



# MARINE MAMMAL COMMISSION

21 May 2013

Mr. P. Michael Payne, Chief  
Permits and Conservation Division  
Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910-3225

Dear Mr. Payne:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the City of San Diego's application seeking authorization under section 101(a)(5)(D) of the Marine Mammal Protection Act to take small numbers of marine mammals by harassment. The taking would be incidental to demolition and reconstruction of the Children's Pool Lifeguard Station in La Jolla, California. Demolition and construction activities would occur from 1 June to 31 December 2013. The Commission also has reviewed the National Marine Fisheries Service's 3 May 2013 notice (78 Fed. Reg. 25958) announcing receipt of the application and proposing to issue the authorization, subject to certain conditions.

## **RECOMMENDATION**

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

## **RATIONALE**

The City plans to demolish the current lifeguard station that has been condemned since February 2008 and construct a new station at the Children's Pool. The new facility would include an observation tower, first aid room, male/female locker rooms, a second observation area, an accessible ramp for restrooms, a public viewing area, and a plaza. Use of equipment (i.e., backhoe, excavator, dump truck, crane, small drill rig, fork lift, air compressor, jack hammer, and hand/power tools) and increased presence of humans would be the main sources of marine mammal disturbance. Activities would occur only during daylight hours.

The Service preliminarily has determined that, at most, the proposed activities temporarily would modify the behavior of small numbers of harbor seals, California sea lions, and northern elephant seals. It also anticipates that any impact on the affected species and stocks would be negligible. The Service does not anticipate any take of marine mammals by death or serious injury and believes that the potential for disturbance will be at the least practicable level because of the proposed mitigation and monitoring measures. Those measures include—

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- (1) restricting demolition and construction activities during the harbor seal pupping and weaning season (1 January to 31 May);
- (2) allowing heavy construction activities to occur only from October to November, a period when relatively few seals are hauled out;
- (3) allowing construction activities to occur only from 8:30 am to 3:30 pm, a period when relatively few seals are hauled out;
- (4) constructing temporary visual and acoustic barriers between the demolition and construction activities and the haul-out site;
- (5) using trained protected species observers to monitor 30 minutes before, during, and 30 minutes after demolition and construction activities;
- (6) conducting in-situ measurements of in-air sound propagation before and during demolition and construction activities, if funding is available;
- (7) coordinating with the Western Alliance for Nature to use its web-camera system to supplement monitoring efforts; and
- (8) reporting injured and dead marine mammals to the Service and local stranding network using the Service's phased approach and suspending activities, if appropriate.

The Commission considers the proposed mitigation and monitoring measures sufficient to avoid significant impacts on harbor seals, California sea lions, and northern elephant seals that might occur in the project area. It also understands that the City's ability to conduct in-situ measurements of in-air sound propagation depends on the availability of resources. Because in-air sound measurements of the sound sources to be used are rare, the Commission encourages the City to use its funding to conduct such measurements during demolition and construction activities and give lower priority to assessing baseline ambient sound levels.

Based on the proposed mitigation and monitoring measures, the Marine Mammal Commission concurs with the National Marine Fisheries Service's preliminary finding and recommends that the Service issue the incidental harassment authorization, subject to inclusion of those measures.

Please contact me if you have questions regarding the Commission's recommendation.

Sincerely,

A handwritten signature in blue ink that reads "Timothy J. Ragen". The signature is written in a cursive, flowing style.

Timothy J. Ragen, Ph.D.  
Executive Director