MARINE MAMMAL COMMISSION

26 May 2015

Ms. Jolie Harrison, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3226

Dear Ms. Harrison:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the City of San Diego's (the City) application seeking authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act (the MMPA) to take small numbers of marine mammals by harassment. The taking would be incidental to reconstruction of the Children's Pool Lifeguard Station in La Jolla, California. The Commission also has reviewed the National Marine Fisheries Service's (NMFS) 19 May 2015 notice (80 Fed. Reg. 28588) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions. The Commission commented on similar applications in 2013 and 2014.

The City demolished the old lifeguard station in 2013 and has been constructing the new station since 2014. Because the construction activities were subject to delays (nesting of migratory birds, unexpected drainage pipe issues, and unexpected demolition and construction delays), the City has requested an additional one-year incidental harassment authorization to finish the construction activities. The new facility would include an observation tower, first aid room, male/female locker rooms, a second observation area, an access ramp for restrooms, a public viewing area, and a plaza. Use of equipment (i.e., backhoe, excavator, dump truck, crane, small drill rig, fork lift, air compressor, jack hammer, and hand/power tools) and increased presence of humans would be the main sources of marine mammal disturbance during the construction period. Activities would occur only during daylight hours.

NMFS preliminarily has determined that, at most, the proposed activities temporarily would modify the behavior of small numbers of harbor seals, California sea lions, and northern elephant seals. It also anticipates that any impact on the affected species and stocks would be negligible. NMFS does not anticipate any take of marine mammals by death or serious injury and believes that the potential for disturbance will be at the least practicable level because of the proposed mitigation measures. The mitigation, monitoring, and reporting measures include—

- prohibiting construction activities during the harbor seal pupping and weaning season (15 December to 1 June);
- requiring the construction activities, to the maximum extent practicable, to occur from 8:30 am to 3:30 pm (a period when relatively few seals are hauled out) but allowing construction activities to occur from 7 am to 7 pm to ensure the activities are completed during this year;

- maintaining temporary visual and acoustic barriers between the construction activities and the haul-out site;
- using trained protected species observers to monitor 30 minutes before, during, and 30 minutes after construction activities;
- conducting in-situ measurements of in-air sound propagation and source levels[1] before and during demolition and construction activities and establishing buffer zones prior to the activities—monitoring harbor seal use 3–5 days prior to the activities and weekly for 60 days after the activities also would be required;
- after the first two months of monitoring, comparing the mean number of harbor seals observed in a 24-hour period during those two months to the mean lower 95 percent confidence interval and comparing the mean across three previous tidal cycles to the lower 95 percent confidence interval once a week thereafter—if any of the means are lower than the 95 percent confidence interval, activities would cease and the City would work with NMFS and harbor seal experts to develop and implement a revised mitigation plan to further reduce the number of takes and potential impacts[2];
- reporting injured and dead marine mammals to NMFS and the local stranding network using NMFS's phased approach and suspending activities, if appropriate; and
- and submitting a final monitoring report.

The Commission concurs with NMFS's preliminary finding and recommends that NMFS issue the requested incidental harassment authorization, subject to inclusion of the proposed mitigation, monitoring, and reporting measures. Please contact me if you have questions regarding the Commission's recommendation.

Sincerely,

Rebecca J. Lent, Ph.D.
Executive Director

[1] To better assess in-air sound propagation and source levels, the distance from the sound meter to each sound-producing activity when conducting sound measurements shall be noted.
[2] If abandonment of the site is likely, monitoring would 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, the cave on the exposed ocean side of Point Loma, etc.).

Public comment on the Children's Pool lifeguard construction project IHA 0648-XD807

Now that the Tower project is sure to be done, the story of the South Casa Beach Seal Rookery and its survival can be told. The South Casa Beach rookery was recognized at the 2009 SRG by NOAA biologists.

"*South Casa Beach has had the first harbor seal pups born there, and the rookery appears to be expanding*". Three seasons ago I was sitting on South Casa Beach when a large seal traversed the beach to lie down and have her pup near me.
https://www.youtube.com/watch?v=3jquHtJJ0vw
South Casa was shown in the original IHA area map under the west side of the tower and labeled "South

Casa Beach haulout". Without rookery status South Casa Beach was left open to the public in the Coastal Permit for the construction while Children's Pool beach was made legally closed for an extended "pupping season". Polite recommendation against closure from NOAA West Office of Protected Resources was ignored.

