BILLING CODE 3510-22-P

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 [insert date 30 days after date of publication in the FEDERAL REGISTER].

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 e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, 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.

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 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 270º 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 μPa 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.comwatch?v=4IRUYVTULsg). During the working day, the City of San Diego estimates there will be sound source levels above 90 dB re 20 µPa during 106 days, including 27 days of 100 to 110 dB re 20 µPa 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 µPa at the mean hauling-out distance (30.5 m). The City of San Diego used the formula and online calculator on the website: 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 (32º 50' 50.02" North, 117º 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;

(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 ½ Coast Boulevard, La Jolla, California 92037 (32º 50' 50.02" North, 117º 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.

Species	Habitat	Best Population Estimate (Minimum)[1]	ESA[2]	MMPA[3]	Population Trend
Mysticetes					
Gray whale (Eschrichtius robustus)	Coastal and shelf	19,126 (18,107)	DL – Eastern Pacific stock EN – Western Pacific stock	NC – Eastern Pacific stock D – Western Pacific stock	Increasing over past several decades
Odontocetes					
Killer whale (Orcinus orca)	Widely distributed	354 (354) - West Coast Transient stock	NL EN – Southern resident population	NC D – Southern Resident and AT1 Transient populations	Increasing – West Coast Transient stock
Bottlenose dolphin (Tursiops truncatus)	Offshore, inshore, coastal, estuaries	323 (290) – California Coastal stock	NL	NC	Stable
Long-beaked common dolphin (Delphinus capensis)	Inshore	107,016 (76,224) – California stock	NL	NC	Increasing
Pinnipeds					
Pacific harbor seal (Phoca vitulina richardii)	Coastal	30,196 (26,667) – California stock	NL	NC	Increased in California 1981 to 2004
Northern elephant seal (Mirounga angustirostris)	Coastal, pelagic when not migrating	124,000 (74,913) – California breeding stock	NL	NC	Increasing through 2005, now stable
California sea	Coastal, shelf	296,750	NL	NC	Increasing

lion (Zalophus californianus)		(153,337) – U.S. stock			
Steller sea lion (Eumetopias jubatus)	Coastal, shelf	72,223 (58,334) – Eastern U.S. stock	T – Eastern U.S. stock EN – Western U.S. stock	D	Overall increasing, decreasing in California
Northern fur seal (Callorhinus ursinus)	Pelagic, offshore	9,968 (5,395) – San Miguel Island stock	NL	NC – San Miguel Island stock	Increasing
Guadalupe fur seal (Arctocephalus townsendi)	Coastal, shelf	7,408 (3,028) – Mexico to California	T	D	Increasing

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 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 wollebaeki) 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 45º 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), 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 μPa for harbor seals and at or above 100 dB re 20 μPa 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 μPa for harbor seals and at or above 100 dB re 20 μPa 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 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 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 ½ to ¾ 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 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 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).

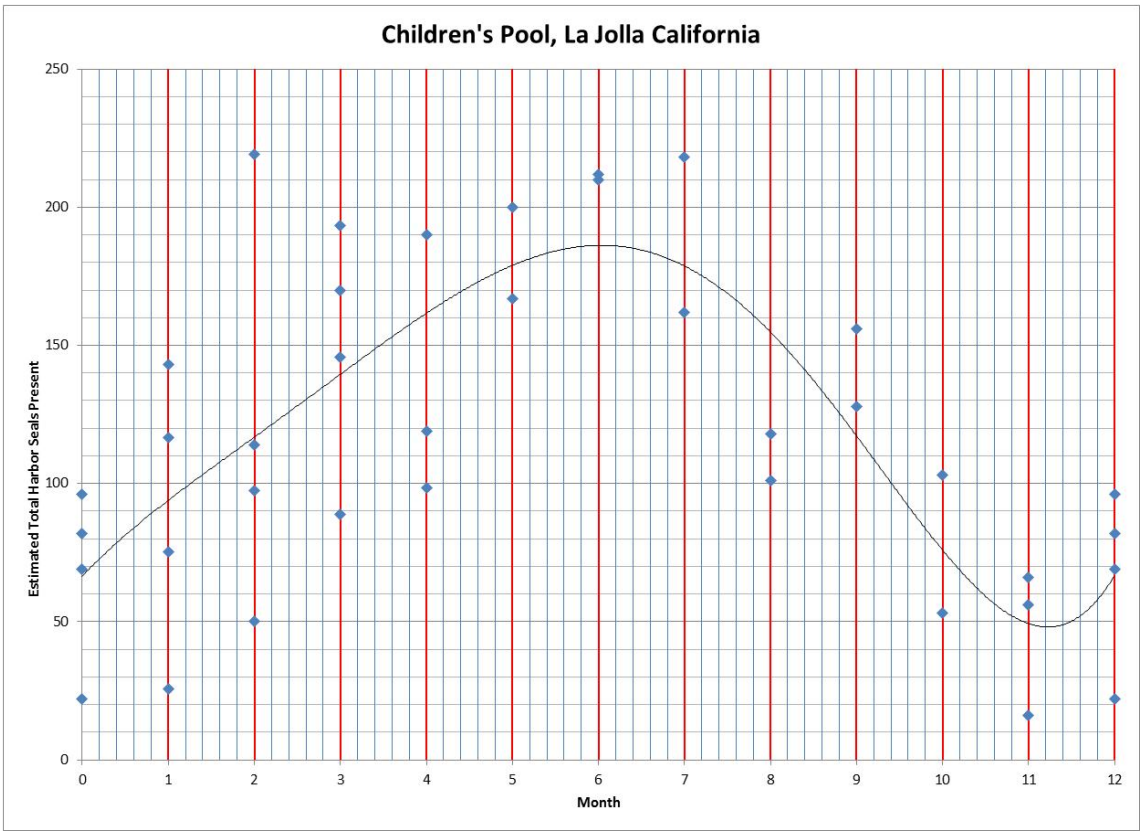

Figure 1. Estimated total harbor seals by month based on counts at the site by Hanan & Associates, Yochem and Stewart, and Children's Pool docents. The polynomial curve fits to counts by moths was used to estimate harbor seals expected to be hauled-out by day.

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.

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.

Species	Requested Take Authorization (Number of Exposures)	Estimated Number of Individuals Taken	Approximate Percentage of Estimated Stock (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.

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 µPa and 100 dB re 20 µPa 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 μPa (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.

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

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