



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

JUN 27 2012

RECEIVED

JUN 28 2012

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

Kanani Brown
Coastal Program Analyst
California Coastal Commission
7575 Metropolitan Drive, Suite 103
San Diego, California 92108

Dear Ms. Brown:

Thank you for contacting NOAA's National Marine Fisheries Service (NMFS), Southwest Regional Office, regarding the City of San Diego Park and Recreation's (City) application to the California Coastal Commission to install and maintain a rope barrier at Children's Pool Beach (CPB), located in La Jolla, California. The hearing will be held on Wednesday, July 11, 2012 in Chula Vista, California. Based on the application and subsequent amendment, the City plans to install a 4 foot high by 152 foot long rope barrier, to be placed in perpetuity, to provide a buffer between people and harbor seals (*Phoca vitulina richardii*). The rope would be attached to the seawall and extend westward 152 feet, leaving a 3 foot opening for public access at the east end near the access stairway. Per your request, this letter provides our comments on the City's application. In order to provide some context for these comments, we have added some background on the Marine Mammal Protection Act (MMPA), harbor seal biology and life history, and the historical and current use of CPB by harbor seals (Appendix 1).

The presence of a harbor seal colony at CPB has been the focus of several lawsuits in the recent past. In 2009, the California State Legislature passed Senate Bill 428, which amended the conditions of the 1931 State trust granting the CPB area tidelands to the City of San Diego. Effective January 1, 2010, the trust was amended to allow for an additional use of the tidelands: a "marine mammal park for the enjoyment and educational benefit of children." While, there is no definition or recognition of the term "marine mammal park" under the MMPA and NMFS' implementing regulations, this amendment of the trust provides the City of San Diego with greater latitude in implementing management actions regarding the harbor seal colony at CPB. In addition, the term "rookery" is not defined in either the MMPA or through its implementing regulations. The American Heritage Science Dictionary (2002) defines a rookery as: "A place where certain birds or animals, such as crows, penguins, and seals, gather to breed." Harbor seals have been observed giving birth at CPB for over 10 years, and the timing

EXHIBIT NO. 12
APPLICATION NO. 6-11-078
NMFS Letter 89
California Coastal Commission

and numbers of pups born are generally predictable from year to year. Therefore, NMFS considers CPB to be a harbor seal rookery and year-round haulout site.

NMFS supports the City's application to install and maintain a rope barrier year-round at CPB, with some reservations, as maintenance of the guideline rope does not ensure that harbor seals will not be harassed. For example, if a harbor seal hauls out on the "human" side of the rope, harassment of that seal may still be considered a violation of the MMPA, even if one is on the "correct" side of the rope. NMFS recommends that the public maintain a distance from any seal, regardless of where they are regarding the guideline rope. For most harbor seal haulout sites along the West Coast of the United States, NMFS recommends a distance of 100 feet. However, with the relatively small area at CPB, NMFS has recommended that the public maintain a distance of at least 50 feet from any seal, while standing on CPB (as opposed to standing on the breakwater). As this is a viewing guideline and not codified in the regulations, NMFS has the flexibility to modify it to meet the individual circumstances of the geographic area and the natural history of the species. However, as a guideline, the distance also does not have the force of law. Harassment is a violation of the MMPA regardless of the distance from which it occurs.

Therefore, NMFS supports establishing the guideline rope year-round, as it would allow at least some measure of public awareness and protection to the harbor seals hauled out on the sand. However, we note that merely abiding by the guideline rope (standing on the "human" side) does not guarantee that a person will not violate the MMPA.

While NMFS has enforcement authority under the MMPA, limited staffing creates a challenge. NMFS has a toll-free hotline (1-800-853-1964) to reports violations of marine laws (including the MMPA). In 2009, this number received a total of 154 calls regarding CPB. Although only three of the 154 calls resulted in a full investigation, all of the calls represent a significant investment for the local NMFS enforcement agent. Under MMPA Section 109(a), no State may enforce a State law or regulation relating to the taking of marine mammals without a transfer of management authority from the Secretary of Commerce or Interior, depending on the species. However, States and local governments are not impeded from taking actions to manage their land consistent with the MMPA, such as erecting rope barriers to protect marine mammals.

Thank you for the opportunity to provide input on the application sent before the California Coastal Commission. We hope that our comments and recommendations will help inform your discussions. If you have any further questions, please do not hesitate to contact Sarah Wilkin at Sarah.Wilkin@noaa.gov or 562-980-3230 or Christina Fahy at Christina.Fahy@noaa.gov or 562-980-4023.

Sincerely,



for Rodney R. McInnis
Regional Administrator

90

Background

Marine Mammal Protection Act

Under the Marine Mammal Protection Act (MMPA), NMFS (exercising the authority of the Secretary of Commerce) is the resource trustee agency for cetaceans and pinnipeds (excluding walrus) in the United States and is responsible for implementing and enforcing the law. The stated goal of the MMPA is to ensure that marine mammal species and stocks do not "diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part" (16 U.S.C. §1361(2)). To implement this goal, the MMPA imposes a general moratorium on the "take" of a marine mammal in U.S. waters. It defines take to mean "to harass, hunt, capture, or kill or attempt to harass, hunt, capture or kill any marine mammal" (16 U.S.C. §1361(13)). Section 117 of the MMPA requires NMFS to prepare stock assessment reports for each marine mammal stock occurring in waters under the jurisdiction of the U.S. These reports describe the geographic range of the stock, including temporal and seasonal variation, minimum population estimates and trends, and estimates of annual human caused serious injury and/or mortality for each stock. Stock assessment reports can be found at: <http://www.nmfs.noaa.gov/pr/sars/>.

