



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD022

Takes of Marine Mammals Incidental to Specified Activities; 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 construction activities of the Children's Pool Lifeguard Station in La Jolla, CA. 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 take, 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-XD022 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 IHA 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

Section 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 November 26, 2013, NMFS received an application from the City of San Diego, Engineering and Capital Projects Department, requesting an IHA. 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 construction activities of the Children's Pool Lifeguard Station at La Jolla, CA. Because the proposed construction activities were subject to delays and cannot be completed by December 15, 2013, the City of San Diego has requested a renewal of the 2013 to 2014 IHA for an additional year. The construction operations are planned to take place during June 2014 to June 2015 in La Jolla, CA. Regarding the previous IHA, NMFS published a notice in the Federal Register (78 FR 25958) on May 3, 2013, making preliminary determinations and proposing to issue an IHA. The notice initiated a 30-day public comment period. On July 8, 2013, NMFS published a notice in the Federal Register (78 FR 40705) announcing the issuance of an IHA. Additional information on the construction activities at the Children's Pool Lifeguard Station is contained in the IHA application, which is available upon request (see ADDRESSES).

Description of the Proposed Specified Activity

The Children's Pool was created in 1931 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 beachcombing. The Children's Pool and nearby shore areas (i.e., shoreline, beaches, and reefs of La Jolla) are used by swimmers, sunbathers, SCUBA divers and snorkelers, shore/surf fishermen, school classes, tide pool explorers, kayakers, surfers, boogie and skim boarders, seal, sea lion, bird and nature watchers 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 previous 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 overall project includes the demolition of the existing lifeguard station and construction of a new, three-story, lifeguard station on the same site. Demolition of the existing lifeguard station was completed during 2013 and construction of the new lifeguard station is expected to be completed during 2014. 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 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° 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 μ 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 or manufacturer's measurement data based on the planned equipment (i.e., a backhoe, dump truck, cement pump, air compressor, electric screw guns, jackhammers, concrete saw, chop saw, and hand tools) to be utilized on the proposed project site. Operation of the equipment is the primary activity within the range of construction of activities that is likely to affect marine mammals by potentially exposing them to in-air (i.e., airborne or sub-aerial) noise. Generally, harbor seals are considered skittish and have the tendency to react or flush into the water at low levels of sound and/or movements. While a range of behavioral responses can be expected, it is difficult to predict what activities might cause noticeable behavioral reactions with Pacific harbor seals at this site. During the demolition and construction activities in 2013, on occasion harbor seals did alert and/or flush due to equipment noises or visual cues while at other times there were no reactions to the same stimuli. Children's Pool is a highly disturbed haul-out site and rookery, and the harbor seals observed at this location are unusually tolerant to the presence of humans, and do not respond in the same manner when exposed to stimuli (e.g., laughing, clapping, stomping, climbing, snorkeling, swimming, wading, traffic, sirens, barking dogs, and road construction) when compared to the behavior of other harbor seals in other "non-urbanized" areas (Yochem and Stewart, 1998; Hanan, 2004; Hanan & Associates, 2011; Hanan, 2005) (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 μ Pa, including

65 days of 100 to 110 dB re 20 μ 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). During 2013, measured sound levels from the demolition equipment reaching the pinnipeds did not exceed approximately 90 dB at the haul-out area closest to the demolition and construction and a peak of about 83 dB re 20 μ Pa 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, during, and after the demolition and construction activities.

The previous lifeguard station is located on a bluff above Children's Pool (32° 50' 50.02" North, 117° 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. For public service during demolition and construction of the new lifeguard station, two temporary towers were placed on nearby cliffs and the first temporary tower was removed. The building contractor utilized an excavator, backhoe, concrete saw, and jackhammers for demolishing the previous structure, and the waste materials were loaded into dump trucks to be hauled to an offsite. Material will be hauled to a local offsite 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 previous facility. The new lifeguard facility is an optimal location to provide lifeguard service to the community. The new three-story, building will contain beach access level public restrooms and showers, lifeguard lockers, and sewage pump room; a second level containing two work stations, ready/observation room, kitchenette, restroom, and first aid station; and a 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 was estimated to take approximately 7 months (148 actual demolition and construction days) and be completed by December 15, 2013; however, demolition and construction did not start until later than previously planned due to the presence of nesting migratory birds. There were additional unexpected delays in the demolition due to unforeseen underground structures at the site making it impossible to finish the project by December 15, 2013. Proposed construction activities will generally occur Monday through Friday (no work will occur on holidays) during daylight hours only, as stipulated in the "Mitigated Negative Declaration" and local ordinances. As a modification to the original IHA, the City of San Diego has requested that proposed construction activities be allowed on weekends (i.e., Saturday and Sunday) to ensure completion of the project during 2014. 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.

The City of San Diego completed phases 1 to 4 in December 2013. Construction of phases 5 to 9 will commence in June 2014, thereby necessitating a renewal of the previous IHA.

Detail summary (phases overlap in time):

See the notice of the final IHA for the City of San Diego's demolition and construction activities that was published in the Federal Register on July 8, 2013 (78 FR 40705) for a more detailed summary on phases 1 to 4 (i.e., mobilization and temporary facilities, demolition and site clearing, site preparation and utilities, and building foundation).

(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, and hand/power tools.

Timeframe – Approximately 35 days.

This phase will be completed in 2014 and has a maximum source level of 100 dB.

(6.) Building exterior:

Doors and windows, siding paint, light fixtures, and plumbing fixtures.

Equipment – truck, hand/power tools, and chop saw.

Timeframe – Approximately 4 weeks.

This phase will be completed in 2014 and has a maximum source level of 100 dB.

(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 – Approximately 37 days.

This phase will be completed in 2014 and has a maximum source level of 100 dB.

(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 – Approximately 37 days.

This phase will be completed in 2014 and has a maximum source level of 110 dB.

(9.) Final inspection, demobilization:

System testing, remove construction equipment, inspection, and corrections.

Equipment – truck, and hand/power tools.

Timeframe – Approximately 41 days.

This phase will be completed in 2014 and has a maximum source level of 100 dB.

The exact dates of the proposed activities depend on logistics and scheduling.

