FMU for which the ACL has been exceeded, are implemented beginning on December 31st of the appropriate year and extending backwards in the year for the number of days necessary to achieve the required reduction in landings. Fishers have expressed to the Council that the timing of these closures results in negative socio-economic impacts. To address this issue, the Council is proposing to develop a mechanism that allows them and NMFS to establish closure dates other than the standard end of the year closures in the event of an overage of the ACL for a specific group of species. There are several approaches that the Council could consider to evaluate and eventually establish a mechanism to guide the selection of AM-based seasonal closures:

Default AM-Closure Date—No Action

Accountability measure-based closures would continue to be implemented beginning on December 31st of the appropriate year and extending backwards in the year for the number of days necessary to achieve the required reduction in landings.

''Customized'' Approach/Mechanism

Change the default AM-closure date (closures start from December 31st going backwards). This procedure to set the timing of the closures would consist of performing an analysis every year for those units that exceeded the ACL over the average of a chosen number of years, and choosing the best date to close the season for the next year based on that specific analysis.

''Upfront'' Timing Approach (Pre-Determined AM-Based Closure Dates)

This approach would also change the default AM-closure date but in a different way than the ''Customized'' Process/Mechanism. This approach would consist of a one-time pre-determination and establishment of closure dates (e.g., start or end date) for all Council FMUs (or alternatively apply the analysis to a selected group of FMUs) and implement through rulemaking. The start or end date would not have to be the same for each FMU.

The goal of this Scoping Hearing is to allow the public to comment on the options listed above and to provide alternative options not yet considered by the Council and NMFS, considering the goals of remaining within the ACL and lessening the socio-economic impact of AMs.

Written comments can be sent to the Council not later than July 25th, 2013, by regular mail to the address below, or via email to *graciela_cfmc@yahoo.com*.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

Dated: June 3, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–13236 Filed 6–5–14; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD022

Takes of Marine Mammals Incidental to Specified Activities; Construction Activities at the Children's Pool Lifeguard Station at La Jolla, California

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

ACTION: Notice; issuance of an Incidental Harassment Authorization (IHA).

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), notification is hereby given that NMFS has issued an IHA to the City of San Diego to take small numbers of marine mammals, by Level B harassment, incidental to construction activities at the Children's Pool Lifeguard Station in La Jolla, California.

DATES: Effective June 28, 2014 through June 27, 2015.

ADDRESSES: A copy of the IHA and the application are available by writing to 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 or by telephoning the contacts listed below (see **FOR FURTHER INFORMATION CONTACT**).

An electronic copy of the IHA application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice, including the IHA application, may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*), directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals, by United States 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.

Authorization for the incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, 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.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) 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 [Level B harassment].

Summary of Request

On November 26, 2013, NMFS received an application from the City of San Diego, Engineering and Capital Projects Department, requesting an IHA for the taking of marine mammals incidental to construction activities. NMFS determined that the IHA application was adequate and complete

on November 26, 2013. NMFS published a notice making preliminary determinations and proposing to issue an IHA on February 11, 2014 (79 FR 8160). The notice initiated a 30 day public comment period.

The City of San Diego will undertake the construction activities between June 2014 and June 2015 at the Children's Pool Lifeguard Station in La Jolla, California. In-air noise generated from equipment used during the construction activities is likely to result in the take of marine mammals. The requested IHA will authorize the take, by Level B (behavioral) harassment, of small numbers of Pacific harbor seals (*Phoca vitulina richardii*), California sea lions (*Zalophus californianus*), and northern elephant seals (*Mirounga angustirostris*) incidental to construction activities of the Children's Pool Lifeguard Station at La Jolla, CA.

NMFS issued the City of San Diego an IHA in 2013 (78 FR 40705, July 8, 2013) for demolition and construction activities at the Children's Pool Lifeguard Station that were scheduled to be completed in 2013. Because the construction activities were subject to delays (e.g., nesting migratory birds, unexpected drainage pipes, unexpected demolition and construction planning, etc.) and could not be completed by December 15, 2013, the City of San Diego requested a renewal of the 2013 IHA for an additional year. Additional information on the construction activities at the Children's Pool Lifeguard Station is contained in the IHA application, which is available upon request (see **ADDRESSES**).

Description of the Specified Activity

Overview

The City of San Diego plans to conduct construction activities at the Children's Pool Lifeguard Station in La Jolla, CA in order to meet the needs of the lifeguards at Children's Pool and the demand for lifeguard services. The overall project includes the demolition of the existing lifeguard station and construction of a new, three-story, lifeguard station on the same site. Demolition of the existing lifeguard station was completed in 2013 and construction of the new lifeguard station is expected to be completed in 2014.

Dates and Duration

The City of San Diego is planning to begin/resume the project at the Children's Pool in La Jolla, CA on June 1, 2014, (see page 30 to 31 of the Negative Declaration in the IHA application) with completion of the new lifeguard station to be completed by December 15, 2014. The City of San Diego and NMFS are requiring a moratorium on all construction activities during harbor seal pupping and weaning (i.e., December 15th to May 30th; see page 5 of the Mitigated Negative Declaration in the IHA application). Therefore, work on this project can only be performed between June 1st and December 14th of any year.

Planned construction activities will generally occur Monday through Friday (no work will occur on holidays) during daylight hours only, as stipulated in the ''Mitigated Negative Declaration'' included in the IHA application and local ordinances. As a modification to the original IHA, the City of San Diego has requested that planned construction activities be allowed on weekends (i.e., Saturday and Sunday to ensure completion of the project during 2014. The exact dates of the planned activities depend on logistics and scheduling. The IHA is valid through June 2015 to allow for construction delays.

Specific Geographic Region

The La Jolla Children's Pool Lifeguard Station is located at 827 ½ Coast Boulevard, La Jolla, CA 92037 (32°50′50.02″ North, 117°16′42.8″ West). The locations and distances (in ft) from the construction site to the Children's Pool haul-out area, breakwater ledge/rocks haul-out area, reef haul-out area, and Casa Beach haul-out area can be found in the City of San Diego's IHA application.

Detailed Description of the Specified Activities

The Children's Pool was created in 1931 by building a breakwater wall which created a protected pool for swimming. Although partially filled with sand, the Children's Pool still has open water for swimming and a beach for sunbathing and beachcombing. The Children's Pool and nearby shore areas (i.e., shoreline, beaches, and reefs of La Jolla) are used by swimmers, sunbathers, SCUBA divers and snorkelers, shore/surf fishermen, school classes, tide pool explorers, kayakers, surfers, boogie and skim boarders, seal, sea lion, bird and nature watchers, and for other activities by the general public. Over the last three years (2010 through 2012), an average of 1,556,184 people have visited the Children's Pool annually, and lifeguards have taken an average of 8,147 preventive actions and 86 water rescues annually (CASA, 2010; 2011; 2012).

The previous lifeguard facility at Children's Pool, built in 1967, was old, deteriorating from saltwater intrusion, and no longer served the needs of the lifeguard staff or the beach-going public. The structure was condemned on February 22, 2008 due to its deteriorated condition and lack of structural integrity. Because the existing building was no longer viable, a temporary lifeguard tower was moved in. However, a new lifeguard station is required to meet the needs of the lifeguards and the demand for lifeguard services.

The overall project includes the demolition of the existing lifeguard station and construction of a new, three-story, lifeguard station on the same site. Demolition of the existing lifeguard station was completed in 2013 and construction of the new lifeguard station is expected to be completed in 2014. The new lifeguard facility is in an optimal location to provide lifeguard service to the community. The new, three-story, building will contain a lower level with beach access level public restrooms and showers, lifeguard lockers, and sewage pump room; a second level with two work stations, ready/observation room, kitchenette, restroom, and first aid station; and a third ''observation'' level with a single occupancy observation space, radio storage closet, and exterior catwalk. Interior stairs will link the floors. The existing below grade retaining walls will remain in place and new retaining walls will be constructed for a ramp from street level to the lower level for emergency vehicle beach access and pedestrian access to the lower level restrooms and showers. A 5.6 m (18.5 ft) wall will be located along the north end of the lower level. The walls will be designed for a minimum design life of 50 years and will not be undermined from ongoing coastal erosion. The walls will not be readily viewed from Coast Boulevard, the public sidewalks or the surrounding community. Enhanced paving, seating and viewing space, drinking fountains, adapted landscaping, and water efficient irrigation will also be included.

The City of San Diego has divided the demolition and construction activities are divided into phases:

(1) Mobilization and temporary facilities;
(2) Demolition and site clearing;
(3) Site preparation and utilities;
(4) Building foundation;
(5) Building shell;
(6) Building exterior;
(7) Building interior;
(8) Site improvements; and
(9) Final inspection and demobilization.

Demolition and construction of the new lifeguard station was estimated to take approximately 7 months (148 actual demolition and construction

days) and be completed by December 15, 2013; however, demolition and construction did not start until later than previously planned due to the presence of nesting migratory birds. There were additional unexpected delays in the demolition due to unforeseen underground structures at the site making it impossible to finish the project by December 15, 2013. The City of San Diego completed phases 1 to 4 by December 2013. Construction of phases 5 to 9 will commence in June 2014, thereby necessitating a renewal of the previous IHA.

