > practicable adverse impact on the affected marine mammal species and
> > stocks and their habitat. NMFS's evaluation of potential measures
> > included consideration of the following factors in relation in one
> > another:
> > The manner in which, and the degree to which, the
> > successful implementation of the measure is expected to minimize
> > adverse impacts to marine mammals;
> > The proven or likely efficacy of the specific measure to
> > minimize adverse impacts as planned; and
> > The practicability of the measure for applicant
> > implementation, including consideration of personnel safety,
> > practicality of implementation, and impact on the effectiveness of the
> > activity.
> >
> > Proposed Monitoring and Reporting
> >
> > In order to issue an ITA for an activity, section 101(a)(5)(D) of
> > the MMPA states that NMFS must set forth "requirements pertaining to
> > the monitoring and reporting of such taking." The MMPA implementing
> > regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs
> > must include the suggested means of accomplishing the necessary
> > monitoring and reporting that will result in increased knowledge of the
> > species and of the level of taking or impacts on populations of marine
> > mammals that are expected to be present in the action area.
> > The City of San Diego has developed a monitoring plan (see Appendix
> > I. Mitigated Negative Declaration in the IHA application) based on
> > discussions between the project biologist, Dr. Doyle Hanan, and NMFS
> > biologists. The plan has been vetted by City of San Diego planners and
> > reviewers. The plan has been formal presented to the public for review
> > and comment. The City of San Diego has responded in writing and in
> > public testimony (see City of Council Hearing, December 14, 2011) to
> > all public concerns.
> > The basic plan is to survey prior to construction activities and
> > then monitor demolition and construction activities by NMFS-approved
> > Protected Species Observers (PSOs) with binoculars and handheld digital
> > sound level measuring devices. PSOs will observe from a station along
> > the breakwater wall as well as the base of the cliff below the
> > demolition/construction area. PSOs will be on site approximately 30
> > minutes before the start of demolition and construction activities and
> > continue for 30 minutes after activities have ceased. Monitors will
> > have authority to stop construction as necessary depending on sound
> > levels, pinniped presence, and distance from sound sources. Daily
> > monitoring reports will be maintained for periodic summary reports to
> > the City of San Diego and to NMFS. Observations will be entered into
> > maintained Hanan & Associates computers. The City of San Diego plans to
> > follow the reporting in the Mitigated Negative Declaration that states
> > "the biologist shall document field activity via the Consultant Site
> > Visit Record. The Consultant Site Visit Record shall be either emailed
> > or faxed to the City of San Diego's Mitigation Monitoring Coordination
> > process (MMC) on the 1st day of monitoring, the 1st week of each month,
> > the last day of monitoring, and immediately in the case of any

> > undocumented discovery. The project biologist shall submit a final
> > construction monitoring report to MMC within 30 days of construction
> > completion." The MMC ``coordinates the monitoring of development
> > projects and requires that changes are approved and implemented to be
> > in conformance with the permit requirements and to minimize any damage
> > to the environment." These documents will also be sent to NMFS.
> > The City of San Diego will include sound measurements at and near
> > the demolition and construction site in their initial survey prior to
> > the proposed activities as a background and baseline for the project.
> > While no specific
> >
> > [[Page 25966]]
> >
> > acoustic study is planned, the City of San Diego's Mitigated Negative
> > Declaration states that marine mammal monitoring shall be conducted for
> > three to five days prior to construction and shall include hourly
> > systematic counts of pinnipeds using the beach, seal rock, and
> > associated reef areas. Monitoring three to five days prior to
> > construction will provide baseline data regarding recent haul-out
> > behavior and patterns as well as background noise levels near the time
> > of demolition and construction activities. No monitoring is planned to
> > be conducted after demolition and construction activities have been
> > finished, as it was not anticipated nor addressed in project funding.
> > Monitoring shall assess behavior and potential behavioral responses to
> > construction noise and activities. Visual digital recordings and
> > photographs shall be used to document individuals and behavioral
> > responses to construction. The City of San Diego plan to make hourly
> > counts of the number of pinnipeds present and record sound or visual
> > events that result in behavioral responses and changes, whether during
> > construction or from public stimuli. During these events, pictures and
> > video will also be taken when possible. The ``Mitigated Negative
> > Declaration" states ``monitoring shall assess behavior and potential
> > behavioral responses to construction noise and activities. Visual
> > digital recordings and photographs shall be used to document
> > individuals and behavioral responses to construction."
> > The City of San Diego is open to working with the Western Alliance
> > for Nature's La Jolla Harbor Seal Webcam, which can be found online
> > at: http://www.wanconservancy.org/la_jolla_harbor_seal_earthcam.htm.
> > The City of San Diego may do periodic checks for monitoring purposes.
> > The camera is not expected to replace Protected Species Observers at
> > the site making accurate counts, measuring sound levels and observing
> > the public and the construction, as well as the seals. In the camera
> > view, you may be able to see visual evidence of Level B harassment, but
> > it probably would not be able to be distinguished between harassment
> > from demolition and construction activities and the public since the
> > camera only shows the Children's Pool beach and seals (usually a
> > specific portion of the beach, but not the reef nor nearby beaches).
> > Consistent with NMFS procedures, the following marine mammal
> > monitoring and reporting shall be performed for the proposed action:
> > (1) A NMFS-approved or -qualified Protected Species Observer (PSO)
> > shall attend the project site prior to, during, and after construction
> > activities cease each day throughout the demolition and construction
> > window.
> > (2) The PSO shall be approved by NMFS prior to demolition and
> > construction activities.
> > (3) The PSO shall search for marine mammals within the Children's
> > Pool area.

> > (4) The PSO shall be present on the pier during demolition and
> > construction activities to observe for the presence of marine mammals
> > in the vicinity of the proposed specified activity. All such activity
> > will occur during daylight hours (i.e., 30 min after sunrise and 30 min
> > before sunset). If inclement weather limits visibility within the area
> > of effect, the PSO will perform visual scans to the extent conditions
> > allow
> > (5) If marine mammals are sighted by the PSO within the acoustic
> > thresholds areas, the PSO shall record the number of marine mammals
> > within the area of effect and the duration of their presence while the
> > noise-generating activity is occurring. The PSO will also note whether
> > the marine mammals appeared to respond to the noise and if so, the
> > nature of that response. The PSO shall record the following
> > information: Date and time of initial sighting, tidal stage, weather,
> > conditions, Beaufort sea state, species, behavior (activity, group
> > cohesiveness, direction and speed of travel, etc.), number, group
> > composition, distance to sound source, number of animals impacted,
> > demolition/construction activities occurring at time of sighting, and
> > monitoring and mitigation measures implemented (or not implemented).
> > The observations will be reported to NMFS.
> > (6) A final report will be submitted summarizing all in-air
> > demolition and construction activities and marine mammal monitoring
> > during the time of the authorization, and any long term impacts from
> > the project.
> > A written log of dates and times of monitoring activity will be
> > kept. The log shall report the following information:
> > Time of observer arrival on site;
> > Time of the commencement of in-air noise generating
> > activities, and description of the activities (e.g., pile removal,
> > augering, or pile installation);
> > Distances to all marine mammals relative to the sound
> > source;
> > For harbor seal observations, notes on seal behavior
> > during noise-generating activity, as described above, and on the number
> > and distribution of seals observed in the project vicinity;
> > For observations of all marine mammals other than harbor
> > seals, the time and duration of each animal's presence in the project
> > vicinity; the number of animals observed; the behavior of each animal,
> > including any response to noise-generating activities;
> > Time of the cessation of in-air noise generating
> > activities; and
> > Time of observer departure from site.
> >
> > All monitoring data collected during construction will be included in
> > the biological monitoring notes to be submitted. A final report
> > summarizing the construction monitoring and any general trends observed
> > will also be submitted to NMFS within 90 days after monitoring has
> > ended during the period of the lifeguard station construction.
> >
> > The City of San Diego would notify NMFS Headquarters and the NMFS
> > Southwest Regional Office prior to initiation of the demolition and
> > construction activities. A draft final report must be submitted to NMFS
> > within 90 days after the conclusion of the demolition and construction
> > activities of the Children's Pool Lifeguard Station. The report would
> > include a summary of the information gathered pursuant to the
> > monitoring requirements set forth in the IHA, including dates and times
> > of operations, and all marine mammal sightings (dates, times,

> > locations, species, behavioral observations [activity, group
> > cohesiveness, direction and speed of travel, etc.], tidal stage,
> > weather conditions, Beaufort sea state and wind force, activities,
> > associated demolition and construction activities). 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 would be considered to
> > be the final report.

> > While the proposed IHA would not authorize injury (i.e., Level A
> > harassment), serious injury, or mortality, should the applicant,
> > contractor, monitor or any other individual associated with the
> > demolition and construction project observe an injured or dead marine
> > mammal, the incident (regardless of cause) will be reported to NMFS as
> > soon as practicable. The report should include species or description
> > of animal, condition of animal, location, time first found, observed
> > behaviors (if alive) and photo or video, if available.

> > In the unanticipated event that the specified activity clearly
> > causes the take of a marine mammal in a manner prohibited by this IHA,
> > such as an injury (Level A harassment), serious injury or mortality,
> > the City of San Diego shall immediately cease the specified activities
> > and immediately report the incident to the Chief of the
> >

> > [[Page 25967]]
> >

> > Permits, and Conservation Division, Office of Protected Resources,
> > NMFS, at 301-427-8401 and/or by email to Jolie.Harrison@noaa.gov and
> > Howard.Goldstein@noaa.gov and the Southwest Regional Stranding
> > Coordinator (Sarah.Wilkin@noaa.gov). The report must include the
> > following information:

> > Time, date, and location (latitude/longitude) of the
> > incident;

> > The type of activity involved;

> > Description of the circumstances during and leading up to
> > the incident;

> > Status of all sound source use in the 24 hours preceding
> > the incident; water depth; environmental conditions (e.g., wind speed
> > and direction, Beaufort sea state, cloud cover, and visibility);

> > Description of marine mammal observations in the 24 hours
> > preceding the incident; species identification or description of the
> > animal(s) involved;

> > The fate of the animal(s); and photographs or video
> > footage of the animal (if equipment is available).

> > Activities shall not resume until NMFS is able to review the
> > circumstances of the prohibited take. NMFS shall work with the City of
> > San Diego to determine what is necessary to minimize the likelihood of
> > further prohibited take and ensure MMPA compliance. The City of San
> > Diego may not resume their activities until notified by NMFS via
> > letter, email, or telephone.

> > In the event that the City of San Diego discovers an injured or
> > dead marine mammal, and the lead PSO determines that the cause of the
> > injury or death is unknown and the death is relatively recent (i.e., in
> > less than a moderate state of decomposition as described in the next
> > paragraph), the City of San Diego will immediately report the incident
> > to the Chief of the Permits and Conservation Division, Office of
> > Protected Resources, NMFS, at 301-427-8401, and/or by email to
> > Jolie.Harrison@noaa.gov and Howard.Goldstein@noaa.gov, and the NMFS
> > Southwest Regional Office (562-980-4017) and/or by email to the

> > Southwest Regional Stranding Coordinator (Sarah.Wilkin@noaa.gov). The
> > report must include the same information identified above. Activities
> > may continue while NMFS reviews the circumstances of the incident. NMFS
> > will work with Trinidad Rancheria to determine whether modifications in
> > the activities are appropriate.
> > In the event that the City of San Diego discovers an injured or
> > dead marine mammal, and the lead PSO determines that the injury or
> > death is not associated with or related to the activities authorized
> > (e.g., previously wounded animal, carcass with moderate to advanced
> > decomposition, or scavenger damage), the City of San Diego shall report
> > the incident to the Chief of the Permits and Conservation Division,
> > Office of Protected Resources, NMFS, at 301-427-8401, and/or by email
> > to Jolie.Harrison@noaa.gov and Howard.Goldstein@noaa.gov, and the NMFS
> > Southwest Regional Office (562-980-4017) and/or by email to the
> > Southwest Regional Stranding Coordinator (Sarah.Wilkin@noaa.gov),
> > within 24 hours of the discovery. The City of San Diego shall provide
> > photographs or video footage (if available) or other documentation of
> > the stranded animal sighting to NMFS and the Marine Mammal Stranding
> > Network.

> >

> > Estimated Take by Incidental Harassment

> >

> > Except with respect to certain 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].

> > The City of San Diego and NMFS anticipate takes of Pacific harbor
> > seals, California sea lions, and northern elephant seals by Level B
> > (behavioral) harassment only incidental to the proposed project at the
> > Children's Pool. No takes by injury (Level A harassment), serious
> > injury, or mortality is expected. There is a high likelihood that many
> > of the harbor seals present during the demolition and construction
> > activities will not be flushed off of the beach or rocks, as pinnipeds
> > at this site are conditioned to human presence and loud noises (Hanan,
> > 2004; 2011) (see <http://www.youtube.com/watch?v=4IRUYVTULsg>).
> > With demolition and construction activities scheduled to begin June
> > 1, 2013, the City of San Diego expects a range of 0 to 190 harbor seals
> > to be present daily during June and a seasonal decline through November
> > to about 0 to 50 harbor seals present daily. If all of the estimated
> > harbor seals present are taken by incidental harassment each day, there
> > could be a maximum of 12,783 takes (i.e., approximately 3,579 adult
> > males and 2,684 juvenile males, 3,451 adult females and 2,429 juvenile
> > females based on age and sex ratios presented in Harkonen et al., 1999)
> > over the entire duration of the demolition and construction activities.
> > The City of San Diego expects about 90% of the adult females to be
> > pregnant after June and July (Greig, 2002). An unknown portion of the
> > incidental takes would be from repeated exposures as harbor seals leave
> > and return to the Children's Pool area. A polynomial curve fit to
> > counts by month was used by the City of San Diego to estimate the
> > number of harbor seals expected to be hauled-out by day (see below and
> > Figure 1 of the IHA application).

> >

> > [[Page 25968]]

> >
 > > [GRAPHIC] [TIFF OMITTED] TN03MY13.017
 > >
 > > Assuming the total seals predicted to haul-out daily at the
 > > Children's Pool are exposed to sound levels that are considered Level B
 > > harassment during days where sound is predicted to exceed 90 dB at the
 > > demolition/construction site (106 days), there could be a maximum of
 > > approximately 12,783 incidental takes (i.e., exposures) of
 > > approximately 600 individual Pacific harbor seals over the duration of
 > > the proposed activities. The estimated 600 individual Pacific harbor
 > > seals will be taken by Level B harassment multiple times during the
 > > proposed demolition and construction activities. Very few California
 > > sea lions and/or northern elephant seals are ever observed at the
 > > Children's Pool (i.e., one or two individuals). The City of San Diego
 > > requests the authority to incidentally take (i.e., exposures) 12,783
 > > Pacific harbor seals, 100 California sea lions, and 25 northern
 > > elephant seals of 600, 2, and 1 individual, respectively. More
 > > information on the number of requested authorized takes, estimated
 > > number of individuals, and the approximate percentage of the stock for
 > > the three species in the proposed action area can be found in Table 2
 > > (below).
 > > NMFS will consider pinnipeds flushing into the water; moving more
 > > than 1 m (3.3 ft), but not into the water; becoming alert and moving,
 > > but do not move more than 1 m; and changing direction of current
 > > movement by individuals as behavioral criteria for take by Level B
 > > harassment. The City of San Diego will estimate the portion of
 > > pinnipeds present that are observed to exhibit these behaviors as well
 > > as the apparent source of the stimulus.

> > [[Page 25969]]

> >
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 > >
 > >
 > > Table 2--Summary of the Anticipated Incidental Take by Level B
 > > Harassment of Pinnipeds for the City of San
 > > Diego's Proposed Demolition and Construction Activities Generating
 > > In-Air Noise at the Children's Pool Lifeguard
 > > Station in La Jolla, California

> > Requested
 > > take Estimated Approximate
 > >
 > > authorization number of percentage of
 > > Species (number
 > > of individuals estimated stock
 > >
 > > exposures) taken (individuals)

> > Pacific harbor seal.....
 > > 12,783 600 1.98
 > > California sea lion.....
 > > 100 2 <0.01
 > > Northern elephant seal.....
 > > 25 1 <0.01

> >
 > > Encouraging and Coordinating Research

> >
> > Each demolition/construction phase and potential harassment
> > activity will be evaluated as to observed sound levels and any pinniped
> > reaction by type of sound source. Flushing will be documented by sex
> > and age class. These data will provide instructional for IHA permitting
> > in future projects. Potential mitigation will be discussed and
> > suggested in the final report.
> >
> > Negligible Impact and Small Numbers Analysis Determination
> >
> > 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."
> > In making a negligible impact determination, NMFS evaluated factors
> > such as:
> > (1) The number of anticipated injuries, serious injuries, or
> > mortalities;
> > (2) The number, nature, and intensity, and duration of Level B
> > harassment (all relatively limited); and
> > (3) The context in which the takes occur (i.e., impacts to areas of
> > significance, impacts to local populations, and cumulative impacts when
> > taking into account successive/contemporaneous actions when added to
> > baseline data);
> > (4) The status of stock or species of marine mammals (i.e.,
> > depleted, not depleted, decreasing, increasing, stable, impact relative
> > to the size of the population);
> > (5) Impacts on habitat affecting rates of recruitment/survival; and
> > (6) The effectiveness of monitoring and mitigation measures.
> > No injuries (Level A harassment), serious injuries, or mortalities
> > are anticipated to occur as a result of the City of San Diego's
> > proposed demolition and construction activities, and none are proposed
> > to be authorized by NMFS. The proposed activities are not expected to
> > result in the alteration of reproductive behaviors, and the potentially
> > affected species would be subjected to temporary only to temporary and
> > minor behavioral impacts. The project scheduling avoids sensitive life
> > stages for Pacific harbor seals. Project activities producing in-air
> > noise would commence in June. This is after the end of the pupping
> > season and affords additional time to accommodate lactation and weaning
> > of season pups as well as considers periods of lowest haul-out
> > occurrence. Table 2 of this document outlines the number of requested
> > Level B harassment takes that are anticipated as a result of these
> > activities. Due to the nature, degree, and context of Level B
> > (behavioral) harassment anticipated and described (see "Potential
> > Effects on Marine Mammals" section above) in this notice, this
> > activity is not expected to impact rates of annual recruitment or
> > survival for the affected species or stock (i.e., Pacific harbor seals,
> > California sea lions, and northern elephant seals), particularly given
> > the NMFS and the applicant's proposal to implement mitigation,
> > monitoring, and reporting measures to minimize impacts to marine
> > mammals.
> > For the other marine mammal species that may occur within the
> > proposed action area, there are no known designated or important
> > feeding and/or reproductive areas. Many animals perform vital
> > functions, such as feeding, resting, traveling, and socializing, on a
> > diel cycle (i.e., 24 hour cycle). Behavioral reactions to noise

> > exposure (such as disruption of critical life functions, displacement,
> > or avoidance of important habitat) are more likely to be significant if
> > they last more than one diel cycle or recur on subsequent days
> > (Southall et al., 2007). However, for many years Pacific harbor seals
> > have been hauling-out at Children's Pool during the year (including
> > during pupping season and while females are pregnant) and have been
> > exposed to anthropogenic sound sources such as vehicle traffic, human
> > voices, etc. and are frequently exposed to stimuli from human presence.
> > While studies have shown the types of sound sources used during the
> > proposed demolition and construction activities have the potential to
> > displace marine mammals from breeding areas for a prolonged period
> > (e.g., Lusseau and Bejder, 2007; Weilgart, 2007), based on the best
> > available information, this does not seem to be the case for the
> > Pacific harbor seals at the Children's Pool. Over many years, the
> > Pacific harbor seals have repeatedly hauled-out to pup and overall the
> > NMFS Stock Assessment Reports (NMFS, 2011) for this stock have shown
> > that the population is increasing and is considered stable.
> > Additionally, the demolition and construction activities will be
> > increasing sound levels in the environment in a relatively small area
> > surrounding the lifeguard station (compared to the range of the
> > animals), and some animals may only be exposed to and harassed by sound
> > for less than a day.
> > Of the 3 marine mammal species under NMFS jurisdiction that may or
> > are known to likely occur in the action area, none are listed as
> > threatened or endangered under the ESA. No incidental take has been
> > requested to be authorized for ESA-listed species as none are expected
> > to be within the proposed action area. There is generally insufficient
> > data to determine population trends for the other depleted species in
> > the study area. To protect these animals (and other marine mammals in
> > the action area), the City of San Diego must prohibit demolition and
> > construction activities during harbor seal pupping season; scheduling
> > demolition and construction activities with highest sound levels during
> > the annual period of lowest haul-out occurrence and during the daily
> > period of lowest haul-out occurrence; limiting activities to the hours
> > of daylight; erecting a temporary visual and acoustic barrier; and
> > using PSOs. No injury, serious injury, or mortality is expected to
> > occur and due to the nature, degree, and context of the Level B
> > harassment anticipated, and the activity is not expected to impact
> > rates of recruitment or survival.

> >
> > [[Page 25970]]
> >

> > As mentioned previously, NMFS estimates that 3 species of marine
> > mammals under its jurisdiction could be potentially affected by Level B
> > harassment over the course of the IHA. It is estimated that 600
> > individual Pacific harbor seals, 2 individual California sea lions, and
> > 1 northern elephant seal will be taken (multiple times) by Level B
> > harassment, which would be approximately 1.98, less than 0.01, and less
> > than 0.01 of the respective stocks. The population estimates for the
> > marine mammal species that may be taken by Level B harassment were
> > provided in Table 2 of this document. NMFS's practice has been to apply
> > the 90 dB re 20 [mu]Pa and 100 dB re 20 [mu]Pa received level threshold
> > for in-air sound levels to determine whether take by Level B harassment
> > occurs. Southall et al. (2007) provide a severity scale for ranking
> > observed behavioral responses of both free-ranging marine mammals and
> > laboratory subjects to various types of anthropogenic sound (see Table
> > 4 in Southall et al. [2007]). NMFS has not established a threshold for

> > Level A harassment (injury) for marine mammals exposed to in-air noise,
> > however, Southall et al. (2007) recommends 149 dB re 20 μ Pa (peak
> > flat) as the potential threshold for injury from in-air noise for all
> > pinnipeds. No in-air sounds from demolition and construction activities
> > will exceed 110 dB at the source.

> > While behavioral modifications, including temporarily vacating the
> > area during the demolition and construction activities, may be made by
> > these species to avoid the resultant acoustic disturbance, the
> > availability of alternate areas within these areas for species and the
> > short and sporadic duration of the activities, have led NMFS to
> > preliminarily determine that the taking by Level B harassment from the
> > specified activity will have a negligible impact on the affected
> > species in the specified geographic region. NMFS believes that the time
> > period of the demolition and construction activities, the requirement
> > to implement mitigation measures (e.g., prohibiting demolition and
> > construction activities during pupping season, scheduling operations to
> > periods of the lowest haul-out occurrence, and visual and acoustic
> > barriers), and the inclusion of the monitoring and reporting measures,
> > will reduce the amount and severity of the potential impacts from the
> > activity to the degree that will have a negligible impact on the
> > species or stocks in the action area.

> > NMFS has preliminarily determined, provided that the aforementioned
> > mitigation and monitoring measures are implemented, that the impact of
> > the demolition and construction activities at the Children's Pool
> > Lifeguard Station in La Jolla, California, June to December, 2013, may
> > result, at worst, in a temporary modification in behavior and/or low-
> > level physiological effects (Level B harassment) of small numbers of
> > certain species of marine mammals. See Table 2 for the requested
> > authorized take numbers of marine mammals.

> >
> > Impact on Availability of Affected Species or Stock for Taking for
> > Subsistence Uses

> >
> > Section 101(a)(5)(D) of the MMPA also requires NMFS to determine
> > that the authorization will not have an unmitigable adverse effect on
> > the availability of marine mammal species or stocks for subsistence
> > use. There are no relevant subsistence uses of marine mammals in the
> > study area (off of southern California in the northeast Pacific Ocean)
> > that implicate MMPA section 101(a)(5)(D).