Additional details regarding the proposed 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, CA 92037 (32° 50' 50.02" North, 117° 16' 42.8" West. Because the City of San Diego and NMFS are already requiring a moratorium on all proposed

construction activities during harbor seal pupping and weaning (i.e., December 15th to May 30th; see page 5 of the Negative Declaration in the IHA application), work on this project can only be performed between June 1st and December 14th of any year. The City of San Diego is planning to begin/resume the proposed project at the Children's Pool in La Jolla, CA on June 1, 2014, (see page 30 to 31 of the Negative Declaration in the IHA application) with completion of the new lifeguard station to be completed by December 15, 2014. The IHA may extend through June of 2015 to finish the proposed construction activities, if needed. 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 Specified Geographic Area of the Proposed Specified Activity

Three species of pinnipeds are known to or could occur in the Children's Pool proposed 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 immediate vicinity of the activity area; thus, they are likely to be exposed to effects of the proposed specified activities. NMFS and the City of San Diego do not expect incidental take of other marine mammal species from the proposed specified activities. 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 identifies 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 (<u>Eschrichtius robustus</u>)	Coastal and shelf	19,126 (18,107)	DL – Eastern Pacific stock EN – Western Pacific stock	NC – Eastern North Pacific stock D – Western North Pacific stock	Increasing over past several decades
Odontocetes					
Killer whale (<u>Orcinus orca</u>)	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 (<u>Tursiops truncatus</u>)	Offshore, inshore, coastal, estuaries	323 (290) – California Coastal stock	NL	NC	Stable
Long-beaked common dolphin (<u>Delphinus capensis</u>)	Inshore	107,016 (76,224) – California stock	NL	NC	Increasing
Pinnipeds					
Pacific harbor seal (<u>Phoca vitulina richardii</u>)	Coastal	30,196 (26,667) – California stock	NL	NC	Increased in California 1981 to 2004
Northern elephant seal (<u>Mirounga angustirostris</u>)	Coastal, pelagic when not migrating	124,000 (74,913) – California breeding stock	NL	NC	Increasing through 2005, now stable
California sea lion (<u>Zalophus californianus</u>)	Coastal, shelf	296,750 (153,337) – U.S. stock	NL	NC	Increasing
Steller sea lion (<u>Eumetopias jubatus</u>)	Coastal, shelf	72,223 (52,847) – Eastern U.S. stock	DL – Eastern U.S. stock EN – Western U.S. stock	D	Overall increasing, decreasing in California
Northern fur seal (<u>Callorhinus ursinus</u>)	Pelagic, offshore	12,844 (6,722) – California stock	NL	NC – California stock	Increasing
Guadalupe fur seal	Coastal, shelf	7,408 (3,028) –	T	D	Increasing

(<u>Arctocephalus townsendi</u>)		Mexico to California			
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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.

The rocks and beaches at or near the Children's Pool in La Jolla, CA, are almost exclusively Pacific harbor seal hauling-out sites. On infrequent 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 that appearances of California sea lions and northern elephant seals are infrequent, but not rare at Children's Pool (Yochem and Stewart, 1998; Hanan, 2004; Hanan & Associates, 2011). During 2013, the City of San Diego observed one juvenile California sea lion and no northern elephant seals at the Children's Pool.

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 kilometers (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. Harbor seal presence at haul-out sites is seasonal with peaks in abundance during their pupping and molting periods. Pupping and molting periods are first observed to the south and progress northward up the coast with time (e.g., January to May near San Diego, April to June in Oregon and Washington) (Jeffries, 1984; Jeffries, 1985; Huber et al., 2001; Hanan, 2004; Hanan & Associates, 2011). In California, approximately 400 to 600 harbor seal haul-out sites are distributed along the mainland coast and on offshore islands, including intertidal sandbars and ledges, rocky shores and islets, and beaches (Harvey et al., 1995; Hanan, 1996; Lowry et al., 2008). Of these haul-out sites, only 14 locations are rookeries (2 locations have multiple sites, for a total of 17 sites) on or near the mainland of California. Preferred haul-out sites are those that are protected from the wind and waves, and allow access to deep water for foraging (Perrin et al., 2008). Harbor seals are one of the most common and frequently observed marine mammals along the coastal environment.

The population of harbor seals has grown off the U.S. west coast and has led to new haul-out sites being used in California (Hanan, 1996). Pacific harbor seals haul-out year-round 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. According to Yochem (2005), the Children's Pool beach site is used by harbor 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. Harbor seals have been observed hauling-out and documented giving birth at the Children's Pool since the 1990's (Yochem and Stewart, 1998; Hanan & Associates, 2004). It is the only rookery in San Diego County and the only mainland rookery on the U.S. west coast between the border of Mexico and Point Mugu in Ventura County, CA (321.9 km [200 miles]). Also, 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 and mate in nearby areas. Harbor seal numbers have increased since 1979 and seals are documented to give birth on these beaches during December through May (Hanan, 2004; Hanan & Associates, 2011). The official start to pupping season is December 15th. Females in an advanced stage of pregnancy begin to show up on the Children's Pool beach by late October to early November. Several studies have identified harbor seal behavior and estimated harbor seal numbers including patterns of daily and seasonal area use (Yochem and Stewart, 1998; Hanan & Associates, 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.

In southern California, a considerable amount of information is known about the movements and ecology of harbor seals, but population structure in the region is not as well known (Stewart and Yochem, 1994, 2000; Keper et al., 2005; Hanan & Associates, 2011). Linder (2011) suggests that this population moves along the California coast and the beach at Children's Pool is part of a "regional network of interconnected" haul-out and pupping sites. Harbor seals often haul-out in protected bays, inlets, and beaches (Reeves et al., 1992). At and near the Children's Pool, harbor seals haul-out on the sand,

rocks, and breakwater base in numbers of 0 to 15 harbor seals to a maximum of about 150 to 250 harbor seals depending on the time of day, season, and weather conditions (Hanan, 2004, Hanan & Associates, 2011; Linder, 2011). Because space is limited behind the breakwater at the Children's Pool, Linder (2011) predicted that it is unlikely that numbers would exceed 250 harbor seals. Based on monitoring from a camera, Western Alliance for Nature (WAN) reports that during the month of May 2013, at any given time, up to 302 harbor seals were documented resting on the Children's Pool beach with additional harbor seals on the rocks and in the water (Wan, personal communication). Almost every day, except for weekends, the number of harbor seals on the beach was over 250 individuals. During the months of September 2012 to January 2013, the average number of harbor seals on the beach during hours prior to people on the beach or with people behind the rope varied from 83 to 120 animals. During this same period when there were people on the beach with or without the rope, but where people were across the rope, the average varied between 7 to 27, which is significantly less. The weather (i.e., wind and/or rain) as well as the proximity of humans to the beach likely affect the presence of harbor seals on the beach. 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. 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 individual 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 Figure 2 below) based on counts at the Children's Pool by Hanan (2004) and Hanan & Associates (2011), Yochem and Stewart (1998), and the Children's Pool docents (Hanan, 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 (Carretta et al., 2010).

