UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

Finding of No Significant Impact for the Issuance of an Incidental Harassment Authorization to the City of San Diego to Take Marine Mammals Incidental to Conducting Demolition and Construction Activities at the Children's Pool Lifeguard Station in La Jolla, California

National Marine Fisheries Service

BACKGROUND

We (National Marine Fisheries Service, Office of Protected Resources, Permits and Conservation Division) propose to issue an Incidental Harassment Authorization (IHA) to the City of San Diego, Engineering and Capital Projects Department under the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1631 *et seq.*) for the incidental taking of small numbers of marine mammals, incidental to the conduct demolition and construction activities at the Children's Pool Lifeguard Station in La Jolla, California, June through December 2013.

Our proposed action is a direct outcome of the City of San Diego requesting an authorization to take marine mammals, by harassment, incidental to conducting demolition and construction activities at the La Jolla Children's Pool Lifeguard Station. The City of San Diego's demolition and construction activities, which have the potential to cause marine mammals to be behaviorally disturbed, warrant an incidental take authorization from us under section 101(a)(5)(D) of the MMPA.

In accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), we completed an Environmental Assessment (EA) titled, *Issuance of an Incidental Harassment Authorization to the City of San Diego to Take Marine Mammals by Harassment Incidental to Demolition and Construction Activities at the Children's Pool Lifeguard Station in La Jolla, California*. This EA focuses primarily on the environmental effects of authorizing the incidental take of marine mammals incidental to the City of San Diego's activities.

This EA also incorporates by reference the following documents per 40 CFR 1502.21 and NOAA Administrative Order (NAO) 216-6 § 5.09(d):

- The City of San Diego's *Application for Incidental Harassment Authorization under the Marine Mammal Protection Act*.
- The National Marine Fisheries Service's *Federal Register* notice on the proposed Incidental Harassment Authorization for *Takes of Marine Mammals Incidental to Specified Activities; Demolition and Construction Activities of the Children's Pool Lifeguard Station at La Jolla, California* (78FR25958, May 3, 2013).

Printed on Recycled Paper

This FONSI presents our selected alternative—Alternative 1 (Preferred Alternative) titled, "Issuance of an Authorization with Mitigation Measures," and our conclusions regarding the impacts related to our proposed action. Based on our review of the City of San Diego's proposed demolition and construction activities and the mitigation and monitoring measures contained in Alternative 1, we have determined that no significant impacts to the human environment would occur from implementing the Preferred Alternative.

ANALYSIS

NAO 216-6 contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality (CEQ) regulations at 40 CFR § 1508.27 state that the significance of an action should be analyzed both in terms of "context" and "intensity." Each criterion listed below this section is relevant to making a finding of no significant impact (FONSI) and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

1) **Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in Fishery Management Plans (FMP)?**

   Response: Our action of issuing an IHA for the take of marine mammals incidental to the conduct of demolition and construction activities is not expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH). The mitigation and monitoring measures required by the IHA would not affect ocean and coastal habitats or EFH. No material is expected to enter or be washed into the marine environment that may affect water quality, as the City of San Diego has developed and will implement the U.S. Environmental Protection Agency's National Pollutant Discharge Elimination System and the Stormwater Pollution Prevention Plan, required for the demolition and construction activities.

2) **Can the proposed action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?**

   Response: We do not expect our action (i.e., issuing an IHA for the take of marine mammals incidental to the conduct of the demolition and construction activities) to have a substantial impact on biodiversity or ecosystem function within the affected environment. Our proposed action of authorizing Level B harassment for the City of San Diego's demolition and construction activities would be limited to temporary behavioral responses and temporary changes in animal distribution. These effects would be short-term and localized.

3) **Can the proposed action reasonably be expected to have a substantial adverse impact on public health or safety?**

   Response: The proposed demolition and construction activities would occur at the Children's Pool Lifeguard Station in La Jolla, California. We do not expect that our action to have a substantial adverse impact on public health or safety as we do not have the authority to permit, authorize, or prohibit the City of San Diego's demolition and construction activities at the

Children's Pool Lifeguard Station in La Jolla, California.

