



MARINE MAMMAL COMMISSION

17 April 2014

Ms. Jolie Harrison, Supervisor
Incidental Take Program
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 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) 11 February 2014 notice (79 Fed. Reg. 8160) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions. The Commission commented on a similar application in 2013.

RECOMMENDATION

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue the incidental harassment authorization, subject to inclusion of the proposed mitigation and monitoring measures.

RATIONALE

In 2013 the City demolished the old lifeguard station that had been condemned since February 2008 and plans to construct a new station at the Children's Pool in 2014. Due to delays in the demolition schedule, 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 and monitoring measures. Those measures include—

- restricting construction activities during the harbor seal pupping and weaning season (15 December to 1 June);
- allowing construction activities to occur only from 8:30 am to 3:30 pm, a period when relatively few seals are hauled out;
- 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 before and during demolition and construction activities and establishing buffer zones prior to the activities;
- 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; and
- reporting injured and dead marine mammals to NMFS and the local stranding network using NMFS's phased approach and suspending activities, if appropriate.

The Commission commends the City for conducting in-situ measurements of in-air sound levels during last year's activities. To better assess in-air sound propagation and source levels of the specific construction activities during this year's activities, the Commission suggests that the City note the distance from the sound meter to each sound-producing activity when conducting sound measurements.

The Commission considers the proposed mitigation and monitoring measures sufficient to avoid significant impacts on harbor seals, California sea lions, and northern elephant seals that might occur in the project area. Therefore, the Commission recommends that NMFS issue the incidental harassment authorization, subject to inclusion of the mitigation and monitoring measures.

The Commission appreciates the opportunity to provide comments on the City's application. Please contact me if you have questions concerning the Commission's recommendations.

Sincerely,



Rebecca J. Lent, Ph.D.
Executive Director