> >
> > Endangered Species Act

> >
> > NMFS (Permits and Conservation Division) has determined that a
> > section 7 consultation for the issuance of an IHA under section
> > 101(a)(5)(D) of the MMPA for this activity is not necessary for any
> > ESA-listed marine mammal species under its jurisdiction as the proposed
> > action will not affect ESA-listed species.

> >
> > National Environmental Policy Act

> >
> > NMFS will conduct a NEPA analysis to evaluate the effects of
> > authorizing the proposed take of marine mammals prior to making a final
> > determination on the issuance of the IHA. This notice, and referenced
> > documents, including the IHA application provide the environmental
> > issues and information relevant to the demolition and construction
> > activities as well as those specific to NMFS's issuance of the IHA.
> >

> > Proposed Authorization

> >

> > NMFS proposes to issue an IHA to the City of San Diego, provided
> > the previously mentioned mitigation, monitoring, and reporting
> > requirements are incorporated. The duration of the IHA would not exceed
> > one year from the date of its issuance.

> >

> > Information Solicited

> >

> > NMFS requests interested persons to submit comments and information
> > concerning this proposed project and NMFS's preliminary determination
> > of issuing an IHA (see ADDRESSES). Concurrent with the publication of
> > this notice in the Federal Register, NMFS is forwarding copies of this
> > application to the Marine Mammal Commission and its Committee of
> > Scientific Advisors.

> >

> > Dated: April 29, 2013.

> > Perry Gayaldo,

> > Acting Deputy Director, Office of Protected Resources, National Marine

> > Fisheries Service.

> > [FR Doc. 2013-10529 Filed 5-2-13; 8:45 am]

> > BILLING CODE 3510-22-P

> >

> >

> >

> > ng every fake excuse they can find - tell their kids to go swim in their

> > pools - every home has one



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-XC498

Jill Marsal <Jill@marsallyonliteraryagency.com>
To: ITP.Goldstein@noaa.gov

Fri, May 31, 2013 at 7:17 PM

Dear Mr. Payne:

Please close the beach in La Jolla during the lifeguard tower construction and provide a wall or barrier to mitigate the sound. Above 90 dB, seals' hearing can be permanently impaired. The IHA takes the position that because many of the La Jolla Seals are acclimated to humans watching them from distances of 50 feet or sometimes less, that the seal colony will therefore be unaffected by noise levels of 90 to 110 dB. There is no scientific basis to support this assertion.

We hope the City will erect a sound barrier wall which would consist of a sound blanket or two layers of plywood with acoustic deadening material between them (or some other method to reduce noise such as a sound wall or mufflers and sound blankets on noise generating equipment.)

We also request that construction cease by November 1. Prolonged exposure to demolition and construction activities has the potential to displace marine mammals from breeding areas. The IHA allows construction to continue until December 31, which is two weeks after the start of the pupping season and long after the seals are in advanced stages of pregnancy. There is a much higher risk of premature and still births when the pregnant females are subjected to constant high levels of stress.

And there should be monitoring for at least 60 days after the construction ceases to be certain that the same number of seals frequent the beach, as did prior to the start of construction.

Best,

Jill Marsal

]13612 Landfair Rd.
San Diego, CA 92130



0648-XC498-- IHA Application for the Children's Pool Beach in La Jolla

Jim Fitzgerald <jimfitz1@pacbell.net>
To: ITP.Goldstein@noaa.gov

Sat, Jun 1, 2013 at 3:51 PM

P. Michael Payne, Chief

Permits and Conservation Division

Re: 0648-XC498--IHA Application for the Children's Pool (CPB) in La Jolla

The replacement of the lifeguard tower at CPB in La Jolla is an absolute necessity and long overdue. The worksite, however, is immediately adjacent to a long-established and highly-visible seal colony. This seal colony is an important asset to the community of La Jolla and the City of San Diego and, for the last 15-20 years, has provided both a unique, urban wildlife learning experience and great enjoyment to literally millions of children and adults from around the world.

This is why it is absolutely critical that the Incidental Harassment Authorization (IHA) for this important project include effective safeguards for the seal colony during the construction period. I am requesting that the current IHA application, at a minimum, include the following:

- Close CPB to the public during construction and for a limited after the work is completed. This would accomplish the following key goals: 1) Mitigate the impact on the seals of the added activity and noise associated with the construction project while it is a work-in-progress; 2) Allow NOAA to more effectively measure and to more accurately assess the short- and longer-term impacts of the project itself on the seal colony-- by temporarily restricting non-construction-related activity in the immediate vicinity of the seals. Note: the actual impact of this proposed closing of public access to CPB likely would be minimal because a 152' rope barrier to discourage inappropriate human-seal interaction is already in place here year-around; and 3) In the restricted confines of CPB, the proposed closing would ensure that the seals could only be viewed by the public from a safe and responsible distance—the minimum guideline from any agency that I have been able to identify in my own research is 50'.
- Specific provision for a sound barrier between the seals and the construction (no such provision in the current IHA application). I have been a resident of La Jolla for 25 years—before the seals migrated to CPB. The seals appear to have adapted well to the human activity and to the normal noise of this urban setting. Construction noise is something different, however. Jack hammering, the cutting of wood and metal, the use of heavy equipment and power tools, and even routine verbal communication among construction crew members (in order to be heard over the routine site noise) can produce high-decibel and unfamiliar sounds. These sounds potentially could be physically harmful to the seals, although I am not an expert. It is reasonable to assume, however, that these loud and unfamiliar sounds, especially so close to the seals, could substantively disrupt the seal colony, which would be contrary to the provisions of the Marine Mammal Protection Act (MMPA). As a result, requiring a sound barrier would appear to be a prudent and responsible precaution to take to protect the seals during project construction.
- Specify a November 1st -15th end-date for construction versus the December 31st date in the current application. December 31st is two weeks after pupping season begins (December 15th). More importantly, the gestation period for harbor seals is 9-11 months. This means that by November, many of the female seals are in an advanced state of pregnancy and under stress—and any major disruption at

CPB could be harmful to the females and to their unborn pups—and, as a consequence, to the viability of the colony. An accelerated end-date would minimize this risk.

Thank you for your consideration.

Respectfully yours,

Jim Fitzgerald

6942 Via Estrada

La Jolla, CA 92037

[858-456-6255](tel:858-456-6255)



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-XC498

Joan Hill <jovhill@aol.com>

Fri, May 31, 2013 at 11:43 AM

To: "ITP.Goldstein@Noaa.gov" <ITP.Goldstein@noaa.gov>

To: P. Michael Payne, Chief Permits and Conversation

Sent from my iPad

I would ask that during construction of the new lifeguard station the beach is closed, there is sound mitigation to protect the seals' hearing, the construction is completed by Nov 1 and that monitoring continues for 60 days.

Thank you, Joan Hill

1831 Torrance St., San Diego, CA 92103



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-XC498

Katherine Ozanich <kozanich1@me.com>

Sun, Jun 2, 2013 at 8:53 PM

To: ITP.Goldstein@noaa.gov

P. Michael Payne, Chief
Permits and Conservation Division

Mr. Payne

I am a resident of La Jolla, California and am concerned about the impact of the construction of the new lifeguard tower on the seals at Casa Beach.

Casa beach must be closed during construction

I would like the city of San Diego to close Casa beach during the lifeguard tower construction and maintain the closure for 60 days after completion of the project. IHA requires monitoring and recording the impact of construction on the seals. However, that's not possible as long as humans are present on the beach because there's no way to distinguish between the impacts of construction and impacts from people.

Construction must cease by November 1

Prolonged exposure to demolition and construction activities has the potential to displace marine mammals from their breeding areas. The IHA allows construction to continue until December 31, which is two weeks after the start of pupping season and long after the seals are in advanced stages of pregnancy. The pregnant females have a higher risk of premature and still births when subjected to high levels of stress.

Provide adequate sound mitigation to protect the seal's hearing

There is no attempt to reduce the sound levels during construction. Above 90 dB, seal's hearing can be permanently impaired.

The city should erect a sound barrier wall to protect the seals from the high level of construction noise.

Thank you for your consideration

Katherine Ozanich M.D.
6121 Waverly Ave.
La Jolla , CA 92037

[Email from Office of Mayor Bob Filner to Chiefs and Directors]

Begin forwarded message:

From: "Burdick, Lee" <LBurdick@sanidiego.gov>
Date: May 14, 2013, 12:15:51 PM PDT
To: "LoMedico, Stacey" <SLomedico@sanidiego.gov>, "Lansdowne, William " <wlansdowne@pd.sanidiego.gov>, "Mainar, Javier" <JMainar@sanidiego.gov>
Cc: "Chadwick, Scott" <SChadwick@sanidiego.gov>, "Bych, Greg" <GBych@sanidiego.gov>
Subject: PLEASE DISTRIBUTE IMMEDIATELY: New Enforcement Protocols

Chiefs and Director:

The Mayor executed today the new protocols for enforcement against seal harassment at Children's Pool Beach in La Jolla. Please find them attached.

The Mayor would like these distributed to your personnel immediately, especially to the Park Rangers. Please communicate to them that the Mayor expects these protocols to be enforced.

Please let me know if you have any questions or concerns. Thank you for your help in this matter.

--Lee

Lee Burdick

Director, Special Projects & Legal Affairs

Office of Mayor Bob Filner

City of San Diego

202 C Street, 11th Floor

San Diego, California 92101

Direct Dial: 619-236-6497

June 2, 2013

P. Michael Payne, Chief
Permits and Conservation Division
Office of Protected Resources, National Marine Fisheries Service
1315 East-West Highway,
Silver Spring, MD 20910

Re: Proposed IHA 0648-XC498

I am writing in support of the Incidental Harassment Authorization for the lifeguard tower reconstruction project at Children's Pool in La Jolla, CA with one strong procedural objection.

This long delayed project is a vital component to protect public safety along the rocky coastline of La Jolla and will enable the Lifeguard Service to more effectively protect human lives. Unfortunately, this project had the misfortune of being located next to a newly established Harbor Seal colony after a decade long secret program of establishing Harbor Seals into the area by a captive/rehabilitated seal release policy by Sea World. The unanticipated impact of this noble but harmful policy has prevented worthwhile safety improvements to Children's Pool and has placed human lives at greater risk while visitors and residents use the ocean near Children's Pool.

The intent of the MMPA was to restore and maintain marine mammals at a self-sustaining population in balance with their environmental limitations. It was not designed to create a tourist attraction for a local municipality or fuel a twenty year old controversy over seals.

When the Marine Mammal Protection Act was passed into law and then subsequently amended, it had the intent to protect species that had suffered impacts on their populations for a variety of reasons. Some directly linked to human activity. Over time, most marine mammal species covered by the Act have recovered to historic levels and are putting pressure on marine ecosystems in the competition for food and space along our coast. The failure to recognize this dramatic recovery by most species has become a failure in the Federal Law. The protected species has itself become the species that other species must now be protected from because of the difficulty in recognizing species recovery scenarios. The City of San Diego's IHA analysis does not consider the impact of Harbor Seals on the surrounding ecosystem or other valuable resources. That would appear to be outside the scope of this IHA analysis.

The Harbor Seal is the primary subject of this San Diego Lifeguard Tower IHA. This serves to demonstrate the problems with a local municipality trying to re-classify one species as sacred and untouchable and creates problems of its own making. Dr. Doyle Hanan has carefully analyzed available research data in the City's application. Using his experience and knowledge, Dr. Hanan has determined that activities at Children's Pool, including the unusual occurrence of construction sounds and activity will cause no significant harm to the Harbor seal Colony or individual animals disturbed by that activity. It would therefore follow that other human activity normally occurring at the pool will also have little impact on the seal colony. The seals have become habituated to the typical, day to day human activities at this location. There is no intentional taking of seals at this site, only occasional incidental disturbance. The seal colony here is thriving.

Dr. Hanan's report recognizes the "Negligible Impact" to seals by human disturbances. However, the City of San Diego claims one level of disturbance impact for this lifeguard tower project IHA and a completely different level for disturbance by citizens using the beach in a separate request to close the Beach to human access. It cannot be both. In the City's attempt to designate this beach as environmentally sensitive habitat (ESHA), it claims the potential of great harm to seals by human activities that this population of seals have become fully habituated and accustomed to. There appears to be great inconsistency to the City's analysis of human impacts on this seal colony. There are no significant impacts on the seals at Children's Pool by typical human activity occurring at Children's Pool. The City is attempting to completely restrict access to the beach by misinterpreting policy and misuse of authority in usurping authority limited to the Federal government.

Federal law in the Marine Mammal Protection Act [MMPA section 109(a)] prohibits states and local municipalities from enforcing the "taking" (intentional and incidental disturbance) of marine mammals. The responsibility to enforce the "taking" of marine mammals is the sole province of the Federal government through the National Marine Fisheries Service. This Federal law is intended to protect marine mammals through consistent enforcement policies by preventing the irregular and capricious enforcement by less qualified employees. In San Diego, this enforcement is under the direction of an unqualified and unauthorized local politician.

In an internal memorandum and clarifying email messages (attached), San Diego Mayor Bob Filner has ordered all City law enforcement department heads to strictly enforce an obscure San Diego Municipal Code intended to prevent the intentional mistreatment of animals. Mayor Filner's order is directing City law enforcement personnel to violate Federal law contained in the Marine Mammal Protection Act. All City law enforcement personnel have been directed to issue citations and to possibly arrest anyone thought to

be disturbing seals at Children's Pool. The illogical extension of a pupping season rope barrier past pupping season was accompanied by the mayor's order to prevent the intended use of the pool. State law and a SD City Council resolution require a "joint use policy" allowing year round access and use of the pool.

The rope barrier has now become the final "line in the sand" to impose an absolute barrier to ocean access at Children's Pool. This order breaches the terms of the State Coastal Development Permit authorizing the placement of the "advisory" rope. The mayor has exceeded his authority to try to prevent people from using the pool by using law enforcement agents under his control. Mayor Filner is also known to encourage vigilante "animal rights" organizations to discourage legal passage to the ocean beyond the rope barrier. Those same organizations are attempting to insert research data into the analysis of seal behavior and will corrupt the impartial data needed to fully monitor project impacts.

This change in enforcement policy will create project site conditions not anticipated or addressed by the IHA application by the City. The beach was described to remain open and available for use by the public. By this new City policy, the beach has effectively been closed even though the IHA application states it is open for use. While this should not stop the issuance of the IHA or interfere with the lifeguard tower reconstruction, it should cause great concern to agencies responsible for the enforcement of the MMPA.

I support and agree with the general findings of no significant harm to Harbors Seals by this lifeguard tower project. I object to the inconsistent policies of the City of San Diego in regard to the management of Children's Pool Beach. I would call on the National Marine Fisheries Service and the Marine Mammal Commission to investigate the attempt to enforce the "taking" of marine mammals by an unauthorized local municipality as it effects the monitoring of this project and consistent MMPA enforcement.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth L. Hunrichs".

Kenneth L. Hunrichs

San Diego, California
kenhunrichs@cox.net

Attachments(2): Seal Harassment Protocol, email from Mayor's office



MEMORANDUM

DATE: May 14, 2013

TO: Chief William Lansdowne
Chief Javier Mainar
Director Stacey LoMedico

FROM: Mayor Bob Filner

SUBJECT: Approved Protocols, *Seal Harassment at Children's Pool Beach, La Jolla*

The San Diego Police Department, the San Diego Lifeguards, and the Park & Recreation Rangers (the "Departments") respect the fundamental right of all people to peacefully express their views regarding the past, present and future use of the Children's Pool. The Departments have a written protocol in place to respond to disturbances and allegations of criminal conduct at the Children's Pool.

The goal of the Departments is to minimize the potential for confrontational behavior by maintaining peace and order during human-to-human and human-to-animal contact on and around the beach and to enforce existing City ordinances as they pertain to the placement of signs and the mistreatment of animals.

To this end, the Departments:

- Place no greater value than on the protection of human life;
- Will not tolerate acts of violence perpetrated against human beings or animals;
- Will respond to all requests for police assistance;
- Consider water safety the primary role of lifeguard personnel;
- Consider crimes perpetrated against any marine mammal to be subject to the City's Municipal Code regarding mistreatment of animals and to the Marine Mammal

Protection Act (“MMPA”), which is enforced by the National Oceanographic and Atmospheric Administration (“NOAA”);

- Will enforce Municipal Code §63.0102(b)(10), which makes it illegal to disturb any animal on a City beach and which does not require an intentional act; and §142.1206, regulating signs, including the issuance of citations, when appropriate; and
- Encourage all people to respect and to not inhibit in any way the right and freedom for all to legally and peacefully occupy the Children’s Pool and adjacent lands and to speak freely, openly and without intimidation.

IMPLEMENTATION OF MUNICIPAL CODE §63.0102(b)(10)

- Municipal Code §63.0102(b)(10) does *not* require that the unlawful action constitute “harm,” only that the animal be “disturbed.”
- “Disturb” is defined in the Merriam-Webster Dictionary as:
 - “to destroy the tranquility or composure of;”
 - “to throw into disorder;” or
 - “to cause disturbance.”
- If there is a complaint filed by a citizen regarding disturbance of an animal at Children’s Pool Beach and the officer is not certain regarding the applicability of §63.0101(b)(10), the officer should obtain ID information of all who are alleged to have disturbed the animal so that a determination can be made as to the nature of the disturbance with a full review of all evidence to follow promptly.
- If someone is engaged in “normal beach activity” – including activities in the water -- and that activity results in a disturbance (*e.g.*, flushing, of the seals), then the disturbance is unlawful.
- The first and best course of action is to warn people that, if they cross the rope or go into the water (which is their right) and that action results in disturbance, then they can be cited.
- If, after the warning humans cross the rope or go into the water and disturb the mammals, then issue a citation.
- If the people disregard the citation, interfere with its issuance, or continue to disturb the mammals, you are authorized and directed to arrest them.



La Jolla Children's Pool Lifeguard Tower Incidental Harassment Authorization 0648-XC498

Ken Hunrichs <kenhunrichs@cox.net>
To: ITP.Goldstein@noaa.gov

Mon, Jun 3, 2013 at 1:49 PM

June 2, 2013

P. Michael Payne, Chief
Permits and Conservation Division
Office of Protected Resources, National Marine Fisheries Service
1315 East-West Highway,

Silver Spring, MD 20910

Re: Proposed IHA 0648-XC498

I am writing in support of the Incidental Harassment Authorization for the lifeguard tower reconstruction project at Children's Pool in La Jolla, CA with one strong procedural objection.

This long delayed project is a vital component to protect public safety along the rocky coastline of La Jolla and will enable the Lifeguard Service to more effectively protect human lives. Unfortunately, this project had the misfortune of being located next to a newly established Harbor Seal colony after a decade long secret program of establishing Harbor Seals into the area by a captive/rehabilitated seal release policy by Sea World. The unanticipated impact of this noble but harmful policy has prevented worthwhile safety improvements to Children's Pool and has placed human lives at greater risk while visitors and residents use the ocean near Children's Pool.

The intent of the MMPA was to restore and maintain marine mammals at a self-sustaining population in balance with their environmental limitations. It was not designed to create a tourist attraction for a local municipality or fuel a twenty year old controversy over seals.

When the Marine Mammal Protection Act was passed into law and then subsequently amended, it had the intent to protect species that had suffered impacts on their populations for a variety of reasons. Some directly linked to human activity. Over time, most marine mammal species covered by the Act have recovered to historic levels and are putting pressure on marine ecosystems in the competition for food and space along our coast. The failure to recognize this dramatic recovery by most species has become a failure in the Federal Law. The protected species has itself become the species that other species must now be protected from because of the difficulty in recognizing species recovery scenarios. The City of San Diego's IHA analysis does not consider the impact of Harbor Seals on the surrounding ecosystem or other valuable resources. That would appear to be outside the scope of this IHA analysis.

The Harbor Seal is the primary subject of this San Diego Lifeguard Tower IHA. This serves to demonstrate the problems with a local municipality trying to re-classify one species as sacred and untouchable and creates problems of its own making. Dr. Doyle Hanan has carefully analyzed available research data in the City's application. Using his experience and knowledge, Dr. Hanan has determined that activities at Children's Pool, including the unusual occurrence of construction sounds and activity will cause no significant harm to the Harbor seal Colony or individual animals disturbed by that activity. It would therefore follow that other human activity normally occurring at the pool will also have little impact on the seal colony. The seals have become habituated to the typical, day to day human activities at this location. There is no intentional taking of seals at this site, only occasional incidental disturbance. The seal colony here is thriving.

Dr. Hanan's report recognizes the "Negligible Impact" to seals by human disturbances. However, the City of San Diego claims one level of disturbance impact for this lifeguard tower project IHA and a completely different level for disturbance by citizens using the beach in a separate request to close the Beach to human access. It cannot be both. In the City's attempt to designate this beach as environmentally sensitive habitat (ESHA), it claims the potential of great harm to seals by human activities that this population of seals have become fully habituated and accustomed to. There appears to be great inconsistency to the City's analysis of human impacts on this seal colony. There are no significant impacts on the seals at Children's Pool by typical human activity occurring at Children's Pool. The City is attempting to completely restrict access to the beach by misinterpreting policy and misuse of authority in usurping authority limited to the Federal government.

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In an internal memorandum and clarifying email messages (attached), San Diego Mayor Bob Filner has ordered all City law enforcement department heads to strictly enforce an obscure San Diego Municipal Code intended to prevent the intentional mistreatment of animals. Mayor Filner's order is directing City law enforcement personnel to violate Federal law contained in the Marine Mammal Protection Act. All City law enforcement personnel have been directed to issue citations and to possibly arrest anyone thought to be disturbing seals at Children's Pool. The illogical extension of a pupping season rope barrier past pupping season was accompanied by the mayor's order to prevent the intended use of the pool. State law and a SD City Council resolution require a "joint use policy" allowing year round access and use of the pool.

The rope barrier has now become the final "line in the sand" to impose an absolute barrier to ocean access at Children's Pool. This order breaches the terms of the State Coastal Development Permit authorizing the placement of the "advisory" rope. The mayor has exceeded his authority to try to prevent people from using the pool by using law enforcement agents under his control. Mayor Filner is also known to encourage vigilante "animal rights" organizations to discourage legal passage to the ocean beyond the rope barrier. Those same organizations are attempting to insert research data into the analysis of seal behavior and will corrupt the impartial data needed to fully monitor project impacts.

This change in enforcement policy will create project site conditions not anticipated or addressed by the IHA application by the City. The beach was described to remain open and available for use by the public. By this new City policy, the beach has effectively been closed even though the IHA application states it is open for use. While this should not stop the issuance of the IHA or interfere with the lifeguard tower reconstruction, it should cause great concern to agencies responsible for the enforcement of the MMPA.

I support and agree with the general findings of no significant harm to Harbors Seals by this lifeguard tower project. I object to the inconsistent policies of the City of San Diego in regard to the management of Children's Pool Beach. I would call on the National Marine Fisheries Service and the Marine Mammal Commission to investigate the attempt to enforce the "taking" of marine mammals by an unauthorized local municipality as it effects the monitoring of this project and consistent MMPA enforcement.

Sincerely,

Kenneth L. Hunrichs
San Diego, California
kenhunrichs@cox.net

Attachments(2): Seal Harassment Protocol, email from Mayor's office

5 attachments



Email from Office of Mayor Bob Filner to Chiefs and Directors.docx
26K



Email from Office of Mayor Bob Filner to Chiefs and Directors.pdf
215K



Response to City's IHA appliaction for LG tower [Ken] June 2013.docx
49K



Response to City's IHA appliaction for LG tower [Ken] June 2013.pdf
343K



Seal Harrassment Protocols (Final) (5-14-13).pdf
1291K



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-XC498

Lorene Parker <lparker@ymcacr.org>
To: ITP.Goldstein@noaa.gov

Fri, May 31, 2013 at 11:52 AM

Please make an amendment to the Incidental Harassment Authorization to allow for the consideration and protection of the harbor seals and other sea life that make Casa Beach their home.

