PROPOSED ACTION:	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.
TYPE OF STATEMENT:	Environmental Assessment
LEAD AGENCY:	U.S. Department of Commerce, National Oceanic and Atmospheric Administration National Marine Fisheries Service
RESPONSIBLE OFFICIAL:	Donna S. Wieting, Director, Office of Protected Resources, National Marine Fisheries Service
FOR FURTHER INFORMATION:	Howard Goldstein National Marine Fisheries Service Office of Protected Resources, Permits and Conservation Division 1315 East West Highway Silver Spring, MD 20910 301-427-8401
LOCATION:	La Jolla Children's Pool Lifeguard Station at 827 ½ Coast Boulevard, La Jolla, California (32º 50' 50.02" North, 117º 16' 42.8" West)
ABSTRACT:	This Environmental Assessment analyzes the environmental impacts of the National Marine Fisheries Service, Office of Protected Resources, Permits and Conservation Division's proposal to issue an Incidental Harassment Authorization to the City of San Diego for the taking, by Level B harassment, of small numbers of marine mammals, incidental to conducting demolition and construction activities at the Children's Pool Lifeguard Station in La Jolla, California, June to December 2013.

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LIST OF ABBREVIATIONS OR ACRONYMS

CFR	Code of Federal Regulations
Commission	Marine Mammal Commission
dB	decibel
EA	Environmental Assessment
EIS	Environmental Impact Statement
ESA	Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq*.)
FONSI	Finding of No Significant Impact
FR	*Federal Register*
ft	feet
IHA	Incidental Harassment Authorization
ITS	Incidental Take Statement
km	kilometer
m	meter
mi	mile
MMPA	Mammal Protection Act of 1972, as amended (16 U.S.C. 1631 *et seq*.)
µPa	microPascal
NAO	NOAA Administrative Order
NEPA	National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq*.)
NMFS	National Marine Fisheries Service
nmi	nautical miles
NOAA	National Oceanographic and Atmospheric Administration
PSO	Protected Species Observer

EXECUTIVE SUMMARY

The National Marine Fisheries Service (NMFS), Office of Protected Resources, Permits and Conservation Division has prepared this Environmental Assessment (EA) pursuant to the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq*.), the Council on Environmental Quality regulations in 40 CFR §§ 1500-1508, and NOAA Administrative Order 216-6.

ES.1 Description of the Proposed Action

The City of San Diego plans to replace the lifeguard station at the Children's Pool in La Jolla, California. The current structure was condemned in 2003 due to structural damage and no longer suits the needs of the City of San Diego and is hazardous to visitors. 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 of demolition and construction activities of the Children's Pool Lifeguard Station at the La Jolla, California, June through December 2013. We do not have the authority to permit, authorize, or prohibit the City of San Diego's demolition and construction activities in La Jolla, California.

Our proposed action results from the City of San Diego's request to take marine mammals, by Level B harassment, incidental to conducting demolition and construction activities at the Children's Pool Lifeguard Station. The City of San Diego's 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.

ES.2 Scope of this Environmental Assessment

This EA titled, *Environmental Assessment on the 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*, focuses primarily on the environmental effects of authorizing the take of marine mammals incidental to the City of San Diego's activities.

We published a notice of the proposed IHA in the *Federal Register* (78 FR 25958, May 3, 2013; [NMFS, 2013]) which provided a detailed description of the proposed demolition and construction activities and environmental information and issues related to it. We incorporate that notice by reference.

We have prepared this EA to assist in determining whether the direct, indirect, and cumulative impacts related to our issuance of an IHA under the MMPA for marine mammals for the City of San Diego's activities is likely to result in significant impacts to the human environment. This EA is intended to inform our decision on issuing the IHA. While the focus of this EA is on the effects caused by the proposed issuance of an IHA, in combining this analysis with the analyses in the previously referenced documents, we with the underlying action which is the full suite of activities conducted for their proposed demolition and construction activities.

