

The Council is considering a limited access program for the whiting/hake fishery via this action. A public comment period is then scheduled during which any member of the public may bring issues forward that relate to Council business but are not included on the published agenda for this meeting. During this morning session, the Atlantic Herring Committee will provide a briefing on progress on Amendment 8 to the Herring FMP, an action that would address: (1) Localized depletion; and (2) long-term harvest strategies for Atlantic herring, including an acceptable biological catch (ABC) control rule that explicitly accounts for herring's role in the ecosystem. The Committee report will also include discussion of plans for a workshop on a management strategy evaluation of the herring ABC control rule and a request that the Council initiate a framework adjustment to revise the Georges Bank haddock catch cap accountability measures. After a lunch break and during a discussion about NOAA's Omnibus Industry-Funded Monitoring Amendment, the Council also will, in cooperation with NOAA, discuss and refine existing alternatives and possibly select preferred alternatives for target levels of monitoring coverage in the Atlantic herring fishery. Approval of the associated draft Environmental Assessment will occur at the NEFMC's June Council meeting. Under the Sea Scallop Committee's agenda item, discussions are planned in which NEFMC members will review results of the Council-sponsored workshop to address concerns about scallop fishing pressure in nearshore areas. They will also review a draft outline and work plan for the five-year performance review of the limited access general category IFQ program and hear information about increased fishing activity in the Northern Gulf of Maine management area. If warranted, the NEFMC may initiate an action at this meeting to address this last topic.

Thursday, April 21, 2016

The final meeting day will begin with a report from the Council's Habitat Committee Chair. After a review of work to date, the committee will ask for Council approval of the Omnibus Deep-Sea Coral Amendment management alternatives for the purpose of further development and analyses. A presentation is then scheduled on the draft Northeast Regional Ocean Plan. The next report will address plans for a peer review (fall 2016) of the in-season discard methodology to be used by NOAA Fisheries. The report will include a discussion of the terms of

reference approved by the Northeast Regional Coordinating Committee. Following a mid-day lunch break, and under the auspices of the Groundfish Committee, there will be: a progress report on work to evaluate the groundfish monitoring program, and an update on other groundfish priorities for 2016, including windowpane flounder management measures and improving the process to develop recreational fishery management measures. The Council will adjourn after it addresses any other outstanding business during the afternoon of April 21st.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

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

Dated: March 29, 2016.

**Tracey L. Thompson,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XE460

#### Takes of Marine Mammals Incidental to Specified Activities; Sand Quality Study Activities at the Children's Pool Beach, La Jolla, California

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

**ACTION:** Notice; proposed Incidental Harassment Authorization (IHA); request for comments.

**SUMMARY:** NMFS has received an application from the City of San Diego for an IHA to take small numbers of marine mammals, by Level B harassment, incidental to the conduct of

sand quality study activities at the Children's Pool Beach in La Jolla, California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to the City of San Diego to take, by Level B harassment only, three species of marine mammals during the specified activities.

**DATES:** Comments and information must be received no later than May 4, 2016.

**ADDRESSES:** Comments on the IHA application should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is [ITP.Youngkin@noaa.gov](mailto:ITP.Youngkin@noaa.gov). NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 25-megabyte size.

All comments received are a part of the public record and will generally be posted to <http://www.nmfs.noaa.gov/pr/permits/incidental/> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

An electronic copy of the IHA application containing a list of the references used in this document may be obtained by visiting the Internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental/>. In case of problems accessing these documents, please call the contact listed below. 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:** Dale Youngkin, 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.*), direct 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.”

Section 101(a)(5)(D) of the MMPA establishes an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS’s review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

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, sheltering, nursing, breeding, feeding, or sheltering [Level B harassment].

### Summary of Request

On December 14, 2015, NMFS received an application from the City of San Diego, Transportation & Storm Water Department, Storm Water Division, requesting an IHA for the taking of marine mammals incidental to the conduct of sand quality study activities. NMFS determined that the IHA application was adequate and complete on February 25, 2016.

The City of San Diego would undertake the proposed sand quality sampling activities between June 1, 2016 and December 14, 2016 at the Children’s Pool Beach in La Jolla, California. Visual stimuli due to the presence of technicians on the beach

and their sand sample collection activities during the study has the potential to result in the take of marine mammals through behavioral disturbance. The requested IHA would 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 sand quality sampling activities of the Children’s Pool Beach at La Jolla, CA. Additional information on the sand quality sampling activities at the Children’s Pool Beach is contained in the IHA application, which is available electronically (see ADDRESSES).

### Description of the Proposed Specified Activity

#### Overview

The City of San Diego plans to conduct a sand quality study at the Children’s Pool Beach in La Jolla, CA in order to fulfill a special condition that was part of a permit issued by the California Coastal Commission (Commission). The special provision required a feasibility study to analyze the sand quality, and methods for improving sand quality, at Children’s Pool Beach. Children’s Pool Beach is currently listed on the Clean Water Act Section 303(d) list as impaired for Fecal Indicator Bacteria (FIB). Additionally, researchers have identified pinniped molting and excrement as a potential source of mercury to the environment (McHuron, Harvey et al. 2014, Cossaboon, Ganguli et al. 2015). The sand quality study will analyze the current extent and magnitude of FIB and mercury contamination in the beach sand at Children’s Pool Beach, and will assess several possible variable effects including tidal cycles, wave regimes, sand depth, and seasonal variability during the effective dates of the IHA.

The California Coastal Commission’s permit certified the City’s request to amend its Land Use Plan. Specifically, the City’s amendment included revisions to allow seasonal closure at Children’s Pool Beach during the Pacific harbor seal pupping season, generally from December 15 to May 15 of every year. The amendment applies only to Children’s Pool Beach, and is intended to allow special protection of the harbor seals at Children’s Pool Beach during the vulnerable months of their pupping season.

The sand quality sampling activities would involve teams of two to three people collecting sand samples for approximately four hours along transects parallel to the shoreline

between the water line and the seawall/bluff railing. Sixteen sampling events are proposed for the sand quality study period between June 1 and December 14, 2016. Sand sample collection would involve grab samples of surface layer sand (surface up to 20 cm of sand to be collected with a sterilized spoon). A small subset of samples per event would be collected from the subsurface via narrow plastic cores (approximately 5 centimeters [cm] by 60 cm) driven into the sand by hand to the extent possible, and then sunk to the desired depth with a small rubber mallet. Approximately 21 samples would be collected per event. Visual stimuli due to the presence of researchers on the beach collecting sand samples would potentially result in behavioral disturbance of pinnipeds hauled out on the beach, which would equate to a take under the MMPA.

