



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

OCT 19 1999

F/SWR3:JGC

Ms. Teri Williams
Deputy Director
City of San Diego
Coastal Parks Division
Park and Recreation Department
2581 Quivera Court
San Diego, CA 92109-8398

Dear Ms. Williams:

Thank you for your letter stating that the City of San Diego is contemplating re-applying for an Incidental Harassment Authorization (IHA) to dredge Children's Pool Beach (CPB) as a means of solving the CPB bacterial contamination problem, and inquiring as to whether the National Marine Fisheries Service (NMFS) would be in favor of such a request.

As you know, the City originally submitted its request for an IHA for CPB on December 28, 1998. On or about March 30, 1999, the San Diego City Council voted 6-3 to withdraw its IHA application to NMFS. This decision was based on various factors: the cost of the project, the inability to definitively predict that the dredging project would result in a decrease in the number of harbor seals frequenting CPB and a subsequent decrease in the bacteria coliform count, and overwhelming opposition from the general public to the dredging project and the displacement of the harbor seals.

We were disappointed by the City Council's decision, as we do not favor public beaches being closed to the general public due to a common pinniped species, such as the harbor seal, expanding its range and colonizing mainland beaches. However, we have never embraced the shared-use concept of people and seals at CPB originally employed by the City, and have stated publicly many times that the City would ultimately have to decide on the future of CPB as a humans-only beach or a seals-only beach. Our major concern regarding the situation at CPB was not so much that the seals' behavior would be altered, but that members of the general public could be cited for harassment of a marine mammal under the Marine Mammal Protection Act (MMPA), or bitten by a seal through an attempt to interact with an animal.



Since the City Council vote, the City has managed CPB as a seals-only beach, the City has erected barriers to keep the general public away from the seals, NMFS Enforcement has donated a \$5000.00 grant towards start-up funds for a docent program at CPB, our NMFS Enforcement agent in San Diego has put in numerous hours working with the docent program, and the docent program is now very active in educating the public on the biology of the harbor seals and their surrounding environment.

Because of the investment in time and money by NMFS Enforcement and the support of the docent program by the general public, we believe that CPB should continue to be managed by the City as a seals-only beach. However, Section 101(a) (5) (A) and (D) of the MMPA does direct NMFS to allow, upon request, the incidental taking of marine mammals by local governments for a specified activity through the issuance of an IHA if : (1) the taking is limited to harassment, (2) the taking will have a negligible impact on the species or stock, and (3) that the permissible methods of taking and the requirements pertaining to the reporting and monitoring of the takings are set forth in the IHA. Therefore, we will process without prejudice any IHA application submitted to us by the City.

If the City Council does vote to proceed with the dredging project and the coliform count is eventually lowered to a level that will allow the general public to once again enter the water surrounding CPB, we will request that the barriers separating the general public from the seals remain, and that a buffer zone be set up around the seal colony in order to ensure the protection of both the general public and the seals that are hauled out on CPB or the surrounding rocks.

If you have any questions, please contact Joe Cordaro at (562) 980-4017.

Sincerely,


James H. Lecky
Assistant Regional Administrator
for Protected Resources

cc: Mike Gonzales-F/EN6