

Whose Beach Is It Anyway?
Managing Seals at Children's Pool, La Jolla CA

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Harbor seals have been hauling out and pupping on a public beach in La Jolla, California that was originally constructed as children's swimming beach. There has been and continues to be debate about how the beach should be managed. Should the animals be removed and public access to the beach restored, should the public be excluded to prevent disturbance and harassment of seals, or is there some middle ground?

In 1992, The San Diego City Council received a proposal from the public to establish a Marine Reserve to protect harbor seals and sea lions on Seal Rock, offshore of Children's Pool, in La Jolla Cove. The public's concern was that divers were approaching seals and sea lions hauled out on Seal Rock and adjacent rocks, attempting to touch them and feed them. The public was concerned that the level of harassment was increasing and would ultimately have a negative effect on the seals. The proposal for a reserve was debated at several town council meetings. The question of whether or not a reserve was needed revolved around two questions: 1) Was significant seal harassment occurring on and around seal rock despite protections afforded by the Marine Mammal Protection Act (MMPA), State Offshore Rocks and Pinnacles Reserve, and municipal codes that protect animals; and 2) was Seal Rock being used as a regular haul out, molting, and/or pupping site? In September 1994, the City Council approved the establishment a temporary reserve, for a period of five years, and commissioned a study to address the questions that arose during the debate on the proposed reserve. The City contracted with Hubbs-Sea World Research Institute to conduct the study.

Between November 1995 and September 1997 Yochem and Stewart (1998) used direct observations and time lapse photograph to document the seal's use of the of the reserve and the impact of human activities on the seals at the Seal Rock Marine Mammal Reserve (reserve). Peak numbers of harbor seals hauled out in the reserve were 62 in 1996 and 65 in 1997. The peak number of seals hauled out in the La Jolla area were 166 seals in 1996 and 172 in 1997. Most of the seals documented outside the reserve were documented on the beach at Children's Pool. Two juvenile elephant seals and two sea lions were seen sporadically in the reserve. Approaches by humans and pecking by birds were the most common sources of disturbance, other sources included traffic noises and barking dogs.

A docent program was active for a few months in 1996. While there were too few observations to allow comparison of harbor seal observation before and after the implementation of the program. Yochem and Stewart (1998) reported that their subjective evaluation was that seals were disturbed less often when docents were present.

In 1999 the Council voted to permanently **adopt reserve** with existing boundaries contingent upon approval of the California Coastal Commission. In March of 2001, the California Coastal Commission approved the reserve as a temporary reserve for another 5 years on the condition that the City study the reserve's effectiveness in preventing seal harassment, erect signs regarding the reserve, and continue a volunteer docent program to educate the public about the seals and the laws that protect them.

1. Children's Pool and Water Quality Problems

Children's Pool was created in 1931, by constructing a small breakwater to create a safe swimming area for children. The original **break water** was constructed with four sluiceways to facilitate flushing and sand transport. **In the late 1930's a child drowned while attempting to swim through one of the sluiceways.** In response, the City plugged the sluiceways, thereby precluding the transport of sand. The resulting deposition of sand behind the breakwater created the broad sandy beach that is there today and diminished the size of the protected pool in which children could swim (City of San Diego Managers report 98-29). Children's pool is adjacent to the reserve, and shortly after the debate about the need for protection of animals hauled out on Seal Rock was initiated, harbor seals began hauling out the beach at Children's **pool.**

THIS IS FALSE.

Initially the City tried to manage the beach for shared use. They erected rope barriers and placed "do not disturb the seals" signs to inform the public not to approach or harass the seals. This divided the beach into two sections: one for the seals and one for the people. As the seals persisted on the beach, water quality problems developed. The San Diego County Department of Environmental Health began documenting coliform counts in excess of State water quality standards. The current State standard for safe human contact is 200 coliform bacteria per 100 ml of water. Since the seals began hauling out at Children's **pool** the counts have **exceed** the standard regularly. In the Fall of 1997, counts regularly **exceed** the state standard by an order of magnitude and occasionally reach peak counts of 16,000 coliform bacteria per 100 ml of water. The harbor seals have been confirmed to be the source of the elevated coliform bacteria through DNA testing (City of San Diego Managers report 98-29). The beach has been closed to swimming since September 4, 1997.

Another debate has occurred as to how to manage the beach to address the water quality problem. One side argued the MMPA provides protection for the seals and they must be allowed to occupy the beach unmolested. The other side looks to the conditions in the original State tidelands grant and argue that the beach must be maintained for swimming. In 1931 the site was deeded to the City by the State of California in Tidelands Grant which said "Said lands shall be devoted exclusively to public park, bathing pool for children, parkway, highway, playground, and recreational purposes, and for such other purposes as may be convenient for the full enjoyment of such purposes."

National Marine Fisheries Service (NOAA Fisheries) advised the City, that the MMPA did not preclude the City from reclaiming Children's **pool** if it decided that is what it wanted to do. NOAA Fisheries referred the City to section 109(h) which authorizes local government officials

to take marine mammals for the protection of the public health and welfare, or the nonlethal removal of nuisance animals. In NOAA Fisheries view, the water quality problem created by the harbor seals constituted a public health problem that could be addressed by encouraging (harassing) the animals to haul out elsewhere. Further NOAA Fisheries advised the City that this was a local issue in which the City should have the lead. NOAA Fisheries advised the City it would support whatever approach the City choose and assist in its implementation.