#### Proposed Dates and Duration

The City of San Diego is planning to begin the project at the Children’s Pool in La Jolla, CA after the beach is opened to the public in May, with completion of the sand sampling activities to be completed prior to closure of the beach to the public in December, 2016. The City of San Diego and NMFS are requiring a moratorium on all sand sampling activities during harbor seal pupping and weaning (*i.e.*, December 15th to May 15th). A moratorium on sampling activities would also be required for an additional two weeks prior to initiating the sand collection activities in order to accommodate late-weaning pups. Therefore, work on this project would only be performed between June 1st and December 14th of 2016.

Proposed sand sampling activities would occur during daylight hours only, as stipulated in the IHA application. In addition, prior to sand sampling events, the beach would be surveyed for the presence of northern fur seals and/or Guadalupe fur seals. If either of these species are observed hauled out or in the water at Children’s Pool Beach, sand sampling would not commence. This precaution is included due to the unusually high number of strandings of fur seals along the entire California coast beginning in January, 2015, which has resulted in the declaration of an Unusual Mortality Event (UME) for Guadalupe fur seal (<http://www.nmfs.noaa.gov/pr/health/mmume/guadalupefurseals2015.html>). In addition, an UME has been declared, and has been ongoing since 2013, for California sea lion pups and yearling due to elevated strandings of pups in Southern California (<http://www.nmfs.noaa.gov/pr/health/mmume/>

*californiasealions2013.htm*). While there have been relatively high numbers of strandings of Guadalupe fur seals coast-wide in California, the presence of this species in California, and at Children's Pool Beach in particular, would be considered extremely rare due to the fact that they prefer isolated rocky haul out sites (Riedman, 1990). As the presence of fur seals at this location would be such a rare event, it is likely that the animal would be sick or injured if it were to be present. Therefore, sand sampling activities would not be conducted and coordination with the stranding network and/or a period of observation would commence, as described in further detail below. Take of fur seals would not be authorized under this IHA.

#### *Proposed Specific Geographic Region*

The La Jolla Children's Pool Beach is located at 850 Coast Boulevard, La Jolla, CA 92037 (32°50'51.18" North, 117°16'41.94" West). All sand quality sampling events will take place at Children's Pool Beach. The locations of the beach and the study area can be found in the City of San Diego's IHA application.

#### *Detailed Description of the Proposed 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. As such, Children's Pool Beach is a highly disturbed urban environment, and seals have been documented to respond less sensitively to stimuli compared to seals at other sites (Hanan, 2004, Hanan & Associates 2011; Hanan and Hanan 2014; Hahn 2010). Per Dr. Doyle Hanan, who has a long history of work with seals at this location, harbor seals hauled out at Children's Pool Beach generally are habituated to the environment, and allow approaches of up to two to three meters before showing signs of disturbance.

All sand sampling activities will take place on the sandy beach area. Samples will be collected along transects parallel to the shoreline between the water's edge and the bluff/railing, while

ensuring a distance of at least three meters (m) from any pinnipeds on the beach. Samples would consist of grab samples from the surface, with a subset of samples collected approximately 25 to 50 cm below the sand surface by using a hollow tube (approximately 5 cm by 60 cm) driven into the sand by hand and/or with a small rubber mallet with minimal digging.

All sand sampling events will be conducted during daylight hours, and each sampling event would be approximately four hours in duration. Sampling events will be scheduled to the maximum extent practicable to occur during the daily period of lowest haul out occurrence (generally 8:30 a.m.–3:30 p.m.). Because the City of San Diego already closes the Children's Pool Beach during harbor seal pupping season (December 15 through May 15), work on this project will be performed between June 1 and December 14, 2016, and up to 16 sampling events would be conducted during this timeframe. The first six sand sampling events are planned to occur soon after June 1, 2016. The first three sampling events (Phase 1a) are designed to maximize sampling area and to capture critical conditions when FIB may be at their highest concentrations. During each Phase 1a event, three transects parallel to the shoreline at the swash zone, the high-tide line, and the supralittoral zone will be established relative to the seawall railing and three surface sand (SS) FIB samples (top 2 centimeters) will be collected across each of the transects at approximately left, middle, and right beach. In addition, subsurface sand (Sbs) FIB samples will also be collected at three of the nine SS sampling location during each event at approximately 25–50 centimeters below the surface. A maximum of 21 FIB samples, including field replicates, will be collected for each Phase 1a monitoring event, for an approximate maximum Phase 1a total of 63 FIB samples. The remaining three sampling events (Phase 1b) will consist of biased sampling based on Phase 1a preliminary findings. The study design for Phase 1b will be finalized in consultation with the City. A maximum of 21 FIB samples, including field replicates, will be collected for each Phase 1b monitoring event, for an approximate maximum Phase 1b total of 63 FIB samples. These early test results can then be compared with additional test results from up to 10 additional sampling events that could be collected during the warmer, high-public-use summer and fall months.

#### **Description of Marine Mammals in the Specified Geographic Area of the Proposed Specified Activity**

Information on marine mammal species for which take would be authorized is included below. Further information on the biology and local distribution of these marine mammal species and others in the region can be found in the NMFS Marine Mammal Stock Assessment Reports, which are available online at: <http://www.nmfs.noaa.gov/pr/sars/>.

Three species of pinnipeds are known to occur in the Children's Pool proposed action area and off the Pacific coastline (see Table 1 below). Pacific harbor seals are the most common species likely to be found within the immediate vicinity of the activity area. California sea lions and northern elephant seals may also be found within the immediate vicinity of the activity area, but are more rare occurrences than harbor seals. Northern fur seals and Guadalupe fur seals are even more rarely observed at this location (Northern and Guadalupe fur seals have been seen observed at nearby beaches on rare occasions, and a northern fur seal was observed hauled out at La Jolla Cove, which is less than a mile from Children's Pool, per a personal communication with Dr. Hanan [February 4, 2016], a scientist with extensive knowledge of the area and the species occurring there). Fur seals are not known to haul out in such urban mainland beaches, and their presence would likely be attributed to sickness or injury if they were observed in this location. Therefore, only three species are considered to be potentially exposed to effects of the proposed sand sampling activities, as sand sampling activities would not be conducted if fur seals were present and coordination with the stranding network would commence. A variety of other marine mammal species have on occasion been reported in the coastal waters off southern California. However, none of these species have been reported to occur in the immediate proposed action area of the Children's Pool Beach. Therefore, NMFS does not expect, and does not propose to authorize, incidental take of marine mammal species other than Pacific harbor seals, California sea lions, and northern elephant seals from the proposed specified activities. Table 1 below provides information on these marine mammal species, their habitat, and conservation status in the nearshore area of the general region of the proposed project area.