Our review of public comments submitted in response to our notice for the proposed IHA did not reveal additional environmental impacts or issues requiring analysis in this EA.

ES.3 Alternatives

Our Proposed Action (Preferred Alternative) represents the Authorization of take incidental to the applicant's demolition and construction activities, along with required monitoring and mitigation measures for marine mammals that would minimize potential adverse environmental impacts. The Authorization includes prescribed means of incidental take, mitigation and monitoring measures, and reporting requirements.

For the No Action Alternative, we would not issue an IHA to the City of San Diego for the taking, by Level B harassment, of small numbers of marine mammals, incidental to the demolition and construction activities.

- We do not have the authority to permit, authorize, or prohibit the demolition and construction activities themselves, the City of San Diego may decide to: (1) continue with the demolition and construction activities with the inclusion of mitigation and monitoring measures sufficient to preclude any incidental take of marine mammals; (2) continue the demolition and construction activities and be in violation of the MMPA if take of marine mammals occurs; or (3) choose not to conduct the demolition and construction activities.
- For purposes of this NEPA analysis, however, we characterize no action as not issue the IHA, and the applicant choosing not to conduct the proposed demolition and construction activities.

ES.4 Environmental Impacts of the Proposed Action

The City of San Diego's proposed demolition and construction activities would involve active acoustics that have the potential to cause marine mammals to be behaviorally disturbed.

- The impacts of conducting 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, negligible, and would not result in substantial impacts to marine mammals or to their role in the ecosystem.
- Thus, the action alternative includes a suite of mitigation measures intended to minimize potentially adverse interactions with marine mammals and their habitat. We acknowledge that the incidental take authorized by the IHA would potentially result in insignificant, unavoidable adverse impacts. However, we believe that the issuance of an IHA would not have any adverse cumulative effects on marine mammal species or their habitats.

The analysis in this EA, including the documents we incorporate by reference, serve as the basis for determining whether our issuance of an IHA to the City of San Diego for the taking, by Level B harassment, of small numbers of marine mammals, incidental to the conduct of the demolition and construction activities at the Children's Pool Lifeguard Station in La Jolla, California, June to December 2013 would result in significant impacts to the human environment.

CHAPTER 1 – INTRODUCTION AND PURPOSE AND NEED

1.1 DESCRIPTION OF PROPOSED ACTION

The Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1631 *et seq*.) prohibits the incidental taking of marine mammals. For a marine mammal to be incidentally taken, it is either killed, seriously injured, or harassed. The MMPA defines harassment as any act of pursuit, torment, or annoyance which: (1) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (2) 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 (Level B harassment). There are exceptions to the MMPA's prohibition on take such as the authority at issue here for us to authorize the incidental taking of small numbers of marine mammals by harassment upon the request of a U.S. citizen provided certain statutory and regulatory procedures are met and determinations made. We describe this exception set forth in the MMPA at section 101(a)(5)(D) in more detail in Section 1.2.

We (NMFS, Office of Protected Resources, Permits and Conservation Division) propose to issue an IHA to the City of San Diego under the MMPA for the taking of small numbers of marine mammals, incidental to the conduct of demolition and construction activities at the Children's Pool Lifeguard Station in La Jolla, California, June through December 2013.

Our proposed action is triggered by the City of San Diego requesting an IHA to take marine mammals incidental to conducting the proposed demolition and construction activities at the Children's Pool Lifeguard Station in the La Jolla, California. The City of San Diego's demolition and construction activities have the potential to cause marine mammals to be behaviorally disturbed by exposing them to elevated levels of sound which, as we have explained, is anticipated to result in take that would otherwise be prohibited by the MMPA. The City of San Diego therefore requires an IHA. Our issuance of an IHA to the City of San Diego is a major Federal action under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq*.), the Council on Environmental Quality (CEQ) regulations in 40 CFR §§ 1500-1508, and NOAA Administrative Order (NAO) 216-6. Thus, we are required to analyze the effects on the human environment and determine whether they are significant such that preparation of an Environmental Impact Statement (EIS) is necessary.