4) **Can the proposed action reasonably be expected to adversely affect endangered or threatened species, their critical habitat, marine mammals, or other non-target species?**

Response: This EA evaluates the affected environment and potential effects of our action. We have determined that the proposed demolition and construction activities may result in some Level B harassment (in the form of short-term and localized changes in behavior) of small numbers, relative to the population sizes, of three species of marine mammals. The impacts of the demolition and construction activities on marine mammals are specifically related to in-air acoustic activities, and these are expected to be temporary in nature, and would not result in substantial impact to marine mammals or to their role in the ecosystem.

We (Permits and Conservation Division) have determined that a section 7 consultation for the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity is not necessary for any Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) –listed marine mammal species under its jurisdiction, as no ESA-listed marine mammals will be affected by the project.

The following mitigation measures are planned for the demolition and construction activities to minimize adverse effects to protected marine mammals:

(1) prohibiting demolition and construction during Pacific harbor seal pupping season from December 15th to June 1st to accommodate lactation and weaning of pups;
(2) limiting activity to the hours of daylight for visual monitoring purposes;
(3) scheduling demolition and construction, to the maximum extent practicable, during the daily period of lowest haul-out occurrence (i.e., 8:30 a.m. to 3:30 p.m.);
(4) erecting a temporary visual and acoustic barrier; and
(5) implementing a protected species monitoring plan and use of trained Protected Species Observers (PSOs) to detect, document, and minimize impacts to marine mammals.

Taking these measures into consideration, we expect the responses of marine mammals from the preferred alternative to be limited to avoidance of the area around the demolition and construction activities and short-term behavioral changes, falling within the MMPA definition of "Level B harassment."

We do not anticipate that marine mammal take by injury (Level A harassment), serious injury, or mortality would occur and we expect that harassment takes should be at the lowest level practicable due to the incorporation of the mitigation measures required by the IHA. For each species, the Level B harassment take numbers are small (most estimates are less than or equal to two percent) relative to the population size of the marine mammal species or stock.

5) **Are significant social or economic impacts interrelated with natural or physical environmental effects?**

Response: The primary impacts to the natural and physical environment are expected to be acoustic and temporary in nature (and not significant), and not interrelated with significant social or economic impacts. Issuance of the IHA would not result in inequitable distributions of environmental burdens or access to environmental goods.

We have determined that issuance of the IHA will not adversely affect low-income or minority populations. Further, there will be no impact of the activity on the availability of the species or stocks of marine mammals for subsistence uses. Therefore, we do not expect significant social or economic effects to result from our issuance of the IHA.

6) **Are the effects on the quality of the human environment likely to be highly controversial?**

Response: The effects of our action are not highly controversial. Specifically, we did not receive any comments raising substantial questions or concerns about the size, nature, or effect of potential impacts from NMFS's proposed action. Previous projects of this type required marine mammal monitoring and monitoring reports, which have been reviewed by us to ensure that activities have a negligible impact on marine mammals. In no case have impacts to marine mammals, as determined from monitoring reports, exceeded our analyses under the MMPA and NEPA.

7) **Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, essential fish habitat, or ecologically critical areas?**

Response: The issuance of an IHA for the take of marine mammals incidental to the conduct of the demolition and construction activities will not impact the action area. There are no unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers, EFH, or ecologically critical areas that could potentially be affected by the proposed action.

8) **Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?**

Response: The issuance of an IHA for the take of marine mammals incidental to the conduct of the demolition and construction activities would not have effects on the human environment that would be highly uncertain or involve unique or unknown risks.

The potential risks of the demolition and construction activities resulting in elevated in-air sound levels are not unique or unknown, nor is there significant uncertainty about impacts. We have issued IHAs for marine mammal take for similar types of construction activities, and monitoring reports received pursuant to the requirements of the IHAs have indicated that there were no unanticipated or unauthorized impacts as a result of the construction activities. The best available science, including input from prior monitoring reports for construction activities, supports our determination that adverse impacts are unlikely and will be minimized through the implementation of the proposed mitigation and monitoring requirements.