TABLE 1—THE HABITAT, ABUNDANCE, AND CONSERVATION STATUS OF PACIFIC HARBOR SEALS, CALIFORNIA SEA LIONS, AND NORTHERN ELEPHANT SEALS

Species	Habitat	Occurrence	Range	Best population estimate (minimum) <sup>1</sup>	ESA <sup>2</sup>	MMPA <sup>3</sup>
Pacific harbor seal ( <i>Phoca vitulina richardii</i> ).	Coastal .....	Common	Coastal temperate to polar regions in Northern Hemisphere.	30,968 (27,348)—California stock.	NL	NC.
Northern elephant seal ( <i>Mirounga angustirostris</i> ).	Coastal, pelagic when not migrating.	Common	Eastern and Central North Pacific—Alaska to Mexico.	179,000 (81,368)—California breeding stock.	NL	NC.
California sea lion ( <i>Zalophus californianus</i> ).	Coastal, shelf .....	Common	Eastern North Pacific Ocean—Alaska to Mexico.	296,750 (153,337)—U.S. stock.	NL	NC.

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

*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, Huber, Jeffries 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, Würsig 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.

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 they have been 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. Harbor 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 at Children’s Pool Beach. 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.

Children’s Pool 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.

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

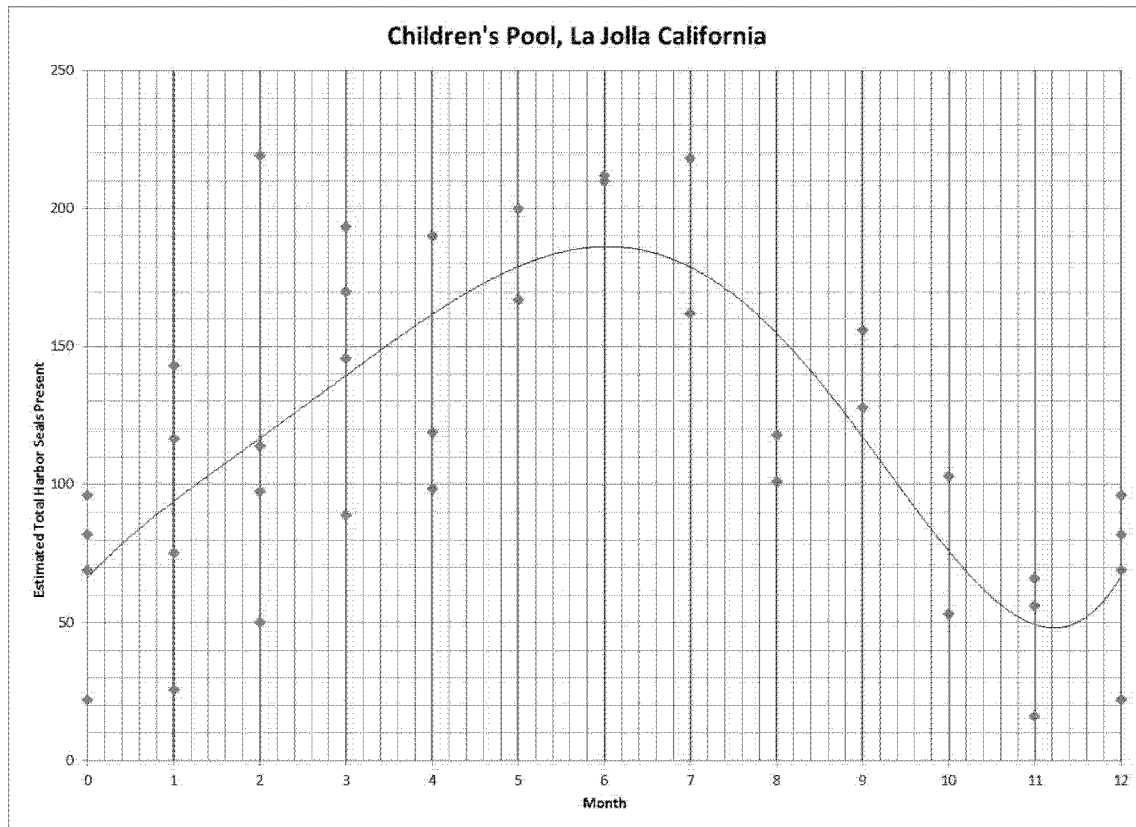
this same period, when people were on the beach and/or across the rope, the average number of harbor seals varied from 7 to 27. The City of San Diego observed 12 counts totaling more than 200 and a maximum of 238 animals during the 2014 to 2015 construction window. The weather (*i.e.*, wind and/or rain) 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 2 of the IHA application and Figure 1 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).

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



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 separate species 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), and 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, although in the past two years births have been reported at La Jolla Cove (about 0.75 km [0.47 miles] east of 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. The California sea lion is not listed under the ESA and the U.S. stock is not considered depleted or strategic under the MMPA.

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 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. 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 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 at the Children's Pool. During 2014, the City of San Diego observed 22 California sea lions (during 19 days) at the Children's Pool. Adult sea lions were also observed hauling out on rocks and cliffs near the Children's Pool. A report from 2015 monitoring is still in process at this time.

#### *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). Spatial segregation in foraging areas between males and females is evident from satellite tag data (Le Boeuf *et al.*, 2000). Males migrate to the Gulf of Alaska and western Aleutian Islands along the continental shelf to feed on benthic prey, while females migrate to pelagic areas in the Gulf of Alaska and the central North Pacific to feed on pelagic prey (Le Boeuf *et al.*, 2000). 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 have recovered after being nearly hunted to extinction (Stewart *et al.*, 1994). Northern elephant seals underwent a

severe population bottleneck and loss of genetic diversity when the population was reduced to an estimated 10 to 30 individuals (Hoelzel *et al.*, 2002). 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 simultaneously. 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 counts of elephant seals at U.S. rookeries in 2010, Lowry *et al.* (2014) reported that 40,684 pups were born. Lowry *et al.* (2014) applied a multiplier of 4.4 to extrapolate from total pup counts to a population estimate of approximately 179,000 elephant seals. This multiplier is derived from life tables based on published elephant seal fecundity and survival rates, and reflects a population with approximately 23% pups (Cooper and Stewart, 1983; Le Boeuf and Reiter, 1988; Hindell 1991; Huber *et al.*, 1991; Reiter and Le Boeuf, 1991; Clinton and Le Boeuf, 1993; Le Boeuf *et al.*, 1994; Pistorius and Bester, 2002; McMahan *et al.*, 2003; Pistorius *et al.*, 2004; Condit *et al.*, 2014). The minimum population size for northern elephant seals in 2010 can be estimated very conservatively as 81,368, which is equal to twice the observed pup count (to account for the pups and their mothers). The population is reported to have grown at 3.8% annually since 1988 (Lowry *et al.*, 2014). Northern elephant seals are not listed under the ESA and are not considered as depleted or a strategic stock under the MMPA.