Lorene K. Parker

Administrative Specialist II

YMCA Childcare Resource Service

3333 Camino del Rio S #400 San Diego Ca 92108-3839

(P) 619.521.3055 ext 2210 (F) 619.521.3050

(E) lparker@ymcacr.org (W) ymcacr.org

The Y: We're for youth development, healthy living, and social responsibility

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ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-xc498

Lynn Bruser <lpbruser@yahoo.com>
Reply-To: Lynn Bruser <lpbruser@yahoo.com>
To: "itp.goldstein@noaa.gov" <itp.goldstein@noaa.gov>

Sat, Jun 1, 2013 at 1:05 PM

Dear Mr. Goldstein,

I understand that a new lifeguard station is going to be built at Casa Beach. My husband and I have walked the boardwalk every morning for 19 years and we are concerned for the seals and their pups during construction.

I can only ask that you kindly remember these animals are very timid and need your thoughtful consideration during the construction.

Thank you so much.

Sincerely,

Lynn and Mike Bruser

La Jolla, California

June 2, 2013

P. Michael Payne, Chief ITP.Goldstein@noaa.gov
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Services
1315 East-West Highway
Silver Spring, MD 20910

SUBJECT: 0648-XC498

Dear Mr. Payne,

My comments regarding the IHA for takes of marine mammals incidental to demolition and construction activities of the Children's Pool Lifeguard Station at La Jolla, California are as follows:

1. IHA section: **SUPPLEMENTARY INFORMATION, Background, Description of the Proposed Specified Activity. It states "The Children's Pool (CP) was created in 1932 by building a breakwater wall which created a protected pool for swimming."** This date is incorrect. See "Until Kingdom Come" by Jeremy Hollins in the 2005 issue of The Journal of San Diego History:

http://www.sandiegohistory.org/journal/v51-3/pdf/v51-3_pool.pdf

After extensive planning, a tedious permit/approval process, and construction filled with numerous delays and obstacles, Savage, Johnson, and Ledbetter eventually **completed the Children's Pool on April 4, 1931**. From the initial survey and design to the final work done by the contractor, the entire project took ten years.

On May 31, a celebration occurred at the breakwater to celebrate the accomplishment. Scripps was too ill to attend the celebration but Savage spoke

2. IHA section: **Anticipated Effects on Marine Mammal Habitat:**

- **The general public will not be excluded from the beaches and areas outside the demolition and construction zone.** This is false. The City of San Diego Ranger at CP has been instructed by Mayor Filner to discourage tourists and locals from walking past the rope barrier to access the beach or ocean.
- **Because the public occasionally harasses the harbor seals with various activities, the NMFS-qualified monitor will make observations and attempt to attribute any observed harassment to the public or to the demolition and construction activities and give all details in the observation report.** No problem here except that it is very important to use an honest, objective NMFS monitor. Animal activists such as many members of La Jolla Friends of

the Seals (LJFoS) or the WAN Conservancy are not objective. Any comments made by members of these biased organizations must be carefully reviewed for accuracy.

3. IHA section: **Proposed Mitigation:**

- **The City of San Diego has established the Children's Pool as a shared beach for pinnipeds and people. During the pupping season a rope is placed along the upper part of the beach to designate how close people can come to the haul-out area. Swimming and other water activities are still allowed as long as there is no direct harassment of the pinnipeds.**

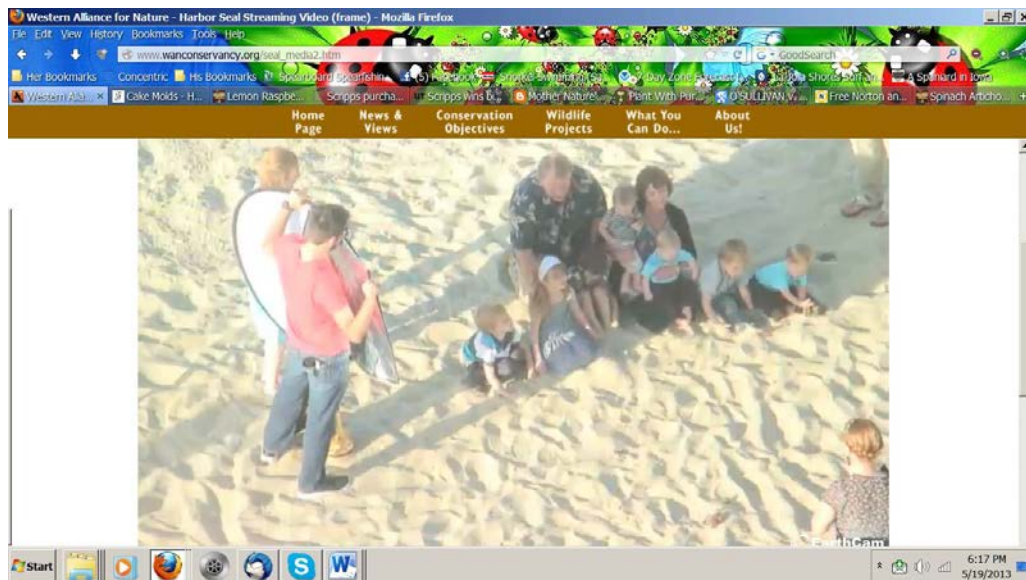
Unfortunately the rope statement and the water activities statement are no longer true. Mayor Bob Filner violated the law when he extended the rope length and has recently instructed City Parks and Recreation to have the rope up year round. Mayor Filner has also instructed Department heads of law enforcement to cite anyone who disturbs a seal by causing it to move, regardless if the movement is a result of direct or indirect harassment.

4. IHA section: **Proposed Monitoring and Reporting:**

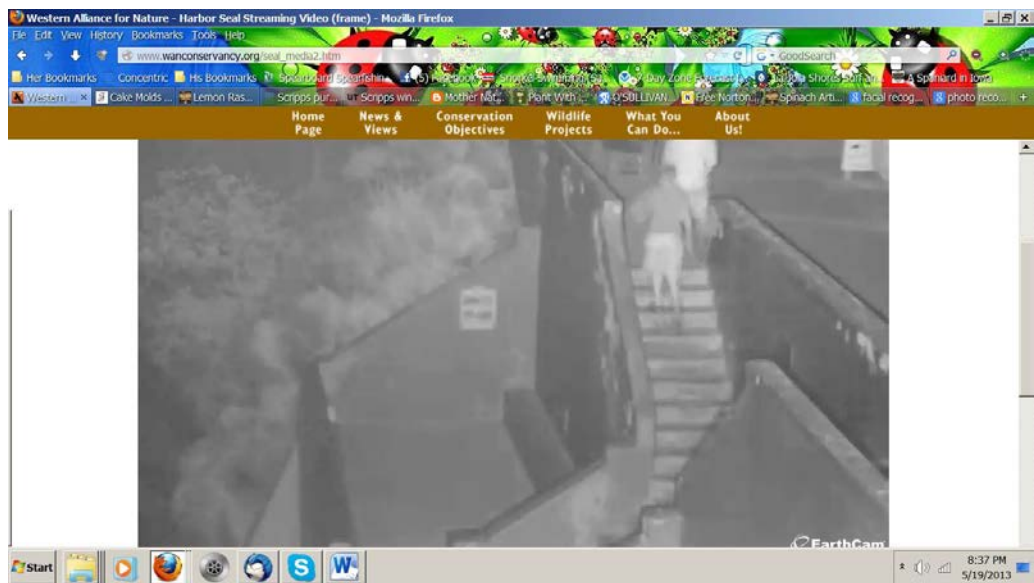
- **The basic plan is to survey prior to construction activities and then monitor demolition and construction activities by NMFS-approved Protected Species Observers (PSOs) with binoculars and handheld digital sound level measuring devices. PSOs will observe from a station along the breakwater wall as well as the base of the cliff below the demolition/construction area.** It cannot be stressed enough that these observers must be objective and not volunteers from any animal extremist group. Currently there are monitors from the animal activist group, LJ Friends of the Seals (LJFS). At one time LJFS members may have had good intentions regarding seals but the organization has become radicalized through the association with animal extremists from the Animal Protection Rescue League (APRL) and the militant anti-whaling group, Sea Shepherd. LJFS members are not all objective, a few belong to Sea Shepherd and some have personal agendas against people who legally cross the rope to access the beach or ocean. These people from LJFS are submitting observations to the CA Coastal Commission. The City is required to do monitoring as a condition to have a year round rope barrier and LJFS is hoping to influence the decision makers with their biased information.
- **Visual digital recordings and photographs shall be used to document individuals and behavioral responses to construction. The City of San Diego plan to make hourly counts of the number of pinnipeds present and record sound or visual events that result in behavioral responses and changes, whether during construction or from public stimuli. During these events, pictures and video will also be taken when possible. The "Mitigated Negative Declaration" states "monitoring shall assess behavior and potential behavioral responses to construction noise and activities. Visual digital recordings and photographs shall be used to document individuals and behavioral responses to construction." This**

sounds great but who are the individuals from the City of San Diego? I hope it is an objective City employee and not a member from any animal activist group such as LJFS. The past president of that group has a stay away order after criminal convictions related to crimes committed at Children's Pool and so does the attorney who has represented members of that group. It should also be noted that the current members of LJFS who are acting as monitors obtaining information for the CCC will not be able to get accurate information. This is because the Lifeguard demolition /construction will skew their observations because it is not a normal daily activity at Children's Pool.

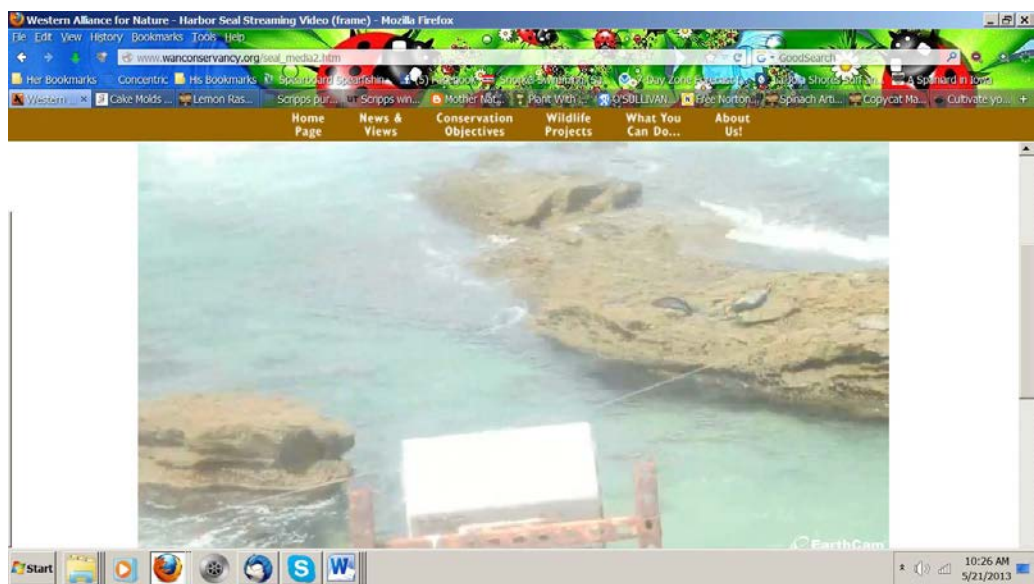
- **The City of San Diego is open to working with the Western Alliance for Nature's La Jolla Harbor Seal Webcam, which can be found online at:**
http://www.wanconservancy.org/la_jolla_harbor_seal_earthcam.htm. The City of San Diego may do periodic checks for monitoring purposes. The camera is not expected to replace Protected Species Observers at the site making accurate counts, measuring sound levels and observing the public and the construction, as well as the seals. In the camera view, you may be able to see visual evidence of Level B harassment, but it probably would not be able to be distinguished between harassment from demolition and construction activities and the public since the camera only shows the Children's Pool beach and seals (usually a specific portion of the beach, but not the reef nor nearby beaches). This is a misleading observation, not entirely true, because the camera does show the reef and nearby Shell Beach. The so called "Harbor seal cam" is more accurately called a surveillance cam. It watches seals but also follows people especially if they legally cross the rope barrier on the CP beach.



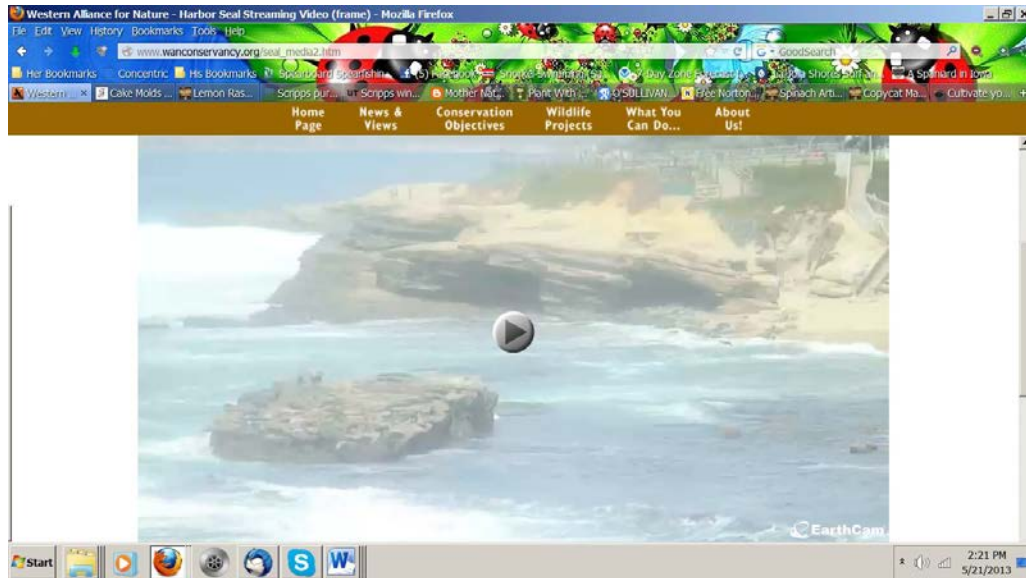
No seals in this family photo close-up.



Men leaving CP beach, no seals removed.



Reef south of "Little Pool", on west side of CP breakwater.



Seal Rock and Shell Beach to the north of CP.

5. IHA section: **Estimated Take by Incidental Harassment**

- **With demolition and construction activities scheduled to begin June 1, 2013, the City of San Diego expects a range of 0 to 190 harbor seals to be present daily during June and a seasonal decline through November to about 0 to 50 harbor seals present daily. If all of the estimated harbor seals present are taken by incidental harassment each day, there could be a maximum of 12,783 takes (i.e., approximately 3,579 adult males and 2,684 juvenile males, 3,451 adult females and 2,429 juvenile females based on age and sex ratios presented in Harkonen *et al.*, 1999) over the entire duration of the demolition and construction activities.** I see no problem with this but unfortunately Mayor Filner has sided with the animal activists possible because members of LJFS contributed to his mayoral campaign last fall. Mayor Filner has distributed a memorandum directing staff to threaten tourists and locals with citations and arrest if they cause an animal to indirectly flush even though it may be a result of incidental harassment. People causing incidental harassment at CP is minimal but it does occur but not at the numbers level the IHA application is considering.
- **...there could be a maximum of approximately 12,783 incidental takes (i.e., exposures) of approximately 600 individual Pacific harbor seals over the duration of the proposed activities.** Our Mayor is threatening citations for incidental harassment by visitors and beach users without authorization to enforce the “taking” of marine mammals.
- **NMFS will consider pinnipeds flushing into the water; moving more than 1 m (3.3 ft), but not into the water; becoming alert and moving, but do not move more than 1 m; and changing direction of current movement by individuals as behavioral criteria for take by Level B harassment.** I see no problem but again be aware that LJFS will be monitoring and

submitting data to the local CCC office including data about people who legally cross the rope barrier to access the ocean at this location.

6. IHA section: **Negligible Impact and Small Numbers Analysis Determination**

- **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.”**
- **It is estimated that 600 individual Pacific harbor seals, 2 individual California sea lions, and 1 northern elephant seal will be taken (multiple times) by Level B harassment, which would be approximately 1.98, less than 0.01, and less than 0.01 of the respective stocks.**
Both these statements are reasonable but there may be possible overreactions of the LJFS and the Mayor. The City Ranger claims observance of at least 67 flushes caused by people on the beach or lower seawall stairs between 11/6/12 and 4/8/13. These numbers account for his presence which the City claims is about 25% of total time. However it usually covers a period of time which is most highly used by people. Even so, the seal colony continues to increase in numbers at CP. Last year 45 pups were born, this year 60-65 despite exaggerated claims of incidental harassment.

The Lifeguard Tower serves a very important purpose at CP. It provides an excellent vantage point for lifeguards to monitor people in the ocean for safety reasons. There are beaches to the north and south of CP. It is very important that the City still realize that people are worthy of protection, not just seals and have therefore submitted this application for an IHA. However it is contradictory that while the City is using data to support this IHA application, at the same time the City is claiming that CP the rope barrier must be up year round because the City thinks these seals are so easily disturbed. Dr. Doyle Hanan has done a great job in preparing the IHA for the City.

I support the IHA for the construction of the Lifeguard Tower but it is irresponsible for the City of San Diego to choose to ignore the same data when it is convenient for them to do so in the pursuit of their agenda driven management policies for Children's Pool.

Sincerely,



Marie Hunrichs
mariehunrichs@cox.net



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

SUBJECT: 0648-XC498

Marie Hunrichs <mariehunrichs@cox.net>
To: ITP.Goldstein@noaa.gov

Mon, Jun 3, 2013 at 2:45 PM

Hello P. Michael Payne,

I have attached my comments to the IHA in PDF form to this email. Please confirm that you have received this.
Thank you.

Marie Hunrichs



MH Comments on IHA, CP.pdf
874K



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

Fwd: 0648-XC-498

marilies schoepflin <marilies@mac.com>

Fri, May 31, 2013 at 10:33 AM

To: "ITP.Goldstein@noaa.gov" <ITP.Goldstein@noaa.gov>

Sent from my iPad

Begin forwarded message:

Subject: 0648-XC-498

To: P.Michael Payne, Chief for Permits and Construction

Dear Mr. Payne

I'm writing on behalf of the seals habituating the rockery on Casa beach in La Jolla, California.

There is a plan to construct a new life guard tower at that beach, an enterprise absolutely unnecessary, if this beach becomes a marine preserve, as it should. As things stand, it seems the construction is to be started anyway.

I hope NOAA will make sure the beach is closed during construction and for two months thereafter. The IHA demands monitoring of the impact the construction causes. This is not possible as long as there are humans present. Humans at this small beach have been causing innumerable instances of flushing. Therefore, if humans are present, no accurate picture of the construction impact could be reached.

In addition, the seal's very sensitive hearing has to be protected. This can be done by installing adequate sound barriers.

Pupping season for the seals starts on December 15th. The month before the female seals are highly pregnant and need a calm environment. For this reason, construction near this breeding area has to be stopped by November 1st.

The fact that the seals have chosen this small beach for their rockery is a wonderful gift to all California and its visitors. Please continue to protect the seals. Thank you.
Sincerely Marilies Schoepflin Ph.D.

Dr. Marilies Schoepflin
6902, Paseo Laredo,
La Jolla, Ca 92037

Sent from my iPad



MARINE MAMMAL COMMISSION

21 May 2013

Mr. P. Michael Payne, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Dear Mr. Payne:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the City of San Diego's application seeking authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act to take small numbers of marine mammals by harassment. The taking would be incidental to demolition and reconstruction of the Children's Pool Lifeguard Station in La Jolla, California. Demolition and construction activities would occur from 1 June to 31 December 2013. The Commission also has reviewed the National Marine Fisheries Service's 3 May 2013 notice (78 Fed. Reg. 25958) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions.

RECOMMENDATION

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue the incidental harassment authorization, subject to inclusion of the proposed mitigation and monitoring measures.

RATIONALE

The City plans to demolish the current lifeguard station that has been condemned since February 2008 and construct a new station at the Children's Pool. The new facility would include an observation tower, first aid room, male/female locker rooms, a second observation area, an accessible ramp for restrooms, a public viewing area, and a plaza. Use of equipment (i.e., backhoe, excavator, dump truck, crane, small drill rig, fork lift, air compressor, jack hammer, and hand/power tools) and increased presence of humans would be the main sources of marine mammal disturbance. Activities would occur only during daylight hours.

The Service preliminarily has determined that, at most, the proposed activities temporarily would modify the behavior of small numbers of harbor seals, California sea lions, and northern elephant seals. It also anticipates that any impact on the affected species and stocks would be negligible. The Service does not anticipate any take of marine mammals by death or serious injury and believes that the potential for disturbance will be at the least practicable level because of the proposed mitigation and monitoring measures. Those measures include—

- (1) restricting demolition and construction activities during the harbor seal pupping and weaning season (1 January to 31 May);
- (2) allowing heavy construction activities to occur only from October to November, a period when relatively few seals are hauled out;
- (3) allowing construction activities to occur only from 8:30 am to 3:30 pm, a period when relatively few seals are hauled out;
- (4) constructing temporary visual and acoustic barriers between the demolition and construction activities and the haul-out site;
- (5) using trained protected species observers to monitor 30 minutes before, during, and 30 minutes after demolition and construction activities;
- (6) conducting in-situ measurements of in-air sound propagation before and during demolition and construction activities, if funding is available;
- (7) coordinating with the Western Alliance for Nature to use its web-camera system to supplement monitoring efforts; and
- (8) reporting injured and dead marine mammals to the Service and local stranding network using the Service's phased approach and suspending activities, if appropriate.

The Commission considers the proposed mitigation and monitoring measures sufficient to avoid significant impacts on harbor seals, California sea lions, and northern elephant seals that might occur in the project area. It also understands that the City's ability to conduct in-situ measurements of in-air sound propagation depends on the availability of resources. Because in-air sound measurements of the sound sources to be used are rare, the Commission encourages the City to use its funding to conduct such measurements during demolition and construction activities and give lower priority to assessing baseline ambient sound levels.

Based on the proposed mitigation and monitoring measures, the Marine Mammal Commission concurs with the National Marine Fisheries Service's preliminary finding and recommends that the Service issue the incidental harassment authorization, subject to inclusion of those measures.

Please contact me if you have questions regarding the Commission's recommendation.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director



0648-XC498

Maxine Snyder <maxine2002@aol.com>
To: ITP.Goldstein@noaa.gov

Sat, Jun 1, 2013 at 3:56 PM

THE BEACH MUST BE CLOSED DURING CONSTRUCTION.

- Require the City of San Diego to close Casa Beach during the lifeguard tower construction and maintain the closure for 60 days after completion of the project. Although the IHA requires monitoring and recording the impact of the construction on the seals, that is not possible as long as humans are present on the beach because there is no way to distinguish between the impacts of the construction and the impacts from people.
- The contention that these seals are habituated to the presence of humans and therefore will not be impacted by the sound of construction is not accurate. These seals react to both human disturbance and sound and in particular are not habituated at all to construction noise.
- **PROVIDE ADEQUATE SOUND MITIGATION TO PROTECT THE SEALS' HEARING.**

There is no attempt to reduce the sound levels. Above 90 dB, seals' hearing can be permanently impaired. The IHA takes the position that because many of the La Jolla Seals are acclimated to humans watching them from distances of 50 feet or sometimes less, that the seal colony will therefore be unaffected by noise levels of 90 to 110 dB. There is no scientific basis to support this assertion.

The City should erect a sound barrier wall which would consist of a sound blanket or two layers of plywood with acoustic deadening material between them. Other methods to reduce noise include sound walls, mufflers and sound blankets on noise generating equipment.

- **CONSTRUCTION MUST CEASE BY NOVEMBER 1.**
Prolonged exposure to demolition and construction activities has the potential to displace marine mammals from breeding areas. The IHA

allows construction to continue until December 31, which is two weeks after the start of the pupping season and long after the seals are in advanced stages of pregnancy. There is a much higher risk of premature and still births when the pregnant females are subjected to constant high levels of stress.