2. Options considered and actions taken

The City considered the following options: 1) Scare the seals away from the beach, 2) scare the seals away from the water of Children's Pool, 3) Relocate the seals, 4) Physically exclude seals from entering Children's Pool, 5) allow public access to the beach at Children's Pool, and 5) reopen plugged sluiceways and dredge the beach to restore original size and contour the beach.

Two options were considered for scaring the seals away. The first, loud noise, was rejected because of disturbance that it would cause to residents and hotel guests adjacent to the beach and the potential for seals to either habituate to the sound or adjust their haul-out pattern to coincide with periods of quiet (e.g. when devices were turned off to comply with local noise ordinances). The second method, harmless prodding, was rejected because of the need for personnel at various times of day and night to ensure the seals would not use the beach. Both methods were expected to result in some negative public reaction.

Excluding seals from the water near Children's Pool was rejected because current methods for excluding animals with either noise or simulated predator sounds and forms were experimental and where they had been tested had proven ineffective as seals acclimate to the devices. A pulse power device was considered but rejected because it was experimental and not approved for use in the vicinity of people.

Relocation was rejected because of the expense involved and the expectation the relocated seals would soon find their way back. Yochem and Stewart (1998) had tagged 10 rehabilitated and released harbor seals that occupied the site and reported their presence across seasons, indicating a level of site fidelity.

Physical exclusion via a net or some other device in the water was rejected because of the limitation it would create for access to the offshore water for divers. It would also present a potential entanglement problem for swimmers and seals.

The City opted to allow increased public use of the beach and to explore unplugging the sluiceways and dredging the beach. In January 1998, the City removed the barriers that had excluded people from the portion of the beach used by the harbor seals. Their thought was that increased presence of humans on the beach might discourage enough seals from hauling out that the coliform counts would fall to a safe range so that swimmers could enter the beach. The removal of the barricade did encourage the public to utilize a greater portion of the beach, but it had the unintended effect of encouraging people to approach close to the animals, to touch them,

or to interact in other ways. Fortunately there were no reported incidents of bites or other injuries to the people that opted to approach the animals, and no reports of physical injury to the animals. The seals demonstrated a great deal of tolerance to disturbance and their numbers did not decline as hoped and neither did the coliform count. In 1999 the city reinstalled the barriers and signs to keep people away from the seals.

Lastly the City considered the reopening of the sluiceways and dredging of the Beach. NOAA Fisheries reviewed the City's proposal, which included the operation of heavy equipment on the beach to sculpt the contours of the beach, and advised the City it should apply for an Incidental Harassment Authorization (IHA). Although the dredging project was intended to address the water quality issue by restoring flushing flows through the pool, at least some thought that the construction noise, reconfigured beach, and restored presence of swimmers might reduce the numbers, or preclude seals from using the beach at Children's pool. NOAA Fisheries processed the permit application, initiated a public comment period on the applications (Federal Register Vol 64, No. 3 page 8548, February 22, 1999), but before the permit was issued the City reconsidered their plan and the Council decided not to fund the project.

NOAA Fisheries has advised the City that given its decision not to proceed, NOAA Fisheries would begin implementing levels of protection commensurate with other pupping beaches and that it would assist in the development of a docent program to facilitate public education. However, NOAA Fisheries acknowledged that the City had the right, under the MMPA, to deal with threats to the public health and welfare and/or to manage the physical structure of the beach to deal with water quality issues if the City ever decided to pursue its IHA permit for the dredging project (Letter James H. Lecky, NOAA Fisheries to Teri Williams, City of San Diego, October 19, 1999).

3. Lessons learned

The City of San Diego was challenged to balance conflicting public views about the future of Children's pool. On one hand the public had been lead to expect that seals and their habitat were in need of protection by the efforts to create a reserve on and around Seal Rock. On the other hand Children's Pool had been established, presumably in perpetuity, as a special place to ensure children had a safe place to swim protected from waves and currents. The City was left to wrestle with these conflicting views with little guidance from NOAA Fisheries.

Absent clear policy on how to decide whether to preserve a public beach for public use or surrender it to an expanding harbor seal population the City arrived at a, in retrospect, dangerous public policy of coexistence on the beach.

I think NOAA Fisheries is correct in recognizing the importance of local government in resolution of this issue. However, absent clear policy and criteria for use of section 109 (h) to conserve public beaches for public use, local governments are likely to continue to struggle in balancing competing public interests. NOAA Fisheries should convene a workshop in cooperation with the Marine Mammal Commission and undertake notice and comment policy

development to address this issue.

Reference

Yochem, P.K., and B.S. Stewart. 1998. Behavioral Ecology and Demography of Seals and Sea lions at the Seal Rock Marine Mammal Reserve. Hubbs-Sea World Technical Report No. 98-282. 11 pp.