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, 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 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 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 two juvenile northern elephant seals at the Children's Pool. During 2014, the City of San Diego observed 30 juvenile elephant seals (during 29 days) at the Children's Pool. A report from 2015 monitoring is still in process at this time.

#### **Potential Effects of the Proposed Specified Activity on Marine Mammals**

A significant body of monitoring data exists for pinnipeds at Children's Pool. In addition, pinnipeds have co-existed with heavy public use at this location, and are likely habituated to human presence and activity. Nevertheless, the City of San Diego's sand sampling activities have the potential to disturb pinnipeds present on the beach. Past monitoring at this location has revealed that some or all of the seals present may move or flush from the beach in response to the presence of humans or their pets as well as crew and equipment associated with construction, though some may remain hauled-out. No stampeding of seals—a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus—has been documented. While it is likely impossible to conduct the proposed sand sampling activities without provoking some response in hauled-out animals, precautionary mitigation measures, described later in this document, help ensure that this type of disturbance would be minimized. Under these conditions, it is anticipated that seals would exhibit a continuum of responses, beginning with alert movements (*e.g.*, raising the head), which may then escalate to movement away from the stimulus and possible flushing into the water. Flushed seals typically re-occupy the haul-out within minutes to hours of the stimulus.

In the absence of appropriate mitigation measures, it is possible that pinnipeds could be subject to injury, serious injury, or mortality, likely through abandonment of pups. However, based on a significant body of site-specific data, harbor seals are unlikely to sustain any harassment that may be considered biologically significant. Individual animals would, at most, flush into the water in response to the sand sampling activities, but may also simply become alert or move across the beach away from the sand sampling crew.

California sea lions and northern elephant seals have been observed as less sensitive to stimulus than harbor seals during monitoring at numerous

other sites. For example, monitoring of pinniped disturbance as a result of abalone research in the Channel Islands showed that while harbor seals flushed at a rate of 69 percent, California sea lions flushed at a rate of only 21 percent. The rate for elephant seals declined to 0.1 percent (VanBlaricom, 2010). In the event that either of these species is present during management activities, they would be expected to display a minimal reaction to maintenance activities, and it is expected that reaction would be less than that expected of harbor seals.

Children's Pool is a rookery for harbor seals, so we have evaluated the potential for injury, serious injury, or mortality to pups. Pup injury or mortality would be most likely to occur in the event of extended separation of a mother and pup, or trampling in a stampede. As discussed previously, no stampedes have been recorded at Children's Pool. Any California sea lions or northern elephant seals present would be independent juveniles or adults; therefore, analysis of impacts on pups is not relevant for those species.

The period of mother-pup bonding, a critical time needed to ensure pup survival and maximize pup health, is not expected to be impacted by the sand sampling activities. Harbor seal pups are extremely precocious, swimming and diving immediately after birth and throughout the lactation period, unlike most other phocids which normally enter the sea only after weaning (Lawson and Renouf, 1985; Cottrell *et al.*, 2002; Burns *et al.*, 2005). Lawson and Renouf (1987) investigated harbor seal mother-pup bonding in response to natural and anthropogenic disturbance. In summary, they found that the most critical bonding time is within minutes after birth. As described previously, the peak of pupping season is typically concluded by mid-May, and the beach is closed to the public until that time. An additional two week period was added to that time before sand sampling activities could begin (to begin June 1) in order to account for any potentially late-weaning pups. As such, it is expected that mother-pup bonding would likely be concluded as well. In addition, mitigation measures described later in this document further reduce the likelihood of any impacts to pups, whether through injury or mortality or interruption of mother-pup bonding (which may lead to abandonment).

In summary, and based on extensive monitoring data, we believe that impacts to hauled-out pinnipeds during estuary management activities would be behavioral harassment of limited duration (*i.e.*, less than one day) and

limited intensity (*i.e.*, temporary flushing at most). Stampinging, and therefore injury or mortality associated with stampeding, is not expected. Further, the continued use of the haul-out despite decades of public use at this site indicates that abandonment of the haul-out is unlikely.

#### **Anticipated Effects on Marine Mammal Habitat**

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). 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. In addition to Pacific harbor seals, California sea lions and northern elephant seals have also been observed at Children's Pool Beach occasionally (Yochem and Stewart 1998; Hanan 2004; Hanan & Associates 2014). 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 Proposed Specified Activity."

The primary anticipated adverse impact upon habitat consists of the removal of sand from the beach. This change is minor, temporary, and limited in duration to the period of the sand sampling activities. All sand sampling activities will take place on the sand beach area normally occupied by hauled out seals. Although sand will be collected from the beach, the total volume removed over the course of the study is estimated to be less than one cubic foot. Additionally, a subset of samples will be collected approximately 25 to 50 centimeters (cm) below the sand surface. Because of the mechanism of collection (use of a hollow plastic tube and rubber mallet with minimal digging), only transient sand displacement is anticipated. Therefore, we do not anticipate impacts to habitat.

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 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. Further, the site is already very disturbed by members 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 the presence of the sand sampling technicians and their activities during the proposed sand quality study is expected by the City of San Diego and NMFS to be quickly restored after the sand sampling activities end.

For these reasons, NMFS anticipates that the proposed action would result in no impacts to marine mammal habitat beyond rendering the areas of Children's Pool Beach immediately around the sand sampling activities less desirable. These sampling activities would be temporary and would occur relatively infrequently, as they are anticipated to occur up to 16 times over the months of May to December for approximately four hours at a time. Thus, any impacts to marine mammal habitat are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

#### **Proposed 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 except during pupping season, when the beach has been closed to the public in order to protect the seals. 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 activities proposed by the applicant include a variety of measures to minimize potential impacts on marine mammals, including:

#### ***Prohibition of Sand Sampling During Pupping Season***

Sand sampling activities 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, sand quality study activities shall be prohibited until June 1, 2016 and would



be required to end before December 15, 2016.

#### *Limiting Activity to Daylight Hours*

Sand sampling activities shall be conducted during daylight hours only. As Protected Species Observers (PSOs) will be required to monitor the sand sampling activities (see discussion below), conducting the sampling events during daylight hours with adequate visibility will allow observers to adequately observe and record activities.

#### *Daily Sand Sampling Timing*

Sand sampling 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., as harbor seals typically have the highest daily or hourly haul-out period during the afternoon from 3 p.m. to 6 p.m. However, sand sampling activities may be extended from 7 a.m. to 7 p.m. to help assure that the project can be completed at a time with low numbers of seals hauled out.