The notice of the final IHA for the City of San Diego's demolition and construction activities that was published in the **Federal Register** on July 8, 2013 (78 FR 40705) provides a detailed summary on phases 1 to 4 (i.e., mobilization and temporary facilities, demolition and site clearing, site preparation and utilities, and building foundation). Phases 5 to 9 include (phases overlap in time):

(5) *Building shell:*

Pre-cast concrete panel walls, panel walls, rough carpentry and roof framing, wall board, cable railing, metal flashing, and roofing.

Equipment—crane, truck, fork lift, and hand/power tools.

Timeframe—Approximately 35 days.

This phase will be completed in 2014 and has a maximum source level of 100 dB.

(6) *Building exterior:*

Doors and windows, siding paint, light fixtures, and plumbing fixtures.

Equipment—truck, hand/power tools, and chop saw.

Timeframe—Approximately 4 weeks.

This phase will be completed in 2014 and has a maximum source level of 100 dB.

(7) *Building interiors:*

Walls, sewage lift station, rough and finish mechanical electrical plumbing structural (MEPS), wall board, door frames, doors and paint.

Equipment—truck, hand/power tools, and chop saw.

Timeframe—Approximately 37 days.

This phase will be completed in 2014 and has a maximum source level of 100 dB.

(8) *Site improvements:*

Modify storm drain, concrete seat walls, curbs, and planters, fine grade, irrigation, hardscape, landscape, hand rails, plaques, and benches.

Equipment—backhoe, truck, hand/power tools, concrete pump/truck, and fork lift.

Timeframe—Approximately 37 days.

This phase will be completed in 2014 and has a maximum source level of 110 dB.

(9) *Final inspection, demobilization:*

System testing, remove construction equipment, inspection, and corrections.

Equipment—truck, and hand/power tools.

Timeframe—Approximately 41 days.

This phase will be completed in 2014 and has a maximum source level of 100 dB.

The exact dates of the planned activities depend on logistics and scheduling.

Sound levels during all phases of the project will not exceed 110 dB re 20 µPa at five feet from the sound sources. The 110 dB estimate is based on equipment manufacturers' estimates obtained by the construction contractor. The City of San Diego utilized published or manufacturers' measurement data based on the planned equipment (i.e., a backhoe, dump truck, cement pump, air compressor, electric screw guns, jackhammers, concrete saw, chop saw, and hand tools) to be utilized on the project site. Operation of the equipment is the primary activity within the range of construction activities that is likely to affect marine mammals by potentially exposing them to in-air (i.e., airborne or sub-aerial) noise. During the working day, the City of San Diego estimates there will be sound source levels above 90 dB re 20 µPa, including 65 days of 100 to 110 dB re 20 µPa at the construction site.

On average, pinnipeds will be about 30.5 meters (m) (100 feet [ft]) or more from the construction site with a potential minimum of about 15.2 m (50 ft). During 2013, measured sound levels from the demolition equipment reaching the pinnipeds did not exceed approximately 90 dB at the haul-out area closest to the demolition and construction and a peak of about 83 dB re 20 µPa at the mean hauling-out distance (30.5 m). The City of San Diego used the formula and online calculator on the Web site: *http://sengpielaudio.com/calculator-distance.htm* and measured distances from the sound source to determine the area of potential impacts from in-air sound. No studies of ambient sound levels have been conducted at the Children's Pool, the City of San Diego intends to measure in-air background noise levels in the days immediately prior to, during, and after the construction activities.

Additional details regarding the construction activities of the Children's Pool Lifeguard Station can be found in the City of San Diego's IHA application. The IHA application can also be found online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Comments and Responses

A notice of preliminary determinations and proposed IHA for the City of San Diego's construction activities was published in the **Federal Register** on February 11, 2014 (79 FR 8160). During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (Commission) and a private citizen. The comments are posted online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Following are the substantive comments and NMFS's responses:

Comment 1: The Commission considers the proposed monitoring and mitigation measures sufficient to avoid significant impacts on harbor seals, California sea lions, and northern elephant seals that might occur in the proposed project area. The Commission recommends that NMFS issue the IHA, subject to inclusion of the proposed monitoring and mitigation measures.

Response: NMFS concurs with the Commission's recommendation and has issued the IHA to the City of San Diego.

Comment 2: The Commission commends the City of San Diego 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 2014, the Commission suggests that the City of San Diego note the distance from the sound meter to each sound-producing activity when conducting sound measurements.

Response: NMFS has included this recommendation as a monitoring and reporting measure in the IHA (see ''Mitigation'' and ''Monitoring and Reporting'' sections below for more information).

Comment 3: A private citizen states that pinnipeds will be killed by the proposed activities and believes that the proposed IHA should be denied to the City of San Diego.

Response: As described in detail in the **Federal Register** notice for the proposed IHA (79 FR 8150, February 11, 2014) and this document, NMFS has determined that the City of San Diego's construction activities at the Children's Pool Lifeguard Station in La Jolla, CA, will not cause injury, serious injury, or mortality to marine mammals. The required monitoring and mitigation measures that the City of San Diego will implement during the construction activities will further reduce the adverse effects on marine mammals to the lowest level practicable. NMFS anticipates only behavioral disturbance

to occur during the conduct of the construction activities.

Description of Marine Mammals in the Specified Geographic Area of the Specified Activity

Three species of pinnipeds are known to or could occur in the Children's Pool action area and off the Pacific coastline (see Table 1 below). Pacific harbor seals, California sea lions, and northern elephant seals are the three species of marine mammals that occur and are likely to be found within the immediate vicinity of the activity area. Therefore, these three species are likely to be exposed to effects of the specified activities. A variety of other marine mammals have on occasion been reported in the coastal waters off southern California. These include gray whales, killer whales, bottlenose dolphins, Steller sea lions, northern fur seals, and Guadalupe fur seals. However, none of these species have been reported to occur in the immediate action area of the Children's Pool beach. Therefore, NMFS does not expect, and is not authorizing, incidental take of other marine mammal species from the specified activities. Table 1 below identifies the cetacean and pinnipeds species, their habitat, and conservation status in the nearshore area of the general region of the project area.

TABLE 1—THE HABITAT, ABUNDANCE, AND CONSERVATION STATUS OF MARINE MAMMALS INHABITING THE GENERAL REGION OF THE ACTION AREA IN THE PACIFIC OCEAN OFF THE SOUTHERN COAST OF CALIFORNIA

Species	Habitat	Occurrence	Range	Best population estimate (minimum) [1]	ESA [2]	MMPA [3]
Mysticetes						
Gray whale (*Eschrichtius robustus*).	Coastal and shelf	Transient during season migrations.	North Pacific Ocean, Gulf of California to Arctic—Eastern North Pacific stock.	19,126 (18,107)	DL—Eastern Pacific stock. EN—Western Pacific stock.	NC—Eastern North Pacific stock D—Western North Pacific stock.
Odontocetes						
Killer whale (*Orcinus orca*).	Widely distributed	Varies on inter-annual basis.	Cosmopolitan	354 (354)—West Coast Transient stock.	NL EN—Southern resident population.	NC D—Southern Resident and AT1 Transient populations.
Bottlenose dolphin (*Tursiops truncatus*).	Offshore, inshore, coastal, estuaries.	Limited, small population within 1 km of shore.	Tropical and temperate waters between 45° North and South.	323 (290)—California Coastal stock.	NL	NC.
Long-beaked common dolphin (*Delphinus capensis*).	Inshore	Common, more inshore distribution, year-round presence.	Nearshore and tropical waters.	107,016 (76,224)—California stock.	NL	NC.
Pinnipeds						
Pacific harbor seal (*Phoca vitulina richardii*).	Coastal	Common	Coastal temperate to polar regions in Northern Hemisphere.	30,196 (26,667)—California stock.	NL	NC.
Northern elephant seal (*Mirounga angustirostris*).	Coastal, pelagic when not migrating.	Common	Eastern and Central North Pacific—Alaska to Mexico.	124,000 (74,913)—California breeding stock.	NL	NC.
California sea lion (*Zalophus californianus*).	Coastal, shelf	Common	Eastern North Pacific Ocean—Alaska to Mexico.	296,750 (153,337)—U.S. stock.	NL	NC.
Steller sea lion (*Eumetopias jubatus*).	Coastal, shelf	Rare	North Pacific Ocean—Central California to Korea.	72,223 (52,847)—Eastern U.S. stock.	DL—Eastern U.S. stock. EN—Western U.S. stock.	D.
Northern fur seal (*Callorhinus ursinus*).	Pelagic, offshore	Rare	North Pacific Ocean—Mexico to Japan.	12,844 (6,722)—California stock.	NL	NC—California stock.
Guadalupe fur seal (*Arctocephalus townsendi*).	Coastal, shelf	Rare	California to Baja California, Mexico.	7,408 (3,028)—Mexico to California.	T	D.

NA = Not available or not assessed.
[1] NMFS Marine Mammal Stock Assessment Reports.
[2] U.S. Endangered Species Act: EN = Endangered, T = Threatened, DL = Delisted, and NL = Not listed.
[3] U.S. Marine Mammal Protection Act: D = Depleted, S = Strategic, and NC = Not classified.

