

Management Plan (FMP) until 4:00 p.m., and to hear the Demersal Committee Report from 4:00–5:00 p.m. On Thursday, March 11th, Council convenes at 9:00 a.m. and is scheduled to adjourn at 1:00 p.m.

Agenda items for this meeting include: industry funded data collection and research; bycatch of scup in the squid fishery; gear conflict problems; 1999 Council work plan; discuss Amendment 13 and 14 to the Summer Flounder, Scup, and Black Sea Bass FMP; possible framework management measures under Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass FMP; possible modifications to the summer flounder mortality rate reduction schedule; New England Council management measures for winter flounder; address possibility of interim measures for dogfish; and other fishery management matters.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see ADDRESSES) at least 5 days prior to the meeting date.

Dated: February 17, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011999A]

Small Takes of Marine Mammals Incidental to Specified Activities; La Jolla Children's Pool Beach Management and Water Quality Project

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the City of San Diego's Parks and Recreation Department for authorization to take small numbers of Pacific harbor seals by harassment incidental to excavating and removing beach sand at the La Jolla Children's Pool, La Jolla, CA. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize the City of San Diego to incidentally take, by harassment, small numbers of seals in the above-mentioned area.

DATES: Comments and information must be received on or before March 24, 1999.

ADDRESSES: Comments on the application should be addressed to the Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application and a list of references used in this document may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources at 301–713–2055, or Joe Cordaro, Southwest Regional Office at 562–980–4017.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not

reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the Marine Mammal Protection Act established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA now defines "harassment" as:

...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) 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.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On December 28, 1998, NMFS received a request from the City of San Diego for authorization to take small numbers of Pacific harbor seals (*Phoca vitulina*) and possibly 1 to 2 California sea lions (*Zalophus californianus*) and northern elephant seals (*Mirounga angustirostris*) by harassment incidental to excavating and removing 3,000 yd³ (2,295 m³) of beach sand at the La Jolla Children's Pool.

The La Jolla Children's Pool was constructed in 1931 to provide a sheltered swimming area for children in La Jolla. Over time, the beach behind the breakwater has gradually widened as sand has accumulated in the sheltered pool. By 1998, the shoreline had advanced to near the end of the breakwater, at the mouth of the pool, leaving very little area for recreational swimming. The lack of a protected swimming area and the proximity to dangerous rip current conditions near the breakwater opening have created significant safety concerns.

In addition to the restricted use and associated dangers due to sand accretion, recreational use has been further compromised by a population of harbor seals that regularly use the Children's Pool area as a haul-out area. Seal feces from the concentrated harbor seal population have resulted in fecal coliform bacteria counts that significantly exceed State water quality standards for bathing beaches and body

contact areas. DNA testing has confirmed the harbor seal population as the source of the bacterial contamination. As a result, the Children's Pool has been determined unsafe for human contact and has been closed to the public for all water contact since September 4, 1997. Moreover, the presence of the large seal population attracts large numbers of non-bathing observers to the beach area. This interaction has raised additional safety concerns for both humans and the seals.

The La Jolla Children's Pool Beach Management and Water Quality Project proposes to restore a safe swimming area and acceptable water quality to the pool by reducing the beach width.

Out of 4,200 yd³ (3,213 m³) of sand in the pool area, approximately 3,000 yd³ (2,295 m³) will be excavated and removed to narrow the beach. Approximately 20 truckloads, or 100 yd³ (76.5 m³) per day, will be excavated from the Pool and transported to the disposal site. As a result, it is expected that the sand excavation activity will take up to 30 working days to complete. With a proposed completion date of May 27, 1999, should the timeline require fewer days for completion, the Project proposes using larger trucks to complete the project. After sand removal, the beach profile will be slowly adjusted such that the pool will be deeper and wider at the outer side, and shallower and narrower at the landward side, providing children with a safe area to swim. The City of San Diego expects that the excavation will enlarge the area available for recreational swimming and provide a safe region for the public away from the dangerous rip currents, and, by reducing the area available for harbor seals, water quality levels are expected to return to former levels that were acceptable and safe for human contact.