#### *Avoidance/Minimization of Interaction with Pinnipeds*

As stated above, per Dr. Doyle Hanan, ongoing observations of harbor seals at Children's Pool have indicated a habituation to the presence of people and therefore, generally show signs of disturbance when people are very close to them on the beach (generally less than two to three meters). Sand sampling activities will be conducted such that humans remain at least three meters from hauled out pinnipeds at all times. While the study calls for taking samples along transects, there is enough flexibility to allow for variation from the transect line to collect samples and still allow for minimizing approach to pinnipeds on the beach. Therefore, hauled out pinnipeds will be minimized or avoided, and efforts will be made to avoid disturbing/alerting/flushing them.

#### *Protected Species Observers*

Trained PSOs would be used to detect, document, and minimize impacts to marine mammals. More information about this measure is contained in the "Proposed Monitoring" section (below).

#### *Proposed Mitigation Conclusions*

NMFS has 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 visual or auditory stimuli associated with the proposed sand quality study, 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 visual or auditory stimuli associated with the proposed sand quality study, 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 visual or auditory stimuli associated with the proposed sand quality study, 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, NMFS has preliminarily determined that the proposed 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.

#### **Proposed 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 proposed 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 visual or auditory stimuli associated with the proposed sand quality study that we associate with specific adverse effects, such as behavioral harassment;

(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 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 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;
- (5) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures; and
- (6) An increase in our level of knowledge regarding the overall health of the monitored species, particularly in light of recent local UMEs and observations of malnutrition increases in the area.

*Proposed Monitoring*

The City of San Diego has developed a monitoring plan based on discussions between the City of San Diego and NMFS, as well as review of past IHAs granted to the City of San Diego. The plan is also included as an Appendix to

our draft Environmental Assessment (EA) for issuance of the IHA for the sand quality study activities (see National Environmental Policy Act section below), which is available for public review along with the draft EA.

The monitoring plan involves PSOs surveying and conducting hourly visual counts beginning prior to sand sampling activities (beginning at least 30 minutes prior to sampling activities), monitoring during sampling activities, and post-sand sampling monitoring (continuing for at least 30 minutes after sand sampling activities have ended). During each sample collection event, the PSO will conduct continuous monitoring from a vantage point along the seawall (weather permitting) or along the bluff above the beach, such that the full study area is in view. During the proposed sand sampling activities, monitoring shall assess behavior and potential behavioral responses to noise and visual stimuli due to the proposed activities. As noted above, if northern fur seals or Guadalupe fur seals are observed prior to commencement of activities, the

activities will not occur and coordination with the stranding network will be initiated.

Counts will be performed by species for three zones: Pinnipeds hauled out on the sandy beach area, pinnipeds observed in the water within approximately 30 meters of the beach, and pinnipeds hauled out on the reef/rocks just off the beach (including Seal Rock). Total counts, counts of juveniles (yearlings and pups), and counts of males/females (when possible) will be recorded. In addition to counts, continuous behavioral monitoring will be conducted for the duration of the sampling event to document any behavioral responses to visual (or other) stimuli, as noted in Table 2 below. When responses are observed, the type of take (*i.e.*, alert and flush, movement of more than one meter, or change in direction of movement) and the assumed cause (whether related to sample collection activities or not) will be noted by species. Photographs and/or video will be taken to document these responses.

TABLE 2—SEAL RESPONSE TO DISTURBANCE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length. Alerts would be recorded, but not counted as a 'take'.
2	Movement	Movements away from the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach including changing direction of travel, or movement along the beach from a resting position. These movements would be recorded and counted as a 'take'.
3	Flush	All retreats (flushes) to the water. Flushing into the water would be recorded and counted as a 'take'.

Additional parameters will be recorded during the first and last count of each sampling event including Beaufort sea state; atmospheric conditions; cloud cover; visibility conditions; air and water temperature; tide height; and number of public visitors present by location at Children's Pool.

Field observations will be documented on Field Monitoring Forms, and all observations and associated data, including daily monitoring reports, would be maintained on City of San Diego computers. A report summarizing mitigation and monitoring for the duration of the Children's Pool Beach sand quality study will be prepared and submitted by the City of San Diego to NMFS following completion of sand sampling activities for the 2016 sampling season.

The following marine mammal monitoring and reporting shall be performed for the proposed action:

- (1) The PSO shall be selected prior to sand sampling activities.
- (2) The NMFS-approved PSO shall attend the project site prior to, during, and after sand sampling activities cease each day that the sand sampling activities occur.
- (3) The PSO shall search for marine mammals within the Children's Pool area.
- (4) The PSO shall be present during sand sampling activities to observe for the presence of marine mammals in the vicinity of the specified activity. All such activity would 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 would perform visual scans to the extent conditions allow.

(5) If marine mammals are sighted by the PSO, the PSO shall record the number of marine mammals and the duration of their presence while the sand sampling activity is occurring. The PSO would also note whether the marine mammals appeared to respond to the noise/visual stimuli 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 between sampling personnel and pinniped(s), number of animals impacted, sampling activities occurring at time of sighting (walking, taking surface sample, or pounding core sampler), and monitoring and mitigation measures implemented (or not implemented). The observations would be reported to NMFS.

(6) To avoid takes of Guadalupe fur seals, if fur seals are observed to be hauled out on the beach, or in the water/rocks at the Children's Pool Beach prior to the initiation of sand collection activities, sand sampling activities will not commence. PSOs will alert the stranding network, as the occurrence of these species would typically indicate a sick/injured animal. Recommendations of the stranding coordinator will be followed, which may include a 24-hour or 48-hour waiting and observation period, and sand sampling would not commence until the animal(s) either vacated the area on its own, or was collected by the stranding network

(7) A final report would be submitted summarizing all effects from sand sampling activities and marine mammal monitoring during the time of the authorization.

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 sand sampling activities;
- Distances to all marine mammals relative to the stimuli;
- For harbor seal, northern elephant seal, and California sea lion observations, notes on behavior during sand sampling activity, as described above, and on the number and distribution observed in the project vicinity;
- For observations of all marine mammals other than harbor seals, northern elephant seals, and California sea lions, 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 sand sampling activities;
- Time of the cessation of sand sampling activities; and
- Time of observer departure from site.

All monitoring data collected during sand sampling events would be included in the biological monitoring notes to be submitted. A final report summarizing the sand sampling monitoring and any general trends observed would also be submitted to NMFS within 90 days after monitoring has ended during the period of the sand quality study or 45 days prior to the date by which any subsequent IHA is requested by the City of San Diego, whichever comes first.