The rocks and beaches at or near the Children's Pool in La Jolla, CA, are almost exclusively Pacific harbor seal hauling-out sites. On infrequent occasions, one or two California sea lions or a single juvenile northern elephant seal have been observed on the sand or rocks at or near the Children's Pool (i.e., breakwater ledge/rocks haul-out area, reef haul-out area, and Casa Beach haul-out area). These sites are not usual haul-out locations for California sea lions and/or northern elephant seals. The City of San Diego commissioned two studies of harbor seal abundance trends at the Children's Pool. Both studies reported that appearances of California sea lions and northern elephant seals are infrequent, but not rare at Children's Pool (Yochem and Stewart, 1998; Hanan, 2004; Hanan & Associates, 2011). During 2013, the City of San Diego observed one juvenile and three adult California sea lions and two juvenile northern elephant seals at the Children's Pool.

Pacific Harbor Seal

Harbor seals are widely distributed in the North Atlantic and North Pacific. Two subspecies exist in the Pacific Ocean: *P. v. stejnegeri* in the western North Pacific near Japan, and *P. v. richardii* in the eastern North Pacific. The subspecies in the eastern North Pacific Ocean inhabits near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. These seals do not make extensive pelagic migrations, but do travel 300 to 500 kilometers (km) (162 to 270 nautical miles [nmi]) on occasion to find food or suitable breeding areas (Herder, 1986; Harvey and Goley, 2011). Previous assessments of the status of harbor seals have recognized three stocks along the west coast of the continental U.S.: (1) California, (2) Oregon and Washington outer coast waters, and (3) inland waters of Washington. An unknown number of harbor seals also occur along the west coast of Baja California, at least as far south as Isla Asuncion, which is about 100 miles south of Punta Eugenia. Animals along Baja California are not considered to be a part of the California stock because it is not known if there is any demographically significant movement of harbor seals between California and Mexico and there is no international agreement for joint management of harbor seals. Harbor seal presence at haul-out sites is seasonal with peaks in abundance during their pupping and molting periods. Pupping and molting periods are first observed to the south and progress northward up the coast with time (e.g., January to May near San Diego, April to June in Oregon and Washington) (Jeffries, 1984; Jeffries, 1985; Huber et al., 2001; Hanan, 2004; Hanan & Associates, 2011).

In California, approximately 400 to 600 harbor seal haul-out sites are distributed along the mainland coast and on offshore islands, including intertidal sandbars and ledges, rocky shores and islets, and beaches (Harvey *et al.,* 1995; Hanan, 1996; Lowry *et al.,* 2008). Preferred haul-out sites are those that are protected from the wind and waves, and allow access to deep water for foraging (Perrin *et al.,* 2008). Of the known haul-out sites, 14 locations are rookeries (2 locations have multiple sites, for a total of 17 sites) on or near the mainland of California. The population of harbor seals has grown off the U.S. west coast and has led to new haul-out sites being used in California (Hanan, 1996). Harbor seals are one of the most common and frequently observed marine mammals along the coastal environment.

Harbor seals have been observed hauling-out and documented giving birth at the Children's Pool since the 1990's (Yochem and Stewart, 1998; Hanan & Associates, 2004). Pacific harbor seals haul-out year-round on beaches and rocks (i.e., breakwater ledge/rocks haul-out area, reef haul-out area, and Casa Beach haul-out area) below the lifeguard tower at Children's Pool. According to Yochem (2005), the Children's Pool beach site is used by harbor seals at all hours of the day and at all tides with the exception of occasional high tide/high swell events in which the entire beach is awash. It is one of the three known haul-out sites for this species in San Diego County. These animals have been observed in this area moving to/from the Children's Pool, exchanging with the rocky reef directly west of and adjacent to the breakwater and with Seal Rock, which is about 150 m (492 ft) west of the Children's Pool. Harbor seals have also been reported on the sandy beach just southwest of the Children's Pool. At low tide, additional space for hauling-out is available on the rocky reef areas outside the retaining wall and on beaches immediately southward. Haul-out times vary by time of year, from less than an hour to many hours. There have been no foraging studies at this site, but harbor seals have been observed in nearshore waters and kelp beds nearby, including La Jolla Cove.

The Children's Pool area is the only rookery in San Diego County and the only mainland rookery on the U.S. west coast between the border of Mexico and Point Mugu in Ventura County, CA (321.9 km [200 miles]). The number of harbor seals in this area has increased since 1979, and seals are documented to give birth on these beaches during December through May (Hanan, 2004; Hanan & Associates, 2011). The official start to pupping season is December 15. Females in an advanced stage of pregnancy begin to show up on the Children's Pool beach by late October to early November. Several studies have identified harbor seal behavior and estimated harbor seal numbers including patterns of daily and seasonal area use (Yochem and Stewart, 1998; Hanan & Associates, 2011; Linder, 2011). Males, females, and pups (in season) of all ages and stages of development are observed at the Children's Pool and adjacent areas.

In southern California, a considerable amount of information is known about the movements and ecology of harbor seals, but population structure in the region is not as well known (Stewart and Yochem, 1994, 2000; Keper *et al.,* 2005; Hanan & Associates, 2011). Linder (2011) suggests that this population moves along the California coast and the beach at Children's Pool is part of a ''regional network of interconnected'' haul-out and pupping sites. Harbor seals often haul-out in protected bays, inlets, and beaches (Reeves *et al.,* 1992). At and near the Children's Pool, harbor seals haul-out on the sand, rocks, and breakwater base in numbers of 0 to 15 harbor seals to a maximum of about 150 to 250 harbor seals depending on the time of day, season, and weather conditions (Hanan, 2004, Hanan & Associates, 2011; Linder, 2011). Because space is limited behind the breakwater at the Children's Pool, Linder (2011) predicted that it is unlikely that numbers will exceed 250 harbor seals. Based on monitoring from a camera, Western Alliance for Nature (WAN) reported that during the month of May 2013 up to 302 harbor seals were documented resting on the Children's Pool beach at any given time, with additional harbor seals on the rocks and in the water (Wan, personal communication). Almost every day, except for weekends, over 250 individual harbor seals were present on the beach. During the months of September 2012 to January 2013, the average number of harbor seals on the beach varied from 83 to 120 animals before people entered the beach or when people were behind the rope. During this same period, when people were on the beach and/or across the rope, the average number of harbor seals varied from 7 to 27. The weather (i.e., wind and/or rain) and the proximity of humans to the beach likely affect the presence of harbor seals on the beach.

Radio-tagging and photographic studies have revealed that only a portion of seals utilizing a hauling-out site are present at any specific moment or day (Hanan, 1996, 2005; Gilbert *et al.,* 2005; Harvey and Goley, 2011; and Linder, 2011). These radio-tagging studies indicate that harbor seals in Santa Barbara County haul-out about 70 to 90% of the days annually (Hanan, 1996). The City of San Diego expects harbor seals to behave similarly at the Children's Pool. Tagged and branded harbor seals from other haul-out sites have been observed by Dr. Hanan at the Children's Pool. For example, harbor seals with red-stained heads and coats, which are typical of some harbor seals in San Francisco Bay have been observed at Children's Pool, indicating that seals tagged at other locations and haul-out sites visit the site. A few seals have been tagged at the Children's Pool and there are no reports of these tagged animals at other sites (probably because

of very low re-sighting efforts and a small sample size [10 individuals radio-tagged]), which may indicate a degree of site-fidelity (Yochem and Stewart, 1998). These studies further indicate that seals are constantly moving along the coast including to/from the offshore islands and that there may be as many as 600 individual harbor seals using Children's Pool during a year, but certainly not all at one time.

The City of San Diego has fitted a polynomial curve to the number of expected harbor seals hauling-out at the Children's Pool by month (see Figure 1 of the IHA application and Figure 2 below) based on counts at the Children's Pool by Hanan (2004), Hanan & Associates (2011), Yochem and Stewart (1998), and the Children's Pool docents (Hanan, 2004). A three percent annual growth rate of the population was applied to Yochem and Stewart (1998) counts to normalize them to Hanan & Associates and docent counts in 2003 to 2004.

A complete count of all harbor seals in California is impossible because some are always away from the haul-out sites. A complete pup count (as is done for other pinnipeds in California) is also not possible because harbor seals are precocial, with pups entering the water almost immediately after birth. Population size is estimated by counting the number of seals ashore during the peak haul-out period (May to July) and by multiplying this count by a correction factor equal to the inverse of the estimated fraction of seals on land. Based on the most recent harbor seal counts (2009) and including a revised correction factor, the estimated population of harbor seals in California is 30,196 individuals (NMFS, 2011), with an estimated minimum population of 26,667 for the California stock of harbor seals. Counts of harbor seals in California increased from 1981 to 2004. The harbor seal is not listed under the ESA and the California stock is not considered depleted or strategic under the MMPA (Carretta *et al.,* 2010).

California Sea Lion

The California sea lion is a full species, separate from the Galapagos sea lion (*Zalophus wollebaeki*) and the extinct Japanese sea lion (*Zalophus japonicus*) (Brunner, 2003; Wolf *et al.,* 2007; Schramm *et al.,* 2009). This species of sea lion is found from southern Mexico to southwestern Canada. The breeding areas of the California sea lion are on islands located in southern California, western Baja California, and the Gulf of California. A genetic analysis of California sea lions identified five genetically distinct geographic populations: (1) Pacific Temperate, (2) Pacific Subtropical, (3) Southern Gulf of California, (4) Central Gulf of California, and (5) Northern Gulf of California (Schramm *et al.,* 2009). In that study, the Pacific Temperate population included rookeries within U.S. waters and the Coronados Islands just south of U.S./Mexico border. Animals from the Pacific Temperate population range north into Canadian waters, and movement of animals between U.S. waters and Baja California waters has been documented, though the distance between the major U.S. and Baja California rookeries is at least 740.8 km (400 nmi). Males from western Baja California rookeries may spend most of the year in the United States.