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). They are found from southern Mexico to southwestern Canada. 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° 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 IHA 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

Richardson et al. (1995) has documented changes in behavior and auditory threshold shifts in response to in-air and underwater noise. Behavioral responses to loud noises could include startling, alertness, changes in physical movement, temporary flushing from the beach, site abandonment, and pup abandonment (Allen, 1991; Kastak and Schusterman, 1996; Kastak et al., 1999; Hanan & Associates, 2011). NMFS and the City of San Diego anticipate short-term behavioral impacts on pinnipeds at the Children's Pool to include startling, alertness, changes in physical movement, temporary flushing from the beach, and general diminished use of the haul-out site during the proposed construction activities (Hanan & Associates, 2011).

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 construction activities of the Children's Pool Lifeguard Station at La Jolla, CA discussed above. Several species of marine mammals may potentially occur in the 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 proposed construction activities. Behavioral disturbance may potentially occur as well incidental to the visual presence of humans and proposed construction activities; however, pinnipeds at this site have likely adapted or become acclimated to human presence at this site. These “urbanized” harbor seals do not exhibit sensitivity at a level similar to that noted in harbor seals in some other regions affected by human disturbance (Allen *et al.*, 1984; Suryan and Harvey, 1999; Henry and Hammil, 2001; Johnson and Acevedo-Gutierrez, 2007; Jansen *et al.*, 2006; Hanan & Associates, 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. The vast majority of these visitors have come to the Children’s Pool specifically to watch the harbor seals. A maximum of 15 personnel, at any one time, are expected to be part of the 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 μ Pa for harbor seals and at or above 100 dB re 20 μ Pa for all other pinniped species (Lawson *et al.*, 2002; Southall *et al.*, 2007). The acoustic mechanisms involved entail in-air non-impulsive noise caused by the proposed construction activities. Expected in-air noise levels are anticipated to result in elevated sound intensities near the proposed construction activities. No other mechanisms or sound sources are expected to affect marine mammal use of the area. The other operations and activities associated with the proposed construction activities would not affect the haul-out and would not entail noise,

that is materially different from normal operations at the lifeguard station, to which the animals may be somewhat habituated already.

Since no proposed construction activities will be performed during the pupping and weaning season (i.e., mid-December through mid-May), there will be no impacts on birthing rates or pup survivorship at the Children's Pool. There will be no in-water 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 μ Pa for harbor seals and at or above 100 dB re 20 μ 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 proposed 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 proposed construction activities may affect pinniped behavior throughout the Children's Pool area, i.e., within approximately a few hundred feet of the 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 backhoe, dump truck, air compressor, electric screw guns, jackhammer, concrete saw, and chop saws used for the proposed construction activities. Background noise levels near the Children's Pool are likely already elevated due to normal activities (e.g., human presence and traffic) and the ocean. There have been no studies conducted at the Children's Pool regarding background noise in the area, but the City of San Diego will conduct pre- and post-acoustic monitoring to determine ambient sound levels as well as noise-levels generated from the construction activities. Marine mammals at Children's Pool haul-outs are presumably tolerant and acclimated to the daily coming and going of humans, automobiles, and to other existing activities at the proposed action area. These proposed activities may occur at any time of the day (i.e., during daylight between 7:00 a.m. and 7:00 p.m.) for periods of up to several hours at a time.

Hanan & Associates (2004) noted that harbor seals hauled-out at the Children's Pool are exposed to the constant presence of humans (on the beach, sea wall, lifeguard tower, and sidewalks). 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 a concern (Hanan, 2004; Hanan & Associates, 2011). At this site, the Pacific harbor seals are most disturbed when people get very close to them on the beach (i.e., probably less than 2 to 3 m [6.6 to 9.8 ft]). However, the City of San Diego requested incidental take coverage in case pinnipeds alert and/or flush into the water due to the novel presence, visual stimuli, and/or sounds of construction equipment not

previously experienced by pinnipeds at this location. The contractors will not directly approach the Pacific harbor seals during the construction activities.

At the individual level, a newly arrived pinniped (moved in from another area) may not have acclimated 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 acclimate and not react to humans (unless close to them) or noises at the proposed construction activities site. Observations have shown that loud and startling noises have consistently caused some of the harbor seals at the site to flush into the water, and generally the harbor seals returned to the haul-out site within a short time (Hanan & Associates, 2002; Yochem, 2004; Hanan & Associates, 2011).

Although harbor seals could also be affected by in-air noise and activity associated with proposed construction at the lifeguard station, harbor seals at Children's Pool haul-outs are presumably acclimated to human activity to some extent due to the daily coming and going (i.e., presence) of humans, and to other existing activities in the area. These proposed activities may occur during daylight hours 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 harbor seals could show a behavioral response, despite their tolerance to current levels of

human-generated noise; incidental take by this mechanism may occur during the proposed construction activities.

Harbor seal presence in the activity area is perennial, with daily presence at a nearby haul-out (Seal Rock is several hundred yards east of the Children's Pool site) during the months when the activity would occur. The potentially affected harbor seals include adults of both sexes. The harbor seals at Children's Pool may be non-migratory residents, exhibiting site fidelity at the haul-out sites. Harbor seals often stay within a 50 km (31.1 miles) range of haul-outs, but young individuals and adult males have lower site fidelity and dispersal rates. Adult females are known to mate and give birth in the area where they were born (i.e., high degree of natal philopatry) (Harkonen and Harding, 2001; Linder, 2011). Cannon (2009) documented individuals moving between haul-out sites at Las Islas Coronados, Mexico and the Children's Pool, which are located approximately 50 km apart (Linder, 2011). However, it is possible that at least some of the harbor seals using this site come from moderate distances, as they are known to travel distances up to approximately 550 km (297 nmi) for foraging or mating purposes (Herder, 1986; Linder, 2011; Hanan & Associates, 2011). A study by Greenslade (2002) on diet and foraging ecology suggests that the harbor seals at Children's Pool travel some distance away from the haul-out site to feed, as the main prey species in their diet (i.e., Pacific sanddab and Pacific hake) do not occur in the kelp forest near the La Jolla area (Linder, 2011).