This EA titled, *Environmental Assessment on the 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*, addresses the potential environmental impacts of two choices available under section 101(a)(5)(D) of the MMPA, namely:

- Issue the IHA to the City of San Diego for Level B harassment take of marine mammals under the MMPA during the demolition and construction activities, taking into account the prescribed means of take, mitigation measures, and monitoring requirements required in the IHA; or
- Not issue an IHA to the City of San Diego in which case, for the purposes of NEPA analysis only, we assume the proposed activities would not proceed.

1.1.1 BACKGROUND ON THE APPLICANT'S MMPA APPLICATION

On December 3, 2012, the National Marine Fisheries Service (NMFS) received an application from the City of San Diego, Engineering and Capital Projects Department, requesting the

issuance of an IHA for the possible harassment of small numbers of Pacific harbor seals (*Phoca vitulina richardii*), California sea lions (*Zalophus californianus*), and northern elephant seals (*Mirounga angustirostris*) incidental to demolition and construction activities at the Children's Pool Lifeguard Station in La Jolla, California. The City of San Diego submitted a revised IHA application on April 1, 2013. The demolition and construction activities are planned to occur from June 28 through December 15, 2013. This authorization would be from June 28, 2013 through June 27, 2014.

On May 3, 2013, NMFS published a notice of a proposed IHA in the *Federal Register* (78 FR 25958) disclosing the effects on marine mammals, making preliminary determinations and including a proposed IHA. NMFS considered and addressed all public comments as a component of the marine mammal impacts analysis required by the MMPA in order to reach a determination that only Level B harassment would occur as a result of the proposed activities.

The existing lifeguard station is located on a bluff above Children's Pool (32º 50' 50.02" North, 117º 16' 42.8" West) nearby reef and beach areas (see detailed maps and photographs on pages 30 to 31 of the "Mitigated Negative Declaration" in the IHA application). The building has deteriorated significantly and must be removed. In its place, a new lifeguard station is scheduled to be constructed within and adjacent to the existing facility. The new three-story, partially subterranean 174.4 square meters (m^3) (1,877 square foot [ft^2]) building will contain beach access level public restrooms and showers, lifeguard lockers, and sewage pump room; second level containing two work stations, ready/observation room, kitchenette, restroom, and first aid station; and third "observation" level which will include a single occupancy observation space, radio storage closet, and exterior catwalk.

The project includes the demolition of the existing lifeguard station and construction of the new, three-story, lifeguard station on the same site using equipment that includes a backhoe, dump truck, air compressor, electric screw guns, jackhammer, concrete saw, and chop saws. Behavioral disturbance may potentially occur to marine mammals hauled-out on nearby beaches and rocks by potentially exposing them to in-air (i.e., airborne) noise from the operation of the various equipment. A polynomial curve fit to counts by month was used by the City of San Diego to estimate the number of harbor seals expected to be hauled-out, and estimates that there could be a maximum of 12,783 takes by Level B harassment over the entire duration of the proposed demolition and construction activities. An estimated 600 individual Pacific harbor seals regularly use Children's Pool, which would be approximately 1.98% of the California stock. NMFS has determined this to be a small number of the species or stock. Very few California sea lions and/or northern elephant seals are ever observed at the Children's Pool.

Demolition and construction of the new lifeguard station is estimated to take approximately 7 months (148 actual demolition and construction days), the proposed activities would begin on June 28, 2013 and be completed by December 15, 2013. Demolition and construction will occur during daylight hours only, as stipulated in the "Mitigated Negative Declaration" and local ordinances. Demolition and construction activities are divided into phases:

(1) mobilization and temporary facilities;
(2) demolition and site clearing;
(3) site preparation and utilities;
(4) building foundation;
(5) building shell;
(6) building exterior;
(7) building interior;
(8) site improvements; and
(9) final inspection and demobilization.