- **REQUIRE MONITORING TO CONTINUE FOR 60 DAYS AFTER THE COMPLETION OF CONSTRUCTION.**

There should be monitoring for at least 60 days after the construction ceases to be certain that the same number of seals frequent the beach, as did prior to the start of construction.



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-XC498

melanie emer <melanietennis@yahoo.com>

Fri, May 31, 2013 at 10:20 AM

Reply-To: melanie emer <melanietennis@yahoo.com>

To: "ITP.Goldstein@noaa.gov" <ITP.Goldstein@noaa.gov>

There needs to be protection for the seal colonies in La Jolla. There are fishermen and kids and wealthy La Jollans hurt them and hit them in the hopes of gaining back the Children's pool to swim in and other beaches. The seals were here first, and many pups are dying on the beaches from malnutrition and abuse in San Diego County. Please help!

Sincerely,
Melanie Emr



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-XC498

mgold@cox.net <mgold@cox.net>
To: ITP.Goldstein@noaa.gov

Sun, Jun 2, 2013 at 1:24 AM

P. Michael Payne, Chief
Permits and Conservation Division
National Marine Fisheries Service
Office of Protected Resources
1315 East-West Highway
Silver Spring, MD 20910

June 1, 2013

RE: 0648-XC498

City of San Diego's Application for Incidental Harassment Authorization
(12,783 harbor seal takes; 100 sea lion takes; 25 elephant seal takes)

Dear Mr. Payne,

Regarding the above-referenced IHA Application, there are several matters which require your attention.

The IHA Application states, "The general public will not be excluded from the beaches and areas outside the construction zone. Because the public occasionally harasses the seals with various activities, the NMFS certified monitor will make observations and attempt to attribute any observed harassment to the public or to the construction activities and give all details in

the observation report.” (IHA Application, page 9.) Common sense dictates that as long as people are permitted on the beach during construction, it will be impossible to distinguish between incidents of harassment that are caused by the public vs. incidents of harassment that are caused by the construction. Therefore, to eliminate this problem, the beach must be closed to the public during the old lifeguard tower’s demolition as well as during the construction of the new lifeguard station.

The IHA Application states, “Visual barriers will be erected to shield construction most [sic] activities from seal view; these barriers will dampen but not exclude sound.” (IHA Application, page 9.) Further details are provided in the City of San Diego’s Mitigated Negative Declaration Report, which states, “A visual and acoustic barrier will be erected and maintained for the duration of the project. The temporary barrier shall consist of ½ to ¾ inch plywood constructed 6-8 feet high depending on the location.” (City of San Diego’s Mitigated Negative Declaration, Final Report 11/30/2011, Page 5). A barrier of ½ to ¾ inch plywood is not a sound barrier at all. A true sound barrier consists of two layers of plywood with acoustic deadening material between them, which should be at least as wide as it is tall. I do not understand why a true sound barrier is not included as part of this project. In addition, it is a simple matter to use sound blankets and/or mufflers on noise-generating equipment, typical of just about every urban construction project, yet there is no mention of sound blankets at all in the IHA. The IHA should be modified to require that a true acoustic barrier sound wall be employed as described above, along with the use of mufflers and/or sound blankets on all noise-generating equipment.

The IHA Application states, "Since no construction will be performed during the pupping season (January through May), there will be no impacts on birthing rates nor pup survivorship at the Children's Pool." (IHA Application, page 8). This is simply not true. The official pupping season for this seal rookery is December 15 through May 15. Furthermore, 90% of females are in the advanced stage (third trimester) of pregnancy by early November. Therefore, construction work should cease by November 1 to avoid negatively impacting the pregnant seals.

I also wanted to call your attention to the fact that nowhere in the IHA Application is it mentioned that the seal rookery at Casa Beach (also known as Children's Pool Beach) is in fact a rookery. As you are aware, Casa B each is the only NMFS-recognized mainland rookery between the Mexican border and Point Mugu Lagoon in Ventura County – a distance of 186 miles. For this critical fact to be completely omitted from the IHA Application is an egregious oversight at best, if not deliberate obfuscation on the part of the author.

Finally, the IHA Application requests authorization for "12,783 harbor seal incidental takes." (IHA Application, page 8.) I would simply like to know by whose definition 12,783 takes qualifies as "small numbers" as per 16 U.S.C. 1371(a)(5) of the Marine Mammal Protection Act of 1972 as Amended.

Thank you for your consideration of these matters.

Sincerely,

Michael Gold

Michael Gold

5219 La Dorna Street

San Diego, CA 92115

mgold@cox.net



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-XC498

PAMT7413@aol.com <PAMT7413@aol.com>

Mon, Jun 3, 2013 at 12:59 PM

To: ITP.Goldstein@noaa.gov

Cc: PAMT7413@aol.com

I want to add my comments to those of others for the Takes of Marine Mammals Incidental to Specified Activities; Demolition and Construction Activities of the Children's Pool Lifeguard Station at La Jolla, California.

Briefly, I have concerns that insufficient studies have been done to determine and prevent negative impact on the seal rookery/colony prior to beginning the work on the Lifeguard station in La Jolla.

As a volunteer docent at the beach, I can say that this area is an important area and should not be minimized because of its small size. The seals are an enormous attraction for visitors to the area and should be handled with great care. Of course, I feel strongly that the seals' habitat should be handled carefully because it is the home of living creatures that have found a place to rest, eat, mate, and give birth. Every consideration should be given to protect the seals and their home at this time.

Please reduce noise during construction.

Please stop construction by the first of November to give pregnant seals a chance to rest and prepare for birth.

Please monitor carefully, and if the construction adversely impacts the seal colony, stop construction immediately and completely until adjustments are made to protect this valuable colony.

Thank you,
Pam Thomas

Pam Thomas

7350 Golfcrest Pl. #1013

San Diego, CA 92119

619-467-7913



0648-XC498

Philomene Offen <philoff@san.rr.com>
To: ITP.Goldstein@noaa.gov

Fri, May 31, 2013 at 12:02 PM

P. Michael Payne, Chief Permits and Conservation Division

Dear Mr. Payne:

- **THE BEACH MUST BE CLOSED DURING CONSTRUCTION.**
Require the City of San Diego to close Casa Beach during the lifeguard tower construction and maintain the closure for 60 days after completion of the project. Although the IHA requires monitoring and recording the impact of the construction on the seals, that is not possible as long as humans are present on the beach because there is no way to distinguish between the impacts of the construction and the impacts from people.
- The contention that these seals are habituated to the presence of humans and therefore will not be impacted by the sound of construction is not accurate. These seals react to both human disturbance and sound and in particular are not habituated at all to construction noise.
- **PROVIDE ADEQUATE SOUND MITIGATION TO PROTECT THE SEALS' HEARING.**
There is no attempt to reduce the sound levels. Above 90 dB, seals' hearing can be permanently impaired. The IHA takes the position that because many of the La Jolla Seals are acclimated to humans watching them from distances of 50 feet or sometimes less, that the seal colony will therefore be unaffected by noise levels of 90 to 110 dB. There is no scientific basis to support this assertion. The City should erect a sound barrier wall which would consist of a sound blanket or two layers of plywood with acoustic deadening material between them. Other methods to reduce noise include sound walls, mufflers and sound blankets on noise generating equipment.
- **CONSTRUCTION MUST CEASE BY NOVEMBER 1.**
Prolonged exposure to demolition and construction activities has the potential to displace marine mammals from breeding areas. The IHA allows construction to continue until December 31, which is two weeks after the start of the pupping season and long after the seals are in advanced stages of pregnancy. There is a much higher risk of premature and still births when the pregnant females are subjected to constant high levels of stress.

- **REQUIRE MONITORING TO CONTINUE FOR 60 DAYS AFTER THE COMPLETION OF CONSTRUCTION.**

There should be monitoring for at least 60 days after the construction ceases to be certain that the same number of seals frequent the beach, as did prior to the start of construction.



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-XC498

ScubaSD@aol.com <ScubaSD@aol.com>

Mon, May 20, 2013 at 10:16 PM

To: ITP.Goldstein@noaa.gov

Dear representative Golstein,

Regarding : **0648-XC498**

The misnamed "Children's Pool" tower not only provides lifeguard support of five beaches besides the immediate beach known as children's pool, it provides vital coastal security related to smuggling of illegal immigrants to our San Diego coast line.

The seals at Children's pool never came onto the beach before 1998. It was only after Sea World started releasing recovery seals to the pool area that they began to take up residence there which is a process of habituation to human contact which is unnatural.

Please approve the restoration of this vital lifeguard station on our San Diego beach coastline.

Thank you for your attention to this matter.

Sincerely yours,

Rodney M. Watkins (618) 260-1880



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-XC498

Dr. Ronald G. Shapiro <drronshapiro@gmail.com>
To: ITP.Goldstein@noaa.gov

Sat, Jun 1, 2013 at 10:40 AM

P. Michael Payne, Chief Permits and Conservation Division

Hi Mr. Goldstein,

As you review the proposed construction changes at La Jolla Cove, California please do everything possible to ensure protection for the seal colony including:

- Beach closure to people during construction
- Doing everything possible to ensure that the sound level from demolition and construction remains well under 90 DB (or not issuing the permit)
- Guaranteeing that all construction will be completed by November 1 (or not issuing the permit)
- Monitoring the health and welfare of the seal population for at least 90 days after the construction is complete, as well as continuous monitoring the year after construction is complete.

Many thanks.

Ronald G. Shapiro, PhD
17 Brookway Road
Providence RI 02906

—

Dr. Ronald G. Shapiro
Independent Consultant in Human Factors, Learning and Human Resources
DrRonShapiro1981@SigmaXi.Net
[\(401\) 272 4664](tel:4012724664)



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-XC498

Ruth Anderson <sculptoruth@yahoo.com>

Fri, May 31, 2013 at 10:40 AM

Reply-To: Ruth Anderson <sculptoruth@yahoo.com>

To: "ITP.Goldstein@noaa.gov" <ITP.Goldstein@noaa.gov>

To: P.Michael Payne, Chief Permits and Conservation Division

Saving and Protecting these Seals is of Extreme Importance to me.

THE BEACH MUST BE CLOSED DURING CONSTRUCTION.

Require the City of San Diego to close Casa Beach during the lifeguard tower construction and maintain the closure for 60 days after completion of the project. Although the IHA requires monitoring and recording the impact of the construction on the seals, that is not possible as long as humans are present on the beach because there is no way to distinguish between the impacts of the construction and the impacts from people.

The contention that these seals are habituated to the presence of humans and therefore will not be impacted by the sound of construction is not accurate. These seals react to both human disturbance and sound and in particular are not habituated at all to construction noise.

PROVIDE ADEQUATE SOUND MITIGATION TO PROTECT THE SEALS' HEARING.

There is no attempt to reduce the sound levels. Above 90 dB, seals' hearing can be permanently impaired. The IHA takes the position that because many of the La Jolla Seals are acclimated to humans watching them from distances of 50 feet or sometimes less, that the seal colony will therefore be unaffected by noise levels of 90 to 110 dB. There is no scientific basis to support this assertion.

The City should erect a sound barrier wall which would consist of a sound blanket or two layers of plywood with acoustic deadening material between them. Other methods to reduce noise include sound walls, mufflers and sound blankets on noise generating

equipment.

CONSTRUCTION MUST CEASE BY NOVEMBER 1.

Prolonged exposure to demolition and construction activities has the potential to displace marine mammals from breeding areas.

The IHA allows construction to continue until December 31, which is two weeks after the start of the pupping season and long after the seals are in advanced stages of pregnancy. There is a much higher risk of premature and still births when the pregnant females are subjected to constant high levels of stress.

REQUIRE MONITORING TO CONTINUE FOR 60 DAYS AFTER THE COMPLETION OF CONSTRUCTION.

There should be monitoring for at least 60 days after the construction ceases to be certain that the same number of seals frequent the beach, as did prior to the start of construction.

Protecting our Seals is of extreme importance to me, I love seeing them on the beach. They are also something that the La Jolla tourists love to see & it would be a great loss if they were hurt/damaged due to this construction.

Please ensure that all the safe guards I have written above are complied with during this construction.

The seals thank you from the bottom of their flippers! and so do I.

Gratefully yours,

Ruth Anderson



Preserving Everyone's Heritage for all Generations

P.O. Box 1041 Malibu, CA 90265 Tel: 323 345-1555 Fax: 310 456-3380

www.wanconservancy.org

May 29, 2013

Michael Payne,
Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910
ITP.Goldstein@noaa.gov

0648-XC498

May 15, 2013

Re: Takes of Marine Mammals Incidental to Specified Activities; Demolition and Construction Activities of the Children's Pool Lifeguard Station at La Jolla, California

Thank you for the opportunity to comment on the National Marine Fisheries Service's (NMFS) proposed incidental harassment authorization (IHA) for the Demolition and Construction Activities of the Children's Pool Lifeguard Station at La Jolla, California. These comments are submitted on behalf of the Western Alliance for Nature. As discussed below the demolition and construction activities will have more than a negligible impact on the La Jolla stock of the Pacific Harbor Seal and therefore cannot legally be authorized under the Marine Mammal Protection Act (MMPA).

NMFS's IHA does not rely on the best available science regarding marine mammal impacts from the noise associated with these activities. Furthermore, the IHA authorizes the take of more than small numbers of marine mammals and greater than negligible impacts on the La Jolla stock of the harbor seal.

Fails to properly characterize this colony of seals as a "population stock"

According to the MMPA Section 3(11) "The term "population stock" or "stock" means a group of marine mammals of the same species or smaller taxa in a common spatial arrangement, that

interbreed when mature." This is an exact description of the stock at Children's Pool Beach. This group of seals is isolated spatially from other seals to a small area of around 200' by 300'. This population hauls out, breeds and mates among its members in this area. There is no other area where these seals breed and mate for over 200 miles of coast and we have a great deal of evidence, including videos, regarding breeding and birthing to show that this occurs among this group at this specific location. The IHA talks about the seals in this location as unique and characterizes them as a group of seals whose behavior is different from seals at other sites. The "seals at this location do not respond to stimuli as observed with other harbor seals in other areas" (IHA application). If these seals are different from seals in other locations how are they not a "population stock"?

The IHA does not discuss this issue at all but presumably relies on the fact that NOAA has not designated these seals as a "stock". NOAA references in its Marine Mammal Stock Assessment Reports are extremely outdated and there is no evidence any attempt has been made to see if this population of seals constitutes a "stock". The mtDNA studies done to divide the Pacific Harbor Seal into 3 geographic stocks were all done, pre 1996, which is prior to the time the colony at La Jolla was well established. In addition, although the use of genetics is not the only basis for determining what is a stock¹, no studies have been performed to determine if the mtDNA is different in this colony or if there is any evidence of a significant amount of cross breeding with seals from other areas along the coast of California. Lacking mtDNA studies, behavioral distinctions can be used to define a stock.¹ Throughout the IHA these seals are described as a distinct group with distinct behavioral patterns associated with this particular physical location, meeting the MMPA definition of a "population stock". Yet the IHA fails to properly characterize this recognized group of seals as a "population stock"

Fails to properly characterize the nature of the La Jolla stock of Pacific Harbor Seals and the relative importance of it.

The IHA, without any scientific proof, characterizes this stock as so habituated that it will not respond adversely to the noise of the proposed activities. As a result of 24/7 monitoring with a remotely operated webcam for the past 4 months there is ample data to prove that these seals are not habituated to the point that they will not be harassed by both the presence of humans and by construction activity.

It also fails to even note that this site is not just a haul-out site but a rookery and also fails to note that this is the only recognized rookery for over 200 miles of the California coast, claiming that if the seals abandon the site others are available in the area. By failing to properly

¹ Wade and Angliss; Guidelines for Assessing Marine Mammal Stocks; 1997:"..there are many different ways to define stocks. The appropriate definition depends upon the management goal. Stocks are often defined as a unit that will preserve genetic diversity, but there are other possible definitions. Under the MMPA there is a clear mandate to maintain populations as a functioning element of the ecosystem, but there is no language to suggest that distinct genetic units should be the management unit"

characterize the regional importance of this site it downplays the possible impact of the construction activities on the La Jolla stock of harbor seals.

Improperly characterizes the La Jolla stock of Pacific Harbor Seals as habituated to human disturbance and can therefore tolerate additional disturbance.

Video evidence indicates that the La Jolla stock of Pacific Harbor Seals is sensitive to human disturbance and construction noise. The assumption that these seals are habituated to human activities and therefore will easily tolerate more is totally unfounded and untested. There is no scientific evidence upon which this conclusion is based. Habituation in this case is based on visible disturbance. However, the most disturbed and vulnerable animals often show no observable response because they can't afford the energy to respond. This is precisely why video evidence of pregnant seals shows them not responding to being kicked, sat upon and having their tails pulled. The use of visual disturbance of pregnant seals as the basis for contending that these seals are habituated is not based in science. Regardless, even if visual disturbance is used as the indicator, there is ample evidence that these seals do react to human disturbance and there is no evidence that they will not be even further disturbed by additional, and totally different, sources of noise.

Improperly claiming that the activities will not take place during critical life stages of the Pacific harbor seal and will not cause displacement from breeding areas.

The IHA claims that project scheduling avoids sensitive life stages for Pacific harbor seals. However, that is not the case. The project is scheduled to run through Dec. 31st. The official pupping season, recognized by the City, for this stock of the Pacific Harbor Seal begins Dec. 15th and noticeably pregnant females begin to appear in late October, early November. Pregnant females would be much more likely to be vulnerable to noise impacts. The IHA, cites, and then ignores, research done that indicates that prolonged exposure to demolition and construction activities have the potential to displace marine mammals from breeding areas for a prolonged period. The IHA fails to provide any research or scientific basis for the claim that these seals will not be displaced from the breeding area and that there will be no impact on pregnant females.

Fails to provide reasonably feasible mitigations that would serve to lessen the impact.

Under the MMPA, NMFS must prescribe methods and means of affecting the "least practicable impact" on the species or stock and its habitat. The IHA fails to require reasonable mitigations to lessen the sound created by the demolition and construction activities. The project intends to create a visible barrier with a plywood wall and then claims this will also serve as an acoustic barrier. This is not the case. While there is no barrier that will eliminate acoustic impacts, standard construction practice to lessen acoustic impacts is to erect a wall consisting of two layers of plywood with an acoustic deadening material in between or to erect a sound wall using various types of sound blankets. Such an acoustic wall is feasible and should be required. In addition, there are means to lessen the sound from noise generating equipment by the use of mufflers and sound deadening blankets. None of these devices are

being used. As such the IHA fails to use the best available technology to reduce the noise impacts on the Pacific Harbor Seals resulting in un-necessary harassment.

Marine Mammal Protection Act (MMPA): Small Numbers

NMFS's own take estimates do not meet the requirements of the MMPA. The primary mechanism by which the MMPA protects marine mammals is through a moratorium on takings. Under the MMPA, the term "take" is broadly defined to mean "to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal." "Harassment" is further defined to include acts of "torment" or "annoyance" that have the "potential" to injure a marine mammal or marine mammal stock in the wild or have the potential to "disturb" them "by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering."

The MMPA provides several narrow exceptions to the moratorium on take. Relevant here, NMFS may, upon request, authorize take in the form of harassment by an IHA for a period of not more than one year, provided certain conditions are met. An activity: (i) must be "specified" and limited to a "specific geographical region," (ii) must result in the incidental take of only "small numbers of marine mammals of a species or population stock," (iii) can have no more than a "negligible impact" on species and stocks, and (iv) cannot have "an un-mitigatable adverse impact on the availability of such species or stock for taking for subsistence uses" by Alaska Natives. In issuing an authorization, NMFS must provide for the monitoring and reporting of such takings and must prescribe methods and means of affecting the "least practicable impact" on the species or stock and its habitat. Finally, for an IHA to issue, the activity cannot have the "*potential* to result in serious injury or mortality."

Here NMFS has blatantly disregarded the MMPA's prohibition on allowing the take of more than small numbers of marine mammals. Most egregiously, NMFS estimates that 12,783 takes will occur affecting 100% of the La Jolla population stock. NMFS does not attempt to explain how its take estimates meet the "small numbers" requirement. The IHA entirely disregards this statutory requirement. NMFS does not attempt to define small numbers, nor does it undertake any sort of analysis of what small numbers might be. The small numbers requirement was to carry out the intent of Congress to protect individual marine mammals. The IHA thus violates the MPA because it does not guarantee that only small numbers of marine mammals will be taken.

Marine Mammal Protection Act: Negligible Impact

In addition, the IHA does not meet the requirement that it will have no more than a negligible impact on this population stock. It provides no scientifically based evidence that the harassment will not result in long-term displacement from the breeding grounds or have impacts on pregnant females that could result in pre-mature or still births and allows the harassment to occur during critical life stages. NMFS does not provide any explanation how, allowing construction activity to occur after the appearance of pregnant females on the beach and after the start of the pupping season, will only result in a negligible impact on this population stock since the incidence of "take" on this stock is 100%.

Fails to provide any meaningful mechanism to determine the actual harassment or take of the La Jolla stock of the Pacific Harbor Seal

While the IHA requires that there be monitoring to determine the on-going take of Pacific Harbor Seals the mitigation proposed does nothing to enable a determination of the actual impact of the demolition and construction. Human presence, which continually causes large flushes and harassment of these seals, will continue to be allowed and the monitoring does not even bother to record the presence of people on the beach. There is no attempt made to provide a mechanism to distinguish these two separate impacts. The only way in which the monitoring plan proposed will have any meaning would be for NMFS to require closure of the beach, by closing of the stairs, to humans. This is highly feasible and should be required. Otherwise the approved monitoring plan that is the ONLY mitigation for the large number of takes proposed will be meaningless.

In addition, the assumption that the seals seem to be habituated to human activities and can therefore easily tolerate more, is totally unfounded and untested (personal email from L. Weilgart). The most disturbed and vulnerable animals often show no observable response because they can't afford the energy to respond. Additionally, there is no scientific evidence cited that shows that seals subjected to this amount of harassment can therefore tolerate additional harassment. More importantly, given that the source of the harassment will now be noise that is totally unfamiliar to the seals, there is no evidence that they will not react to that change.

Fails to provide an adequate monitoring plan

The IHA states that " Over the last three years (2010 through 2012), an average of 1,556,184 people have visited the Children's Pool" yet the monitoring plan fails to include any monitoring information on the number of people on the beach or their location relative to the seals. Any data obtained from the current monitoring plan will be scientifically inaccurate and fails to meet even the minimum standards for monitoring. There is no way to monitor the effects of the construction by eliminating the presence of people on the beach from the monitoring. Their presence is a major factor affecting the behavior of the seals.

Fails to require after project monitoring to determine whether there is any long-term displacement from the breeding area.

NMFS fails to require post- project monitoring for a reasonable period of time to determine if the proposed activities have caused displacement from the area and abandonment of the site as a rookery. The basis for this is that "no funds were included for this purpose". There is no other justification given for the lack of a post-project monitoring. The lack of funding does not justify omission of a determination as to what the impacts of the project are. The only way to determine if abandonment has occurred or if there has been any long-term impact is to require at least a 60 day post- project monitoring period and then a requirement to put in place a recovery plan, should it turn out that the projected lack of any impact proves false.

Fails to analyze any possible long term impacts from the new facilities

There is no analysis of any possible long term impacts on the seal population at this location from the new facilities. These new facilities could increase the number of visitors to the beach. In particular, the new facilities will have bathrooms located at beach level. Current facilities are at street level. This will most certainly increase the numbers of people who go down to the beach. Consequently this increase will translate into a corresponding increase in the amount of harassment of the seals. This long term impact has not been analyzed or accounted for.

Lack of credible and up-to-date scientific studies to justify the conclusions in the IHA

Throughout the document the IHA fails to provide reference to valid, up-to-date studies to justify many of the conclusions such as the probable responses to the new sound sources, long-term impacts on the population stock, lack of a negligible impact, etc. Studies were either not cited because there are none, or were cited that had no relevance or were so out-dated that they also had no relevance. For the most part, conclusions reached were based on conjecture and not on evidence. For the IHA to meet the requirements of the MMPS it must be accompanied by accurate and appropriate scientific studies. The IHA fails to meet that test.