#### *Proposed Reporting*

A draft final report must be submitted to NMFS within 90 days after the conclusion of the final sand sampling activities of the Children's Pool Beach.

The report would 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 sand sampling activities). A final report must be submitted within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report would 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 sand quality study observe an injured or dead marine mammal, the incident (regardless of cause) will immediately be reported to NMFS stranding coordinator. 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, or if any fur seals are observed) 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 stranding coordinator 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, and the West Coast Regional Stranding Coordinator. 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;
- 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 would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would 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, and the West Coast Regional Stranding Coordinator 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

#### 2013 to 2014

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 May 30, 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 three sightings of California sea lions (1 juvenile, 3 adult), and 2 northern elephant seals (both juveniles) at the Children's Pool.

#### 2014 to 2015

Hanan & Associates, Inc., on behalf of the City of San Diego, conducted marine mammal monitoring at seven locations during demolition and construction activities at the Children's Pool Lifeguard Station in La Jolla, California from August 6, 2014 to March 15, 2015. Construction activities began on August 6, 2014 and were halted for the Pacific harbor seal pupping season (December 15, 2014 to May 30, 2015). During 127 days of visual and acoustic observations, Hanan & Associates counted a total of 63,598 Pacific harbor seals and 27,844 people. During the 2014 demolition and construction activities, Hanan & Associates observed a total of 20,259 takes by Level B harassment (*i.e.*, alerts, movements, and flushes) that could be attributed to demolition and construction activities (7,424 takes), the general public (10,000 takes), and other sources (2,835 takes). As of March 13, 2015, at least 60 harbor seal pups (including 6 still or premature 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, 366 sightings of California sea lions (93 at

Children's Pool beach; others were at Seal Rock, South Casa Beach, and on the reef), and 1 northern elephant seal (juvenile). One dead adult and one dead juvenile California sea lion were sighted on the Children's Pool beach after the start of the beach closure and after the construction activities stopped for the pupping season. These strandings were reported to NMFS.

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 reports. The 2013 to 2014 and 2014 to 2015 monitoring reports can be found online at: <http://www.nmfs.noaa.gov/pr/permits/incidental/construction.htm#childrenspool>.

### 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].

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 visual disturbance associated with the sand quality study sand sampling activities at the Children's Pool Beach. No takes by injury (Level A harassment), serious injury, or mortality are expected. NMFS will consider pinnipeds behaviorally reacting to the sand sampling activities by flushing into the water, moving more than twice the animal's body length but not into the water; becoming alert and moving more than twice its body length; and changing direction of current movements by individuals as behavioral criteria for take by Level B harassment.

With proposed sand sampling activities scheduled to begin in May 2016, the City of San Diego expects a range of harbor seals to be present daily during June with a maximum of up to 190 individuals and a seasonal decline through November to about 0 to 50 harbor seals present daily. As not all of the sampling activities have been planned, and there is uncertainty regarding the timing and number of all activities, we have assumed the

maximum number of authorized sampling activities (16) occurring during the maximum haul out month (June) in order to estimate take numbers. If all of the estimated harbor seals present are taken by incidental harassment each day, there could be a maximum of 3,040 incidences of take (*i.e.*, approximately 896 adult males and 672 juvenile males, 864 adult females and 608 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.

Very few California sea lions or northern elephant seals are ever observed at the Children's Pool Beach. As noted above, Children's Pool is almost exclusively a harbor seal haul-out site and on rare occasions, one or two California sea lions or a single juvenile elephant seal have been observed on the sand or rocks at, or near, Children's Pool. However, as noted above, an UME has been in place since 2013 for California sea lions. According to the NMFS West Coast Region, California sea lion strandings in January-May of 2015 were over 10 times the average stranding level for the same five-month period during 2004–2012. The City of San Diego has requested take for these species due to their potential occurrence at this location and past monitoring experience at this location. As the previous IHA authorized take of two individual sea lions incidental to construction activities at Children's Pool, and numbers of sea lion sightings have been over 10 times the average, we estimate that up to 20 individuals may be incidentally taken by Level B harassment equating to 320 exposures (conservatively assuming 20 × 16 sampling events). As only one or two northern elephant seals are known to occur rarely at Children's Pool Beach, it was conservatively estimated that 16 individuals would be exposed to Level B harassment for a total of 16 takes (assuming one present for each of the 16 sampling events). Therefore, NMFS proposes authorizing the following numbers of incidental takes (*i.e.*, Level B harassment): 3,040 Pacific harbor seals (600 individuals), 320 California sea lions (20 individuals), and 16 northern elephant seals (16 individuals). More information on the number of takes authorized, and the approximate percentage of the stock for the three species in the proposed action area can be found in Table 3 (below).

TABLE 3—SUMMARY OF THE AUTHORIZED INCIDENTAL TAKE BY LEVEL B HARASSMENT OF PINNIPEDS FOR THE CITY OF SAN DIEGO'S PROPOSED SAND QUALITY STUDY ACTIVITIES GENERATING VISUAL AND AUDITORY STIMULI AT THE CHILDREN'S POOL BEACH IN LA JOLLA, CA.

Species	Take authorization (number of exposures)	Estimated number of individuals taken	Abundance	Approximate percentage of estimated stock (takes authorized/population)	Population trend
Pacific harbor seal .....	3,040	600	30,968—California stock .....	10	Increased in California 1981 to 2004. Increasing. Increasing 3.8% annually since 1988.
California sea lion .....	320	20	296,750—U.S. stock .....	0.1	
Northern elephant seal .....	16	16	179,000—California breeding stock.	<0.01	

### Analysis and Preliminary 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.

Behavioral disturbance may potentially occur incidental to the visual presence of humans and sand sampling activities; however, pinnipeds at this site have likely adapted or become acclimated to human presence at this site. The City of San Diego has designated Children's Pool Beach as a shared use beach. Many activities currently take place at Children's Pool Beach and the surrounding shoreline areas including swimming, SCUBA diving, surfing, kayaking, tide pooling, and nature watching. 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). For example, during monitoring for construction for the Children's Pool Lifeguard Station, equipment noise and visual cues at times have caused seals to alert/flush, while at other times the same stimuli have produced no reaction (City of San Diego, 2015). Per the City of San Diego (2015), “[a]t the individual level, a newly arrived seal (which swam in from another area) may not have habituated to humans and noise as have seals that have been onsite for a while. These recent arrivals may alert to visual stimuli, perhaps flushing to the water. But after a few days using this beach during the non-pupping season (when humans are also present on the beach), we would expect them to habituate and generally not react to humans unless very close to them (Hanan 2004, Hanan & Associates 2011, Hanan and Hanan 2014).” Therefore, there is a high likelihood that many of the harbor seals present during the proposed sand sampling activities would not be flushed off of the beach or rocks, as pinnipeds at this site are conditioned to

human presence (Hanan, 2004; Hanan & Associates, 2011) (see <http://www.youtube.com/watch?v=4IRUYVTULsg>), and it is anticipated that takes would likely be of lesser intensity than would be expected at other locations.