Although harbor seals are tolerant to the presence of humans and other visible and non-visible disturbances, they may display a range of behaviors when exposed to noise from proposed construction activities. Using the webcam, WAN has documented that

when major flushing events occur it can take a day or two for them to return in the same numbers. Videos of these events can be found online at:

<http://www.youtube.com/watch?v=UWH3z2iP1Ms&Feature=youtu.be> and
<http://www.youtube.com/watch?v=VRQyn6IOUxY>.

It is likely that many harbor seals in the “urbanized” population would be affected more than once over the course of the proposed construction period; therefore, it is possible that some measure of adaptation or acclimatization would occur on the part of the harbor seals, whereby they would tolerate elevated noise levels and/or utilize haul-outs relatively distant from the proposed construction activities. This strategy is possible, but it is difficult to predict whether the harbor seals would show such a response. Project scheduling avoids the most sensitive breeding phases of harbor seals. Proposed project activities producing in-air noise would commence in June, after pupping season and when pups have been weaned. Proposed project activities producing in-air noise are scheduled to terminate by the middle of December, which is before adult female harbor seals begin pupping. Visibly pregnant females may begin using this site in November, and perhaps as early as October.

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 proposed 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 proposed 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 generally do not take into consideration the 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 proposed construction activities are beyond or outside the habitat areas where harbor seals and other pinnipeds are found. Visual barriers would be erected to shield construction activities from the visual perception and potentially dampen acoustic effects on pinnipeds. Because the public occasionally harasses the harbor seals with various activities, the NMFS-qualified PSO monitoring the site will make observations and attempt to distinguish and attribute any observed harassment to the public or to the proposed 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-construction conditions soon after the activities are completed which is anticipated to occur before the next pupping season (Hanan & Associates, 2011). 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 proposed 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 proposed construction activities. No aspect of the 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 project (Hanan & Associates, 2011). 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 proposed action will result in no impacts to marine mammal habitat beyond rendering the areas immediately around the Children's Pool less desirable during construction activities of the Children's Pool Lifeguard Station as the impacts will be localized.

Proposed Mitigation

Any Incidental Take Authorization (ITA) issued under section 101(a)(5)(D) of the MMPA, must prescribe, where applicable, 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. In the past, during the pupping season, a rope was placed along the upper part of the beach with signage to inform and designate how close people can come to the haul-out area and the pinnipeds. The timeframe for the rope has been extended so that it is now present year-round. The proposed construction activities are planned to occur outside the harbor seal pupping and weaning periods. Visual and acoustic barriers were constructed in 2013. The visual and acoustic barriers were constructed of plywood, 1.2 to 2.4 m (4 to 8 ft) tall stood on end and held up by wood posts. The barriers were placed at the site with input from NMFS Southwest Regional Office (SWRO) personnel so that they will hide as advantageously as possible the proposed construction activities that may be seen by pinnipeds. The barriers appear to dampen the acoustic sound sources, but do not prevent sound from permeating the environment. The barriers also appear to hide and reduce visual cues that may stimulate behavioral reactions from the pinnipeds on the beach below. As the site is a beach with construction along the cliff and on flat areas above the cliff, a complete barrier cannot be constructed to hide all proposed construction activities for the project. Once the walls of the lifeguard station's building are in place, much of the proposed 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.

As part of the public comment process for the issuance of the previous 2013 IHA, NMFS modified several of the monitoring and mitigation measures included in the proposed IHA (78 FR 25958, May 3, 2013) for practicability reasons, as well as included several additional measures in the final IHA (78 FR 40705, July 8, 2013). These include changing the pupping season from December 15th to May 15th and prohibiting construction activities during this time; extending construction activities from 7:00 a.m. to 7:00 p.m. to help assure that more work is completed during the 2013 construction window; continuing monitoring for 60 days following the end of construction activities; and triggering a shut-down of construction activities in the unexpected event of abandonment of the Children's Pool site. The mitigation measure on scheduling the heaviest construction activities (with the highest sound levels) during the annual period of lowest haul-out occurrence (October to November) was removed as it was included in the City of San Diego's Mitigated Negative Declaration when it was anticipated that the City of San Diego would obtain an IHA in the summer of 2012 and begin demolition and construction activities in the fall of 2012. This is no longer practicable due to logistics, scheduling and to allow the planned activities to be completed before the next pupping season.

The activities 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 (December 15th to May 15th) and for an additional four weeks to accommodate lactation and weaning of late season pups. Thus, construction shall be prohibited from December 15th to June 1st.
- Construction activities shall be scheduled, to the maximum extent practicable, during the daily period of lowest haul-out occurrence, from approximately 8:30 a.m. to 3:30 p.m.; however, construction activities may be extended from 7:00 a.m. to 7:00 p.m. to help assure that the project can be completed during the 2014 construction window. 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 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 m (6 to 8 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, construction activities shall be limited to the period when the species of concern will be least likely to be in the