Below are citations from the IHA and specific comments in response to those citations.

"Description of Proposed Specified Activity"

"The Children's Pool and nearby shore areas are used by swimmers, sunbathers, SCUBA divers and snorkelers, shore/surf fishermen, school classrooms, tide pool explorers, kayakers, surfers, boogie and skim boarders, seal, bird and nature waters as well as other activities by the general public. Over the last three years (2010 through 2012), an average of 1,556,184 people have visited the Children's Pool"

Comment:

Fails to mention that viewing of harbor seals is the primary activity at this site. Of the 1,556,184 people who have visited Children's Pool beach over the last 3 years the vast majority of them have come to the beach specifically to watch the seals. (attachment showing Visitors to Children's Pool) <http://www.youtube.com/watch?v=dVmY2N4DgtU>

"It is difficult to predict what activities might cause noticeable behavioral reactions with Pacific harbor seals at this site. Children's Pool is a highly disturbed hauling-out site and seals at this location do not respond to stimuli as observed with other harbor seals in other areas (Hanan & Associates, 2004; 2011) (see <http://www.youtube.com/watch?v=4IRUYVTULsq>)."

Comment:

Fails to note that this is not just a haul-out site but the only rookery for 200 miles. In addition, this video indicates precisely why it is necessary to stop the construction by Nov. 1. The reason the seals are not moving is because they are pregnant. This is the same reason they did not move when their tails were pulled, they were kicked and even sat upon. According to L. Weilgart (see personal communication), "The most disturbed and vulnerable animals often show no observable response because they can't afford the energy to respond". This is why these seals are not moving, not because they are habituated. It is consistent with our other

findings that these seals are NOT habituated to the extent claimed and do flush easily, unless they are pregnant or sick.

Contrary to the claim made by the City there is a great deal of evidence that these seals, although somewhat habituated relative to other stocks, do react to noise and human presence by fleeing the beach. Monitoring data is now available for the months of Sept 2012-Feb, 2013 and from the Seal Cam, recordings, 24/7, for March –May 2013, a total of 9 months, that show their reactions. In addition, Yochem², in a study of this colony from Nov. 15 to Dec. 30th of 2005, stated there were 144 instances of human caused flushes at this beach.

- a) **Human caused flushes:** *During the months of February, March and April there were 133 documented flushing incidents. May incidents have not yet been reviewed. These were recorded on both video and on visual monitoring forms. These flushing incidents do not represent all of the flushing that took place because in order for the incident to be recorded, the camera operator would have to have had the incident on the screen. If the camera were to be focused on a part of the beach where the flushing was not occurring or if the operator had the camera focused in on the seals so that only a few seals were visible, the incident would not have been recorded. It should also be noted that since this period was late winter, and spring, most of these incidents occurred during the weekends. That is the time when most of the incidents with individuals crossing the guide rope and approaching the seals occurred. Attached is video of just one of the 133 flushes on camera.*

<http://www.youtube.com/watch?v=UWH3z2iP1Ms&feature=youtu.be>

As Table 1 below indicates there is a significant difference between the numbers of seals on the beach with and without human presence.

- b) **Construction noise:** *On one occasion the metal gate along the west side was repaired. The gate was vandalized on March 18, 2013 and the repair took place that following week. When this repair took place all seals left the beach. The gate is located off the beach but the noise, well below the levels indicated here, resulted in all of the seals leaving the beach and not returning until the following day. On two occasions, March 10, 2013 and April 30, 2013 the septic tank was cleaned out. The septic pumping truck was located behind the lifeguard tower on the street with only a relatively small black hose going down to the level of the mid-landing. The result was an immediate flush of seals on the beach. The noise level in this instance was well below that which will take place with these demolition and construction activities. There is recorded video evidence of these flushes.*

<http://www.youtube.com/watch?v=VRQyn6IOUxY>

² Yokem, 2005: La Jolla Cove Wall Replacement and Bluff Improvements Project December 21, 2004 through January 1, 2005, Pacific Harbor Seal Monitoring

"Proposed Dates, Duration, and Specific Geographic Region"

"the IHA application, work on this proposed project can only be performed between June 1st and December 31st of any year"

Comment:

The City's official start of the pupping season is Dec. 15th. By that time females are extremely pregnant. Pregnant females begin to show on the beach by late October early Nov. Work should not be permitted after Nov. 1st.

"Pacific Harbor Seal"

"In California, approximately 400 to 600 harbor seal haul-out sites are distributed along the mainland and on offshore islands, including intertidal sandbars, rocky shores, and beaches (Hanan, 1996; Lowery *et al.*, 2008)".

Comment:

While there are 400+ haul-out sites there are only 14 locations with rookeries (2 locations have multiple sites, total sites are 17) on or near the mainland of California which is 1100 miles, making this site extremely important. Failure, throughout the IHA, to note that this is a rookery appears to be an attempt to downplay the relative importance of the site.

"It is one of the three known haul-out sites for this species in San Diego County."

Comment:

This site is much more than a "haul-out" site. It is the only rookery in San Diego County and the only rookery between the Mexican Border and Point Mugu in Ventura County, almost 200 miles. As the only rookery for 200 miles, this is an extremely important site. Again, failure to note this is a rookery underplays the importance of the site.

"Harbor seals haul-out on the sand, rocks, and breakwater base at/near the Children's Pool in numbers of 0 to 15 seals to a maximum of about 150 to 200 seals depending on the time of day, season, and weather conditions"

Comment:

These figures are inaccurate. During the month of May, 2013, 302 seals were documented resting on the beach with additional seals on the rocks and in the water. In fact, almost every day except for weekends the numbers of seals on the beach was over 250.

"Because space is limited behind the breakwater at Children's Pool, it is unlikely that the number of seals would ever exceed 250 individuals (Linder, 2011)."

Comment:

Again, this is inaccurate. We have document evidence, including video, of 302 seals on the beach. The counts used are old and out dated.

"Potential Effects on Marine Mammals"

"pinnipeds at this site have likely adapted or become habituated to human presence at this site. Large numbers of people come to the site to view the pinnipeds at all hours and they perform many activities that can disturb pinnipeds at other sites, but this often does not occur at Children's Pool as they seem to have habituated to human presence and associated noises"

Comment:

This statement is inaccurate and not based on any meaningful study. In fact, in the one study cited (Yokem²) the author discusses 144 instances of flushing during a 45 day period.

Human disturbance at the site: *While occasionally, the seals at this location do not react to human presence by flushing, particularly when the humans are behind the rope or when the seals are pregnant, they more often than not do react by fleeing into the ocean. Since the Seal Cam has gone up and 24/7 monitoring has taken place there is an increasing body of data that indicates the seals here respond negatively to the presence of humans, particularly when people are on the ocean side of the rope. In 3 months time, Feb. thru April, there were 133 documented incidents of flushing. This is only a percentage of the overall flushing incidents since camera operators do not always spot the flushing. The Camera, which is operated to be able to be remotely controlled so that seals can be located and then focused on, cannot cover the entire beach. Unless the incident occurs where the camera is focused at that time, the incident will not be recorded. In addition, these are winter and early spring months. At this time of year most flushing incidents occur on weekends, not during the week, because that is when there are people who cross the rope which results in the flushes. These individuals usually do not come to the beach during the week. We anticipate that once summer starts the number of flushing incidents will rise sharply. In addition, on March 20th, the beach was closed at night, reducing the flushing incidents. That closure ends May 15th. Again we anticipate additional flushing incidents to occur. Thus this colony of seals, while somewhat habituated, still readily reacts to human disturbance. Regardless, the statement that these seals are so habituated they are not disturbed by human activity is inaccurate. In addition, the type of disturbance they will experience with the construction is totally different from what they have experienced. It will be from loud and sometimes sudden noises. The seals can, in no way, be expected to have habituated to this type of disturbance.*

Construction disturbance at the site: *The Construction noise can be expected to dramatically increase the impact of humans on the seals and may be sufficient to cause them to abandon the site. During the time frame of March and April there were 3 incidents at this site to indicate the possible sever impact of construction noise.*

a) *On two occasions, March 10th and April 30th, the septic tank or portable toilets were pumped. The pumper was a truck located on the street, removed from the beach. A small black hose was taken to a drain on the mid-landing and no activity took place on the beach. Noise levels were not recorded but they were considerably less than 90db. The immediate result of this was for the seals to leave the beach. <http://www.youtube.com/watch?v=VRQyn6IOUxY>*

b) *On March 18th, the metal gate on the west side of the lifeguard tower that closes off the ramp was vandalized. It was repaired that following week. The db level was relatively low, however all seals on the beach were flushed into the water and did not return the entire day, even after work on the gate ceased.*

In summary, these seals are not habituated to the point that they would be expected to ignore additional human disturbance and there is no scientific analysis of the added impact to them of this additional human activity, particularly to an entirely new type of disturbance.

"Since no demolition or construction activities will be performed during the pupping and weaning season (i.e., January through May), there will be no impacts on birthing rates or pup survivorship at the Children's Pool."

Comment: This is incorrect. The City's official pupping season is Dec. 15th to May 15th. However, females are in an advanced state of pregnancy by November. Work should cease by Nov. 1 to avoid impacts to pregnant females that could result in premature or still births or abandonment of the site

"The nature of that effect is unpredictable, but logical responses on the part of the pinnipeds include tolerance (noise levels would likely not be loud enough to induce temporary threshold shift in harbor seals), or avoidance by using haul-outs or by foraging outside of the immediate Children's Pool area."

Comment:

"Logical responses" without any citation as to the basis of this statement shows that there has been no specific analysis of the impacts at this site. There are very few scientific studies regarding the effect of sound in air on these pinnipeds. Most studies are of the effects of sound in water. Experience at the site, however, shows that the most likely result will be that the seals will leave the area and if the disturbance is daily, will not return until the construction ceases, if then. We have documented proof that when major flushing occurs (large numbers of seals) it can take a day or two for them to return. If that happens daily, it is unlikely they will return until all construction stops and then, it is unknown, if they will ever return.

"Background noise levels near the Children's Pool are likely already elevated due to normal activities".

Comment:

Why have no studies been done to determine the extent of the current background noise? Even if such studies show background noise is elevated, the sound levels comes in major part from the ocean itself and from traffic noise above. The construction noise will be in addition to the existing sound sources, will be additive, and will be totally different in sound level and frequency.

"Project activities producing in-air noise are scheduled to terminate at the end of December, which is before female seals begin to seek sites suitable for pupping."

Comment:

December 31st is well after female seals begin to seek sites for pupping at this latitude. Dec. 15th is the City's official start of pupping season but females actually begin using this site here in November, perhaps as early as October, as can be observed by the numbers of visibly pregnant females using the site at that time.

"Anticipated effects on Marine Mammal Habitat"

"Visual barriers will be erected to shield construction activities from the potential acoustic effects and visual perception of pinnipeds."

Comment:

Visual barriers are not necessarily acoustic barriers. Acoustic barriers, as are used at construction sites, usually consist of two layers of plywood with sound absorbing material between them or sound walls consisting of sound blankets. Here only one layer of plywood is planned and that will have no impact on the sound levels.

"Because the public occasionally harasses the harbor seals with various activities, the NMFS qualified monitor will make observations and attempt to attribute any observed harassment to the public or to the demolition and construction activities and give all details in the observation report."

Comment:

There is no way the NMFS-qualified monitor will be able to attribute observed harassment to the public or to the demolition and construction. There are no specific steps or monitoring designed to be able to make that determination. The monitoring plan does not even include collecting data on the presence of people on the beach. There are no mitigations that will facilitate a determination as to whether or not the harassment is attributable to the demolition and construction. If it should be determined it is attributable to the construction, the construction should be stopped if harassment is greater than anticipated, until a revised mitigation plan can be devised. As long as the public is allowed on the beach there is no way to distinguish between the harassment attributable to the presence on the public on the beach and the harassment due to the construction.

"the City of San Diego would expect pinniped behavior to return to pre-demolition and construction conditions soon after the proposed activities"

Comment:

On what is this conclusion based? The author of the IHA does not cite any studies to back up this conclusion.

"No aspect of the proposed project is anticipated to have any permanent effect on the location of pinniped haul-outs in the area, and no permanent change in seal or sea lion use of haul-outs and related habitat features is anticipated to occur as a result of the proposed project"

Comment:

Again, what is this based on? Are there any studies to indicate that long term (in this case 6 months) of daily harassment to pregnant females does not result in site abandonment? this conclusion is pure conjecture.

"Proposed Mitigation"

"During the pupping season a rope is placed along the upper part of the beach to designate how close people can come to the haul-out area."

Comment:

The time frame for the rope has been extended so that it is now present year-round

"Swimming and other water activities are still allowed as long as there is no direct harassment of the pinnipeds".

Comment:

Unfortunately, because there is no enforcement direct harassment occurs on a regular basis from the same individuals. This is why preventing the public from using the beach is a critical element in actually being able to monitor and analyze the harassment events. Beach closure is relatively simple and feasible.

"The visual and acoustic barrier will likely be constructed of plywood, 1.8 to 2.4 m (6 to 8 ft) tall."

Comment:

This may act as a visual barrier but it is not an acoustic barrier. For construction sites, acoustic barriers are constructed of two layers of plywood with sound deadening material between or from sound blankets. Such barriers, to be effective, must be wider than they are tall. In addition, noise can be further reduced through the use of mufflers and sound blankets on noise generating equipment. None of these devices are proposed to be used.

"The barriers may dampen the acoustic sound sources, but are not expected to exclude sound from the environment."

Comment:

The barrier proposed will serve only as a visual barrier. There is no evidence that a single layer of plywood has any acoustic deadening properties at all.

"Construction shall be prohibited during the Pacific harbor seal pupping season (January 1st to May 1st)"

Comment:

The city's official start of pupping season is Dec. 15th. Continuation of construction activities until the end of December could have a significant impact on the seals ability to use this site for pupping.

"Construction shall be scheduled during the daily period of lowest haul-out occurrence, from approximately 8:30 a.m. to 3:30 p.m. Harbor seals typically have the highest daily or hourly haul-out period during the afternoon from 3:00 p.m. to 6:00 p.m".

Comment:

According to Yokem² (2005), the Children's Pool Beach site is used by seals at all hours of the day and at all tides, with the exception of occasional high tide/high swell events in which the entire beach is awash.

Data is also available for the number of seals on the beach during daylight hours starting September 2012. The data has not been fully analyzed but preliminary findings indicate that the number of seals on the beach is not simply a function of time of day. It is not clear what the above statement about highest haul-out period is based on but it would be consistent with our findings that the primary factor reducing the number of seals on the beach appears to be whether or not humans were present on the beach and their location on the beach, i.e. no rope, behind the rope, across the rope. No rope and people across the rope showed equivalent impact. People on the landward side of the rope did not impact the presence of seals. There were typically fewer people as the time approached 6pm. The other factor that affected the

presence of seals was weather. Wind and/or rain caused them to leave the beach. The data is during the fall, winter and spring so there is insufficient data in regards to temperature. However, on the few days where the temperature was elevated and there was no confounding issue of people, it appears the seals left the beach on their own. This data is available to NOAA and to the City, should they wish to review it.

"A visual and acoustic barrier will be erected and maintained for the duration of the project to shield demolition and construction activities from beach view. The temporary barrier shall consist of 1/2 to 3/4 inch (1.3 to 1.9 centimeters [cm]) plywood constructed 1.8 to 2.4 meters (m) (6 to 8 feet [ft]) high depending on the location."

Comment:

Again, this will not reduce any acoustic impacts. This is a visual barrier only, not an acoustic barrier.

"Proposed monitoring and reporting"

"The basic plan is to survey prior to construction activities and then monitor demolition and construction activities by NMFS-approved Protected Species Observers (PSOs) with binoculars and handheld digital sound level measuring devices. PSOs will observe from a station along the breakwater wall as well as the base of the cliff below the demolition/construction area. PSOs will be on site approximately 30 minutes before the start of demolition and construction activities and continue for 30 minutes after activities have ceased."

"The City of San Diego plan to make hourly counts of the number of pinnipeds present and record sound or visual events that result in behavioral responses and changes, whether during construction or from public stimuli."

Comment:

The monitoring plan requires counts of seals at 4 locations but it does not require any count of people on the beach or their locations relative to the seals. It also does not record any disturbance or harassment of the seals caused by people on the beach, although it claims to record events that result in behavioral responses and changes from public stimuli. Without recording the number of people on the beach or their locations relative to the seals it is not possible to record or understand the influence of people on harassment. This information is critical to be able to understand what is happening at the beach and any monitoring plan that does not include, at a minimum, the number of people on the beach and their locations relative to the seals, cannot be considered a valid monitoring plan. Without this, the data collected is meaningless. In addition, there is nothing in the plan that details how the monitors will distinguish between harassment due to the noise of the project and harassment due to the presence of humans on the beach or how or if the construction caused noise may be additive, synergistic or multiplicative, magnifying the effects of the human disturbance. The only way to be able to effectively monitor the impacts of the construction would be to close the beach to the public. This should be required of the City during the period of construction

"A written log of dates and times of monitoring activity will be kept. The log shall report the following information:

For harbor seal observations, notes on seal behavior during noise-generating activity, as described above, and on the number and distribution of seals observed in the project vicinity;"

Comment:

The monitoring proposed is to start 30 minutes prior to demolition and construction activities and at least 30 minutes after cessation of the in-air noise-generating activity. The monitoring should be conducted at all times, 24/7, or at least one hour prior to sunrise and 1 hour after sunset, in order to know what impact the construction may or may not have on the seals since humans are also present 24/7. To understand a complex situation it is necessary to reduce as many variables as possible. Allowing humans to be present on the beach during construction would constitute a confounding influence that would make any data obtained invalid.

For example, if the seals have been flushed from the beach prior to the start of construction that day and the only seals present were those with decreased sensitivity to noise, then the monitoring, if limited to the time of construction, will be unable to indicate if there would have been an impact had all the seals been present. It would also lead to an erroneous conclusion if the seals are not present because they had been flushed by members of the public earlier, were no longer present on the beach but attempting unsuccessfully to return to the beach. Without looking at whether or not people are present on the beach it would not be possible to understand what was preventing their return. In addition the monitoring would only be looking at the response of seals who are highly habituated, since they would be the only ones left on the beach. Any data obtained would lead to inaccurate conclusions and would be scientifically invalid. To have valid data it is necessary to reduce as many of the variables as possible.

"Monitoring three to five days prior to construction will provide baseline data regarding recent haul-out behavior and patterns"

Comment:

There is considerable baseline data available that is not being used. There is no way that a meaningful baseline can be obtained in only 3-5 days. The number of seals can vary widely depending on a number of factors, weather, tides and presence of humans. 3 days is insufficient time to get any statistically meaningful data. Since February, monitoring reports have been recorded every hour during the day from 6am-2am the next morning. This baseline data is backed up by video recording of the entire day 24/7. This data should be reviewed and analyzed for use in determining an accurate baseline, particularly as it relates to haul-out patterns.

"No monitoring is planned to be conducted after demolition and construction activities have been finished, as it was not anticipated nor addressed in project funding".

Comment:

Monitoring after demolition and construction activities have finished should be required to determine if there has been any long-term permanent impact on the use of the site. There should be a report submitted at least 60 days after cessation of all activities to determine whether or not any long-term or permanent impacts have occurred. If it is determined, for instance, that seals have not returned to the beach in their pre-project numbers or have abandoned the site, the City of San Diego should work with NOAA to develop a program

designed to re-establish the colony at the site. The lack of funding allocated for this is not a justification under the MMPA for failing to adequately address possible impacts.

"The City of San Diego is open to working with the Western Alliance for Nature's La Jolla Harbor Seal Webcam, which can be found online at:

http://www.wanconservancy.org/la_jolla_harbor_seal_earthcam.htm."

Comment:

*These comments are being submitted by the Western Alliance for Nature. We are willing to work with the City, and have offered to submit the data we have obtained on harassment, haul-out patterns, presence of humans on the beach, both behind and in front of the rope, weather, etc. NOAA should **require** the City to analyze our extensive data base prior to the start of demolition and construction to determine when the least number of seals will be on the beach to minimize the impacts and to aide in determining what the current pattern of seal haul-out is at the beach.*

"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 would be considered to be the final report."

Comment:

There should be a follow-up study and report at least 60 days after cessation of all activities to determine whether or not any long-term or permanent impacts have occurred. If it is determined that seals have not returned to the beach in their pre-project numbers or have abandoned the site, the City of San Diego should work with NOAA to develop a program designed to re-establish the colony at the site.

"While the proposed IHA would not authorize injury (i.e., Level A harassment), serious injury, or mortality, should the applicant, contractor, monitor or any other individual associated with the demolition and construction project observe an injured or dead marine mammal, the incident (regardless of cause) will be reported to NMFS as soon as practicable"

Comment:

If there were serious injury or injury an immediate report should also be made to SeaWorld's stranding program so that Sea World might make an attempt at rescuing the injured animal for possible rehabilitation

"Estimated take by Incidental Harassment"

"City of San Diego expects a range of 0 to 190 harbor seals to be present daily during June and a seasonal decline through November to about 0 to 50 harbor seals present daily"

Comment:

We believe this to be an under estimate of actual numbers using the site. The first two weeks of May 2013 the average number of seals on the beach was over 250 seals with peak numbers at 302. During the months of Sept 2012- January 2013 the average number of seals on the beach during hours prior with no people on the beach or with people behind the rope varied from 83-120. During this same period when there were people on the beach with no rope or with a rope

but where people were across the rope the average varied between 7 to 27, clearly significantly less.

We have not analyzed the numbers for Feb- May of 2013 but they are well over the numbers indicated above, except for weekends when they are continually harassed and leave the beach from deliberate human disturbance. This data is available and should be reviewed by the City.

Table 1

Month	# days of data	Seal Cam	Rope	Night Closure	hrs of Observation Days	Daytime av # no humans or humans behind rope	daytime average with people-no rope or people across rope
Sept '12	13	No	no	No	varies	115	7
Oct '12	13	No	no	No	varies	120	10
Nov '12	22	No	no	No	varies	109	13
Dec 1-15, '12	17	No	no	No	varies	88	9
Dec 15-20, '12	3	No	130'	No	varies	120	18
Dec 20-31, '12	9	No	152'	No	varies	83	27
Jan '13	20	No	152'	No	varies	125	25
Feb '13	28	yes	152'	No	24		
March 1-20, '13	20	yes	152'	No	24		
March 21-31, '13	10	yes	152'	Yes	20		
April '13	30	yes	152'	Yes	20		
May 1-15, '13	15	yes	152'	Yes	20		
May 16-31, '13	16	yes	152'	No	24		

"could be a maximum of approximately 12,783 incidental takes (i.e., exposures) of approximately 600 individual Pacific harbor seals over the duration of the proposed activities".

Comment:

Nothing is proposed if the number of takes is significantly greater than the approved number of takes. Using the above figure of 12,783 takes over a 7 month period equates to 1826 takes per month. If after at least a month the average actual take exceeds the predicted number of takes by 25% the construction should be shut down and the City of San Diego required to work with NOAA to come up with a plan to reduce the number of takes to the expected level.

"Negligible Impact and Small Numbers Analysis Determination"

"The proposed activities are not expected to result in the alteration of reproductive behaviors, and the potentially affected species would be subjected to only temporary and minor behavioral impacts. The project scheduling avoids sensitive life stages for Pacific harbor seals"

Comment:

Pregnant seals have been sighted on the beach beginning in early November. The project scheduling includes construction activities during use by pregnant females and goes into the start of the pupping season, Dec. 15th. Therefore it does not avoid sensitive life stages. If the project is allowed to continue through the end of Dec. it could result in premature births and abortions. There is no reference to the best available information regarding the impacts on rookeries from construction noises where pregnant seals are present. In fact, the two papers cited that reference this issue are dismissed. Therefore it is pure speculation to state that the activities will not result in the alteration of reproductive behaviors or have any impact on site selection or birthing. Additionally, the statement that this will not result in the alteration of reproductive behaviors is not supported by an reference to any scientific study, particularly since the construction noise will continue well into the late stages of pregnancy.