We describe the City of San Diego's demolition and construction activities in more detail in Section 2.2.

1.1.2 MARINE MAMMALS IN THE ACTION AREA

On December 3, 2012, we received an application from the City of San Diego, which reflected updates to the mitigation measures, incidental take requests for marine mammals, and information on marine protected areas. Table 1 (below) includes a list of the marine mammals under our jurisdiction that could inhabit the general region of the action area for the proposed demolition and construction activities.

Table 1. The habitat, abundance, and conservation status of marine mammals inhabiting the general region of the action area in the Pacific Ocean off the southern coast of California.

Species	Habitat	Best Population Estimate (Minimum)[1]	ESA[2]	MMPA[3]	Population Trend
Mysticetes					
Gray whale (*Eschrichtius robustus*)	Coastal and shelf	19,126 (18,107)	DL – Eastern Pacific stock EN – Western Pacific stock	NC – Eastern Pacific stock D – Western Pacific stock	Increasing over past several decades
Odontocetes					
Killer whale (*Orcinus orca*)	Widely distributed	354 (354) - West Coast Transient stock	NL EN – Southern resident population	NC D – Southern Resident and AT1 Transient populations	Increasing – West Coast Transient stock
Bottlenose dolphin (*Tursiops truncatus*)	Offshore, inshore, coastal, estuaries	323 (290) – California Coastal stock	NL	NC	Stable
Long-beaked common dolphin (*Delphinus capensis*)	Inshore	107,016 (76,224) – California stock	NL	NC	Increasing
Pinnipeds					
Pacific harbor seal (*Phoca vitulina richardii*)	Coastal	30,196 (26,667) – California stock	NL	NC	Increased in California 1981 to 2004
Northern elephant seal (*Mirounga angustirostris*)	Coastal, pelagic when not migrating	124,000 (74,913) – California breeding stock	NL	NC	Increasing through 2005, now stable
California sea lion (*Zalophus californianus*)	Coastal, shelf	296,750 (153,337) – U.S. stock	NL	NC	Increasing
Steller sea lion (*Eumetopias jubatus*)	Coastal, shelf	72,223 (58,334) – Eastern U.S. stock	T – Eastern U.S. stock EN – Western U.S. stock	D	Overall increasing, decreasing in California
Northern fur seal (*Callorhinus ursinus*)	Pelagic, offshore	9,968 (5,395) – San Miguel Island stock	NL	NC – San Miguel Island stock	Increasing
Guadalupe fur seal (*Arctocephalus townsendi*)	Coastal, shelf	7,408 (3,028) – Mexico to California	T	D	Increasing

NA = Not available or not assessed.

[1] NMFS Marine Mammal Stock Assessment Reports

[2] U.S. Endangered Species Act: EN = Endangered, T = Threatened, DL = Delisted, and NL = Not listed.

[3] U.S. Marine Mammal Protection Act: D = Depleted, S = Strategic, and NC = Not classified.

The rocks and beaches at or near the Children's Pool in La Jolla, California, are almost exclusively Pacific harbor seal hauling-out sites. On infrequent occasions, one or two California sea lions or a single juvenile northern elephant seal, have been observed on the sand or rocks at or near the Children's Pool (i.e., breakwater ledge/rocks haul-out area, reef haul-out area, and Casa Beach haul-out area). These sites are not usual haul-out locations for California sea lions and/or northern elephant seals. The City of San Diego commissioned two studies of harbor seal abundance trends at the Children's Pool. Both studies reported that appearances of California sea lions and northern elephant seals are infrequent, but not rare at Children's Pool (Yochem and Stewart, 1998; Hanan & Associates, 2004).