The entire California sea lion population cannot be counted because all age and sex classes are never ashore at the same time. In lieu of counting all sea lions, pups are counted during the breeding season (because this is the only age class that is ashore in its entirety), and the numbers of births is estimated from the pup count. The size of the population is then estimated from the number of births and the proportion of pups in the population. Censuses are conducted in July after all pups have been born. There are no rookeries at or near the Children's Pool. Population estimates for the U.S. stock of California sea lions range from a minimum of 153,337 to an average estimate of 296,750 animals. They are considered to be at carrying capacity of the environment. The California sea lion is not listed under the ESA and the U.S. stock is not considered depleted or strategic under the MMPA.

Northern Elephant Seal

Northern elephant seals breed and give birth in California (U.S.) and Baja California (Mexico), primarily on offshore islands (Stewart *et al.,* 1994) from December to March (Stewart and Huber, 1993). Males feed near the eastern Aleutian Islands and in the Gulf of Alaska, and females feed further south, south of 45° North (Stewart and Huber, 1993; Le Boeuf *et al.,* 1993). Adults return to land between March and August to molt, with males returning later than females. Adults return to their feeding areas again between their spring/summer molting and their winter breeding seasons.

Populations of northern elephant seals in the U.S. and Mexico were all originally derived from a few tens or a few hundreds of individuals that survived in Mexico after being nearly hunted to extinction (Stewart *et al.,* 1994). Given the very recent derivation of most rookeries, no genetic differentiation would be expected. However, movement and genetic exchange continues between rookeries when they start breeding (Huber *et al.,* 1991). The California breeding population is now demographically isolated from the Baja California population. The California breeding population is considered in NMFS's stock assessment report to be a separate stock.

A complete population count of elephant seals is not possible because all age classes are not ashore at the same time. Elephant seal population size is typically estimated by counting the number of pups produced and multiplying by the inverse of the expected ratio of pups to total animals (McCann, 1985). Based on the estimated 35,549 pups born in California in 2005 and an appropriate multiplier for a rapidly growing population, the California stock was approximately 124,000 in 2005. The minimum population size for northern elephant seals can be estimated very conservatively as 74,913, which is equal to twice the observed pup count (to account for the pups and their mothers), plus 3,815 males and juveniles counted at the Channel Islands and central California sites in 2005 (Lowry, NMFS unpublished data). Based on trends in pup counts, northern elephant seal colonies were continuing to grow in California through 2005, but appear to be stable or slowly decreasing in Mexico (Stewart *et al.,* 1994). Northern elephant seals are not listed under the ESA and are not considered as depleted or a strategic stock under the MMPA.

Further information on the biology and local distribution of these marine mammal species and others in the region can be found in the City of San Diego's IHA application, which is available upon request (see **ADDRESSES**), and the NMFS Marine Mammal Stock Assessment Reports, which are available online at: *http://www.nmfs.noaa.gov/pr/sars/.*

Potential Effects of the Specified Activity on Marine Mammals

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (e.g., construction equipment and activities) have been observed to impact marine mammals. This discussion may also include reactions that we consider to rise to the level of a take and those that we do not consider to rise to the level of take (for example, with acoustics), we may include a discussion of studies that showed animals not reacting at all to sound or exhibiting barely measureable

avoidance. This section is intended as a background of potential effects and does not consider either the specific manner in which this activity will be carried out or the mitigation that will be implemented, or how either of those will shape the anticipated impacts from this specific activity. The ''Estimated Take by Incidental Harassment'' section later in this document will include a quantitative analysis of the number of individuals that are expected to be taken by this activity. The ''Negligible Impact Analysis'' section will include the analysis of how this specific activity will impact marine mammals and will consider the content of this section, the ''Estimated Take by Incidental Harassment'' section, the ''Mitigation'' section, and the ''Anticipated Effects on Marine Mammal Habitat'' section to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, anatomical modeling, and other data, Southall *et al.* (2007) designate ''functional hearing groups'' for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low-frequency cetaceans (13 species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 30 kHz;
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High-frequency cetaceans (eight species of true porpoises, six species of river dolphins, *Kogia* spp., the franciscana (*Pontoporia blainvillei*), and four species of cephalorhynchids): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- Phocid pinnipeds in water: Functional hearing is estimated to occur between approximately 75 Hz and 100 kHz;
- Otariid pinnipeds in water: Functional hearing is estimated to occur between approximately 100 Hz and 40 kHz.

As mentioned previously in this document, 3 marine mammal species (0 cetacean and 3 pinniped species) are likely to occur in the proposed action area. Of the 3 pinniped species likely to occur in the City of San Diego's proposed action area, 2 are classified as phocid pinnipeds (i.e., Pacific harbor seal and northern elephant seal) and, 1 is classified as an otariid pinniped (i.e., California sea lion) (Southall *et al.,* 2007). The City of San Diego requests authorization for Level B harassment of these 3 species of marine mammals (i.e., Pacific harbor seals, California sea lions, and northern elephant seals) incidental to the use of equipment and its propagation of in-air noise from various acoustic mechanisms associated with the construction activities of the Children's Pool Lifeguard Station at La Jolla, CA discussed above. NMFS considers a species' functional hearing group when we analyze the effects of exposure to sound on marine mammals.

The notice of the proposed IHA (79 FR 8160, February 11, 2014) included a discussion of the effects of in-air sounds from construction activities on pinnipeds, which included tolerance, behavioral disturbance, and hearing impairment. NMFS refers readers to the City of San Diego's IHA application, NMFS's EA for additional information on the behavioral reactions (or lack thereof) by all types of marine mammals to high levels of in-air sounds.

The potential effects to marine mammals described in this section of the document generally do not take into consideration the monitoring and mitigation measures described later in this document (see the ''Mitigation'' and ''Monitoring and Reporting'' sections), which are designed to effect the least practicable impact on affected marine mammal species or stocks.

Anticipated Effects on Marine Mammal Habitat

The rocks and beaches at or near the Children's Pool in La Jolla, CA, are almost exclusively Pacific harbor seal hauling-out sites. Harbor seals have been observed hauling-out and documented giving birth at the Children's Pool since the 1990s (Yochem and Stewart, 1998; Hanan & Associates, 2004). It is one of the three known haul-out sites for this species in San Diego County and is the only rookery in San Diego County and the only mainland rookery on the U.S. west coast between the border of Mexico and Point Mugu in Ventura County, CA. More information on this population of Pacific harbor seals can be found in the ''Description of Marine Mammals in the Specified Geographic Area of the Specified Activity.''

The primary anticipated adverse impacts upon habitat consist of temporary changes to the in-air acoustic environment, as detailed in the proposed IHA notice (79 FR 8160, February 11, 2014). These changes are minor, temporary, and limited in duration to the period of the construction activities. The temporary impacts on the acoustic environment are not expected to have any permanent effects on the species or stock populations of marine mammals occurring at the Children's Pool.

All construction activities are beyond or outside the habitat areas where harbor seals and other pinnipeds are found. Visual barriers will be erected to shield construction activities from the visual perception and potentially dampen acoustic effects on pinnipeds. Because the public occasionally harasses the harbor seals with various activities, the NMFS-qualified PSO monitoring the site will make observations and attempt to distinguish and attribute any observed harassment to the public or to the construction activities and give all details in the observation report. If any short-term, temporary impacts to habitat due to sounds or visual presence of equipment and workers did occur, the City of San Diego will expect pinniped behavior to return to pre-construction conditions soon after the activities are completed, which is anticipated to occur before the next pupping season (Hanan & Associates, 2011).

The area of habitat affected is small and the effects are localized and temporary; thus there is no reason to expect any significant reduction in habitat available for foraging and other habitat uses. No aspect of the project is anticipated to have any permanent effect on the location or use of pinniped haul-outs or related habitat features in the area (Hana & Associates, 2011). Further, the site is already very disturbed by member of the public who come to the area during the day and night to view the pinnipeds. The City of San Diego and NMFS do not project any loss or modification of physical habitat for these species. Any potential temporary loss or modification of habitat due to in-air noise or visual presence of equipment and workers during the activities is expected by the

City of San Diego and NMFS to be quickly restored after construction activities end and all equipment and barriers are removed.

For these reasons, NMFS anticipates that the action will result in no impacts to marine mammal habitat beyond rendering the areas immediately around the Children's Pool less desirable during construction activities.

Mitigation

In order to issue an Incidental Take Authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must prescribe, where applicable, the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

The City of San Diego has established the Children's Pool as a shared beach for pinnipeds and people. In the past, during the pupping season, a rope was placed along the upper part of the beach with signage to inform and designate how close people can come to the haul-out area and the pinnipeds. The timeframe for the rope has been extended so that it is now present year-round. The construction activities are planned to occur outside the harbor seal pupping and weaning periods.

The City of San Diego will implement the following mitigation measures to help ensure the least practicable impact on marine mammals:

(1) Prohibition of construction during pupping season;

(2) Daily construction timing;

(3) Construction of visual and acoustic barriers;

(4) Use of Protected Species Observers;

(5) Establishment of buffer zones; and

(6) Potential abandonment survey.

