



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

JUN 25 2015

Mr. Jihad Sleiman
Associate Civil Engineer
City of San Diego
Public Works Department
Engineering and Capital Projects Branch
Architectural Engineering and Parks Division
525 B Street, Suite 750, MS908A
San Diego, CA 92101

Dear Mr. Sleiman:

Enclosed is an Incidental Harassment Authorization (IHA) issued to the City of San Diego pursuant to section 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*), to harass small numbers of marine mammals, by Level B harassment, incidental to construction activities at the Children's Pool Lifeguard Station in La Jolla, California during June 2015 to June 2016.

You are required to comply with the conditions contained in the IHA. In addition, you must cooperate with any federal, state, or local agency monitoring the impacts of your activities, and submit a report to the National Marine Fisheries Service (NMFS) Office of Protected Resources within 90 days after completion of the activities authorized herein. The IHA requires monitoring of marine mammals by qualified individuals before, during, and after construction activities, and reporting of marine mammal observations, including species, numbers, and behavioral modifications potentially resulting from this activity.

If you have any questions concerning the IHA or its requirements, please contact Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, at 301-427-8401.

Sincerely,

Donna S. Wieting
Director
Office of Protected Resources

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Enclosure



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Incidental Harassment Authorization

The National Marine Fisheries Service (NMFS) hereby authorizes the City of San Diego, Public Works Department, Engineering and Capital Projects Branch, Architectural Engineering and Parks Division, 525 B Street, Suite 750, MS 908A, San Diego, California 92101, 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 2015 through June 2016, contingent upon the following conditions:

1. Effective Dates

This Authorization is valid from June 28, 2015 through June 27, 2016.

2. Specified Geographic Region

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:

- (a) 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 (IHA) 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 (attached) for authorized species and take numbers.

(ii) If any marine mammal species are encountered during construction activities that are not listed in Table 2 (attached) for authorized taking and are likely to be exposed to sound pressure levels (SPLs) at or above 90 decibels (dB) re 20 µPa for Pacific harbor seals (*Phoca vitulina richardii*) and/or at or above 100 dB re 20 µPa for all pinniped species except harbor seals (for in-air noise), then the City of San Diego 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. Prohibited Take

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 City of San Diego is required to implement the following mitigation and monitoring requirements when conducting the specified activities in order to achieve the least practicable impact on affected marine mammal species or stocks:

Construction Prohibited during Pupping Season

(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.

Daily Construction Timing

(b) The construction activities shall be scheduled Monday through Friday; however, they may continue on weekends to ensure completion of the project in 2015. 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 2015 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.

Visual and Acoustic Barriers

(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 West Coast Regional Office personnel so that they will hide as advantageously as possible the construction activities that may be seen by pinnipeds.

Protected Species Observers

(d) A NMFS-qualified, trained Protected Species Observer (PSO) shall be used to detect, document, and minimize potential impacts from construction activities. The PSO shall attend the project site 30 minutes prior to the start of construction activities 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 (see Table 1 below), 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 commencement activities, and presence of humans on the beach. Whenever possible, the PSO should determine whether the harassment or pinnipeds is attributable to the construction activities and/or to 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.

Buffer Zones

(i) Buffer zones shall be established (*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 (see Table 1 below for buffer zone distances) so that in-air sounds associated with the construction activities no longer exceed levels that are potentially harmful to marine mammals.

In-Air Noise Monitoring

(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 (*e.g.*, construction equipment including backhoe, dump truck, cement truck, air compressor, electric screw guns, jackhammer, concrete saw, chop saw, and hand tools) and in the absence (as a background and baseline [*i.e.*, ambient] for the project) of all construction activities, and confirm or identify harassment isopleths for all types of construction activities conducted. 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. 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 construction activities. Following construction, the City of San Diego shall have a program where a PSO shall randomly select a day per week to visit the Children's Pool.

Potential Abandonment Survey

(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 City of San Diego 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 IHA.

(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 e-mail to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov* and the West Coast Regional Stranding Coordinator (562-980-3230). 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 e-mail, 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 e-mail to *Jolie.Harrison@noaa.gov* and *Howard.Goldstein@noaa.gov*, and the NMFS West Coast Regional Office (1-866-767-6114) and/or by e-mail to the West Coast Regional Stranding Coordinator (562-980-3230). 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 e-mail 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 (562-980-3230), 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 IHA.

Donna S. Wieting

JUN 25 2015

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

Date

Attachments

Attachment

Table 1. Buffer Zone Radii for Estimating Take.

Source In-Air	Predicted Distances from Activity to Isopleths	
	In-Air Level B Harassment Zone for Harbor Seals 90 dB re 20 μ Pa	In-Air Level B Harassment Zone for All Other Pinnipeds 100 dB re 20 μ Pa
Construction Operations	10 m (32.8 ft)	3.16 m (10.4 ft)

Table 2. Authorized Incidental Take Numbers for Each Marine Mammal Species for the City of San Diego's Construction Activities at the Children's Pool Lifeguard Station in La Jolla, California.

Species	Total Authorized Takes at the Children's Pool Lifeguard Station Area (Number of Exposures)	Estimated Number of Individuals Taken by Level B Harassment
Pinnipeds		
Pacific harbor seal (<i>Phoca vitulina richardii</i>)	10,000	600
California sea lion (<i>Zalophus c. californianus</i>)	100	2
Northern elephant seal (<i>Mirounga angustirostris</i>)	25	1

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.