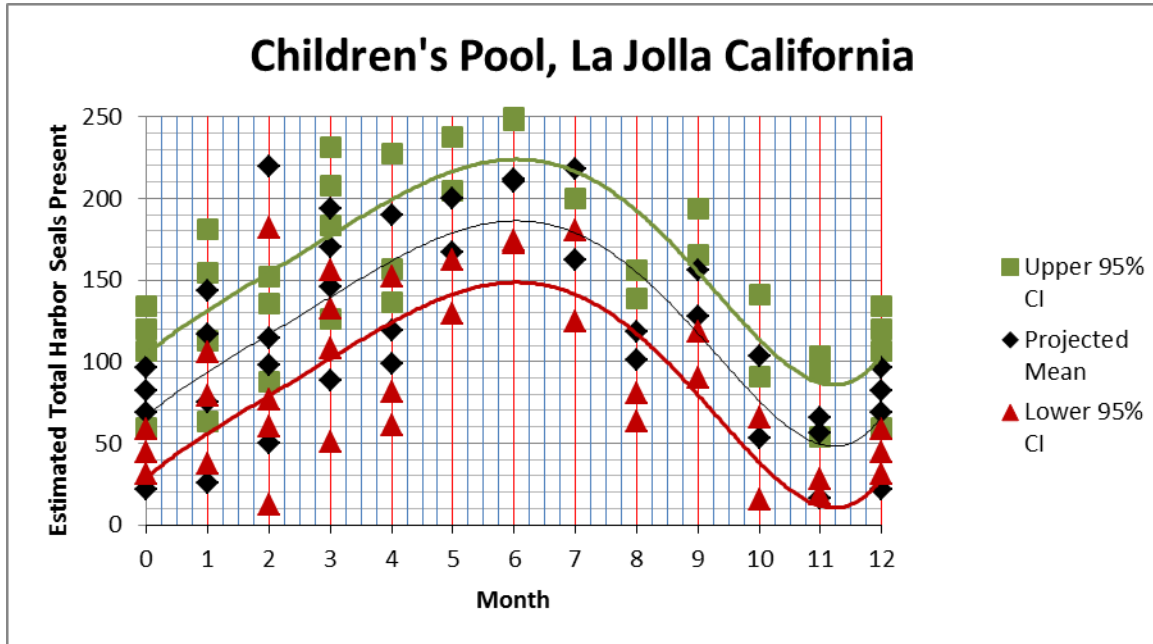
project area. The construction window for construction activities shall be from June 1 to December 15, 2014. The IHA may extend through June 1 through June 27, 2015 to finish the proposed construction activities if needed. Avoiding periods when the highest number of marine mammal individuals are in the action area is another mitigation measure to protect marine mammals from the proposed construction activities.

Abandonment

After the first two months of monitoring during construction activities, the City of San Diego will take the mean number of observed harbor seals at the Children's Pool in a 24-hour period across that two months and compare it to the mean of the lower 95 percent confidence interval in Figure 1 (see below). If the observed mean is lower, the City of San Diego will shut-down construction activities and work with NMFS and other harbor seal experts (e.g., Mark Lowry, Dr. Sarah Allen, Dr. Pamela Yochem, and/or Dr. Brent Stewart) to develop and implement a revised mitigation plan to further reduce the number of takes and potential impacts. Once a week every week thereafter, the City of San Diego will take the same mean of observed harbor seals across the previous three tide cycles (a tide cycle is approximately 2 weeks) and compare it to the 95% lower confidence interval in Figure 1 for the same time period. If the observed mean is lower, the City of San Diego will shut-down and take the action described above. If abandonment of the site is likely, monitoring will be expanded away from the Children's Pool to determine if animals have been temporarily displaced to known haul-out sites in the southern California area (e.g., north end of Torrey Pines, cave on the exposed ocean side of Point Loma, etc.). For the purpose of this proposed action, NMFS will consider the Children's Pool site to possibly be abandoned if zero harbor seals are present each

day during the daytime and nighttime hours for at least three tide cycles (a tide cycle is approximately 2 weeks), but this cannot be confirmed until observations continue to be zero during a full pupping and molting season.

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 months, which includes the projected mean as well as the upper 95% and lower 95% confidence intervals, was used to estimate harbor seals expected to be hauled-out by day.



More information regarding the City of San Diego's monitoring and mitigation measures, for the proposed 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.

NMFS has determined that the proposed mitigation measures will effect the least practicable adverse impact on the species or stocks of marine mammals in the action area.

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, where applicable, set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104

(a)(13) require 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 formally 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 construction activities by NMFS-approved PSOs with high-resolution binoculars and handheld digital sound level meters (measuring devices). PSOs will observe from a station along the breakwater wall as well as the base of the cliff below the proposed construction area. PSOs will be on site approximately 30 minutes before the start of 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 and maintained on 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 proposed construction site in their initial survey prior to the 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 the proposed construction activities. The City of San Diego has modified its monitoring program to include 60 days of monitoring post- construction activities. Following construction, the City of San Diego will have a program of onsite PSOs that will randomly select a day per week to monitor. During the proposed construction activities, 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 proposed construction. The City of San Diego

plans 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 WAN’s La Jolla Harbor Seal Webcam was attached to the old (now demolished) lifeguard station and is no longer available online (http://www.wanconservancy.org/la_jolla_harbor_seal_earthcam.htm); therefore, the City of San Diego cannot do periodic checks using the webcam for monitoring purposes as required during the 2013 IHA. The City of San Diego has stated that there is no suitable place to mount the camera at the construction site. The camera was not expected to replace NMFS-qualified PSOs at the site making accurate counts, measuring sound levels and observing the public and the construction, as well as the harbor seals. In the old camera view, a person may be able to see visual evidence of Level B harassment, but it probably would not be able to be distinguished between harassment from construction activities and the public since the camera has a limited scope and only shows the Children’s Pool beach and pinnipeds (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) The PSO shall be approved by NMFS prior to construction activities.

(2) The NMFS-approved PSO shall attend the project site prior to, during, and after construction activities cease each day throughout the construction window.

(3) The PSO shall search for marine mammals within the Children's Pool area.

(4) The PSO shall be present during construction activities to observe for the presence of marine mammals in the vicinity of the specified activity. All such activity will occur during daylight hours (i.e., 30 minutes after sunrise and 30 minutes 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 threshold 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, 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 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;
- 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 proposed 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 construction activities. A draft final report must be submitted to NMFS within 90 days after the conclusion of the 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 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 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 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 City of San Diego discovers a live stranded marine mammal (sick and/or injured) at Children's Pool, they shall immediately contact Sea World's stranded animal hotline at 1-800-541-7235. Sea World shall also be notified for dead stranded pinnipeds so that a necropsy can be performed. In all cases, NMFS shall be notified as well, but for immediate response purposes, Sea World shall be contacted first.

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 West Coast Regional Stranding Coordinator (Justin.Greenman@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 West Coast Regional Office (1-866-767-6114) and/or by email to the West Coast Regional Stranding Coordinator (Justin.Greenman@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 the City of San Diego 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 West Coast Regional Office (1-866-767-6114) and/or by email to the West Coast Regional Stranding Coordinator (Justin.Greenman@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. Activities may continue while NMFS reviews the circumstances of the incident.

