



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

9

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

Dear Ms. Fain,

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

Harassment (Level B) means any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

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

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

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



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

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

Sincerely,



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

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