Visual and acoustic barriers were constructed in 2013 to mitigate the effects of the construction activities. The visual and acoustic barriers were constructed of plywood, 1.2 to 2.4 m (4 to 8 ft) tall stood on end and held up by wood posts. The sheets of plywood were stood upright and held up with two wooden two by fours hinged to the top of the frame, so they could be collapsed and moved depending on the location and need for access by demolition and construction equipment. The barriers were placed at the site with input from NMFS Southwest Regional Office (SWRO) personnel so that they will hide as advantageously as possible the construction activities that may be seen by pinnipeds. The barriers appear to dampen the acoustic sound sources, but do not prevent sound from permeating the environment. The barriers also appear to hide and reduce visual cues that may stimulate behavioral reactions from the pinnipeds on the beach below. As the site is a beach with construction along the cliff and on flat areas above the cliff, a complete barrier cannot be constructed to hide all construction activities for the project. Once the walls of the lifeguard station's building are in place, much of the construction activities will take place above the Children's Pool beach (i.e., out of sight) as well as inside the building (i.e., a visual and partial sound barrier). There will be no activities in the ocean or closer to the water's edge and since harbor seals mate underwater in the ocean, there will be no impacts on mating activities. California sea lions and northern elephant seals are such infrequent users of this area and their rookeries are so far away (at least 104.6 km [65 miles] at offshore islands) that there will be no adverse impact on these species.

As part of the public comment process for the issuance of the previous 2013 IHA, NMFS modified several of the monitoring and mitigation measures included in the proposed IHA (78 FR 25958, May 3, 2013) for practicability reasons, and also included several additional measures in the final IHA (78 FR 40705, July 8, 2013). These included changing the pupping season from December 15th to May 15th and prohibiting construction activities during this time; extending construction activities from 7:00 a.m. to 7:00 p.m. to help assure that more work would be completed during the 2013 construction window; continuing monitoring for 60 days following the end of construction activities; and triggering a shut-down of construction activities in the unexpected event of abandonment of the Children's Pool site. The mitigation measure on scheduling the heaviest construction activities (with the highest sound levels) during the annual period of lowest haul-out occurrence (October to November) was originally included in the City of San Diego's Mitigated Negative Declaration when it was anticipated that the City of San Diego would obtain an IHA in the summer of 2012 and begin demolition and construction activities in the fall of 2012. This requirement has been removed because it is no longer practicable due to logistics, scheduling and to allow the planned activities to be completed before the next pupping season.

The activities planned by the applicant includes a variety of measures calculated to minimize potential impacts on marine mammals, including:

Prohibition of Construction During Pupping Season

Construction shall be prohibited during the Pacific harbor seal pupping season (December 15th to May 15th) and for an additional two weeks thereafter to accommodate lactation and weaning of late season pups. Thus, construction shall be prohibited from December 15th to June 1st.

Daily Construction Timing

Construction activities shall be scheduled, to the maximum extent practicable, during the daily period of lowest haul-out occurrence, from approximately 8:30 a.m. to 3:30 p.m. However, construction activities may be extended from 7:00 a.m. to 7:00 p.m. to help assure that the project can be completed during the 2014 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.

Construction of Visual and Acoustic Barriers

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 1/2 to 3/4 inch (1.3 to 1.9 centimeters [cm]) plywood constructed 1.8 to 2.4 m (6 to 8 ft) high depending on the location.

Protected Species Observers

Trained PSOs will be used to detect, document, and minimize impacts (i.e., possible shut-down of noise-generating operations [turning off the equipment so that in-air sounds associated with construction no longer exceed levels that are potentially harmful to marine mammals]) to marine mammals. More information about this measure is contained in the ''Monitoring'' section (below).

Establishment of Buffer Zones

The City of San Diego shall establish buffer zones (i.e., where sound pressure levels are at or above 90 dB re 20 µPa for harbor seals and/or at or above 100 dB re 20 µPa for all pinniped species except harbor seals [for in-air noise]) around the construction activities so that in-air sounds associated with the construction activities no longer exceed levels that are potentially harmful to marine mammals.

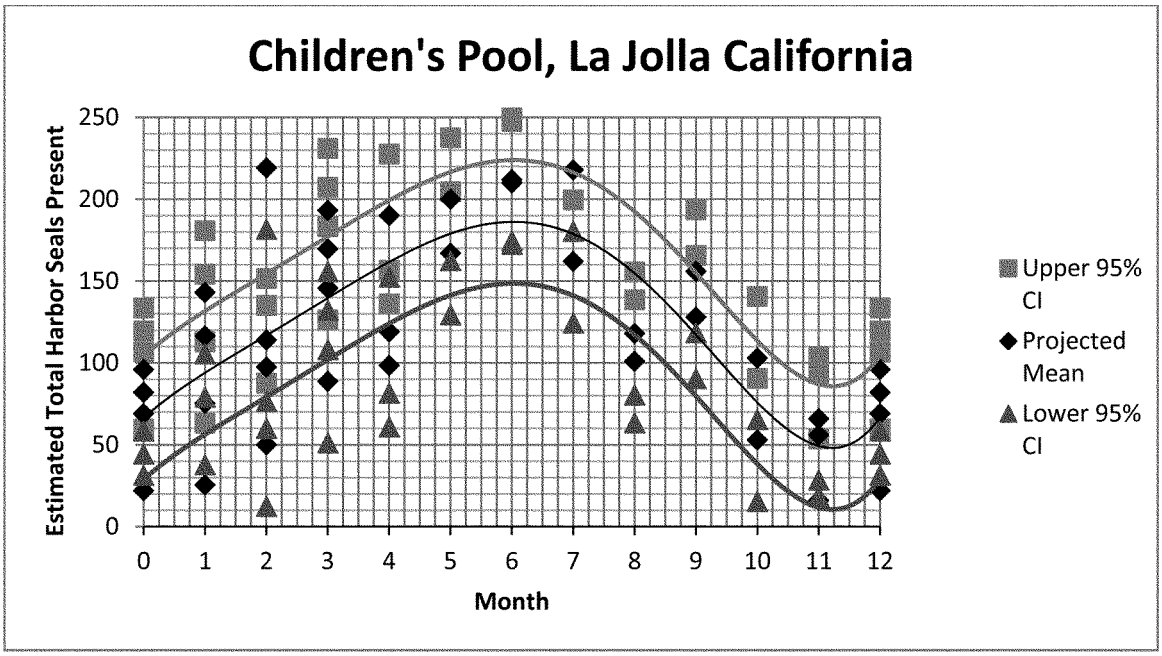
Timing Constraints for In-Air Noise

To minimize in-air noise impacts on marine mammals, construction activities shall be limited to the period when the species of concern will be least likely to be in the project area. The construction window for construction activities shall be from June 1 to December 15, 2014. The IHA may extend to June 1 through June 27, 2015 to finish the construction activities if needed. Avoiding periods when the highest number of marine mammal individuals are in the action area is another mitigation measure to protect marine mammals from the construction activities.

Potential Abandonment Survey

After the first two months of monitoring during construction activities, the City of San Diego will take the mean number of observed harbor seals at the Children's Pool in a 24-hour period across that 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 will 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 will 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 will shut-down and take the action described above. If abandonment of the site is likely, monitoring will 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, cave on the exposed ocean side of Point Loma, etc.). For the purpose of this action, NMFS will consider the Children's Pool site to possibly be abandoned if zero harbor seals are present each day during the daytime and nighttime hours for at least three tide cycles (a tide cycle is approximately 2 weeks), but this cannot be confirmed until observations continue to be zero during a full pupping and molting season.

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.



More information regarding the City of San Diego's monitoring and mitigation measures for the construction activities at the Children's Pool Lifeguard Station can be found in the IHA application.

Mitigation Conclusions

NMFS carefully evaluated the applicant's mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. NMFS's evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the activity.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(1) Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).

(2) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels from construction equipment, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(3) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels from construction equipment, or other activities expected to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).

(4) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels from construction equipment, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

(5) Avoidance of minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(6) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on NMFS's evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must, where applicable, set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104 (a)(13) require that requests for ITAs include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(1) An increase in the probability of detecting marine mammals, both within the mitigation zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the analyses mentioned below;

(2) An increase in our understanding of how many marine mammals are likely to be exposed to levels from construction equipment that we associate with specific adverse effects, such as behavioral harassment, TTS or PTS;

(3) An increase in our understanding of how marine mammals respond to stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival) through any of the following methods:

- Behavioral observations in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict received level, distance from source, and other pertinent information);
- Physiological measurements in the presence of stimuli compared to observations in the absence of stimuli (need to be able to accurately predict receive level, distance from the source, and other pertinent information);
- Distribution and/or abundance comparisons in times or areas with concentrated stimuli versus times or areas without stimuli;

(4) An increased knowledge of the affected species; and

(5) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

Monitoring

The City of San Diego developed a monitoring plan (see Appendix I, Mitigated Negative Declaration in the IHA application) based on discussions between the project biologist, Dr. Doyle Hanan, and NMFS biologists. The plan has been vetted by City of San Diego planners and reviewers. The plan has been formally presented to the public for review and comment. The City of San Diego has responded in writing and in public testimony (see City of San Diego Council Hearing, December 14, 2011) to all public concerns.