Pacific Harbor Seal

Harbor seals are widely distributed in the North Atlantic and North Pacific. Two subspecies exist in the Pacific Ocean: *P. v. stejnegeri* in the western North Pacific near Japan, and *P. v. richardii* in the eastern North Pacific. The subspecies in the eastern North Pacific Ocean inhabits near-shore coastal and estuarine areas from Baja California, Mexico, to the Pribilof Islands in Alaska. These seals do not make extensive pelagic migrations, but do travel 300 to 500 km kilometers (km) (162 to 270 nautical miles [nmi]) on occasion to find food or suitable breeding areas (Herder, 1986; Harvey and Goley, 2011). Previous assessments of the status of harbor seals have recognized three stocks along the west coast of the continental U.S.: (1) California, (2) Oregon and Washington outer coast waters, and (3) inland waters of Washington. An unknown number of harbor seals also occur along the west coast of Baja California, at least as far south as Isla Asuncion, which is about 100 miles south of Punta Eugenia. Animals along Baja California are not considered to be a part of the California stock because it is not known if there is any demographically significant movement of harbor seals between California and Mexico and there is no international agreement for joint management of harbor seals. In California, approximately 400 to 600 harbor seal haul-out sites are distributed along the mainland coast and on offshore islands, including intertidal sandbars and ledges, rocky shores and islets, and beaches (Harvey *et al*., 1995; Hanan, 1996; Lowry *et al*., 2008). Of these haul-out sites, only 14 locations are rookeries (2 locations have multiple sites, for a total of 17 sites) on or near the mainland of California. Preferred haul-out sites are those that are protected from the wind and waves, and allow access to deep water for foraging (Perrin *et al*., 2008). Harbor seals are one of the most common and frequently observed marine mammals along the coastal environment.

The population of harbor seals has grown off the U.S. west coast and has led to new haul-out sites being used in California (Hanan, 1996). Pacific harbor seals haul-out year-round on nearby beaches and rocks (i.e., breakwater ledge/rocks haul-out area, reef haul-out area, and Casa Beach haul-out area) below the lifeguard tower at Children's Pool. According to Yochem (2005), the Children's Pool beach site is used by harbor seals at all hours of the day and at all tides with the exception of occasional high tide/high swell events in which the entire beach is awash. Harbor seals have been observed hauling-out and documented giving birth at the Children's Pool since the 1990's (Yochem and Steward, 1998; Hana & Associates, 2004). It is the only rookery in San Diego and the only mainland rookery on the U.S. west coast between the border of Mexico and Point Mugu in Ventura County, California (321.9 km [200 miles]). Also, it is one of the three known haul-out sites for this species in San Diego County. They haul-out, give birth to pups, nurse, and molt their pelage on the beach and often forage for food in nearby areas. Harbor seal numbers have increased since 1979 and seals are documented to give birth on these beaches

during December through May (Hanan, 2004; 2011). The official start of the pupping season is December 15th. Females in and advanced stage of pregnancy begin to show up on the Children's Pool beach by late October to early November. Several studies have identified harbor seal behavior and estimated seal numbers including patterns of daily and seasonal area use (Yochem and Stewart, 1998; Hanan & Associates, 2004, 2011; Linder, 2011). Males, females, and pups (in season) of all ages and stages of development are observed at the Children's Pool and adjacent areas.