Estimated Take by Incidental Harassment

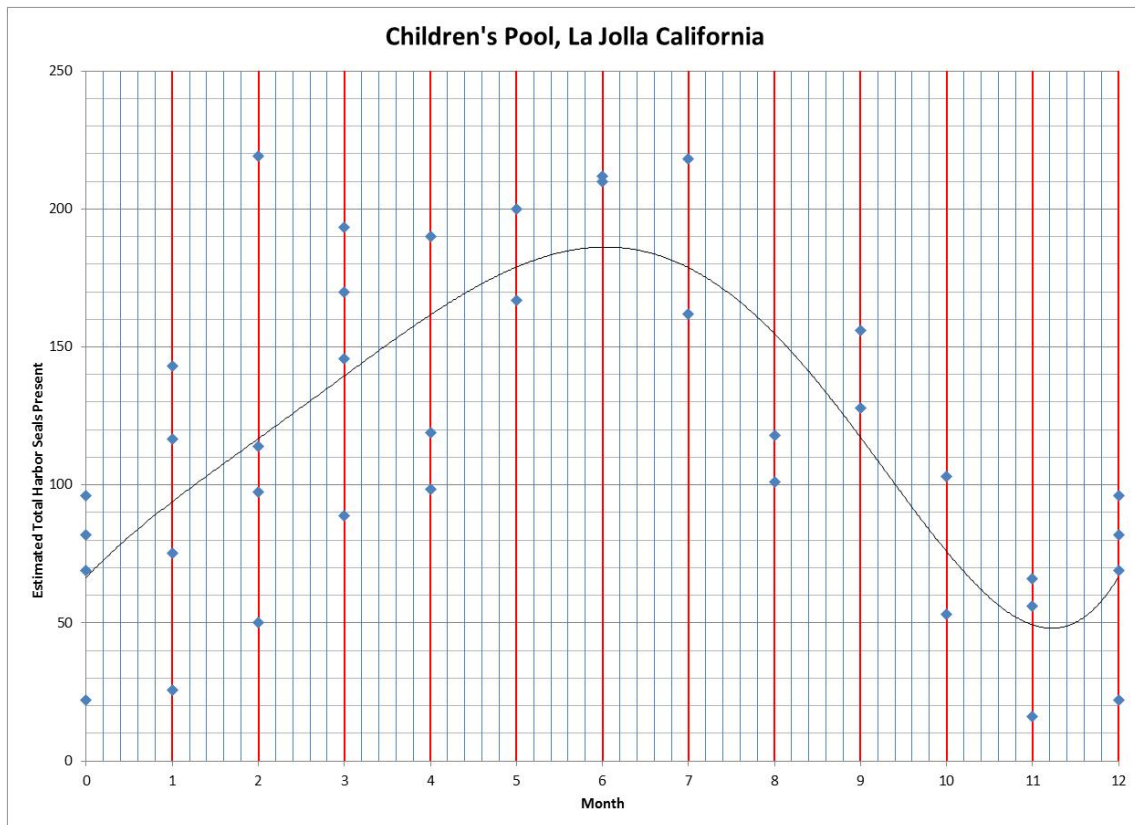
Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal 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 construction 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 proposed 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; Hanan & Associates, 2011) (see <http://www.youtube.com/watch?v=4IRUYVTULsg>).

With proposed construction activities scheduled to begin in June 2014, 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 10,000 takes (i.e., approximately 2,947 adult males and 2,211 juvenile males, 2,842 adult females and 2,000 juvenile females based on age and sex ratios presented in Harkonen *et al.*, 1999) over the entire duration of the 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 2 of the IHA application).

Figure 2. 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 months 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 proposed construction site (65 days), there could be a maximum of approximately 10,000 incidental takes (i.e., exposures) of approximately up to 600 individual Pacific harbor seals over the duration of the activities. The estimated 600 individual Pacific harbor seals will be taken by Level B harassment multiple times during the proposed 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) 10,000 Pacific harbor seals, 100 California sea lions, and 25 northern elephant seals, which would equate to 600, 2, and 1 individuals, respectively, being exposed multiple times. 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 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 (i.e., if it is from human presence, construction activities, or other).

Table 2. Summary of the anticipated incidental take by Level B harassment of pinnipeds for the City of San Diego’s proposed construction activities generating in-air noise at the Children’s Pool Lifeguard Station in La Jolla, CA.

Species	Requested Take Authorization (Number of Exposures)	Estimated Number of Individuals Taken	Approximate Percentage of Estimated Stock (Individuals)
Pacific harbor seal	10,000	600	1.98
California sea lion	100	2	<0.01
Northern elephant seal	25	1	<0.01

Encouraging and Coordinating Research

Each 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. NMFS has encouraged the City of San Diego to work with WAN to review and analyze any available data to determine baseline information as well as evaluate the impacts from the construction activities on the pinnipeds at the Children’s Pool.

Analysis and Preliminary Determinations

Negligible Impact

Negligible impact is “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” (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals

that might be “taken” through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

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 construction activities, and none are 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 only temporary and minor behavioral impacts.

As discussed in detail above, the proposed project scheduling avoids sensitive life stages for Pacific harbor seals. Proposed project activities producing in-air noise would

commence in June and end by December 15th. June 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. The December 15th end date should provide more protection for the pregnant and nursing harbor seals in case they give birth before January 1st; however, most births occur after the beginning of January. Table 2 of this document outlines the number of requested Level B harassment takes that are anticipated as a result of these proposed 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., California stock of Pacific harbor seals, U.S. stock of California sea lions, and California breeding stock of northern elephant seals), particularly given the NMFS and the applicant’s plan to implement required 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 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 proposed 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 proposed 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 proposed study area. To protect these animals (and other marine mammals in the proposed action area), the City of San Diego shall schedule 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; limit activities to the hours of daylight; erect a temporary visual and acoustic barrier; use PSOs and prohibit construction activities during harbor seal pupping season. 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 proposed activity is not expected to impact rates of recruitment or survival.

Small Numbers

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 proposed IHA. It is estimated that up to 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 California, U.S., and California breeding 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 μ Pa and 100 dB re 20 μ 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 proposed construction activities will exceed 110 dB at the source and no measured sounds approached that sound level in 2013.

While behavioral modifications, including temporarily vacating the area during the proposed 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 proposed activities, have led NMFS to 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 proposed construction activities, the requirement to implement mitigation measures (e.g., prohibiting construction activities during pupping season, scheduling operations to periods of the lowest haul-out occurrence, visual and acoustic barriers, and the addition of a new measure that helps protect against unexpected abandonment of the site), and the inclusion of the monitoring and reporting measures, will reduce the amount and severity of the potential impacts from the proposed activity to the degree that will have a negligible impact on the species or stocks in the proposed action area.