The monitoring plan involves surveying prior to construction activities, monitoring during construction activities by NMFS-approved PSOs with high-resolution binoculars and handheld digital sound level meters (measuring devices), and post-construction monitoring. The City of San Diego will include sound measurements at and near the construction site in their initial survey prior to the activities as a background and baseline for the project. While no specific acoustic study is planned, the City of San Diego's Mitigated Negative Declaration states that marine mammal monitoring shall be conducted for three to five days prior to construction and shall include hourly systematic counts of pinnipeds using the beach, Seal Rock, and associated reef areas. Monitoring three to five days prior to construction will provide baseline data regarding recent haul-out behavior and patterns as well as background noise levels near the time of the construction activities.

During the construction activities, monitoring shall assess behavior and potential behavioral responses to construction noise and activities. PSOs will observe the construction activities from a station along the breakwater wall and from the base of the cliff below the construction area. PSOs will be on site approximately 30 minutes before the start of construction activities and will remain on site until 30 minutes after activities have ceased. Visual digital recordings and photographs shall be used to document individuals and behavioral responses to construction. The City of San Diego (i.e., PSOs) plans to 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 or from public stimuli. During these events, pictures and video will also be taken when possible. The ''Mitigated Negative Declaration'' states ''monitoring shall assess behavior and potential behavioral responses to construction noise and activities. Visual digital recordings and photographs shall be used to document individuals and behavioral responses to construction.''

Monitors will have authority to stop construction as necessary depending on sound levels, pinniped presence, and distance from sound sources. Daily monitoring reports will be maintained for periodic summary reports to the City of San Diego and to NMFS. Observations will be entered into and maintained on Hanan & Associates computers. The City of San Diego plans to follow the reporting requirements in the Mitigated Negative Declaration, which states that ''the biologist shall document field activity via the Consultant Site Visit Record. The Consultant Site Visit Record shall be

either emailed or faxed to the City of San Diego's Mitigation Monitoring Coordination process (MMC) on the 1st day of monitoring, the 1st week of each month, the last day of monitoring, and immediately in the case of any undocumented discovery. The project biologist shall submit a final construction monitoring report to MMC within 30 days of construction completion.'' The MMC ''coordinates the monitoring of development projects and requires that changes are approved and implemented to be in conformance with the permit requirements and to minimize any damage to the environment.'' These documents will also be sent to NMFS. Finally, the City of San Diego has modified its monitoring program to include 60 days of monitoring post-construction activities. Following construction, the City of San Diego will have a program of onsite PSOs that will randomly select a day per week to monitor.

NMFS notes that the WAN's La Jolla Harbor Seal Webcam was attached to the old (now demolished) lifeguard station and is no longer available online (*http://www.wanconservancy.org/la_jolla_harbor_seal_earthcam.htm*). The City of San Diego has stated that there is no suitable place to mount the camera at the construction site. Therefore, the City of San Diego cannot do periodic checks using the webcam for monitoring purposes as required by the 2013 IHA. However, the camera was not expected to replace NMFS-qualified PSOs at the site making accurate counts, measuring sound levels and observing the public and the construction, as well as the harbor seals. In the old camera view, a person may have been able to see visual evidence of Level B harassment but probably would not have been able to distinguish between harassment from construction activities and harassment from the public since the camera had a limited scope and only showed the Children's Pool beach and pinnipeds (usually a specific portion of the beach, but not the reef nor nearby beaches).

Consistent with NMFS procedures, the following marine mammal monitoring and reporting shall be performed for the action:

(1) The PSO shall be approved by NMFS prior to construction activities.

(2) The NMFS-approved PSO shall attend the project site prior to, during, and after construction activities cease each day throughout the construction window.

(3) The PSO shall search for marine mammals within the Children's Pool area.

(4) The PSO shall be present during construction activities to observe for the presence of marine mammals in the vicinity of the specified activity. All such activity will occur during daylight hours (i.e., 30 minutes after sunrise and 30 minutes before sunset). If inclement weather limits visibility within the area of effect, the PSO will perform visual scans to the extent conditions allow.

(5) If marine mammals are sighted by the PSO within the acoustic threshold areas, the PSO shall record the number of marine mammals within the area of effect and the duration of their presence while the noise-generating activity is occurring. The PSO will also note whether the marine mammals appeared to respond to the noise and, if so, the nature of that response. The PSO shall record the following information: Date and time of initial sighting, tidal stage, weather conditions, Beaufort sea state, species, behavior (activity, group cohesiveness, direction and speed of travel, etc.), number, group composition, distance to sound source, number of animals impacted, construction activities occurring at time of sighting, and monitoring and mitigation measures implemented (or not implemented). The observations will be reported to NMFS.

(6) A final report will be submitted summarizing all in-air acoustic effects from construction activities and marine mammal monitoring during the time of the authorization, and any long term impacts from the project.

A written log of dates and times of monitoring activity will be kept. The log shall report the following information:

- Time of observer arrival on site;
- Time of the commencement of in-air noise generating activities, and description of the activities;
- Distances to all marine mammals relative to the sound source;
- Distances from the sound meter to each sound-producing activity when conducting sound measurements;
- For harbor seal observations, notes on seal behavior during noise-generating activity, as described above, and on the number and distribution of seals observed in the project vicinity;
- For observations of all marine mammals other than harbor seals, the time and duration of each animal's presence in the project vicinity; the number of animals observed; the behavior of each animal, including any response to noise-generating activities;
- Time of the cessation of in-air noise generating activities; and
- Time of observer departure from site.

All monitoring data collected during construction will be included in the biological monitoring notes to be submitted. A final report summarizing the construction monitoring and any general trends observed will also be submitted to NMFS within 90 days after monitoring has ended during the period of the lifeguard station construction.

Reporting

The City of San Diego will notify NMFS Headquarters and the NMFS Southwest Regional Office prior to initiation of the construction activities. A draft final report must be submitted to NMFS within 90 days after the conclusion of the construction activities of the Children's Pool Lifeguard Station. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA, including dates and times of operations and all marine mammal sightings (dates, times, locations, species, behavioral observations [activity, group cohesiveness, direction and speed of travel, etc.], tidal stage, weather conditions, Beaufort sea state and wind force, associated construction activities). A final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report will be considered to be the final report.

While the IHA does not authorize injury (i.e., Level A harassment), serious injury, or mortality, should the applicant, contractor, monitor or any other individual associated with the construction project observe an injured or dead marine mammal, the incident (regardless of cause) will be reported to NMFS as soon as practicable. The report should include species or description of animal, condition of animal, location, time first found, observed behaviors (if alive) and photo or video, if available.

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 if a dead stranded pinniped is found so that a necropsy can be performed. In all cases, NMFS shall be notified as well, but for immediate response 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 IHA, 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 email to *Jolie.Harrison@noaa.gov, Howard.Goldstein@noaa.gov,* and the West Coast Regional Stranding Coordinator (*Justin.Greenman@noaa.gov*). The report must include the following information:

- 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 the action necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The City of San Diego may not resume its activities until notified by NMFS via letter, email, or 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 email to *Jolie.Harrison@noaa.gov, 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 (*Justin.Greenman@noaa.gov*). The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with the City of San Diego to determine whether modification of the activities is 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 (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 email to *Jolie.Harrison@noaa.gov, 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 (*Justin.Greenman@noaa.gov*) 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.

Monitoring Results From Previously Authorized Activities

Hanan & Associates, Inc., on behalf of the City of San Diego, conducted marine mammal and in-air sound monitoring at six locations during demolition and construction activities at the Children's Pool Lifeguard Station in La Jolla, California from June 3, 2013 to February 12, 2014. Demolition and construction activities began on July 10, 2013 and were halted for the Pacific harbor seal pupping season (December 15, 2013 to June 1, 2014). During 115 days of visual and acoustic observations, Hanan & Associates counted a total of 61,631 Pacific harbor seals and 26,037 people. During the 2013 demolition and construction activities, Hanan & Associates observed a total of 15,673 takes by Level B harassment (i.e., alerts, movements, and flushes) that could be attributed to demolition and construction activities (5,095 takes), the general public (8,639 takes), and other sources (1,939 takes). As of April 15, 2014, at least 60 harbor seal pups (including 2 still births) have been born at the Children's Pool and there has been no indication of abandonment. In addition to the Pacific harbor seal sightings, PSOs recorded 11 sightings of cetaceans (gray whales and bottlenose dolphins), 4 sightings of California sea lions (1 juvenile, 3 adult), and 2 northern elephant seals (both juveniles) at the Children's Pool.

Hanan & Associates recorded mean in-air sound levels of 69.2 dB re 20 µPa (range of 55.6 to 93.7 dB re 20 µPa) during non-demolition and construction activities and 70.3 dB re 20 µPa (range of 50.7 to 103.1 dB re 20 µPa) during demolition and construction activities. During 2013, measured sound levels from the demolition equipment reaching the pinnipeds did not exceed approximately 90 dB at the haul-out area closest to the demolition and construction activities, nor did they exceed a peak of about 83 dB re 20 µPa at the mean hauling-out distance (30.5 m).

More information on the monitoring results from the City of San Diego's previous demolition and construction activities at the La Jolla Children's Pool Lifeguard Station can be found in the final monitoring report.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) 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 [Level B harassment].