"While studies have shown the types of sound sources used during the proposed demolition and construction activities have the potential to displace marine mammals from breeding areas for a prolonged period (e.g., Lusseau and Bejder, 2007; Weilgart, 2007), based on the best available information, this does not seem to be the case for the Pacific harbor seals at the Children's Pool"

Comment:

There is no citation as to what that "available information" is and why this is not applicable to Children's Pool. There is no scientific basis for this claim, since as our data proves, these seals do react to both human and construction disturbances and leave the beach as a result of them. The articles cited do not deal with air-borne noise and are completely irrelevant so citing them and then stating that this "does not seem to be the case for the Pacific harbor seals" is simply trying to imply that there is a basis for the conclusion that in this case the sound will have no impact.

According to Weilgart(personal communication), cited above by the City "The assumption that the seals seem to be habituated to human activities and can therefore easily tolerate more is totally unfounded and untested. Firstly, habituation in this case is based on visible disturbance, which doesn't mean much. The most disturbed and vulnerable animals often show no observable response because they can't afford the energy to respond. To get at this question more completely, stress hormones or other reliable measures such as vital rates would have to be used. I assume this hasn't been done. Secondly, just because animals stick around doesn't mean they aren't paying a price in some other way. Effects can accumulate, so assuming apparent habituation or tolerance (these two concepts aren't the same--I think the IHA actually means tolerance unless they can prove a waning response over time which is habituation) to one type of impact will mean the same tolerance to an ADDITIONAL but different type of impact is also not justified without some proof. Most animals must deal with a variety of anthropogenic impacts in nature and it is rare that these impacts are just additive. More often than not, they

are synergistic or multiplicative, magnifying the impacts” Noting this, the proposed activity could have the potential to displace the seals from this breeding area and the applicant has not provided any credible scientific evidence to the contrary.

In addition, the usual sources of sounds that the seals at Children's pool are exposed to are significantly different from the sounds of demolition and construction so even if these seals somewhat tolerate human disturbances they have not been exposed to construction noises. As shown by the 3 instances where there was such exposure during the past 3 months, they responded almost immediately by fleeing. There is, therefore, no basis to claim that displacement will not occur.

"While behavioral modifications, including temporarily vacating the area during the demolition and construction activities, may be made by these species to avoid the resultant acoustic disturbance, the availability of alternate areas within these areas for species and the short and sporadic duration of the activities, have led NMFS to preliminarily determine that the taking by Level B harassment from the specified activity will have a negligible impact"

Comment:

The duration of the construction is not short. It is planned for 5 days per week, each and every week for 7 months. Even if temporary impacts of noise do not have long term impacts on the use of the site, this project could lead to abandonment of the site as a rookery. There is no way to accurately predict whether or not that will occur.

The statement that there are alternate areas available is incorrect. There are no known or recognized rookeries in the San Diego area or anywhere between the Mexican border and Point Mugu in Ventura County a distance of approximately 200 miles.

In summary we request the following changes be incorporated into the IHA:

1- All work cease after Nov. 1

2- A sound barrier consisting of two layers of plywood with acoustic deadening material between or a temporary sound wall be erected that is wider (broader) than it is high.

3- The use of mufflers and sound blankets be required on noise generating equipment.

4- The City obtain data from the Western Alliance for Nature and use it to determine a baseline for the presence of seals and their distribution with time and adjust the construction hours if the baseline indicates the need and also use this data to help analyze the impacts of the construction.

5- If monitoring indicates that the number of takes is exceeding the number allowed under the IHA all construction activities cease until a revised mitigation plan be devised

6- The City should be required to close the beach during construction to enable a more accurate determination as to what the impacts of the construction are on the seals. Unless the beach is closed there is no way to distinguish between the impacts caused by the presence of people and the impacts caused by the construction.

7-The Monitoring plan should include observations of numbers of people on the beach and their location relative to the seals and any impacts of their presence at the time of counting the seals on the beach.

8- The number of takes should be reduced to a smaller percentage of the population stock stock so as to meet the small numbers requirement of the MMPA

9- Monitoring should continue for 60 days after the cessation of construction to determine long term impacts. If reduction in numbers continues or site abandonment has occurred, the City should work with NOAA on a plan to help re-establish the colony

Unless the above additional mitigations are incorporated into the project the project cannot be authorized under the Marine Mammal Protection Act.

Yours truly

A handwritten signature in black ink, appearing to read "Sara Wan". The signature is fluid and cursive, with the first name "Sara" and last name "Wan" clearly distinguishable.

Sara Wan*

on behalf of the Western Alliance for Nature

*MS Zoology, Yale University, MS Electrical Engineering, UC Irvine, Former Member FACA Advisory Committee to the Marine Mammal Commission on the Effects of Sound on Marine Mammals.



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-XC498

Sara Wan <sarawan425@gmail.com>
To: ITP.Goldstein@noaa.gov

Fri, May 31, 2013 at 8:34 PM

P. Michael Payne,

Attached are my comments in response to the Federal Register Notice of:
Takes of Marine Mammals Incidental to Specified Activities; Demolition and Construction Activities
of the Children's Pool Lifeguard Station at La Jolla, California

Please confirm receipt

Sara Wan

IHA Comments.pdf
875K

ATTACHMENT 1 : THE PATTERN OF LOBBYING

Presented are a few of the communications that drew NMFS into beach closure advocacy. It took years for animal rights activists to turn local NOAA policy around behind the scenes.

- a) 11_16_09 Friends of Seals continues trying to get NOAA to post signs including its 50' guideline. Reminded that NOAA cannot force the City to accept any signs.
- b) 1_5_10 Dr. James Lecky finds a 50' imperative to be wrong.
- c) 2_11_2010 NMFS warns Friends of the Seals it is illegal to tell people they cannot cross the advisory rope. FoS tries to get NMFS staff to attend a City Council committee meeting to request a sign with 50' guideline imperative.
- d) 8_23_10 FoS requests NOAA lean on the ranger to enforce the 50' and put it in Park signs. NMFS requires San Diego be the one ask for it.
- e) 11_22_10 FoS asserts many seals will die without distance requirement signs from NOAA. Ranger points out 50' limit would close the sea wall. FoS threatens hitting other NOAA offices with inflammatory video and emails. Has to be reminded there are no distance regulations.
- f) 4_1_11 FoS slanders divers, threatens violence, demands emergency action.
- g) 7_13_11 FoS steps up demands, claims organized diver harassment. Any NMFS SW investigation never resulted in substantiation, or even notifying us.

FOOTNOTE:

During the following 2 years, NMFS had done what it could for beach closure save overt enforcement. The next goal was extending the advisory rope barrier from a pupping season necessity to all year. But NOAA had no jurisdiction there. A state permit to forever rope off the beach in all seasons stalled when the San Diego Planning Commissions had to rule it conflicted with local land use rules. FoS was plaintiff in 2 lawsuits against the Planning Commission to nullify its ability to rule on a measure approved by higher authorities, even citing harmony with the highest law of the land, the MMPA. The 2nd lawsuit prevailed after the City Attorney refused to defend the Commission or present any evidence to support them.

The next goal is absolute half year closure, and NMFS was needed again. A new Mayor promised to close the beach for his supporters. Parks and Rec requested a state permit for half year closure. It got the NOAA sign that would show enforceability of NMFS SW special guidelines including the NOAA Hotline number which will accrue documentation needed to petition for enforcement. But still no federal enforcement. People still go on the beach and seals are not bothered so the job is not done.

With apparent federal jurisdiction in place, the Mayor issued his own orders to police to use an obscure statute specifically for prosecuting persons who cross the advisory rope and then are in some proximity to a seal seen to move in some way. The City now has assumed enforcement capability for its own definition of "take of marine mammals" and NMFS SW remains the unseen puppeteer.

THEREFORE, we must warn against NMFS SW staff being able to stack the research deck in data gathering and personnel choices. The Marine Mammal Commission needs to ensure any IHA is administered so the MMPA works per intent with undistorted science behind it.

Subject: FW: Signs with 50' guideline

From: Michelle Zetwo <Michelle.Zetwo@noaa.gov>

Date: 11/16/2009 7:56 AM

To: Sarah Wilkin <Sarah.Wilkin@noaa.gov>, 'Christina Fahy' <Christina.Fahy@noaa.gov>

I know I have emailed you both previously on this. My feeling is that if signs were made, they would more likely get noticed if they were posted down on the sand next to the rope barrier. That being said, there is the money issue, and not knowing if the City would allow (more) signs to be posted down on the beach. Cindy will keep asking about this issue so I think we should give her some sort of answer on this. Please advise.

-Michelle

Michelle Zetwo

Special Agent

NOAA Fisheries Office of Law Enforcement

San Diego Field Office

From: Cindy Benner [mailto:Outside Scope]

Sent: Saturday, November 14, 2009 2:19 PM

To: Michelle Zetwo

Cc: Ellen Shively

Subject: Re: Signs with 50' guideline

Importance: High

Hi Michelle,

I know you've been busy, but have you gotten any feedback from NOAA on changing the wording on the signs? Ellen Shively is now Vice President so I'm copying her on this email.

If you prefer, I can contact Sara Wilkin and try to coordinate with her. The rope line goes up Dec. 15, and now that the seals can stay and the beach won't be dredging, there is no political cloud hanging over our heads.

Hope to hear from you soon. Please let me know if I should contact Sara. Thanks.

Cindy

----- Original Message -----

From: [Cindy Benner](#)

To: [Michelle Zetwo](#)

Sent: Thursday, October 22, 2009 6:45 AM

Subject: Signs with 50' guideline

Hi Michelle,

I know how slowly things move in the government. By any chance have you gotten any initial feedback from anyone at NOAA re: having the wording on the NOAA signs include the 50' viewing guideline? We really think this minor change will greatly reduce the number of people who approach the seals too closely and should also help your office in enforcing the MMPA.

Thanks again for all that you do and for speaking to us last month.

Cindy

Re: Where is the "NOAA Official Policy of 50'?

Subject: Re: Where is the "NOAA Official Policy of 50'?

From: Jim Lecky <Jim.Lecky@noaa.gov>

Date: 1/5/2010 11:27 AM

To: John Leek <jleek001@san.rr.com>

CC: Chris Yates <Chris.Yates@noaa.gov>

John, I recommend you work with the Regional Office in Long Beach on this. Clearly the statement in the materials you attached to your e-mail that 50 ft. is mandated by the MMPA is wrong. The only prohibition in the statute is the prohibition on "take" which includes harassment. As you pointed out there are a number of guidelines on our web site, and there are number of guidelines published by other entities. Guide lines do not carry the force of law, they are merely meant to assist the public in observing animals without running afoul of the prohibition on take by harassment. The variability in guideline is a result of the variability in sensitivity of species to disturbance and variability in the circumstances under which different species might be observed. While there is no reference to 50 ft in our published or posted materials, I am not aware of ongoing discussions among the City, local interests, and NMFS Regional Office that might be focusing on such a distance. I am copying Chris Yates, Assistant Regional Administrator for Protected Resources in case he has any more current information he can provide. jl

John Leek wrote:

The La Jolla Seal Display advocates are about to present a big plan to the San Diego City Council to make a marine mammal park at Children's Pool along their own desires. Part of their documentation is reference to an official 50' viewing distance per NMFS policy and guidelines, and ready cooperation from NMFS to help implement that and other new restrictions to public access.

I have been searching for such a 50' distance in NOAA websites for a year, since they started telling tourists and beachgoers that to discourage beach use. I still cannot find it. I find guidelines from 100 feet to 100 yards, but not 50'. I asked our local NOAA OLA officer, but she could not find it. Why would NOAA have an unpublished guideline? Who is speaking for NOAA in assuring these people there is such a guideline and telling them in writing that NMFS is willing to put up signs to that effect? How much authority does he have? Is it you?

Jim Lecky



Sarah Wilkin - NOAA Federal <sarah.wilkin@noaa.gov>

Thanks for meeting with us

8 messages

Cindy Benner **Outside Scope**

Thu, Feb 11, 2010 at 6:39 AM

To: Sarah Wilkin <Sarah.Wilkin@noaa.gov>

Cc: Christina Fahy <Christina.Fahy@noaa.gov>, Monica DeAngelis <Monica.DeAngelis@noaa.gov>, Ellen Shively **Outside Scope** >

Hi Sarah,

It was so nice finally meeting you, Monica and Tina. I found the meeting very productive and hope what our docents shared with you was valuable information.

I would like to send an email to all of our docents and want to see if I've captured most of the major points made during the meeting. Perhaps I can abbreviate what I've listed below:

- There is a 48-hour wait period before Sea World will rescue an animal. An exception would be an animal that is injured or extremely sick. In the case of newborn pups, the wait period will allow adequate time for the mom and pup to be reunited on their own.
- NMFS now allows Sea World to flush several other animals if it's necessary in order to rescue a sick or injured animal or an abandoned pup.
- Please provide Sea World with complete information: your name and that you are a LJFS docent, phone number, details on the condition of the animal, where it is located and how many other seals are around it. If possible when the animal is in the middle of the rookery, please call them back if the animal moves to a more isolated location.
- Please do not become impatient if it takes Sea World 3-4 hours to arrive. Often they are on call rescuing other animals anywhere along the San Diego coastline and need to return to Sea World first before heading out on another rescue. They do not come to rescue animals after 5pm so sometimes it isn't possible for them to get there until the next day.
- When Sea World staff arrives, be as helpful as possible in providing additional information and treat their staff courteously.
- Do not tell the public that they **cannot** go on the beach. This is illegal and could lead to legal repercussions for the docent as well as LJFS. When the public is educated about the need to remain away from the seals, the vast majority will comply.

Is there anything I missed? Are there any other subject matters I should include? Perhaps Monica or Tina have something to add.

At our next board meeting, I will mention that we will be communicating further about the possibility of NMFS personnel contacting/having a meeting with the City (most likely members of the Natural Resources and Cultural Committee) about posting signage with the 50' viewing guideline. In addition, we're hoping your staff will reference other locations such as Carpinteria, where the beach is closed during pupping season to ensure the well-being of the pups and moms, as well as to ensure public safety.

We're looking forward to working with you in the future. Ellen will mail you copies of our pamphlet with suggestions to the City for a Marine Mammal Park which also contains background information.

The next NRCC meeting is **Feb. 24 at 2pm**, and we hope to be on the agenda with APRL to discuss our plans for a marine mammal park. Could anyone from your office attend that meeting? Unfortunately I'll be out of town for that meeting, but Ellen will be attending.

If you have any questions or need additional information, please let me know or call me at **Outside**.

Subject: Re: Fw: Questions for any/all of you.
From: Christina Fahy <Christina.Fahy@noaa.gov>
Date: 8/23/2010 1:25 PM
To: ellenshively [REDACTED] >

Hi Ellen--

I was on leave that week and seeing that you requested answers by a specific date, I was not sure whether you still wanted answers. Did you get a copy of the letter we sent to the City of San Diego? That may answer some of your questions. We have not received a request from them to help with signage. We have a brochure on watching seals/sea lions but they are not specific just to pups. I do not know the answers to the last two questions, hopefully Michelle got back to you on the enforcement question.

Thanks, sorry for the delay in my response.

Tina

ellenshively wrote:

Did you receive this?

Ellen Shively

----- Original Message ----- From: ellenshively To: Christina.Fahy@NoAA.gov Cc: Sarah Wilkin ; MichelleZetwo@noaa.gov ; MonicaDeAngelis@moaa.gov Sent: Wednesday, August 11, 2010 11:28 AM
Subject: Questions for any/all of you.

Hello from San Diego:

Chris - I have your email to Cindy Benner dated Nov. 30, 2009 titled Re:Court Victory on Friday.

On Friday, a group of us are visiting the SD Park and Rec Director and the new Ranger for Casa Beach, Randal Hawley, who is temporary, experienced and working under grant from an "anonymous donor".

Q: You state that 50 ft is recommended guideline for people to remain at Children's Pool beach. do you still stand behind this statement?

Q: The Ranger states to us that he is designing signs now.

Are you still awaiting an invitation from the City (don't know who) to ask for your help requesting NMFS signage.

Q: NOAA Fisheries Enforcement published a nice one page handout, "Sharing the Shore with Harbor Seal Pups in Washington State". It has some excellent viewing suggestions. Source is www.nwr.noaa.gov/MarineMammals/upload/sealpups.pdf
Is there a comparable pub for Southern California?

Q: When I read the NOAA sign to the Ranger last week about the MMPA rule that it is unlawful to take any action with "the potential todisturb the marine mammals", he forcefully said two interesting things: (a.) a city ranger does not (can not) enforce federal law, and (b.) that to prosecute, one must "prove malicious intent". Two men sit in beach chairs close to the water line to prevent the seals from beaching. They do it repetitively several times a week. They don't wave their hands or blow trumpets - they just block seals access to this "shared use" beach. Also - public is all over the beach, day and night.

That seems to me throwing in an interpretation in order not to carry out his responsibilities. The Ranger observes them, talks amicably to the public, then leaves the beach and the men intact.

He also lets people come very close to any beached seals - I'd say within 10 feet.

Q: He tells me that private signage (such as ours and APRL's) may be removed and

placed in a "freedom of speech" area away from the steps down to the beach. Is this common practice?

Would appreciate your comments and answers to the above in preparation for this meeting on Friday.

PS - The group wanting full access 24 hours a day, year round, have stepped up their protests on weekends to City Council decisions - even protesting clearing the beach during pupping season. They now have two tables, crowding out APRL and LJFS. It's a circus there.....

The seals are on the losing end of all this.

Thanks - Ellen Shively
President
La Jolla Friends of the Seals
Outside Scope



Sarah Wilkin - NOAA Federal <sarah.wilkin@noaa.gov>

Fw: La Jolla harbor seal rookery: A petting Zoo for kids?

3 messages

ellenshively [REDACTED] Outside Scope

Mon, Nov 22, 2010 at 9:16 AM

To: "LoMedico, Stacey" <SLomedico@sandiego.gov>, "Hawley, Randal" <RHawley@sandiego.gov>, Sarah Wilkin <Sarah.Wilkin@noaa.gov>, Christina.Fahy@noaa.gov, Monica.DeAngelisa@noaa.gov, Michelle Zetwo <Michelle.Zetwo@noaa.gov>

Cc: JSanders@sandiego.gov, SLightner@sandiego.gov, "Dye, Morris" <MDye@sandiego.gov>

TO: Above Officials:

You could alleviate so much of these premature stillbirths and continual cruel harassment if you would only put up signs to the public, and enforce NOAA's own Guidelines as written in your brochure recently received from Ms DeAngelis.....and requested by San Diego Children's Pool Ranger Hawley to be distributed until the city could make adequate copies:

QUOTE: Swimming, Diving or at the Beach:

Remain 50 yards from free swimming seals and sea lions

Remain 100 yards from animals hauled out on land when approaching from the water

Remain at least 100 ft from animals if approaching from land

....

WHY WON'T YOU POST/ENFORCE THIS AT CASA BEACH if you mean what you publish !!!!!!!

THIS PUPPING SEASON MAY BECOME A DEATH WATCH IF SOMETHING DOESN'T CHANGE IN POLICY...

Ellen Shively

President

La Jolla friends of the Seals

[REDACTED] Outside

From: XY

Sent: Sunday, November 21, 2010 10:17 PM

Subject: Re: La Jolla harbor seal rookery: A petting Zoo for kids?

It's soooo close to happening.....a seal bites and takes of just one little piece of a nose.... and then the city wakes up. to a lawsuit. In the meantime, we know that the local NMFS nor the city of San diego doesn't give a \$%^&*.Have the films been sent to any national office or to any other office of NMFS? Maybe it will get someone's attention out of the area since Zetwo and company appear to be asleep at the wheel.

???

XX wrote:

Urgent: Watch the U-tube video below. Is this what the City of San Diego and NOAA's National Marine Fisheries Service wants for this seal rookery?

<http://www.youtube.com/watch?v=5mgG7sgs0l0>

video by Andrea Hahn, San Diego

Hawley, Randal <RHawley@sandiego.gov>

Mon, Nov 22, 2010 at 11:25 AM

To: ellenshively [redacted] Outside Scope, "LoMedico, Stacey" <SLomedico@sandiego.gov>, Sarah Wilkin <Sarah.Wilkin@noaa.gov>, "Christina.Fahy@NOAA.gov" <Christina.Fahy@noaa.gov>, "Monica.DeAngelisa@NOAA.gov" <Monica.DeAngelisa@noaa.gov>, Michelle Zetwo <Michelle.Zetwo@noaa.gov>
Cc: "Lightner, Sherri" <SLightner@sandiego.gov>

Please be advised that the brochure Ms Shively refers to is the NOAA produced and is not a City of San Diego publication. The publication does list recommended distances for viewing etc. I have not been using these suggested guidelines for distance as the physical confines of the Pool are not conducive to the 50/100 yd. distance mentioned. (City would have to close the seawall and the beach when seals are present). I only have an electronic print of the brochure and have not been given any to pass out at the Pool.
I have been requesting that the public stay back from the seals up to a point where "the seals notice you and let you know that you are close enough!". No set distances. As you know the recently installed signage reminds visitors to "Stay back" and "Move slowly" when approaching seals for viewing without setting specific distances.

thank you

Randy Hawley

Sr. Ranger/Children's Pool

San Diego Park and Recreation Department

From: ellenshively [redacted] Outside Scope]

Sent: Monday, November 22, 2010 9:16 AM

To: LoMedico, Stacey; Hawley, Randal; Sarah Wilkin; Christina.Fahy@NOAA.gov; Monica.DeAngelisa@NOAA.gov; Michelle Zetwo

Cc: Sanders, Judy; Lightner, Sherri; Dye, Morris

Subject: Fw: La Jolla harbor seal rookery: A petting Zoo for kids?

[Quoted text hidden]

Michelle Zetwo <Michelle.Zetwo@noaa.gov>

Mon, Nov 22, 2010 at 12:25 PM

To: ellenshively [redacted] Outside Scope, "LoMedico, Stacey" <SLomedico@sandiego.gov>, "Hawley, Randal" <RHawley@sandiego.gov>, Sarah Wilkin <Sarah.Wilkin@noaa.gov>, Christina.Fahy@noaa.gov, Monica.DeAngelisa@noaa.gov

Ellen-

Any distance guidelines written in any NOAA brochures are just that - guidelines. There are no distance regulations with regard to the Marine Mammal Protection Act in California. If you were talking about distances with humpback whales in Hawaii, my answer would be different.

-Michelle

[Quoted text hidden]

 **smime.p7s**
6K

Subject: Fw: Questions for any/all of you.

From: ellenshively [REDACTED] Outside Scope

Date: 4/1/2011 9:53 AM

To: Tina.Fahy@NOAA.gov, Michelle Zetwo <Michelle.Zetwo@noaa.gov>, Monica DeAngelis <Monica.DeAngelis@noaa.gov>, Christina.Fahy@noaa.gov

NMFS:

This will be a nasty weekend at Children's Pool. Both sides are gearing up for a stand-off. Divers blogs are particularly malicious.

Please send an emergency message to the Mayor to close the beach - Sunday at 2 pm in particular.

I have notified them all - Stacy LoMedico. Mayor Sanders, Jan Goldsmith, the City Attorney - to no avail.....(i.e. no response!!!!)

The pups will be the big losers if they are caught in the middle.....

Ellen Shively

[REDACTED] Outside Scope

----- Original Message -----

From: [ellenshively](#)

To: Christina.Fahy@NoAA.gov

Cc: [Sarah Wilkin](#) ; MichelleZetwo@noaa.gov ; MonicaDeAngelis@moaa.gov

Sent: Wednesday, August 11, 2010 11:28 AM

Subject: Questions for any/all of you.

Hello from San Diego:

Chris - I have your email to Cindy Benner dated Nov. 30, 2009 titled Re:Court Victory on Friday.