Pacific harbor seals - general biology/life history

Pacific harbor seals (*Phoca vitulina richardii*) are widely distributed throughout the North Pacific. Haulout sites are widely distributed throughout the California mainland and on offshore islands, including beaches, rocky shores, and intertidal sandbars. This subspecies inhabits near-shore coastal and estuarine areas from Baja California, Mexico to Alaska. Their migrations are limited to 300-500 kilometers, occasionally traveling these distances to find food or suitable breeding areas. The timing of harbor seal pupping occurs sequentially along the west coast of North America, with the earlier pupping seasons occurring in Baja California and southern California, and later seasons occurring in the Pacific Northwest and British Columbia, Canada. After birth, pups nurse and are dependent on their mothers for approximately 4-6 weeks until weaning. Harbor seals breed shortly after weaning their pups. Delayed implantation of the fertilized blastocyst occurs 1.5 to 3 months following mating. The gestation period is approximately 9 months.

For any individual or group of individuals in a breeding colony, there are two time periods in a given year when non-lethal disturbance or harassment would be the most harmful to harbor seals. The first is any interference with pregnant females that might result in the loss of young prior to birth (either through abortion of a fetus that cannot survive outside of the womb or the premature birth of a pup that lives a short time before dying). This type of reproductive failure can be harmful to the health of that female and, over time, may result in the collapse of the harbor seal colony. The second critical time period is immediately following birth, when mothers and their pups bond, so they can

recognize each other if they become separated. Disruption of the bonding process usually leads to abandonment of the pup and eventual death without human intervention.

Harbor seals at Children's Pool Beach

There have been limited studies focusing on the harbor seals in La Jolla, but the animals likely colonized CPB because it provided suitable habitat. Genetic analyses have not been conducted to determine population structure or the origins of the founding animals for this rookery; however, one reasonable assumption is that they may have originated from some of the offshore islands (e.g., San Clemente Island) in southern California. In addition, there is no evidence that human intervention (via the release of rehabilitated seals) created this colony. Prior to colonization of CPB, some rehabilitated harbor seals were released from multiple La Jolla beaches located near known offshore haulout sites (rocks). However, these releases represent a small number of animals and there is no evidence that those released harbor seals were more likely to haul out on the mainland beaches versus offshore rocks following release. Currently, all harbor seals rehabilitated in San Diego County are released off Point Lorna.

Currently, Pacific harbor seals use CPB to haul out year-round, and to give birth and nurse their pups. Harbor seals historically occupied the offshore rocks near La Jolla, but were not consistently observed on the mainland at CPB until the early 1990's. By 1995, harbor seals were using CPB daily (Yochem and Stewart 1998). This time period coincides with an observed increase in the harbor seal population off California. During this time, individual animals could be observed hauling out in areas containing suitable habitat (Hanan 1996), sometimes leading to the establishment of a haulout site or re-colonization of an historical haulout site. With a sloping, sandy beach that is north-facing and generally protected from tidal influence and high wave action, CPB provides suitable habitat for harbor seals.

The first observed pups confirmed born on CPB occurred in the late 1990's. NMFS conducts a statewide harbor seal census survey every few years and includes the animals at CPB. More frequent observations by volunteer groups and project monitoring reports indicate that the number of pups born annually appears to have stabilized at CPB, now averaging between 40-50 pups. Harbor seals, including those at CPB, display site fidelity, with female harbor seals often remaining close to the area they gave birth.

Harbor seals at CPB are subject to many potential daily urban disturbances- traffic noise, car alarms, slamming doors, people shouting and laughing. Any of these disturbances may provoke a reaction from a harbor seal on the beach. This may include raising their head, looking around, or moving. The most disruptive of human interactions is one that leads to animals flushing into the water, causing animals to expend energy and prevent them from gaining the benefits of hauling out (e.g., rest or thermoregulation). When pups are on the beach, they can be injured or even killed by stampeding adult seals. Biologists have observed that the presence of people on the beach near the hauled out seals or at the water's edge typically results in large numbers of seals flushing (Hanan 2004). By

keeping the public at a distance from hauled out harbor seals, flushing can (in most cases) be prevented.

For the harbor seals hauled out at CPB, the most critical time for protection from disturbance and harassment are during the last months of pregnancy and through pup weaning. The first full-term harbor seal pups are usually born at CPB in January. NMFS has received documented reports of abortions and premature parturition occurring in CPB harbor seals in November and December. Therefore, NMFS generally considers December 1 as the beginning of the pupping season. After birth, pups nurse and are dependent on their mothers for approximately 4-6 weeks until weaning. The last pups of the season (typically born in April) may not wean until the end of May. Therefore, NMFS generally considers May 30 as the end of the pupping season, as this date ensures that the majority of pups will be weaned.

93

Literature Cited

Hanan, D. 1996. Dynamics of abundance and distribution in the Pacific harbor seal, *Phoca vitulina richardsi*, on the coast of California. Doctor of Philosophy dissertation. University of California, Los Angeles. 173 pages.

Hanan, D. 2004. Biological letter report and recommendations for construction regarding pinniped surveys at Children's Pool, La Jolla, California. Report submitted to City of San Diego, Public Building and Parks Division, Engineering and Capital Projects Department, Architectural Engineering and Contracts Division. In partial fulfillment of Fixed Fee Agreement C-12438.

Yochem, P. and B. Stewart. 1998. Behavioral ecology and demography of seals and sea lions at Seal Rock Marine Mammal Reserve. HSWRI Technical Report No. 98-282. Submitted to City of San Diego, Seal Rock Marine Mammal Reserve Ad Hoc Committee.