

**UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

In the Matter of:

LILLO MARIA CREIGHTON,

Respondent

Docket No: SW030133

INITIAL DECISION AND ORDER

Issued: April 20, 2005

Issued by:

Hon. Parlen L. McKenna
Administrative Law Judge
Alameda, California

FOR THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

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ATTACHMENT C

The Marine Mammal Protection Act and its implementing regulations provide a mechanism for allowing, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographic region (See 16 U.S.C. § 1371 (a)(5)(A) and 50 C.F.R. § 216.104(a). In order to obtain such an authorization by NMFS, the requesting party must submit a written request to the Assistant Administrator detailing, among other things:

- (1) A detailed description of the specific activity or class of activities that can be expected to result in incidental taking of marine mammals;
- (2) The dates(s) and duration of such activity and the specific geographical region where it will occur;
- (3) The species and numbers of marine mammals likely to be found within the activity area;
- (4) A description of the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks of marine mammals likely to be affected by such activities;
- (5) The type of incidental taking authorization that is being requested (i.e., takes by harassment only; takes by harassment, injury and/or death) and the method of incidental taking;
- (6) By age, sex, and reproductive condition (if possible), the number of marine mammals (by species) that may be taken by each type of taking identified in paragraph (a)(5) of this section, and the number of times such takings by each type of taking are likely to occur;
- (7) The anticipated impact of the activity upon the species or stock of marine mammal.

Once the Assistant Administrator receives a written request, the regulations (50 C.F.R. § 216.104(b)(2)) require that notice be given in the Federal Register, newspapers of general circulation, and appropriate electronic media in the coastal areas that may be affected by such activity. If, after completion of the regulatory process, NMFS determines that the requested "incidental taking" should be authorized, regulations will be promulgated under 50 C.F.R. § 216.105 and a Letter of Authorization issued under 50 C.F.R. § 216.106.

Presumably, the filing of this application could be made by the City/County of San Diego in a parens patriae role as the trustee under the Grant Deed from the State of California. The application could also be filed by the impacted swimmers. Interestingly, the record does not indicate whether or not this approach was explored or utilized.