



UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
National Marine Fisheries Service
Office for Law Enforcement
501 W. Ocean Blvd., Suite 4300
Long Beach, CA 90802
(562) 980-4050

December 11, 2006

Nina M. Fain, Deputy City Attorney
1200 Third Ave, Suite 1100
San Diego, CA 92101

Dear Ms. Fain,

I am writing in regard to the marine mammals at La Jolla's Children's Pool and steps we can take to protect them and the people in the community. In the past few months, there have been numerous calls and other communications to NOAA's Office for Law Enforcement (OLE) regarding incidents of marine mammal harassment by the public at the Children's Pool Beach (CPB) in La Jolla, CA. As you know, under the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1372 (a)(2)(A), *it is unlawful for any person or vessel or other conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States.* Harassment is listed under the definition of 'take.'

Take means to harass, hunt, capture, collect, or kill, or to attempt to... any marine mammal.

Harassment (Level B) means any act of pursuit, torment, or annoyance which 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 but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

The CPB receives numerous visitors each month which increases the potential for seal/human interaction. OLE has placed signs on the landings above the CPB, which warn the public to keep a safe distance from the hauled out seals and sea lions. While the guidelines are useful, they have not prevented actions that could be considered harassment from occurring at the beach, particularly during pupping season. The OLE continues to receive HOTLINE calls reporting alleged marine mammal harassment at the CPB.

Harbor seals haul out at CPB for breeding, nursing, molting, and resting. The pupping season at the CPB is normally from January through April but can start as early as mid December through mid May. Typically, the pup is born and weaned during the late spring. Nursing usually lasts about 3-6 weeks, averaging about 4 weeks until the pup is weaned. Unlike many other seal pups, harbor seals are able to swim at birth, but harbor seal mothers are very protective and the mother/pup bond is very important, particularly during the time immediately following birth.

OLE is concerned that the public will continue to harass marine mammals and continue to be subject to citation under the MMPA at CPB. Therefore, we strongly recommend, that the City close the CPB starting December 15, through May 15 or at a minimum, consider reinstating the CPB rope barrier that was once in



place. Unfortunately, in the past the rope barrier did not deter the "determined" individual(s) from approaching the seals. The rope barrier will provide a clear message for those that have a sincere desire to respect the marine mammals present on the beach, and therefore will provide some level of heightened protection for the adult and newborn seals. The rope barrier will also aid in informing people when they are more likely to be found in violation of the MMPA and potentially cited.

OLE appreciates and looks forward to a continued opportunity to work with you in assisting you with achieving your goals as well as protecting the animals and citizens of our community.

Sincerely,



Donald W. Masters
Special Agent in Charge
NOAA Fisheries/OLE

cc: April Penner, City Manager's Office
Dale Jones, Director, Office for Law Enforcement
Rod McInnis, Regional Administrator, SW Region