Description of Marine Mammals Affected by the Activity

General information on harbor seals and other marine mammal species found in Southern California waters can be found in Barlow *et al.* (1995, 1997). Please refer to those documents for information on these species.

Based on the most recent harbor seal counts (23,302 in May/June 1995; Hanan, 1996) and on Hanan's revised correction factor (1.3), the harbor seal population in California is estimated to number 30,293 (Barlow *et al.*, 1997). In California, there are approximately 400 to 500 harbor seal haul-out sites, widely distributed along the mainland and at offshore islands, including intertidal sandbars, rocky shores, and beaches.

In the Children's Pool area, researchers found that the monthly peak counts of harbor seals (based upon ground counts) present during the 2-year survey ranged from 11 to 142 (Yochem and Stewart, 1996). The range of other marine mammals present included 1 to 2 California sea lions and 1 northern elephant seal. While no seal births were observed in the Pool area during the study period, a few nursing pups were observed from April through June, with peak pup counts taking place in June.

Potential Effects on Marine Mammals

The marine mammal most likely to be impacted by the sand removal project is the harbor seal. However, one or two California sea lions and/or northern elephant seals might also be affected. The type of taking anticipated will be incidental harassment caused by the noise of excavation equipment and truck traffic. It is anticipated that the seals may be disturbed and will be flushed from the beach upon initiation of activities on a daily basis, unless they become acclimated to the activity. The number of seals disturbed will vary depending, in part, on the tidal elevation at the nearby haul-out site at Seal Rock at the time of initiation of the activity. Because the project will work only during daylight hours, seals may haul out upon conclusion of the day's activities. Alternatively, due to the activity of heavy machinery required to move the sand off the beach, the harbor seals may avoid the site for the duration of the project and haulout on the nearby Seal Rock Marine Mammal Reserve or at alternate sites. Once the project has been completed, there will be a reduced area for hauling out and increased competition with recreational users which will likely reduce the number of harbor seals returning to the Children's Pool area to haul-out. These seals are expected to utilize Seal Rock or other haulouts in the area. No seals are expected to be seriously injured or killed by this activity.

Monitoring and Reporting

One or more marine mammal biologists will conduct observations on harbor seal behavior before, during, and after the beach excavation project. Impacts will be observed and recorded as the sand removal begins and ends each work day. Upon completion of the project, data will be collected on the harbor seal population at Children's Pool daily for 2 weeks. Data collection format will follow that required for the 1994 to 1996 study conducted on the populations of harbor seals at Seal Rock Marine Mammal Reserve and Children's

Pool by Hubbs-Sea World Research Institute. To assess any seasonal impact on the harbor seal population, quarterly observations will be recorded for a period of 1 year following completion of the project (July and October 1999, and January and April, 2000). A draft report will be submitted to NMFS within 90 days of completion of the 2-week post-project monitoring, and an interim report will be submitted within 90 days after the April 2000 observations. Both the draft and final reports will be subject to review and comment by NMFS. Any recommendations made by NMFS will need to be addressed in a final report prior to acceptance by NMFS.

Conclusions

NMFS has preliminarily determined that the short-term impact of excavating and removing beach sand at the La Jolla Children's Pool will result, at worst, in a temporary modification in behavior by harbor seals and possibly one or two California sea lions and northern elephant seals. While these behavioral modifications, including the permanent vacating the haulout at Children's Pool, may be made by these species to avoid the resultant excavation noise and smaller beach area, this action is expected to have no more than a negligible impact on the species or stocks of these animals. In addition, no take by injury and/or death is anticipated or authorized.

Proposed Authorization

NMFS proposes to issue an incidental harassment authorization to the City of San Diego for possible harassment of small numbers of Pacific harbor seals, California sea lions, and northern elephant seals incidental to excavating and removing beach sand at the La Jolla Children's Pool, La Jolla, CA. NMFS has preliminarily determined that the proposed activities would result in the harassment of only small numbers of each of these species of marine mammals and would have no more than a negligible impact on these marine mammal stocks.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see ADDRESSES).

Dated: February 17, 1999.

P. Michael Payne,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.
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