NMFS has preliminarily determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of the proposed construction activities at the Children's Pool Lifeguard Station in La Jolla, CA, June 2014 to June 2015, 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

There are not relevant subsistence uses of marine mammals implicated by this action in the action area (off of southern California in the northeast Pacific Ocean). Therefore, NMFS has determined that the total taking of affected marine mammal species

or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

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

To meet NMFS's National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) requirements for the issuance of an IHA to the City of San Diego, NMFS prepared an Environmental Assessment (EA) in 2013 for a similar activity titled "Environmental Assessment on the Issuance of an Incidental Harassment Authorization to the City of San Diego to Take Marine Mammals by Harassment Incidental to Demolition and Construction Activities at the Children's Pool Lifeguard Station in La Jolla, California" to comply with the Council of Environmental Quality (CEQ) regulations and NOAA Administrative Order (NAO) 216-6. NMFS will evaluate the proposed action to determine whether the 2013 EA supports the City of San Diego's 2014 IHA request.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the City of San Diego for conducting construction activities at the Children's Pool Lifeguard Station in La Jolla, CA, 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. The proposed IHA language is provided below:

City of San Diego, Engineering and Capital Projects Department, 600 B Street, Suite 800, MS 908A, San Diego, California 92101-4502, is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1371(a)(5)(D)), to harass small numbers of marine mammals incidental to the construction activities at the Children's Pool Lifeguard Station, June 2014 through June 2015, contingent upon the following conditions:

1. This Authorization is valid from June 28, 2014 through June 27, 2015.
2. This Authorization is valid only for the construction activities at the Children's Pool Lifeguard Station that shall occur in the following specified geographic area:

The La Jolla Children's Pool Lifeguard Station at 827 ½ Coast Boulevard, La Jolla California 92037 (32° 50' 50.02" North, 117° 16' 42.8" West), as specified in the City of San Diego's Incidental Harassment Authorization application.

3. Species Authorized and Level of Takes

(a) The incidental taking of marine mammals, by Level B harassment only, is limited to the following species in the La Jolla, California area:

- (i) Pinnipeds - see Table 2 (above) for authorized species and take numbers.
- (ii) If any marine mammal species are encountered during construction activities that are not listed in Table 2 (above) for authorized taking and are likely to be exposed to sound pressure levels (SPLs) at or above 90 decibels (dB) re 20 µPa for harbor seals and/or at or above 100 dB re 20 µPa for all pinniped species except harbor

seals (for in-air noise), then the Holder of this Authorization must shut-down operations to avoid take.

(b) The taking by injury (Level A harassment), serious injury, or death of any of the species listed in Condition 3(a) above, or the taking of any kind of any other species of marine mammal, is prohibited and may result in the modification, suspension or revocation of this Authorization.

4. The methods authorized for taking by Level B harassment are limited to acoustic-generating equipment sources (e.g., backhoe, dump truck, cement truck, air compressor, electric screw guns, jackhammer, concrete saw, chop saw, and hand tools) without an amendment to this Authorization:

5. The taking of any marine mammal in a manner prohibited under this Authorization must be reported immediately to the Office of Protected Resources, National Marine Fisheries Service (NMFS), at 301-427-8401.

6. Mitigation and Monitoring Requirements

The Holder of this Authorization is required to implement the following mitigation and monitoring requirements when conducting the specified activities in order to achieve the least practicable adverse impact on affected marine mammal species or stocks:

(a) The construction activities shall be prohibited during the Pacific harbor seal pupping season at Children's Pool (December 15th to May 15th) and for an additional two weeks to accommodate lactation and weaning of late season pups. Thus, construction shall be prohibited from December 15th to June 1st.

(b) The construction activities shall be scheduled Monday through Friday; however, they may continue on weekends to ensure completion of the project in 2014. To the maximum extent practicable, the construction activities shall be conducted from approximately 8:30 a.m. to 3:30 p.m., during the daily period of lowest haul-out occurrence; however, construction activities may be extended from 7:00 a.m. to 7:00 p.m. (i.e., daylight hours) to help assure that the project is completed during the 2014 construction window. Harbor seals typically have the highest daily or hourly haul-out period during the afternoon from 3:00 pm to 6:00 p.m.

(c) A visual and acoustic barrier will be erected and maintained for the duration of the project to shield construction activities from beach view. The temporary barrier shall consist of 1.3 to 1.9 centimeter ($\frac{1}{2}$ to $\frac{3}{4}$ inch) plywood constructed 1.2 to 2.4 meters (4 to 8 feet) high depending on the location. The barriers will be placed at the site with input from NMFS Southwest Regional Office personnel so that they will hide as advantageously as possible the construction activities that may be seen by pinnipeds.

(d) Use a NMFS-approved, trained Protected Species Observer (PSO) to detect, document, and minimize potential impacts from construction activities. The PSO shall attend the project site 30 minutes prior until 30 minutes after construction activities cease each day throughout the construction window. The PSO shall be approved by NMFS prior to construction activities. The PSO shall search for marine mammals using binoculars and/or the naked eye within the Level B (behavioral) harassment zones, which may vary upon the type of in-air sound being produced by the construction activities. The PSO will observe from a station along the breakwater wall as well as the base of the cliff below the construction area. If inclement weather limits visibility within the area of

effect, the PSO will perform visual scans to the extent conditions allow. The PSO will not have to monitor on days or portions of days when there will be little chance of disturbance from construction activities (e.g., nothing visual, sound levels at source less than 90 dB re 20 μ Pa, or all work activities inside the building).

(e) The PSO shall visually scan the action area for the presence of marine mammals at least 30 minutes prior to the start-up and continuously throughout periods of in-air noise-generating activities. Visual scans shall continue for at least 30 minutes after each noise-generating episode has ceased.

(f) The PSO shall use visual digital recordings and photographs to document individuals and behavioral responses to the construction activities. The PSO shall 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 activities or from public stimuli. During these events, pictures and videos will be taken when possible to document individuals and behavioral responses.

(g) A PSO shall record the following information when a marine mammal is sighted:

(i) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), distribution, bearing and distance relative to the sound source(s), group cohesiveness, duration of presence, apparent reaction to the construction activities (e.g., none, avoidance, approach, etc.), direction and speed of travel, duration of presence, and if there are other causes of potential disturbance occurring;

(ii) Date, time, location, activity of construction operations, monitoring and mitigation measures implemented (or not implemented), tidal stage, weather conditions, Beaufort sea state, wind speed, visibility, and sun glare; and

(iii) The data listed under Condition 6(g)(ii) shall also be recorded at the start and end of each observation watch and during a watch whenever there is a change in one or more variables.