On Friday, a group of us are visiting the SD Park and Rec Director and the new Ranger for Casa Beach, Randal Hawley, who is temporary, experienced and working under grant from an "anonymous donor".

Q: You state that 50 ft is recommended guideline for people to remain at Children's Pool beach. do you still stand behind this statement?

Q: The Ranger states to us that he is designing signs now.

Are you still awaiting an invitation from the City (don't know who) to ask for your help requesting NMFS signage.

Q: NOAA Fisheries Enforcement published a nice one page handout, "Sharing the Shore with Harbor Seal Pups in Washington State". It has some excellent viewing suggestions.

Source is www.nwr.noaa.gov/MarineMammals/upload/sealpups.pdf

Is there a comparable pub for Southern California?

Q: When I read the NOAA sign to the Ranger last week about the MMPA rule that it is unlawful to take any action with "the potential todisturb the marine mammals", he forcefully said two interesting things: (a.) a city ranger does not (can not) enforce federal law, and (b.) that to prosecute, one must "prove malicious intent". Two men sit in beach chairs close to the water line to prevent the seals from beaching. They do it repetitively several times a week. They don't wave their hands or blow trumpets - they just block seals access to this "shared use" beach. Also - public is all over the beach, day and night.

That seems to me throwing in an interpretation in order not to carry out his responsibilities. The

Ranger observes them, talks amicably to the public, then leaves the beach and the men intact. He also lets people come very close to any beached seals - I'd say within 10 feet.

Q: He tells me that private signage (such as ours and APRL's) may be removed and placed in a "freedom of speech" area away from the steps down to the beach. Is this common practice?

Would appreciate your comments and answers to the above in preparation for this meeting on Friday.

PS - The group wanting full access 24 hours a day, year round, have stepped up their protests on weekends to City Council decisions - even protesting clearing the beach during pupping season. They now have two tables, crowding out APRL and LJFS. It's a circus there.....

The seals are on the losing end of all this.

Thanks -
Ellen Shively
President
La Jolla Friends of the Seals
Outside Scope

Subject: Fw: The core of the problem at Casa.doc

From: ellenshively [REDACTED] Outside Scope

Date: 7/13/2011 3:14 PM

To: Sarah Wilkin <Sarah.Wilkin@noaa.gov>, Monica DeAngelis <Monica.DeAngelis@noaa.gov>, Christina.Fahy@noaa.gov, Michelle Zetwo <Michelle.Zetwo@noaa.gov>

NOAA staff
NMFS
Long Beach, CA

Dear Agents Wilkin, DeAngelis, Fahy and Zetwo;

It seems time is long past for some authority to try to enforce the city, state and federal laws giving protections for the harbor seals of Casa Beach. Someone should help this city define "shared Use" at Casa Beach to remedy much of the current mis-understanding between opposing interests. With the "shared use" and "open beach" policy - people are simply over running the place, hardly considering the needs of the animals being shoved out and displaced around the clock.

If you view the December 9th, 2010 San diego Planning Commission archival video, you'll see how shared use was brought up and a definition was supplied "off the cuff".....Hardly a satisfactory policy if no one knows what is meant. Where are the boundaries? Please see my latest LTE attached.

It is no positive reflection on this city or, for that matter, federal agencies, to allow the conflict between advocates for seals to harbor in this beach and advocates for unrestricted use of the beach continue their verbal abuse and inappropriate interference with each other and the general public.

It's time for a solution.....whether it be better signage, (you once offered to provide better ones - maybe specifically mentioning 50 ft separation from the closest seal) closure at night when the lifeguards go home and re-opening when they come on duty - or killing off the seals to eliminate the controversy (please don't allow that!)Whatever- but the current status quo is just chaotic and some authoratative remedy must be put in place.

It is a daily embarrassment to me and a smudge on this city's lack of a management plan to let this needless fight continue.

Please advise the Mayor, President of the City Cpuncil or Natural Resources and Culture Committee on appropriate solutions and urge them to place this on the August 1, 2011 NRCC docket. This has gone on far too long. I could tell you about the accelerated diver/ spear/fisher/ swimmer organized harassment
Thank you.

Ellen Shively
La Jolla Friends of the Seals
[REDACTED] Outside Scope

— Attachments: —

ATTACHMENT 2: THE SIGN, FINALLY DELIVERED



There has only been one conviction under the MMPA at Children's Pool, from an incident in 2004. NMFS SW has complained it is burdened with over 150 complaints of MMPA violations/year of which only a couple percent had substance. This posting invites more frivolous hotline entries by people reporting violations of unpublished guidelines.

People swimming in or out of the beach necessarily swim "near" seals, so ocean access became unofficially criminalized and phone reports are wanted. This is abuse of an emergency NOAA function to gather misleading data.

THEREFORE, we must warn against NMFS SW staff being able to stack the research deck in data gathering and personnel choices. The Marine Mammal Commission needs to ensure any IHA is administered so the MMPA works per intent with undistorted science behind it.

ATTACHMENT 3: The Mayor assumes power to enforce a local definition of take of marine mammals

Emboldened by federal indication of enforceability of guidelines, the Mayor fulfilled his promise to close the beach as best he could. He dictated special prosecution of persons who can be implicated in observations of seal movement while on the “wrong” side of the advisory rope.

No citations have yet come of it. Seals are so many fewer in summer they only take a fraction of the beach next to the sea wall. But eventually someone will be snared. This obscure ordinance was used only once before by a ranger, but the City Attorney rejected the citation before it got to the courthouse. People still wander over to within 20’ of unconcerned seals as Dr Hanan predicted in his findings. The need for specious documentation of claims of organized seal harassment is greater than ever for authorities. The seals are not cooperating.

NMFS SW clearly has a need to justify emergency closures done by San Diego because it cannot be done federally without stretching the MMPA beyond its limits.

THEREFORE, we must warn against NMFS SW staff being able to stack the research deck in data gathering and personnel choices. The Marine Mammal Commission needs to ensure any IHA is administered so the MMPA works within its intent with undistorted science behind it.



MEMORANDUM

DATE: May 14, 2013

TO: Chief William Lansdowne
Chief Javier Mainar
Director Stacey LoMedico

FROM: Mayor Bob Filner

SUBJECT: Approved Protocols, *Seal Harassment at Children's Pool Beach, La Jolla*

The San Diego Police Department, the San Diego Lifeguards, and the Park & Recreation Rangers (the "Departments") respect the fundamental right of all people to peacefully express their views regarding the past, present and future use of the Children's Pool. The Departments have a written protocol in place to respond to disturbances and allegations of criminal conduct at the Children's Pool.

The goal of the Departments is to minimize the potential for confrontational behavior by maintaining peace and order during human-to-human and human-to-animal contact on and around the beach and to enforce existing City ordinances as they pertain to the placement of signs and the mistreatment of animals.

To this end, the Departments:

- Place no greater value than on the protection of human life;
- Will not tolerate acts of violence perpetrated against human beings or animals;
- Will respond to all requests for police assistance;
- Consider water safety the primary role of lifeguard personnel;
- Consider crimes perpetrated against any marine mammal to be subject to the City's Municipal Code regarding mistreatment of animals and to the Marine Mammal

Protection Act (“MMPA”), which is enforced by the National Oceanographic and Atmospheric Administration (“NOAA”);

- Will enforce Municipal Code §63.0102(b)(10), which makes it illegal to disturb any animal on a City beach and which does not require an intentional act; and §142.1206, regulating signs, including the issuance of citations, when appropriate; and
- Encourage all people to respect and to not inhibit in any way the right and freedom for all to legally and peacefully occupy the Children’s Pool and adjacent lands and to speak freely, openly and without intimidation.

IMPLEMENTATION OF MUNICIPAL CODE §63.0102(b)(10)

- Municipal Code §63.0102(b)(10) does *not* require that the unlawful action constitute “harm,” only that the animal be “disturbed.”
 - “Disturb” is defined in the Merriam-Webster Dictionary as:
 - “to destroy the tranquility or composure of;”
 - “to throw into disorder;” or
 - “to cause disturbance.”
 - If there is a complaint filed by a citizen regarding disturbance of an animal at Children’s Pool Beach and the officer is not certain regarding the applicability of §63.0101(b)(10), the officer should obtain ID information of all who are alleged to have disturbed the animal so that a determination can be made as to the nature of the disturbance with a full review of all evidence to follow promptly.
 - If someone is engaged in “normal beach activity” – including activities in the water -- and that activity results in a disturbance (*e.g.*, flushing, of the seals), then the disturbance is unlawful.
 - The first and best course of action is to warn people that, if they cross the rope or go into the water (which is their right) and that action results in disturbance, then they can be cited.
 - If, after the warning humans cross the rope or go into the water and disturb the mammals, then issue a citation.
 - If the people disregard the citation, interfere with its issuance, or continue to disturb the mammals, you are authorized and directed to arrest them.
-

ATTACHMENT 4: ONE OF MANY LETTERS ADVOCATING MUNICIPAL BEACH CLOSURE

Below is one of 3 letters in as many years to San Diego asking that municipality to take responsibility for closing Children's Pool to alleviate NMFS OLE case load. Just one is included here. They underscored the lack of will and jurisdiction NMFS had to create a marine mammal sanctuary on state land. As was quoted in the letter, the MMPA only extends to incidents "*in waters or on lands under the jurisdiction of the United States*". That is defined under 18 USC § 7 as lands acquired for use by the United States from a state, for federal purposes such as "*fort, magazine, arsenal,*"

There has only been one conviction under the MMPA at Children's Pool, from an incident in 2004. Yet NMFS SW has complained it is burdened with over 150 complaints of MMPA violations/year. The closer the City gets to imposing closure the more complaints are received.

NMFS SW has a need to justify emergency closures done by San Diego because it cannot be done federally without stretching the MMPA beyond its limits.

THEREFORE, we must warn against NMFS SW staff being able to stack the research deck in data gathering and personnel choices. The Marine Mammal Commission needs to ensure any IHA is administered so the MMPA works within its intent with undistorted science behind it.



UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
NOAA FISHERIES SERVICE
Office of Law Enforcement
501 W. Ocean Blvd., Suite 4300
Long Beach, CA 90802
November 30, 2007

San Diego City Attorney's Office
Nina M. Fain, Deputy City Attorney
1200 Third Ave, Suite 1100
San Diego, CA 92101

Dear Ms. Fain,

I am writing in regard to the marine mammals at La Jolla's Children's Pool and steps we can take to protect them and the people in the community. In the past few months, there have been numerous calls and other communications to NOAA's Office of Law Enforcement (OLE) regarding incidents of marine mammal harassment by the public at the Children's Pool Beach (CPB) in La Jolla, CA. As you know, under the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1372 (a)(2)(A), *it is unlawful for any person or vessel or other conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States.* Harassment is listed under the definition of 'take.' Take means to harass, hunt, capture, collect, or kill, or to attempt to... any marine mammal.

Harassment (Level B) means any act of pursuit, torment, or annoyance which 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 but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

Joe Cordaro, NOAA Wildlife Biologist, advises that harbor seals haul out at CPB for breeding, nursing, molting, and resting. The first full-term pups are usually born in early-mid January. Pups wean from their mothers in approximately 4-7 weeks. The last pups of the season may not wean until the end of May.

The CPB receives numerous visitors each month which increases the potential for seal/human interaction. OLE has placed signs on the landings above the CPB, which warn the public to keep a safe distance from the hauled out harbor seals. While the guidelines are useful, they have not prevented actions that could be considered harassment from occurring at the beach, particularly during pupping season. OLE continues to receive HOTLINE calls reporting alleged marine mammal harassment at the CPB.

OLE is concerned that the public will continue to harass marine mammals and continue to be subject to citation under the MMPA at CPB. Therefore, we strongly recommend, that the City close the CPB starting December 15 through May 30 or, at a minimum, consider reinstating the CPB rope barrier that was once in place. Unfortunately, in the past the rope barrier did not deter the "determined" individual(s) from approaching the seals. The rope barrier will provide a clear message for those that have a sincere desire to respect the marine mammals present on the beach, and therefore will provide some level of heightened protection for the adults and newborn seals. The rope barrier will also aid in informing people when they are more likely to be found in violation of the MMPA and potentially cited.



We realize that this request may be complicated by the recent result of the litigation over CPB. Nonetheless, NMFS remains concerned about the vulnerability of the seals at the rookery during the pupping season.

As in previous years, OLE appreciates your practice of implementing the rope barrier. The rope barrier has been a needed step in the right direction, but closing the beach would make a safer environment for the nursing seals. OLE appreciates and looks forward to a continued opportunity to work with you in assisting you achieving your goals as well as protecting the animals and citizens of our community.

Sincerely,



Donald W. Masters
Special Agent in Charge
NOAA Fisheries/OLE

cc: April Penner, City Manager's Office
Dale Jones, Director, Office of Law Enforcement
Rod McInnis, Regional Administrator, SW Region
Russ Strach, Assistant Regional Administrator for Protected Resources, SW Region

ATTACHMENT 5: COURT FINDINGS THE CHILDREN'S POOL IS NOT A NATUAL HABITAT BUT A CONTRIVED TOURIST ATTRACTION

Presented:

Court record of conclusions based on sworn testimonies.

This only has relevance to the IHA in the limited area we are addressing. That is, showing as we promised, that research should not be under the control of an agency directly involved in secondary purposes.

The gathering of biased data to indicate widespread public harassment of seals is not part of measuring the adherence to the City's IHA request. It will make the case against any human activity at our 2 beaches now recognized by NMFS SW as seal haulouts. That will call for closure, not enhanced facilities. There is motive to skew data. It is to bury the past.

As attested in court, harbor seals were preferentially released in La Jolla. Later data requests showed they had been captured all over the County and some came from outside the County. The vast majority were pups, with no recollection of where they had come from. This was completely outside the intent of the MMPA. The way out of the consequences for San Diego and NMFS is to somehow come up with data to support closure after allowing the tower construction.

THEREFORE, we must warn against NMFS SW staff being able to stack the research deck in data gathering and personnel choices. The Marine Mammal Commission needs to ensure any IHA is administered so the MMPA works per intent with undistorted science behind it.

1 that a prudent person acting in a like capacity would use in the conduct of an
2 enterprise of like character and with like aims to accomplish the purposes of
3 the trust as determined from the trust instrument.” (Cal Prob. Code § 16040.)

4 Plaintiff cites to the fact that since at least 1997, Hubbs-SeaWorld has
5 been engaged in a rescue, rehabilitation and release program under the aegis of
6 the National Oceanographic and Atmospheric Administration or its sub-agency,
7 NMFS. [Exh. 245.] That program consists of retrieving injured or diseased
8 animals, rehabilitating them at SeaWorld in San Diego, and, upon return to
9 health, and after tagging, releasing them in Pacific waters. The release of
10 harbor seals is accomplished generally in the kelp beds immediately outside
11 the Children’s Pool. Tagged harbor seals are routinely observed hauling-out at

12 the Children’s Pool. Once it was determined that the released seals were
13 impacting the use of the Children’s Pool, the City took no steps to protect the
14 Pool from becoming a haul-out for such seals.

15 The number of seals at the Children’s Pool was minimal, if any, at the
16 time of the creation of the breakwater and the Trust grant. Starting in the
17 early 1990’s, seals came to reside in the general area of Children’s Pool in
18 growing numbers. During that time frame, the City undertook the designation
19 of the ocean and reef immediately adjoining Seal Rock as a reserve in order to
20 accommodate the seals in that area. The Reserve is within a hundred yards or
21 less of the area granted as the Children’ Pool. In such close proximity, the
22 seals, based on counts, seem to prefer the Children’s Pool to Seal Rock as a
23 haul-out. Over time, the seal population at Children’s Pool has grown to where
24 it now exceeds 200 during portions of the year. Photographs show seals on the
25 beach across the entire width of Children’s Pool at the edge of the water.
[Exh. 399.]

26 During the 1990’s, seal feces came to pollute the beach and adjoining
27 waters. The County of San Diego, Department of Environmental Health,
28 regularly tests the waters along the San Diego coastline. In 1997, the County

REMEDIES

As stated above, the court will not order the City to modify its law enforcement activities at the Children's Pool or remove the surveillance camera located at the Pool. The City argues this court does not have the authority to order it to take any action in regard to the Pool, because such actions would be discretionary. If the Children's Pool were a "natural" beach, as argued by the City, such a position might have merit. This court probably would not order the City to clean up a dirty or contaminated "natural" beach where the City was not the direct cause of the contamination.

However, the Children's Pool is not a "natural" condition. It is a man-made, artificial condition, which was entrusted to the City for specific uses and purposes. The City has knowingly declined to remove sand from the Pool, even though the sand has reached the point where the Pool in reality cannot be used for its intended purpose. Although the City has approved requests to study the removal of the sand, even as recently as September of 2004, it has consistently failed to remove the sand that has been building-up for the last 70 years.

The presence of unhealthy levels of bacteria from seal feces in the pool water has been consistently left un-addressed by the City. The substantial increase in the number of seals using the Children's Pool seems to have some relationship to the actions or inactions of the City. The creation of the Reserve in close proximity to the Children's Pool and the release by Sea World of rehabilitated harbor seals in the kelp beds off-shore of the Pool, seem to have contributed to an increasing number of seals using portions of the Children's Pool in the mid-1990's. The City's decision to separate the seals from humans and then closing off the Pool to humans, likewise appears to have encouraged the seals to occupy more and more of the beach with ever increasing numbers.

The occupation of the Children's Pool does not seem to be a "natural" phenomenon. According to the evidence at trial, Children's Pool is the only public beach in California that has been taken over by seals. The City was

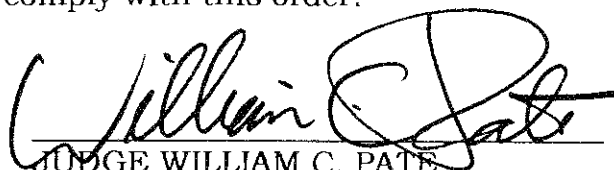
1 warned in 1997 that if it did not discourage the seals from hauling-out at the
2 Children's Pool, the number of seals present at the Pool would greatly increase.
3 In response to the situation, the City put up barriers to keep the public out of
4 the Pool area. To date, the City has taken no steps to reduce the level of
5 pollution at Children's Pool.

6 Therefore, in order to protect the rights of the people of California to the
7 full use and enjoyment of a unique asset, the Children's Pool, the City, as
8 trustee of the Children's Pool, is hereby ordered to employ all reasonable
9 means to restore the Pool to its 1941 condition by removing the sand build-up
10 and further to reduce the level of water contamination in the Pool to levels
11 certified by the County of San Diego as being safe for humans.

12 Nothing contained in this order shall be construed as requiring the City
13 to violate any law, rule or regulation of any federal, state or county government.
14 The court will maintain jurisdiction to oversee compliance with this order. This
15 order shall be fully complied with no later than six (6) months after the date
16 this order is issued. The City is directed to file a report with this court, no later
17 than sixty (60) days following entry of this order, setting forth what steps it has
18 undertaken and intends to undertake to comply with this order.

19 IT IS SO ORDERED.

20 Dated: August 25, 2005

21 
22 JUDGE WILLIAM C. PATE
23 Judge of the Superior Court
24
25
26
27
28

ATTACHMENT 6: HOW IT CAME TO BE.

Presented:

Original data obtained from NMFS SW showing La Jolla releases of harbor seals. Columns were added to sum La Jolla releases vs. previous normal uninhabited release locations.

As attested in court, harbor seals were preferentially diverted to La Jolla. Later data requests showed they had been captured all over the County and some came from outside the County. The vast majority were pups, with no recollection of where they had come from. The whole story is found at [THE SEAL COLONY WAS BUILT AT CHILDREN'S POOL](#)

This is all a done deal. There is no going back.

It is only pertinent to this IHA request to document the pattern we promised to show. NMFS SW has a vested interest in pressing its authority past protection of marine mammal stocks to creating a de facto federal reserve with people excluded.

NMFS SW published a denial of the court conclusions in the face of its own data in 2010 when it claimed there is no evidence of preferential release and the seals at Children's Pool must have emigrated from the Channel Islands 60 miles away. This odd conclusion also served to support a NMFS website showing it knows of no harbor seal haulouts between Mexico and Carpinteria (the entire Southern California Bight) except on the Channel Islands and Children's Pool.

This also contradicted Dr. Hanans findings presented in the IHA request.

THEREFORE, we must warn against NMFS SW staff being able to stack the research deck in data gathering and personnel choices. The Marine Mammal Commission needs to ensure any IHA is administered so the MMPA works per intent with undistorted science behind it.