No injuries (Level A harassment), serious injuries, or mortalities are anticipated to occur as a result of the City of San Diego's sand sampling activities, and none are proposed for authorization by NMFS. The proposed activities are not expected to result in the alteration of reproductive behaviors because of the moratorium on access to the beach during the pupping season, and the potentially affected species would be subjected to only temporary and minor behavioral impacts.

As discussed in detail above, the proposed project scheduling avoids sensitive life stages for Pacific harbor seals. Proposed project activities will commence June 1 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 late-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 3 of this document outlines the number of Level B harassment takes that are anticipated as a result of these proposed 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 proposed mitigation,

monitoring, and reporting measures that would 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 at the project site. Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (*i.e.*, 24 hour cycle). Behavioral reactions (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. The Pacific harbor seals have repeatedly hauled-out to pup over many years and the NMFS Stock Assessment Reports for this stock have shown that the population is increasing and is considered stable (NMFS, 2014). Additionally, the proposed sand sampling activities would generally not take place on subsequent days for long durations, as a maximum of up to 16 sampling events (lasting approximately 4 hours each) are planned for the sand quality study, which would take place over the six-months of the study.

None of the potentially affected marine mammal species under NMFS jurisdiction in the action area (Pacific harbor seals, California sea lions, and northern elephant seals) are listed as threatened or endangered under the ESA. To protect these animals (and other marine mammals in the action area), the City of San Diego shall schedule sand sampling activities during the daily period of lowest haul-out occurrence; limit activities to the hours of daylight; ensuring that technicians performing sand sampling remain at least three meters from any hauled out pinnipeds; use PSOs, prohibit sand sampling activities in the unlikely event that fur seals are present, and prohibit sand sampling activities during harbor seal pupping season.

Although behavioral modifications, including temporarily vacating the area during the proposed sand sampling activities, may be made by these species, the sand quality sampling activities would be fairly sporadic and would be of relatively short duration. NMFS believes that the time period of the proposed sand sampling activities, the requirement to implement mitigation measures (*e.g.*, prohibiting sand sampling activities during pupping season, scheduling operations to periods of the lowest haul-out occurrence, and ensuring a buffer of at least three meters between sampling technicians and hauled out pinnipeds), and the inclusion of the monitoring and reporting measures, will reduce the amount and severity of the potential impacts from the activity.

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

#### *Small Numbers*

As mentioned previously, NMFS estimates that three species of marine mammals under its jurisdiction could be potentially affected by Level B harassment over the course of the IHA. It is conservatively estimated that the instances of take by Level B harassment (amounting to 3,040 for Pacific harbor seals, 320 for California sea lions, and 16 for northern elephant seals) would be approximately 10%, 0.1%, 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 3 of this document.

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 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 3 for the proposed authorized take numbers of marine mammals.

#### **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 would not have an unmitigable adverse impact on the availability of such species or stocks for subsistence purposes.

#### **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 the Guadalupe fur seal. This species is rare at Children's Pool Beach. Due to the fact that sightings have occurred in the area, and due to the declaration of a UME for this species in the area, ESA consultation was considered. However, it was determined that the sand sampling activities would have no potential to affect the Guadalupe fur seal because these activities would not occur if this species were present at Children's Pool Beach. No other ESA-listed species are expected to occur in the proposed project area.

#### **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 a Draft Environmental Assessment (EA) titled *Draft Environmental Assessment of the Issuance of an Incidental Harassment Authorization to the City of San Diego to Take Marine Mammals by Harassment Incidental to Sand Quality Study Activities at the Children's Pool Beach in La Jolla, California* to comply with the Council of Environmental Quality (CEQ) regulations and NOAA Administrative Order (NAO) 216-6. NMFS will evaluate public comments on the proposed action to determine whether a Finding of No Significant Impact (FONSI) is warranted, or if an Environmental Impact Statement (EIS) would be required.

#### **Proposed Authorization**

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the City of San Diego for conducting sand quality study activities

at the Children's Pool Beach in La Jolla, CA, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The proposed IHA language is provided below:

The City of San Diego, is hereby authorized under section 101(a)(5)(D) of the Marine Mammal Protection Act (16 U.S.C. 1371(a)(5)(D)), to harass small numbers of marine mammals incidental to the sand quality study activities at the Children's Pool Beach, June 1 through December 14, 2016, contingent upon the following conditions:

1. *Effective Dates*

This Authorization is valid from June 1, 2016 through June 30, 2017.

2. *Specified Geographic Region*

This Authorization is valid only for the sand sampling activities at the Children's Pool Beach that shall occur in the following specified geographic area:

The La Jolla Children's Pool Beach at 850 Coast Boulevard, La Jolla California 92037 (32° 50'51.18" North, 117° 16'41.94" West), as specified in the City of San Diego's IHA application.

3. *Species Authorized and Level of Takes*

(a) The incidental taking of marine mammals, by Level B harassment only, is limited to the following species in the La Jolla, California area:

(i) *Pinnipeds*—see Table 3 (above) for authorized species and take numbers.

(ii) If any marine mammal species are encountered during sand sampling activities that are not listed in Table 3 (above) and are likely to be taken by the sand quality study activities, then the City of San Diego must shut-down operations to avoid take.

(b) The taking by injury (Level A harassment), serious injury, or death of any of the species listed in Condition 3(a) above, or the taking of any kind of any other species of marine mammal, is prohibited and may result in the modification, suspension or revocation of this Authorization.

The methods authorized for taking by Level B harassment are limited to visual stimuli associated with sand sampling activities (walking beach transects, taking sand surface samples, and taking subsurface samples, including hammering core samples with a rubber mallet) without an amendment to this Authorization:

4. *Prohibited Take*

The taking of any marine mammal in a manner prohibited under this Authorization must be reported immediately to the Office of Protected Resources, National Marine Fisheries Service (NMFS), at 301-427-8401.

5. *Mitigation and Monitoring Requirements*

The City of San Diego is required to implement the following mitigation and monitoring requirements when conducting the specified activities:

*Sand Sampling Activities Prohibited During Popping Season*

(a) The sand sampling activities shall be prohibited until June 1, 2016 and shall be completed prior to December 15, 2016.