(h) A PSO shall also record the time of arrival and departure on site, commencement and cessation of in-air noise construction activities, and presence of humans on the beach. Whenever possible, the PSO should determine as to whether or not the harassment or pinnipeds is attributable to the construction activities and/or the presence of the public on the beach and around the Children's Pool area. A PSO shall record the number of people on the beach and surrounding areas as well as their location relative to the animals.

(i) Establish buffer zones (i.e., where sound pressure levels [SPLs] are at or above 90 decibels (dB) re 20 μ Pa for harbor seals and/or at or above 100 dB re 20 μ Pa for all pinniped species except harbor seals [for in-air noise]) around the construction activities so that in-air sounds associated with the construction activities no longer exceed levels that are potentially harmful to marine mammals.

(j) In-air noise monitoring and reporting shall be performed during the construction activities at and near the Children's Pool Lifeguard Station. The PSO shall have access to handheld digital sound level measuring devices. The study will characterize in-air sound levels in the area related to and in the absence of all construction activities (as a background and baseline for the project), and confirm or

identify harassment isopleths for all types of and construction activities conducted.

Monitoring shall be conducted three to five days prior to construction activities and shall include hourly systematic counts of pinnipeds using the beach, Seal Rock, and associated reef areas to provide baseline data regarding recent haul-out behavior and patterns as well as background noise levels near the time and construction activities. Monitoring shall continue for 60 days following the end of demolition and construction activities.

Following construction, the City of San Diego will have a program where a PSO that will randomly select a day per week to visit the Children's Pool.

(k) After the first two months of monitoring during construction activities, the City of San Diego shall take the mean number of observed harbor seals at the Children's Pool in a 24-hour period across the two months and compare it to the mean of the lower 95 percent confidence interval in Figure 1 (see below). If the observed mean is lower, the City of San Diego shall shut-down construction activities and work with NMFS and other harbor seal experts (e.g., Mark Lowry, Dr. Sarah Allen, Dr. Pamela Yochem, and/or Dr. Brent Stewart) to develop and implement a revised mitigation plan to further reduce the number of takes and potential impacts. Once a week every week thereafter, the City of San Diego shall take the same mean of observed harbor seals across the previous three tide cycles (a tide cycle is approximately 2 weeks) and compare it to the 95% lower confidence interval in Figure 1 for the same time period. If the observed mean is lower, the City of San Diego shall shut-down and take the action described above. If abandonment of the site is likely, monitoring shall be expanded away from the Children's Pool to determine if animals have been temporarily displaced to haul-out sites in the southern California area (e.g., Torrey Pines, Point Loma, etc.).

7. Reporting Requirements

The Holder of this Authorization is required to:

(a) Submit a draft report on all activities and monitoring results to the Office of Protected Resources, NMFS, within 90 days of the completion of the construction activities at the Children's Pool Lifeguard Station. This report must contain and summarize the following information:

(i) Dates, times, locations, weather, sea conditions (including Beaufort sea state and wind speed), and associated activities during all construction activities and marine mammal sightings;

(ii) Species, number, location, distance from the PSO, and behavior of any marine mammals, as well as associated construction activities, observed throughout all monitoring activities.

(iii) An estimate of the number (by species) of marine mammals that: (A) are known to have been exposed to the construction activities (based on visual observation) at received levels greater than or equal 90 dB re 20 μ Pa for harbor seals and 100 dB re 20 μ Pa for all other pinniped species for in-air noise with a discussion of any specific behaviors those individuals exhibited; and (B) may have been exposed (based on reported values and modeling measurements for the construction equipment) to the construction activities in-air noise at received levels greater than or equal 90 dB re 20 μ Pa for harbor seals and 100 dB re 20 μ Pa for all other pinniped species with a discussion of the nature of the probable consequences of that exposure on the individuals that have been exposed. 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 not moving more than 1 m; and

changing direction of current movement by individuals as behavioral criteria for take by Level B harassment.

(iii) A description of the implementation and effectiveness of the: monitoring and mitigation measures of the Incidental Harassment Authorization.

(b) Submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, within 30 days after receiving comments from NMFS on the draft report. If NMFS decides that the draft report needs no comments, the draft report shall be considered to be the final report.

8. In the unanticipated event that the City of San Diego discovers a live stranded marine mammal (sick and/or injured) at Children's Pool, they shall immediately contact Sea World's stranded animal hotline at 1-800-541-7235. Sea World shall also be notified for dead stranded pinnipeds so that a necropsy can be performed. In all cases, NMFS shall be notified as well, but for immediate responses purposes, Sea World shall be contacted first.

Reporting Prohibited Take

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this Authorization, 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 West Coast Regional Stranding Coordinator (Justin.Greenman@noaa.gov). The report must include the following information:

(a) 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 or email, or via telephone.

Reporting an Injured or Dead Marine Mammal with an Unknown Cause of Death

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 West Coast Regional Office (1-866-767-6114) and/or by email to the West Coast Regional Stranding Coordinator (Justin.Greenman@noaa.gov). The report must include the same information identified in the Condition 8(a) above. Activities may continue while NMFS reviews the

circumstances of the incident. NMFS will work with the City of San Diego to determine whether modifications in the activities are appropriate.

Reporting an Injured or Dead Marine Mammal Not Related to the Activities

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 in Condition 2 to 4 of this Authorization (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 West Coast Regional Office (1-866-767-6114) and/or by email to the West Coast Regional Stranding Coordinator (Justin.Greenman@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. Activities may continue while NMFS reviews the circumstances of the incident.

9. A copy of this Authorization must be in the possession of all contractors and PSOs operating under the authority of this Incidental Harassment Authorization.

Request for Public Comments

NMFS requests comment on our analysis, the draft authorization, and any other aspect of the preliminary determinations and notice of the proposed IHA for the City of San Diego's construction activities at the La Jolla Children's Pool Lifeguard Station. Please include with your comments any supporting data or literature citations to help

inform our final decision on the City of San Diego's request for an MMPA authorization.

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: February 4, 2014.

Donna S. Wieting,
Director,
Office of Protected Resources,
National Marine Fisheries Service.

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