	A	B	C	D	E	F	G	H	I
1	HARBOR SEAL RELEASES BY SEAWORLD (SAN DIEGO COUNTY, 1989 - 2006)								
2	Freedom of Information Act Request 2008-00188								
3	3 columns of 1's added for sum computations								
4	RELDATE	RCITY	RLOC	RLAT	RLONG	Vicinity La Jolla CP released	Location by GPS as released	93 to 2006	DDD.MM.mmm
5	12-Oct-89	SAN DIEGO	8 MILES SOUTH OF POINT LOMA				1		
6	12-Oct-89	SAN DIEGO	8 MILES SOUTH OF POINT LOMA				1		
7	12-Oct-89	SAN DIEGO	8 MILES SOUTH OF POINT LOMA				1		
8	07-Mar-90	LA JOLLA	KELP BED OFFSHORE LA JOLLA POINT				1		
9	07-Mar-90	LA JOLLA	KELP BED OFFSHORE LA JOLLA POINT				1		
10	28-Jun-90	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA				1		
11	28-Jun-90	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA				1		
12	28-Jun-90	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA				1		
13	21-Sep-90	SAN DIEGO	15 MILES SOUTHWEST OF POINT LOMA				1		
14	05-Dec-90	LA JOLLA	1 MILE WEST OF POINT LA JOLLA			1	1		
15	01-Apr-91	LA JOLLA	OFF SEAL ROCK			1	1		
16	23-May-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA				1		
17	23-May-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA				1		
18	23-May-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA				1		
19	07-Jun-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA				1		
20	07-Jun-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA				1		
21	07-Jun-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA				1		
22	07-Jun-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA				1		
23	21-Jun-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA				1		
24	21-Jun-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA				1		
25	11-Jul-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA				1		
26	11-Jul-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA				1		
27	05-Sep-91	SAN DIEGO	12 MILES SOUTHWEST OF POINT LOMA				1		
28	20-May-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BEACH				1		
29	20-May-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
30	27-May-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
31	27-May-92	LA JOLLA	FEW MILES WEST OF LA JOLLA SHORES				1		
32	27-May-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
33	27-May-92	LA JOLLA	2 MILES WEST OF LA JOLLA SHORES			1	1		
34	03-Jun-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
35	03-Jun-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
36	29-Jun-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
37	29-Jun-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
38	29-Jun-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
39	03-Jul-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
40	20-Aug-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
41	20-Aug-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
42	08-Oct-92	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
43	10-Feb-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		

	A	B	C	D	E	F	G	H	I
44	10-Feb-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
45	10-Feb-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
46	21-May-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
47	21-May-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
48	21-May-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
49	17-Jun-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
50	17-Jun-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
51	08-Jul-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
52	08-Jul-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BEACH				1		
53	25-Sep-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
54	25-Sep-93	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1		
55	20-Dec-93	LA JOLLA	LA JOLLA KELP BED	325130	1171615	1	1	1	(<1 mile from CP)
56	20-Dec-93	LA JOLLA	LA JOLLA KELP BED	325130	1171615	1	1	1	
57	29-Sep-94	LA JOLLA	LA JOLLA KELP BED	325130	1171615	1	1	1	
58	29-Sep-94	LA JOLLA	LA JOLLA KELP BED	325130	1171615	1	1	1	
59	13-Jan-95	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
60	31-Mar-95	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
61	28-Jun-95	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
62	28-Jun-95	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
63	28-Jun-95	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
64	28-Jun-95	SAN DIEGO	12 MILES SOUTHWEST OF MISSION BAY				1	1	
65	15-Sep-95	LA JOLLA	CHILDREN'S POOL			1	1	1	
66	15-Sep-95	LA JOLLA	CHILDREN'S POOL			1	1	1	
67	15-Sep-95	LA JOLLA	CHILDREN'S POOL			1	1	1	
68	15-Sep-95	LA JOLLA	CHILDREN'S POOL			1	1	1	
69	19-Jul-96	LA JOLLA	OFF LA JOLLA COAST			1	1	1	
70	19-Jul-96	LA JOLLA	OFF LA JOLLA COAST			1	1	1	
71	03-Sep-96	LA JOLLA	1 MILE OFFSHORE CHILDREN'S POOL			1	1	1	
72	03-Sep-96	LA JOLLA	1 MILE OFFSHORE CHILDREN'S POOL			1	1	1	
73	03-Sep-96	LA JOLLA	1 MILE OFFSHORE CHILDREN'S POOL			1	1	1	
74	03-Sep-96	LA JOLLA	1 MILE OFFSHORE CHILDREN'S POOL			1	1	1	
75	28-Sep-96	LA JOLLA	OFF LA JOLLA			1	1	1	
76	30-Jul-97	LA JOLLA	SHELL BEACH			1	1	1	
77	30-Jul-97	LA JOLLA	SHELL BEACH			1	1	1	
78	03-Nov-97	LA JOLLA	SHELL BEACH			1	1	1	
79	03-Nov-97	LA JOLLA	SHELL BEACH			1	1	1	
80	13-Jan-98	LA JOLLA	SHELL BEACH			1	1	1	
81	22-Apr-98	LA JOLLA	BETWEEN CHILDREN'S POOL & LA JOLLA COVE			1	1	1	
82	22-Apr-98	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
83	02-Jun-98	LA JOLLA	1 MILE WEST OF CHILDREN'S POOL			1	1	1	
84	02-Jun-98	LA JOLLA	1 MILE WEST OF CHILDREN'S POOL			1	1	1	
85	02-Jun-98	LA JOLLA	1 MILE WEST OF CHILDREN'S POOL			1	1	1	
86	06-Jul-98	SAN DIEGO	1 MILE WEST OF LA JOLLA			1	1	1	
87	06-Jul-98	SAN DIEGO	1 MILE WEST OF LA JOLLA			1	1	1	
88	06-Jul-98	SAN DIEGO	1 MILE WEST OF LA JOLLA			1	1	1	
89	06-Jul-98	SAN DIEGO	1 MILE WEST OF LA JOLLA			1	1	1	
90	05-Aug-98	LA JOLLA	7 MILES WEST OF LA JOLLA			1	1	1	
91	05-Aug-98	LA JOLLA	7 MILES WEST OF LA JOLLA			1	1	1	
92	05-Aug-98	SAN DIEGO	7 MILES WEST OF LA JOLLA			1	1	1	
93	01-Oct-98	LA JOLLA	5 MILES WEST OF CHILDREN'S POOL			1	1	1	

	A	B	C	D	E	F	G	H	I
94	01-Oct-98	LA JOLLA	5 MILES WEST OF CHILDREN'S POOL			1	1	1	
95	01-Oct-98	LA JOLLA	5 MILES WEST OF CHILDREN'S POOL			1	1	1	
96	02-Nov-98	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
97	02-Nov-98	LA JOLLA	10 MILES WEST OF LA JOLLA			1	1	1	
98	02-Nov-98	LA JOLLA	10 MILES WEST OF LA JOLLA			1	1	1	
99	26-May-99	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
100	18-May-00	LA JOLLA	1 MILE WEST OF LA JOLLA (OFF CHILDREN'S POOL)			1	1	1	
101	28-Jun-00	LA JOLLA	3 MILES WEST OF CHILDREN'S POOL			1	1	1	
102	28-Jun-00	LA JOLLA	3 MILES WEST OF CHILDREN'S POOL			1	1	1	
103	28-Jun-00	LA JOLLA	3 MILES WEST OF CHILDREN'S POOL			1	1	1	
104	30-Jul-00	LA JOLLA	4 MILES WEST OF CHILDREN'S POOL			1	1	1	
105	21-May-01	LA JOLLA	2 MILES NORTHWEST OF SEAL ROCK			1	1	1	
106	29-Jun-01	LA JOLLA	3 MILES OFFSHORE BETWEEN SCRIPPS PIER AND CHILDREN'S POOL	3251	11717	1	1	1	(This GPS value is <1mile dead west of CP)
107	03-Aug-01	LA JOLLA	2 MILES WEST OF CHILDREN'S POOL			1	1	1	
108	22-Aug-01	LA JOLLA	2 MILES WEST OF CHILDREN'S POOL			1	1	1	
109	10-Sep-01	LA JOLLA	5 MILES WEST OF CHILDREN'S POOL			1	1	1	
110	21-Nov-01	LA JOLLA	5 MILES WEST OF CHILDREN'S POOL			1	1	1	
111	23-Jul-02	SAN DIEGO	KELP BEDS OFF LA JOLLA COVE	3251	11717	1	1	1	(GPS is <1mile dead west of CP)
112	19-May-03	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
113	19-May-03	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
114	25-Jul-03	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
115	25-Jul-03	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
116	12-May-04	SAN DIEGO	10 MILES SOUTHWEST OF MISSION BAY				1	1	
117	25-May-05	LA JOLLA	OUTSIDE KELP BEDS OFF CHILDREN'S POOL			1	1	1	
118	25-May-05	LA JOLLA	OUTSIDE KELP BEDS OFF CHILDREN'S POOL			1	1	1	
119	25-May-05	SAN DIEGO	OUTSIDE KELP BEDS OFF CHILDREN'S POOL			1	1	1	
120	25-May-05	LA JOLLA	OUTSIDE KELP BEDS OFF CHILDREN'S POOL			1	1	1	
121	25-May-05	LA JOLLA	OUTSIDE KELP BEDS OFF CHILDREN'S POOL			1	1	1	
122	20-Jul-05	LA JOLLA	WEST OF LA JOLLA KELP BEDS	3250	11718	1	1	1	
123	20-Jul-05	LA JOLLA	WEST OF LA JOLLA KELP BEDS	3250	11718	1	1	1	
124	20-Jul-05	LA JOLLA	WEST OF LA JOLLA KELP BEDS	3250	11718	1	1	1	
125	20-Jul-05	LA JOLLA	WEST OF LA JOLLA KELP BEDS	3250	11718	1	1	1	
126	20-Jul-05	LA JOLLA	WEST OF LA JOLLA KELP BEDS	3250	11718	1	1	1	
127	05-Jun-06	SAN DIEGO	LOCALITY NOT RECORDED	32.42348	117.1656		1	1	(3 miles south of Mission Bay Jetty)
128	16-Jun-06	SAN DIEGO	LOCALITY NOT RECORDED	32.42348	117.1655		1	1	
129	19-Jul-06	SAN DIEGO	POINT LOMA KELP BEDS	32.43758	117.1594		1	1	
130	05-Oct-06	SAN DIEGO	LOCALITY NOT RECORDED	11720	3253		1	1	(4 miles W. Black's Beach)
131			TOTAL SEALS RELEASED OFF CHILDREN'S			61			
132			TOTAL SEALS in 17 YEARS				126		
133			TOTAL SEALS DEC '93 TO JULY '05					72	
134			TOTAL RELEASED AT LA JOLLA DEC '93 TO JULY '05			58	equals	81%	Of all harbor seal releases in 11 years
135									
136									

The San Diego Council of Divers, Inc.
Dedicated to education, safety, conservation,
sportsmanship, ocean access, preservation of wise
legislation, and furthering of knowledge of marine
phenomena.



To:

P. Michael Payne, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway, Silver Spring, MD 20910

Re: Proposed IHA 0648-XC498 - Favorable Comment with reservation

The San Diego Council of Divers has functioned as an umbrella group for all dive clubs in San Diego for over 55 years. Our members constantly visit the area that is protected by the Children's Pool Tower, a critical safety facility essential to the entire west La Jolla coast. The majority of diving in San Diego is done in La Jolla and divers, swimmers, surfers and all shore visitors there are protected by only 3 lifeguard tower facilities.

This tower provides observation and protection for miles of ocean along that coast containing a kelp bed where fishing and boating attract visitors from all over the County. The tower will oversee 6 public beaches, most of which are rugged natural entries. Two of its beaches are posted for chronic rip currents.

The IHA proposal is well researched and accurate by the foremost authority on harbor seals in California; Dr. Doyle Hanan. Dr. Hanan thoroughly documented his report showing our colony of seals is robust and resilient and unbothered by human activity. This contradicts long standing assertions by NMFS SW to the contrary. It is likely NMFS SW influence in setting criteria for the collection of data will discredit Dr. Hanan's findings afterward. By making any seal movement considered harassment either by the construction or the public, it can accumulate extraneous data that will seem to debunk Dr. Hanan's observations that the seals are peacefully acclimated and are not endangered, but thriving. We would request the

Marine Mammal Commission take steps to let Dr Hanan choose the monitors and research methods free of interference by NMFS SW. When Dr. Hanan consulted with them he would have been unaware of the program that office has to influence San Diego government to close the beach (and its twin) to the public. That will be documented in attachments.

On weekends and after hours with no construction, every movement of a seal, in any direction, for any reason will be necessarily documented as baseline “harassment” by the public. These seals move around all the time, and leave the beach as they please. They are animals, not plants. This kind of pseudo-science would not make it into a high school science fair. NMFS SW’s motive is recorded in various complaints NMFS has published it does not wish to spend resources dealing with Children’s Pool. NMFS SW has issued varying guidelines and policies and shifting definitions of pupping season dates and seal physiology. Among unsubstantiated claims is that natural premature parturition in harbor seals on our beach in December and early January can be explained by human proximity. Even in court, NMFS staff asserted human proximity can cause mother seals to trample their young in panic or spontaneously abort, though the same seals are so acclimated they could not be driven away if the City tried. (Declarations in Superior Court Oct 21, 2008)

The endorsed “research collection” has no baseline, or control or end result criteria basic to any competent research. It does not consider recent changes in beach use, such as our Mayor directing police to cite and possibly arrest any person on the beach considered cause of a seal moving a few feet. The IHA “research” work will be given over to people willing to work for free, certainly the animal rights group that lobbied NMFS SW for years to get NOAA to put signs on our beach criminalizing violation of unpublished guidelines. (Documentation attached) The Marine Mammal Commission should intervene here to prevent use of intimidation and phony criteria against honest citizens. It is bad science, causes citizen resentment to be deflected to the seals and devalues the entire MMPA.

NMFS SW has intervened for years to encourage San Diego to close our beach for them. Their benefit is to end the specious complaints and hotline

calls and also curtail common observations that seals are doing just fine sharing the beach with people.

Lacking jurisdiction to misuse the MMPA to close State tidelands, NMFS SW has tried harder and harder to deputize San Diego bureaucrats and special interest groups to take action on its behalf. This misuse of their authority and evasion of responsibility can only be curtailed by the Marine Mammal Commission specifying San Diego not be granted backdoor jurisdiction for actions to enforce laws concerning the take of marine mammals. (MMPA Sec 109(a)) The MMPA protects citizens from being prosecuted except by discretion of authorized officials under the Department of Commerce with real jurisdiction over marine mammals and according to the MMPA as written and understood by the Commission.

If any valuable data is to be obtained from this very unique opportunity for observations, it has to be done with real science, carefully set up with some professionalism. For just one example, at no time do knowledgeable NOAA personnel back check the observers to see how well observations of their own match data from the same conditions by zealous volunteers.

It is our request the IHA be conditionally granted, but that the Marine Mammal Commission assume direct oversight of the "research" offered as mitigation, or assign it to Dr Doyle, the only honest broker on the horizon. The presently proposed data gathering is a mechanism to give San Diego more federal support for managing the colony as a municipally controlled tourist attraction without regard to the safeguards built into the MMPA keeping marine mammals under the careful purview of the Dept of Commerce and apolitical scientists. Our seals have been pawns in a game between agencies trying to control their fate and ours but avoid being responsible for the mess San Diego has made.

We in San Diego do not ask special favors or absolution, but equal protection under the law. There is no motion or group set to drive the seals away. They will not repatriate to the wild, but only use more public beaches, as they already have done due to overcrowding, not adverse conditions at Children's Pool. Note the map in the IHA request showing

just as big a haulout area at the adjacent South Casa Beach where 30% of our pups this year were born. We need to continue to share considerably with the seals as they spread and not be banned from this and more beaches.

San Diego has announced construction shall begin May 30th, before you will see this, confident the deal is done. We ask the Marine Mammal Commission provide oversight to prevent the degradation of science and law, to provide impartial oversight and a more neutral body. From the East Coast, our assertions may seem absurd. We are forced to provide documents.

Extraordinary claims require hard evidence. There are 6 attachments:

1. A pattern of lobbying that finally prevailed to get NMFS SW to post a threat to beachgoers doing nothing illegal. San Diego had be solicited to ask for the signs for lack of NOAA jurisdiction. Includes reaction of Dr. James Lecky to the idea when proposed.
2. The sign, posted on 2 separate beaches asking for hotline responses to disobedience of NMFS unpublished guidelines.
3. Mayor's edict assuming City police powers to redefine and prosecute "take" of marine mammals where NOAA had wisely chosen not to.
4. NMFS letter to San Diego urging it take action to close or cordon off our beach, though it violates state law.
5. Court findings that Children's Pool was stocked with rehab seals and so not a natural beach or colony. (O'Sullivan vs. San Diego, 2005)
6. Data from NMFS SW showing the release patterns in the 90's that caused Honorable Judge Pate to rule Children's Pool had been stocked and was "not a natural beach".

San Diego Council of Divers

Scott Anderson, President

President@yahoo.com

P.O. Box 84778, San Diego, CA 92138-4778



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-XC498 IHA for incidental to demolition and construction activities of the Children's Pool Lifeguard Station in La Jolla, California.

Secretary <sdcod@san.rr.com>

Sun, Jun 2, 2013 at 5:24 PM

To: ITP.Goldstein@noaa.gov

Cc: Council of Divers President <scottradiver@yahoo.com>

The San Diego Council of Divers is keen to see the construction of the new Lifeguard station begun immediately.

We only have objection to some of the oversight of data gathering on the effect on seals. The effect will be minimal as predicted by Dr. Hanan. We request the Marine Mammal Commission take care the research is solely in the control of Dr. Hanan without conditions or personnel imposed. This needs to be a condition of the IHA being granted for reasons given in the attached documentation.

7 attachments



0648-XC498 attachment 4.pdf
212K



0648-XC498 attachments # 1.pdf
383K



0648-XC498 attachments 6.pdf
76K



0648-XC498 attachment 3.pdf
180K



0648-XC498 attachment 2.pdf
159K



0648-XC498 Lifeguard Tower IHA public input.pdf
84K



0648-XC498 attachments 5 .pdf
165K



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

Childrens Pool Tower

SHANNAN ULRICH <shannandiver@hotmail.com>
To: "ITP.Goldstein@noaa.gov" <itp.goldstein@noaa.gov>

Mon, May 20, 2013 at 7:10 AM

We need Childrens Pool Tower and lifeguard station. Thousands of people enjoy La Jolla beaches monthly and they need protection.

Thank you,

Shannan Ulrich

June 2, 2013

Michael Payne,
Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Services
1315 East-West Highway
Silver Spring, MD 20910
ITP.Goldstein@noaa.gov

RE: Takes of Marine Mammals Incidental to Specified Activities; Demolition and Construction Activities of the Children's Pool Lifeguard Station at La Jolla, California

Thank you for this opportunity to comment on the National Marine Fisheries Service's (NMFS) proposed incidental harassment authorization (IHA) for the Demolition and Construction Activities of the Children's Pool lifeguard Station at La Jolla, California.

First and foremost, the seals are not habituated to humans in any way. They are still very wild and do not tolerate harassment of any type. I have seen the slightest disruption result in massive flushings, such as last weekend when a person on the seawall dropped a Dixie cup off the wall. Such a small incident caused at least half the beach to flush. That equates to about 60 to 70 seals.

I have witnessed minimal sounds causing a huge flush. A few weeks ago a person on the side walked dropped a beach umbrella on the sidewalk above and it caused a rather large flush. I am illustrating that the seals are not habituated to the point that they would tolerate noise of the planned destruction and construction of the lifeguard tower. This morning I witnessed a two dogs barking that caused a major flush.

The beach should be closed during the entire construction process and hope that every measure will be taken to adhere to the protection of the seals habitat. This habitat is a year round haul-out site for the seals and not just a birthing rookery. The seals do not have another location to re-locate to. This is the only rookery on the west coast from the Mexican border to north of Santa Barbara. There are no other places for the seals to haul-out in the southern California region. Every effort must be taken to mitigate sound and construction noise during the entire process and preserve the beach for the seals health and life.

The monitoring plan is inadequate as it does not include any data on the presence of people on the beach. The construction should be completed no later than November 1, 2013 and every effort should be made to minimize the noise levels at the site.

Sincerely,
Ms. Shannon Player
337 F Avenue
Coronado Ca 92118
619 992 8921



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

Takes of Marine Mammals 0648-XC498

Shannon Player <player.shannon@gmail.com>
To: ITP.Goldstein@noaa.gov

Sun, Jun 2, 2013 at 6:54 PM

Please see comments attached.



IHA comments.doc
27K



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-XC498

Stephen Foster <wahoo_ss565@me.com>

Fri, May 31, 2013 at 4:54 PM

To: "ITP.Goldstein@noaa.gov" <ITP.Goldstein@noaa.gov>

To: P. Michael Payne, Chief
Permits and Conservation Division

Dear Sir,

I am a frequent visitor to the Casa Beach in La Jolla, California and have supported the seal population there for many years. They are a delight, not just to me and my family, but to the millions of visitors from around the world who come there to watch the Harbor Seal colony.

The demolition and rebuilding of the lifeguard tower adjacent to the beach that is used by this group of seals is of concern to me. First of all, there needs to be adequate sound mitigation to protect the seals' hearing, i.e. sound walls, mufflers and/or sound blankets on noise generating equipment. This area is very close to where they haul out. I hope that adequate steps are taken to dampen the sound that they will hear.

Also, this work should not be done at all in the pupping season, which begins in San Diego in December. Discontinuing work on the lifeguard tower all together during the advanced stages of the seal's pregnancies, as well as during the pupping season, is essential. That would make the "quiet time" begin in late October. Can the entire beach be closed to humans (excluding the lifeguards) during demolition and construction to minimize the stress on the seals? Please consider this, as well.

Thank you, kindly, for your consideration in this matter.

Sincerely,

Stephen Foster

Sent from my iPad



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-XC498

Susan Foster <missqfoster2@yahoo.com>

Fri, May 31, 2013 at 3:49 PM

Reply-To: Susan Foster <missqfoster2@yahoo.com>

To: "ITP.Goldstein@noaa.gov" <ITP.Goldstein@noaa.gov>

To: P. Michael Payne, Chief
Permits and Conservation Division

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Thank you, kindly, for your consideration in this matter.

Sincerely,

Susan Foster



0648-XC498 ATTN: P. Michael Payne

Sylvia Selverston <sillygranma@yahoo.com>
To: ITP.Goldstein@noaa.gov

Fri, May 31, 2013 at 2:42 PM

Please protect La Jolla seals

- **THE BEACH MUST BE CLOSED DURING CONSTRUCTION.**
Require the City of San Diego to close Casa Beach during the lifeguard tower construction and maintain the closure for 60 days after completion of the project. Although the IHA requires monitoring and recording the impact of the construction on the seals, that is not possible as long as humans are present on the beach because there is no way to distinguish between the impacts of the construction and the impacts from people.
- The contention that these seals are habituated to the presence of humans and therefore will not be impacted by the sound of construction is not accurate. These seals react to both human disturbance and sound and in particular are not habituated at all to construction noise.
- **PROVIDE ADEQUATE SOUND MITIGATION TO PROTECT THE SEALS' HEARING.**
There is no attempt to reduce the sound levels. Above 90 dB, seals' hearing can be permanently impaired. The IHA takes the position that because many of the La Jolla Seals are acclimated to humans watching them from distances of 50 feet or sometimes less, that the seal colony will therefore be unaffected by noise levels of 90 to 110 dB. There is no scientific basis to support this assertion. The City should erect a sound barrier wall which would consist of a sound blanket or two layers of plywood with acoustic deadening material between them. Other methods to reduce noise include sound walls, mufflers and sound blankets on noise generating equipment.
- **CONSTRUCTION MUST CEASE BY NOVEMBER 1.**
Prolonged exposure to demolition and construction activities has the potential to displace marine mammals from breeding areas. The IHA allows construction to continue until December 31, which is two weeks after the start of the pupping season and long after the seals are in advanced stages of pregnancy. There is a much higher risk of premature and still births when the pregnant females are subjected to constant high levels of stress.
- **REQUIRE MONITORING TO CONTINUE FOR 60 DAYS AFTER THE COMPLETION OF CONSTRUCTION.**
There should be monitoring for at least 60 days after the construction ceases to

be certain that the same number of seals frequent the beach, as did prior to the start of construction.

Thank you
Sylvia Selverston
San Diego, CA



La Jolla Seal Beach 0648-XC498

Tami / Mark <mark.tami@btinternet.com>

Fri, May 31, 2013 at 10:49 PM

Reply-To: Tami / Mark <mark.tami@btinternet.com>

To: "ITP.Goldstein@noaa.gov" <ITP.Goldstein@noaa.gov>

To: P. Michael Payne, Chief, Permits and Conservation Division

Please be aware of the impact to the seals during the construction of the new lifeguard tower.

THE BEACH MUST BE CLOSED DURING CONSTRUCTION.

Although the IHA requires monitoring and recording the impact of the construction on the seals, that is not possible as long as humans are present on the beach because there is no way to distinguish between the impacts of the construction and the impacts from people.

The contention that these seals are habituated to the presence of humans and therefore will not be impacted by the sound of construction is not accurate. These seals react to both human disturbance and sound and in particular are not habituated at all to construction noise.

PROVIDE ADEQUATE SOUND MITIGATION TO PROTECT THE SEALS' HEARING.

There is no attempt to reduce the sound levels. Above 90 dB, seals' hearing can be permanently impaired. The IHA takes the position that because many of the La Jolla Seals are acclimated to humans watching them from distances of 50 feet or sometimes less, that the seal colony will therefore be unaffected by noise levels of 90 to 110 dB. There is no scientific basis to support this assertion.

The City should erect a sound barrier wall which would consist of a sound blanket or two layers of plywood with acoustic deadening material between them. Other methods to reduce noise include sound walls, mufflers and sound blankets on noise generating equipment.

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high levels of stress.

REQUIRE MONITORING TO CONTINUE FOR 60 DAYS AFTER THE COMPLETION OF CONSTRUCTION.

There should be monitoring for at least 60 days after the construction ceases to be certain that the same number of seals frequent the beach, as did prior to the start of construction.

Thank you for your consideration.

Best Regards,

Tami Takahashi



ITP Goldstein - NOAA Service Account <itp.goldstein@noaa.gov>

0648-XC498

Victoria Ross <victoriaross888@gmail.com>

Fri, May 31, 2013 at 2:59 PM

To: ITP.Goldstein@noaa.gov

The seals at La Jolla have been disrupted sufficiently over the years. The human aggressive attacks caught on camera have been despicable.

Some arrangement should be made to construct a Lifeguard tower with as minimal harm to the seals.

People need to learn to respect the ocean and its life members.

Humans can't work together, as is, due to all of the aggressive acts now exhibited.

Working with the seals could set an example for other communities and the people of San Diego.

I am saddened by what I see in actions against the seals, little concern.

So much money is wasted by lack of better planning.

I will review this issue on the online San Diego Examiner.

Natural defense is an important part of community.

Respectfully,
Victoria Wagner (Ross)
<http://www.Krillionaire.com>

Victoriaross888@gmail.com

Examniner.com

Mobile [224 828 2643](tel:2248282643)

