



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

JAN -2 2014

In response refer to:
151410SWR2013PR00014:CEY

Todd Gloria
Interim Mayor

Councilmembers
City of San Diego
202 C Street
San Diego, CA 92101

Dear Mayor Gloria and City of San Diego Councilmembers:

This letter provides comments from the West Coast Region of the National Marine Fisheries Service (NMFS) on the City of San Diego's (City) proposal to prohibit the public from entering the sandy area of Children's Pool Beach in La Jolla during harbor seal pupping season from December 15th through May 15th.

NMFS has communicated with the City for many years regarding pinnipeds at Children's Pool Beach, and has attempted to provide helpful guidance and scientific expertise to both the City and the various stakeholders. In this arena, our principle responsibility is to implement the Marine Mammal Protection Act (MMPA) and promote the conservation of marine mammal populations.

Unfortunately, our efforts to provide guidance on complying with the MMPA has not helped to diminish the human conflict that persists between various groups at Children's Pool Beach. It is unfortunate that the human conflicts overshadow what is a MMPA conservation success story that all should enjoy -- the population growth of harbor seals along our West coast. The ideal solution to this type of conflict is one of shared use -- where the MMPA is complied with but no unnecessary restrictions are placed on other beach or ocean users.

Therefore, we want to clarify that we do not believe that complete closure of Children's Pool Beach is necessary to protect the harbor seals from violations of the MMPA. The MMPA does not require that beaches be closed, or that people maintain any specific distance from the animals. Rather, the MMPA generally prohibits the harassment, hunting, capturing, or killing of marine mammals. As these terms relate to the pinnipeds at Children's Pool, the primary concern is the harassment of these animals that could occur as a result of human activities. Harassment would be acts of pursuit, torment, or annoyance that have the potential to injure the animal(s) or disrupt natural behavior patterns.



Our attempts to reduce the likelihood of harassment of marine mammals by providing distance recommendations and other guidance have been interpreted by various interests as requiring or prohibiting certain actions, such as requiring people maintain set distances while observing the animals or swimming in the vicinity of the animals. In fact, the law does not mandate set distances. We do believe that pupping season is a particularly important time for ensuring that harbor seals are not impacted by human activities, but do not believe that complete closure of the beach is the only way of achieving that protection.

Our advice is that all individuals, communities, and governments be made aware of the prohibitions of the MMPA and take steps to reduce the possibility of harassing marine mammals wherever they are encountered in the wild. We encourage efforts to reach out to the public and affected communities to educate them about these animals and foster respect for the animals through responsible and safe viewing practices.

Also, we recommend the City review the pre-emption provisions of MMPA Section 109 (a), 16 U.S. Code Section 1379(a), as it makes decisions to addresses the conflicts at Children's Pool Beach.

If you have any questions, please contact me at 562-980-4007.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris E. Yates", with a long horizontal flourish extending to the right.

Chris E. Yates
Assistant Regional Administrator for
Protected Resources

cc: California Coastal Commission Attn: Kanani Brown, Coastal Program Analyst