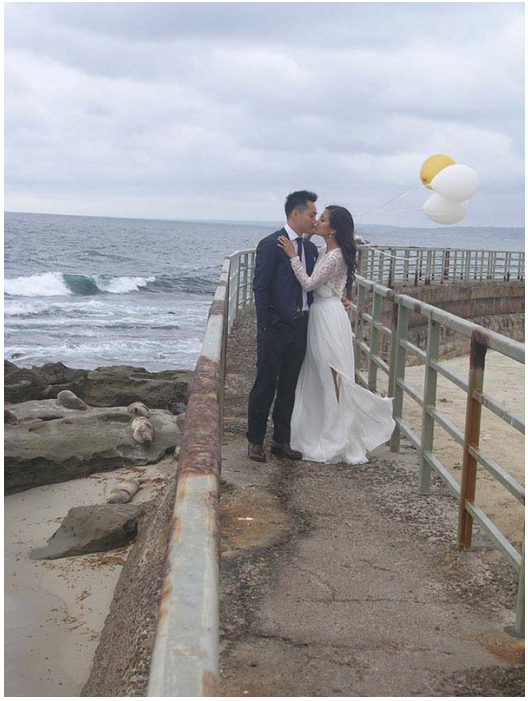
The Coastal Commission had granted a closure permit for Children's Pool based on an old NOAA website that showed no data for harbor seals on the entire So. California mainland except at Children's Pool. This was taken as proof harbor seals are federally recognized as locally endangered. The South Casa rookery was an inconvenient exception. Self-appointed seal protectors that had fought to close the Children's Pool stayed away from South Casa. This is the only documentation of what happened.

As winter of 2014 approached, seals gathered on both beaches, one with complete protection from the public, South Casa with none. In January 2014, construction ceased and South Casa Beach was left open to the public while Children's Pool was a fenced off "rookery". San Diego was under no obligation to protect the seals on South Casa Beach and might have assumed that any seals would prefer the complete safety of the legally closed Children's Pool just around the corner. Such was not the case.

On the far (west) side of the seawall, the South Casa seals were not visible from the street and a new sand area was theirs for the taking. It was off season. The Ranger could not see that area, and was not assigned there anyway. The seals were on their own. When the Ranger was advised of the South Casa seals and people taking "selfies" with the seals and their pups he could not go look. I asked to show him the seals so they could be included in his census, but his supervisor advised that beach was "not in his commission". Lifeguards had a good view of the rookery but had no reason to pay attention. But locals found out, and went to stand around next to those seals. The remarkable happened. The seals took it in stride and accepted people for the slow moving harmless nuisances they seemed. The photo record of this inadvertent experiment has been seen nowhere else and there are some simple lessons to learn.

It could have been better handled

People liked to view seals from the sea wall and had they been able, fewer would have thought to approach the South Casa seals by land. But the City had closed the sea wall without a permit. People simply climbed the rail view both colonies at once. I put up a sign for those that would do that, but it was removed. People wanted to know how to treat the seals right but had to guess.



Mother seals don't like other seals

Avoiding people was not as important to mother seals looking for a quiet place to nurse their pups as getting away from boisterous males or pups not their own. If people were in the way, many seals would not hesitate to just head for a choice sandy spot anyway. They learned that people retreat rather than defend a position as a seal would. It depended on how experienced a seal was. Many had shared territory with people all their lives.

Seals are afraid of anything they don't know, and conversely….

Conversely, they will learn to ignore anything ubiquitous that does not hurt them. Researchers in the 80's sought "natural seals" in huge remote colonies. Scientists found it impossible to approach those

seals closer than 100 yards and that was taken as their instinctive fear limit of humans. Many animals do have an inborn in fear of their foremost predator's shape so this made sense. Scientists were dumfounded 20 years ago when seals in La Jolla would haul out next to people after a few years of release of rehab rescued seals in the La Jolla area. Car horns, helicopters, low planes, screaming children all eventually meant nothing to them. This adaptivity was the key to the persistence of the Shared Use South Casa Rookery. And it became a living laboratory to observe close up how seals get by.