NMFS's current underwater and in-air acoustic exposure criteria:

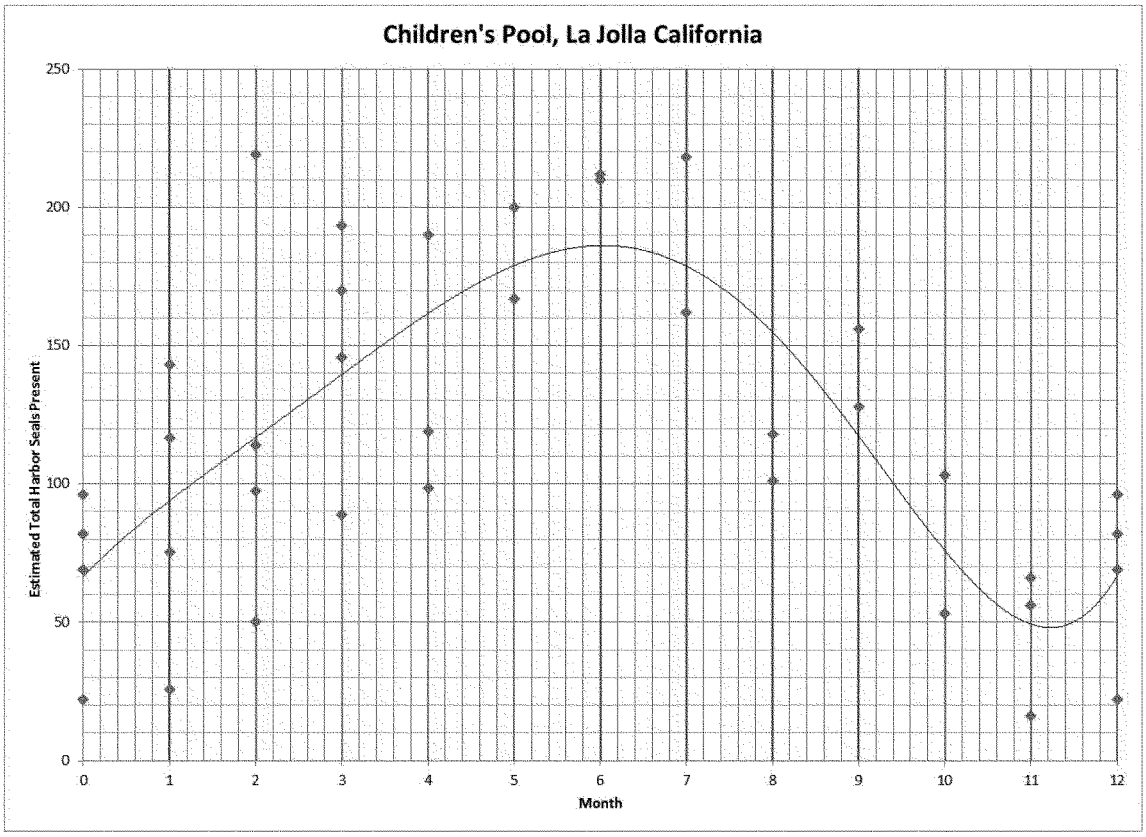
Criterion	Criterion Definition	Threshold
Underwater Impulsive (Non-Explosive) Sound		
Level A harassment (injury)	Permanent threshold shift (PTS) (Any level above that which is known to cause TTS).	180 dB re 1 µPa-m (root means square [rms]) (cetaceans) 190 dB re 1 µPa-m (rms) (pinnipeds).
Level B harassment	Behavioral disruption (for impulsive noise)	160 dB re 1 µPa-m (rms).
Level B harassment	Behavioral disruption (for continuous noise)	120 dB re 1 µPa-m (rms).

Criterion	Criterion Definition	Threshold
In-Air Sound		
Level A harassment	NA	NA.
Level B harassment	Behavioral disruption	90 dB re 20 μPa (harbor seals) 100 dB re 20 μPa (all other pinniped species) NA (cetaceans).

The City of San Diego and NMFS anticipate takes of Pacific harbor seals, California sea lions, and northern elephant seals by Level B (behavioral) harassment only incidental to the construction project at the Children's Pool. No takes by injury (Level A harassment), serious injury, or mortality are expected. NMFS will consider pinnipeds behaviorally reacting to the construction activities by 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 movements by individuals as behavioral criteria for take by Level B harassment.

With construction activities scheduled to begin in June 2014, the City of San Diego expects a range of 0 to 190 harbor seals to be present daily during June and a seasonal decline through November to about 0 to 50 harbor seals present daily. If all of the estimated harbor seals present are taken by incidental harassment each day, there could be a maximum of 10,000 takes (i.e., approximately 2,947 adult males and 2,211 juvenile males, 2,842 adult females and 2,000 juvenile females based on age and sex ratios presented in Harkonen *et al.,* 1999) over the entire duration of the activities. An unknown portion of the incidental takes will be from repeated exposures as harbor seals leave and return to the Children's Pool area. A polynomial curve fit to counts by month was used by the City of San Diego to estimate the number of harbor seals expected to be hauled-out by day (see below and Figure 2 of the IHA application).

Figure 2. 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 was used to estimate harbor seals expected to be hauled-out by day.



Assuming the total seals predicted to haul-out daily at the Children's Pool are exposed to sound levels that are considered Level B harassment during days where sound is predicted to exceed 90 dB at the construction site (65 days), there could be a maximum of approximately 10,000 incidental takes (i.e., exposures) of approximately up to 600 individual Pacific harbor seals over the duration of the activities. The estimated 600 individual Pacific harbor seals will be taken by Level B harassment multiple times during the construction activities.

Very few California sea lions and/or northern elephant seals are ever observed at the Children's Pool (i.e., one or two individuals). The City of San

Diego requests the authority to incidentally take (i.e., exposures) 10,000 Pacific harbor seals, 100 California sea lions, and 25 northern elephant seals, which will equate to 600, 2, and 1 individuals, respectively, being exposed multiple times. More information on the number of takes authorized, and the approximate percentage of the stock for the three species in the action area can be found in Table 2 (below).

TABLE 2—SUMMARY OF THE AUTHORIZED INCIDENTAL TAKE BY LEVEL B HARASSMENT OF PINNIPEDS FOR THE CITY OF SAN DIEGO'S CONSTRUCTION ACTIVITIES GENERATING IN-AIR NOISE AT THE CHILDREN'S POOL LIFEGUARD STATION IN LA JOLLA, CA

Species	Take authorization (number of exposures)	Estimated number of individuals taken	Abundance	Approximate percentage of estimated stock (individuals)	Population trend
Pacific harbor seal	10,000	600	30,196—California stock	1.98	Increased in California 1981 to 2004.
California sea lion	100	2	296,750—U.S. stock	<0.01	Increasing.
Northern elephant seal	25	1	124,000—California breeding stock.	<0.01	Increasing through 2005, now stable.

Encouraging and Coordinating Research

Each construction phase and potential harassment activity will be evaluated as to observed sound levels and any pinniped reaction by type of sound source. Flushing will be documented by sex and age class. These data will provide information for IHA permitting in future projects. Potential additional mitigation (other than what is already required) will be discussed and suggested in the final report. NMFS has encouraged the City of San Diego to work with WAN to review and analyze any available data to determine baseline information as well as evaluate the impacts from the construction activities on the pinnipeds at the Children's Pool.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the MMPA requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are not relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for subsistence purposes.

Analysis and Determinations

Negligible Impact

Negligible impact is ''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'' (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and effects on habitat.

In making a negligible impact determination, NMFS evaluated factors such as:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment; and

(3) The context in which the takes occur (i.e., impacts to areas of significance, impacts to local populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of the stock or species of marine mammals (i.e., depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

No injuries (Level A harassment), serious injuries, or mortalities are anticipated to occur as a result of the City of San Diego's construction activities, and none are authorized by NMFS. The planned activities are not expected to result in the alteration of reproductive behaviors, and the potentially affected species will be subjected to only temporary and minor behavioral impacts.

Behavioral disturbance may potentially occur incidental to the visual presence of humans and construction activities; however, pinnipeds at this site have likely adapted or become acclimated to human presence at this site. These ''urbanized'' harbor seals do not exhibit sensitivity at a level similar to that noted in harbor seals in some other regions affected by human disturbance (Allen *et al.,* 1984; Suryan and Harvey, 1999; Henry and Hammil, 2001; Johnson and Acevedo-Gutierrez, 2007; Jansen *et al.,* 2006; Hanan & Associates, 2011). Therefore, there is a high likelihood that many of the harbor seals present during the construction activities will not be flushed off of the beach or rocks, as pinnipeds at this site are conditioned to human presence and loud noises (Hanan, 2004; Hanan & Associates, 2011) (see *http://www.youtube.com/watch?v=4IRUYVTULsg*).

As discussed in detail above, the project scheduling avoids sensitive life stages for Pacific harbor seals. Planned project activities producing in-air noise will commence in June and end by December 15. The commencement date occurs after the end of the pupping season, affords additional time to accommodate lactation and weaning of season pups, and takes into account periods of lowest haul-out occurrence. The end date falls approximately two weeks prior to January 1, the time after which most births occur, providing protection for pregnant and nursing harbor seals that may give birth before January 1.

Table 2 of this document outlines the number of Level B harassment takes that are anticipated as a result of these activities. Due to the nature, degree, and context of Level B (behavioral) harassment anticipated and described (see ''Potential Effects on Marine Mammals'' section above) in this notice, this activity is not expected to impact rates of annual recruitment or survival for the affected species or stock (i.e., California stock of Pacific harbor seals, U.S. stock of California sea lions, and California breeding stock of northern elephant seals), particularly given the required mitigation, monitoring, and reporting measures that will be implemented to minimize impacts to marine mammals.