*Daily Sand Sampling Timing*

(b) To the maximum extent practicable, sand sampling activities shall be conducted from approximately 8:30 a.m. to 3:30 p.m.; however, sand sampling activities may be extended from 7 a.m. to 7 p.m. (*i.e.*, daylight hours).

*Protected Species Observers*

(c) A trained Protected Species Observer (PSO) shall attend the project site 30 minutes prior until 30 minutes after sand sampling activities cease each day throughout the sand quality study window. The PSO shall be approved by NMFS prior to commencement of activities. The PSO shall search for marine mammals using binoculars and/or the naked eye within the study area. The PSO will observe from a station along the breakwater wall (weather permitting) as well as the base of the cliff.

(d) In the event that fur seals are observed either on the rocks, beach, or in the water at Children's Pool Beach prior to commencement of sand collection activities, these activities will be postponed until coordination with the stranding network is complete (including any potential 24-hour or 48-hour wait/observation period) and/or the animal either leaves, or is collected by the stranding network.

(e) The PSO shall use visual digital recordings and photographs to document individuals and behavioral responses to the sand sampling activities. The PSO shall make hourly counts of the number of pinnipeds present and record events that result in behavioral responses and changes, whether due to sand sampling activities or from public stimuli. During these events, pictures and videos will be taken when possible to document individuals and behavioral responses.

(f) A PSO shall record the following information when a marine mammal is sighted:

(i) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent),

distribution, bearing and distance relative to the sampling technicians (stimuli), group cohesiveness, duration of presence, apparent reaction to sand sampling activities (*e.g.*, none, avoidance, approach, etc.), direction and speed of travel, duration of presence, and if there are other causes of potential disturbance occurring;

(ii) Date, time, location, sand sampling activity (walking; surface sampling; subsurface sampling [hammering], etc), monitoring and mitigation measures implemented (or not implemented), tidal stage, weather conditions, Beaufort sea state, wind speed, visibility, and sun glare; and

(iii) The data listed under Condition 6(g)(ii) shall also be recorded at the start and end of each observation watch and during a watch whenever there is a change in one or more variables.

(g) A PSO shall also record the time of arrival and departure on site, commencement and cessation of sand sampling activities, and presence of humans on the beach. Whenever possible, the PSO should determine as to whether or not the harassment of pinnipeds is attributable to the sand sampling activities and/or the presence of the public on the beach and around the Children's Pool area. A PSO shall record the number of people on the beach and surrounding areas as well as their location relative to the animals.

*Approach Buffer Zones*

(h) Buffer zones shall be established such that sand sampling technicians will remain at least three meters from any hauled out pinniped at all times.

6. *Reporting Requirements*

The City of San Diego is required to:

(a) Submit a draft report on all activities and monitoring results to the Office of Protected Resources, NMFS, within 90 days of the completion of the sand sampling activities at the Children's Pool Beach. This report must contain and summarize the following information:

(i) Dates, times, locations, weather, sea conditions (including Beaufort sea state and wind speed), and associated activities during all sand sampling activities and marine mammal sightings;

(ii) Species, number, location, distance from the PSO, and behavior of any marine mammals, as well as associated sand sampling activities, observed throughout all monitoring activities.

(iii) An estimate of the number (by species) of marine mammals that are known to have been exposed to the sand sampling activities (based on visual observation) with a discussion of any specific behaviors those individuals

exhibited. NMFS will consider pinnipeds flushing into the water; moving more than twice their body length, but not into the water; and changing direction of current movement by individuals as behavioral criteria for take by Level B harassment.

(iv) A description of the implementation and effectiveness of the monitoring and mitigation measures of the IHA.

(b) Submit a final report to the Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, within 30 days after receiving comments from NMFS on the draft report. If NMFS decides that the draft report needs no comments, the draft report shall be considered to be the final report.

7. In the unanticipated event that the City of San Diego discovers a live stranded marine mammal (sick and/or injured, or if any fur seals are observed) at Children's Pool, they shall immediately contact Sea World's stranded animal hotline at 1-800-541-7235. Sea World shall also be notified for dead stranded pinnipeds so that a necropsy can be performed. In all cases, the NMFS stranding coordinator shall be notified as well, but for immediate responses purposes, Sea World shall be contacted first.

#### *Reporting Prohibited Take*

8. In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this Authorization, such as an injury (Level A harassment), serious injury or mortality, the City of San Diego shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS and the West Coast Regional Stranding Coordinator. The report must include the following information:

(a) Time, date, and location (latitude/longitude) of the incident; the type of activity involved; description of the circumstances during and leading up to the incident; water depth; environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility); description of marine mammal observations in the 24 hours preceding the incident; species identification or description of the animal(s) involved; the fate of the animal(s); and photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with the City of San Diego to determine what is necessary to

minimize the likelihood of further prohibited take and ensure MMPA compliance. The City of San Diego may not resume their activities until notified by NMFS via letter or email, or via telephone.

#### *Reporting an Injured or Dead Marine Mammal With an Unknown Cause of Death*

In the event that the City of San Diego discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), the City of San Diego will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS and the NMFS West Coast Regional Office and/or the West Coast Regional Stranding Coordinator. The report must include the same information identified in the Condition 8(a) above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with the City of San Diego to determine whether modifications in the activities are appropriate.

#### *Reporting an Injured or Dead Marine Mammal Not Related to the Activities*

In the event that the City of San Diego discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in Condition 2 to 4 of this Authorization (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the City of San Diego shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS and the NMFS West Coast Regional Office and/or the West Coast Regional Stranding Coordinator 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.

#### *Reporting Any Presence of Fur Seals*

In the event that the City of San Diego discovers any fur seals hauled out on the rocks or in sand at Children's Pool Beach prior to commencing sand sampling activities for the day, the City of San Diego shall contact the West Coast Regional Stranding Coordinator and sand sampling activities will not

commence until the animal(s) either leave or are collected by the stranding network. The City will also report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS 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 after the animal(s) are no longer present while NMFS reviews the circumstances of the incident.

9. A copy of this Authorization must be in the possession of all contractors and PSOs operating under the authority of this IHA.

#### **Request for Public Comments**

NMFS requests comment on our analysis, the draft authorization, and any other aspect of the preliminary determinations and notice of the proposed IHA for the City of San Diego's sand quality study activities at the La Jolla Children's Pool Beach. Please include with your comments any supporting data or literature citations to help inform our final decision on the City of San Diego's request for an MMPA authorization.

Dated: March 29, 2016.

**Wanda L. Cain,**

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

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## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

[Docket ID: DoD-2016-HA-0032]

### **Proposed Collection; Comment Request**

**AGENCY:** Office of the Assistant Secretary of Defense for Health Affairs, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with the *Paperwork Reduction Act of 1995*, the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the