Seals know when people are there

A seal has acute senses. Human-used beaches reek of us. A seal can echolocate footsteps in sand. It does not have to look up. Nobody fooled them, nobody forced seals to join us. They also knew the people-less Children's Pool was right around the corner.

Mother seals do not abandon viable pups

In the wild, scientists (all male) had seen mother seals streak into the water if disturbed, leaving their pups behind. It was concluded harbor seals are emotionally overwrought by motherhood and will readily abandon their pups to save themselves. Don't be silly. A mother seal cannot pick up, or carry or drag a pup. She can only alert the pup to follow – NOW, and lead the way to safety; the water. At South Casa, I got video of mother seals finding their pups, perhaps after foraging, and the mother immediately tore off to the water with the pup in hot pursuit. The system works. See the video link at the end.

Seals can get used to anything that does not bite

Seals are semi-arctic and built to conserve energy. Spooking into cold water for the same thing over and over would be counter-survival. A few years ago much was made of videos at Children's Pool of people trying to pet seals and the seal then would run into the water or at least rear up. (Seals don't touch each other on land and doing so often causes a row) This year at South Casa some children noted which seals were the most acclimated and got to pet them without the seals reacting adversely. Whether the seals liked it cannot be known and "accepted" may be a better word. However, some of our seals will seek petting and rubbing from divers in the water, where they cavort and play contact-nuzzling with each other.

Seals speak body language pretty well

To indicate displeasure, a seal growls, and people respond correctly often moving back or fleeing. No problem. Seals also can do a head-thrust, which humans also understand perfectly. Advancing toward a spot is usually all it takes to make a human retreat, so that works. A common gesture of annoyance is to rake the air with their claws. Because humans do not have claws they often don't understand that one. I have seen people "waving back" as to return a friendly gesture. If seals had fingers they surely would sometimes communicate with us using one.

Seals don't pick fights with land animals; they are not equipped

They are slow on land and have a biting reach of maybe 14". They are fully aware a human is 10 times faster on land but unaggressive, if not polite. People walk up and they walk away. Perceiving conflict or a strange human behavior, a seal just goes in the water, which is equivalent to going into another room for us. Save energy. They nap underwater in the Children's Pool. I see them snoozing in the weeds when I snorkel there. No reason to squabble over a spot to nap. People leave at night anyway.

There are simple rules for being a successful harbor seal:

1. **Keep doing what works**
2. **If anything seems not seem right get in the water first and ask questions later**
3. **Return to places where no predators are seen and there is food**
4. **Do what the big seals do**
5. **Only bite things that are smaller than you are**
6. **If you are a pup, stay with mama. If she slips away, stay put. Mama runs, you keep up. She will drill you on this.**

Summer is starting and the seal population overall is back down to a fraction of the winter's. There are much fewer seals on South Casa Beach now. We will not know until next February if they will return in greater number. But they will be welcome.

Some will claim the photos must have been the moment before the seals all stampeded, or they were dead. For all the interaction, I never witnessed a "stampede". Some of the original video is found at https://www.youtube.com/watch?v=Q15VCGll5XM

Bottom Line

This IHA was overblown and mostly unneeded. The seals at Children's Pool were not even perturbed by heavy machinery. Instead of closing the Children's Pool, which routed people over to South Casa, people just needed education. Simple rules:
"If any seal on the beach stares at you, stop until it no longer pays attention to you. Do not advance straight at an animal while staring at it. Notice no seal touches another; so take a hint. Take care if you crouch because predators do that. If you have not studied the seals for a while, maybe you should stand behind the rope first. If you push in and seals go in the water everybody will be mad at you."

It would be really good if some scientific studies of our seals were made without political expediencies dictating a dogma. Rigid forms to fill demanding certain numbers only reflect rigid thinking, and drive out insights. Dr. Hanan noted in the introduction, it takes 3 days to acclimate a wild seal, not years. See rule 4 above.

Harbor seals can prosper in an urban landscape, adapting to human interaction and even territorially benefitting, as have pigeons, rats, starlings and coyotes. Efforts to fence off humans only delays the acclimation and fences in the seals. They should be able to adapt to new opportunities and spread.