The Children's Pool is one of the three known haul-out sites for Pacific harbor seal in San Diego County and the only rookery in San Diego County and the only mainland rookery on the U.S. west coast for this species between the border of Mexico and Point Mugu in Ventura County, CA. For the other marine mammal species that may occur within the action area (i.e., California sea lions and northern elephant seals), there are no known designated or important feeding and/or reproductive areas. Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (i.e., 24 hour cycle). Behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). However, Pacific harbor seals have been hauling-out at Children's Pool during the year for many years (including during pupping season and while females are pregnant) while being exposed to anthropogenic sound sources such as vehicle traffic, human voices, etc. and other stimuli from human presence. While studies have shown the types of sound sources used during the construction activities have the potential to displace marine mammals from breeding areas for a prolonged period (e.g., Lusseau and Bejder, 2007; Weilgart, 2007), based on the best available information, this does not seem to be the case for the Pacific harbor seals at the Children's Pool. The Pacific harbor seals have repeatedly hauled-out to pup over many years and the NMFS Stock Assessment Reports (NMFS, 2011) for this stock have shown that the population is increasing and is considered stable. Additionally, the construction activities will increase sound levels in the environment in a relatively small area surrounding the lifeguard station (compared to the range of the animals), and some animals may only be exposed to and harassed by sound for less than a day.

NMFS's practice has been to apply the 90 dB re 20 µPa and 100 dB re 20 µPa received level threshold for in-air sound levels to determine whether take by Level B harassment occurs. Southall *et al.* (2007) provide a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* [2007]). NMFS has not established a threshold for Level A harassment (injury) for marine mammals exposed to in-air noise, however, Southall *et al.* (2007) recommends 149 dB re 20 µPa (peak flat) as the potential threshold for injury from in-air noise for all pinnipeds. No in-air sounds from construction activities will exceed 110 dB at the source and no measured sounds approached that sound level in 2013.

Of the 3 marine mammal species under NMFS jurisdiction that may or are known to likely occur in the action area, none are listed as threatened or endangered under the ESA. No incidental take has been requested to be authorized for ESA-listed species as none are expected to be within the action area. To protect these animals (and other marine mammals in the action area), the City of San Diego shall schedule construction activities with highest sound levels during the daily period of lowest haul-out occurrence; limit activities to the hours of daylight; erect a temporary visual and acoustic barrier; use PSOs and prohibit construction activities during harbor seal pupping season. No injury, serious injury, or mortality is expected to occur and due to the nature, degree, and context of the Level B harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

Although behavioral modifications, including temporarily vacating the area during the construction activities, may be made by these species to avoid the resultant acoustic disturbance, the availability of alternate areas within these areas for species and the short and sporadic duration of the activities, have led NMFS to determine that the taking by Level B harassment from the specified activity will have a negligible impact on the affected species in the specified geographic region. NMFS believes that the time period of the construction activities, the requirement to implement mitigation measures (e.g., prohibiting construction activities during pupping season, scheduling operations to periods of the lowest haul-out occurrence, visual and acoustic barriers, and the addition of a new measure that helps protect against unexpected abandonment of the site), and the inclusion of the monitoring and reporting measures, will reduce the amount and severity of the potential impacts from the activity to the degree that will have a negligible impact on the species or stocks in the action area.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS finds that the total marine mammal take from the City of San Diego's activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As mentioned previously, NMFS estimates that 3 species of marine mammals under its jurisdiction could be potentially affected by Level B harassment over the course of the IHA. It is estimated that up to 600 individual Pacific harbor seals, 2 individual California sea lions, and 1 northern elephant seal will be taken (multiple times) by Level B harassment, which will be approximately 1.98, less than 0.01, and less than 0.01% of the respective California, U.S., and California breeding stocks. The population estimates for the marine mammal species that may be taken by Level B harassment were provided in Table 2 of this document.

NMFS has determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of the construction activities at the Children's Pool Lifeguard Station in La Jolla, CA, June 2014 to June 2015, may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals. Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks. See Table 2 for the authorized take numbers of marine mammals.

Endangered Species Act

NMFS (Permits and Conservation Division) has determined that an ESA section 7 consultation for the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity is not necessary for any ESA-listed marine mammal species under its jurisdiction, as the planned action will not affect ESA-listed species.

National Environmental Policy Act

To meet NMFS's National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requirements for the issuance of an IHA to the City of San Diego, NMFS prepared an Environmental Assessment (EA) in 2013 for a similar activity titled ''Environmental Assessment on the Issuance of an Incidental Harassment Authorization to the City of San Diego to Take Marine Mammals by Harassment Incidental to Demolition and Construction Activities at the Children's Pool Lifeguard Station in La Jolla, California'' to comply with the Council of Environmental Quality (CEQ) regulations and NOAA Administrative Order (NAO) 216–6. Based on the analysis in the EA and the underlying information in the record, including the IHA application, proposed IHA, and public comments, NMFS prepared and signed a Finding of No Significant Impact (FONSI) determining that preparation of an Environmental Impact Statement was not required. The FONSI was signed on June 28, 2013 prior to the issuance of the IHA for the City of San Diego's activities from June 2013 to June 2014. The currently planned construction activities that will be covered by the IHA from June 2014 to June 2015 are similar to the demolition and construction activities described in the 2013 EA. NMFS has reviewed CEQ's regulations and has determined that it is not necessary to supplement the 2013 EA because the effects of this IHA fall within the scope of those documents and do not require further supplementation. Based on the public comments received in response to the publication in the **Federal Register** notice and proposed IHA, NMFS has reaffirmed its FONSI.

Authorization

NMFS has issued an IHA to the City of San Diego for conducting construction activities at the La Jolla Children's Pool Lifeguard Station, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: May 30, 2014.

Perry F. Gayaldo,

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

[FR Doc. 2014–13213 Filed 6–5–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 140514424–4424–01]

RIN 0660–XC010

Big Data and Consumer Privacy in the Internet Economy

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Request for Public Comment.

SUMMARY: The National Telecommunications and Information Administration (''NTIA'') is requesting comment on ''big data'' developments and how they impact the Consumer Privacy Bill of Rights.

DATES: Comments are due on or before 5 p.m. Eastern Time on August 5, 2014.

ADDRESSES: Written comments may be submitted by email to *privacyrfc2014@ntia.doc.gov.* Comments submitted by email should be machine-searchable and should not be copy-protected. Written comments also may be submitted by mail to the National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4725, Attn: Privacy RFC 2014, Washington, DC 20230. Responders should include the name of the person or organization filing the comment, as well as a page number, on each page of their submissions. All comments received are a part of the public record and will generally be posted to *http://www.ntia.doc.gov/category/internet-policy-task-force* without change. All personal identifying information (for example, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NTIA will accept anonymous comments.

FOR FURTHER INFORMATION CONTACT: John Morris, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4725, Washington, DC 20230; telephone (202) 482–1689; email *jmorris@ntia.doc.gov.* Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002.

SUPPLEMENTARY INFORMATION:

Background: In January 2014, President Obama asked Counselor to the President John Podesta to lead a team of advisors, including Secretary of Commerce Penny Pritzker, Secretary of Energy Ernest Moniz, Office of Science and Technology Policy Director John Holdren, and National Economic Council Director Jeffrey Zients, in conducting a 90-day study examining how ''big data'' will transform the way individuals live and work and impact the relationships among government, citizens, businesses, and consumers.

On May 1, 2014, the working group published its findings and recommendations as *Big Data: Seizing Opportunities, Preserving Values* (the ''Big Data Report'').[1] The Big Data Report notes that big data analysis can ''become an historic driver of progress, helping our nation perpetuate the civic and economic dynamism that has long been its hallmark.'' [2] At the same time, big data ''raises considerable questions about how our framework for privacy protection applies in a big data ecosystem'' and has the potential to ''eclipse longstanding civil rights protections in how personal information is used in housing, credit, employment, health, education, and the marketplace.'' [3]

The Big Data Report specifically addresses privacy and the Administration's Consumer Privacy Bill of Rights.[4] The Big Data Report notes that:

As President Obama made clear in February 2012, the Consumer Privacy Bill of Rights and the associated Blueprint for Consumer Privacy represent ''a dynamic model of how to offer strong privacy protection and enable ongoing innovation in new information technologies.'' The Consumer Privacy Bill of Rights is based on the Fair Information Practice Principles.

[1] Executive Office of the President, *Big Data: Seizing Opportunities, Preserving Values* (the ''Big Data Report'') (May 2014), *available at: http://www.whitehouse.gov/sites/default/files/docs/big_data_privacy_report_may_1_2014.pdf.*

[2] Big Data Report, Letter to the President from John Podesta, Counselor to the President; Penny Pritzker, Secretary of Commerce; Ernest J. Moniz, Secretary of Energy; John Holdren, Director, Office of Science and Technology Policy; and Jeffrey Zients, Director, National Economic Council (May 1, 2014).

[3] *Id.*

[4] In February 2012, the White House released *Consumer Data Privacy in a Networked World: A Framework for Protecting Privacy and Promoting Innovation in the Global Digital Economy* (the ''Privacy Blueprint''), *available at: http://www.whitehouse.gov/sites/default/files/privacy-final.pdf.* The Privacy Blueprint includes the Consumer Privacy Bill of Rights, which applies seven Fair Information Practice Principles to contemporary commercial data practices. The Blueprint also calls for Congress to pass baseline consumer privacy legislation.