9) **Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?**

Response: The EA and the documents it references analyzed the issuance of an IHA for the take of marine mammals incidental to the conduct of the demolition and construction activities and the impacts of the demolition and construction activities in light of other human activities within the study area. We expect the following combination to result in no more than minor and

short-term impacts to marine mammals in the demolition and construction activity area in terms of overall disturbance effects: (a) our issuance of an IHA with prescribed mitigation and monitoring measures for the demolition and construction activities; (b) past, present, and reasonably foreseeable future activities in the Pacific Ocean; (c) research activities; (d) military testing and training activities; vessel traffic, noise, and collisions; and (d) commercial fisheries.

These activities, when conducted separately or in combination with other activities, have the potential to affect marine mammals in the action area. Any cumulative effects caused by the addition of the demolition and construction activities impacts on marine mammals would be extremely limited and would not rise to the level of "significant," especially considering the timeframe of the proposed activities, the location of the proposed demolition and construction activity area away from known areas of importance to marine mammals, and the mitigation and monitoring requirements in the IHA. The demolition and construction activities are unlikely to co-occur with any additional human activities, and thus the degree of cumulative impact would be minimal.

10) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

Response: We have determined that the proposed action is not an undertaking with the potential to affect historic resources. The issuance of an IHA for the take of marine mammals incidental to the conduct of the demolition and construction activities would not adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural or historical resources.

11) Can the proposed action reasonably be expected to result in the introduction or spread of a non-indigenous species?

Response: We have determined that the proposed action is not an undertaking with the potential to introduce or spread non-indigenous species.

12) Is the proposed action likely to establish a precedent for future actions with significant effects or does it represent a decision in principle about a future consideration?

Response: Our action of issuing an IHA for the take of marine mammals incidental to the conduct of the demolition and construction activities would not set a precedent for future actions with significant effects nor represent a decision in principle.

Each MMPA authorization applied for under section 101(a)(5) must contain information identified in our implementing regulations. We consider each activity specified in an application separately and, if we issue an IHA, we must determine that the impacts from the specified activity would result in a negligible impact to the affected species or stocks. Our issuance of an IHA may inform the environmental review for future projects, but would not establish a precedent or represent a decision in principle about a future consideration.

13) Can the proposed action reasonably be expected to threaten a violation of any Federal, State, or local law or requirements imposed for the protection of the environment?

Response: Issuance of the IHA would not result in any violation of Federal, State, or local laws for environmental protection. We have fulfilled our section 7 responsibilities under the ESA (see response to Question 4) and the MMPA for this action.

14) Can the proposed action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

Response: The proposed action would not result in any significant cumulative adverse effects on target or non-target species incidentally taken by harassment due to the demolition and construction activities.

We have determined that marine mammals may exhibit behavioral changes such as avoidance of or changes in movement within the action area. However, we do not expect the authorized harassment to result in significant cumulative adverse effects on the affected species or stocks. We do not expect that our issuance of an IHA to result in any significant cumulative adverse effects on target or non-target species incidentally taken by harassment due to elevated in-air sound levels.

We have issued incidental take authorizations for other construction activities that may have resulted in the harassment of marine mammals, but they are dispersed both geographically (throughout the U.S.) and temporally, are short-term in nature, and all use mitigation and monitoring measures to minimize impacts to marine mammals. Because of the relatively short time that the project area will be ensonified (not more seven months), the action will not result in synergistic or cumulative adverse effects that could have a substantial effect on any species.

DETERMINATION

In view of the information presented in this document and the analysis contained in the supporting EA titled, *Issuance of an Incidental Harassment Authorization to the City of San Diego to Take Marine Mammals by Harassment Incidental to Demolition and Construction Activities at the Children's Pool Lifeguard Station in La Jolla, California,* and documents that it references, we have determined that issuance of an IHA to the City of San Diego in accordance with Alternative 1 the EA would not significantly impact the quality of the human environment, as described in this FONSI and in the EA.

In addition, all beneficial and adverse impacts of the action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an Environmental Impact Statement for this action is not necessary.

Donna S. Wieting

Donna S. Wieting,
Director,
Office of Protected Resources,
National Marine Fisheries Service

JUN 28 2013

Date