In southern California, a considerable amount of information is known about the movements and ecology of harbor seals, but population structure in the region is not as well known (Steward and Yochem, 1994, 2000; Keper *et al*., 2005; Hanan & Associates, 2011). Linder (2011) suggests that this population moves along the California coast and the beach of Children's Pool is part of a "regional network of interconnected" haul-out and pupping sites. Harbor seals often haul-out in protected bays, inlets, and beaches (Reeves *et al*., 1992). At and near the Children's Pool, harbor seals haul-out on the sand, rocks, and breakwater base at/near in numbers of 0 to 15 harbor seals to a maximum of about 150 to 200 harbor seals depending on the time of day, season, and weather conditions (Hanan & Associates, 2004, 2011; Linder, 2011). Based on monitoring from a camera, the Western Alliance for Nature (WAN) reports that during the month of May 2013, at any given time, up to 302 harbor seals were documented resting on the Children's Pool beach with additional harbor seals on the rocks and in the water (Wan, personal communication). Almost every day, except for weekends, the number of harbor seals on the beach was over 250 individuals. During the months of September 2012 to January 2013, the average number of harbor seals on the beach during hour prior to people on the beach or with people behind the rope varied from 83 to 120 animals. During this same period when there were people on the beach with or without the rope, but where people were across the rope, the average varied between 7 to 27, which is significantly less. The weather (i.e., wind and/or rain) as well as the proximity of humans to the beach likely affect the presence of harbor seals on the beach. These animals have been observed in this area moving to/from the Children's Pool, exchanging with the rocky reef directly west of and adjacent to the breakwater and with Seal Rock, which is about 150 m (492 ft) west of the Children's Pool. Harbor seals have also been reported on the sandy beach just southwest of the Children's Pool. At low tide, additional space for hauling-out is available on the rocky reef areas outside the retaining wall and on beaches immediately southward. Haul-out times vary by time of year, from less than an hour to many hours. There have been no foraging studies at this site, but harbor seals have been observed in nearshore waters and kelp beds nearby, including La Jolla Cove.

Radio-tagging and photographic studies have revealed that only a portion of seals utilizing a hauling-out site are present at any specific moment or day (Hanan, 1996, 2005; Gilbert *et al*., 2005; Harvey and Goley, 2011; and Linder, 2011). These radio-tagging studies indicate that harbor seals in Santa Barbara County haul-out about 70 to 90% of the days annually (Hanan, 1996), the City of San Diego expects harbor seals to behave similarly at the Children's Pool. Tagged and branded harbor seals from other haul-out sites have been observed by Dr. Hanan at the Children's Pool. Harbor seals have been observed with red-stained heads and coats, which are typical of some harbor seals in San Francisco Bay, indicating that seals tagged at other locations and haul-out sites do visit the Children's Pool. A few seals have been tagged at the Children's Pool and there are no reports of these tagged animals at other sites (probably because of very low re-sighting efforts and a small sample size [10 individuals radio-tagged]), which may indicate a degree of site-fidelity (Yochem and Stewart, 1998). These studies further indicate that seals are constantly moving along the coast including to/from the offshore islands and that there

may be as many as 600 individual harbor seals using Children's Pool during a year, but certainly not all at one time.

The City of San Diego has fitted a polynomial curve to the number of expected harbor seals hauling-out at the Children's Pool by month (see Figure 1 of the IHA application and Figure 4 below) based on counts at the Children's Pool by Hanan & Associates (2004, 2011), Yochem and Stewart (1998), and the Children's Pool docents (Hanan & Associates, 2004). A three percent annual growth rate of the population was applied to Yochem and Stewart (1998) counts to normalize them to Hanan & Associates and docent counts in 2003 to 2004.

A complete count of all harbor seals in California is impossible because some are always away from the haul-out sites. A complete pup count (as is done for other pinnipeds in California) is also not possible because harbor seals are precocial, with pups entering the water almost immediately after birth. Population size is estimated by counting the number of seals ashore during the peak haul-out period (May to July) and by multiplying this count by a correction factor equal to the inverse of the estimated fraction of seals on land. Based on the most recent harbor seal counts (2009) and including a revised correction factor, the estimated population of harbor seals in California is 30,196 individuals (NMFS, 2011), with an estimated minimum population of 26,667 for the California stock of harbor seals. Counts of harbor seals in California increased from 1981 to 2004. The harbor seal is not listed under the ESA and the California stock is not considered depleted or strategic under the MMPA (Carretta *et al*., 2010).

California Sea Lion

The California sea lion is now considered to be a full species, separated from the Galapagos sea lion (*Zalophus wollebaeki*) and the extinct Japanese sea lion (*Zalophus japonicus*) (Brunner, 2003; Wolf *et al*., 2007; Schramm *et al*., 2009). The breeding areas of the California sea lion are on islands located in southern California, western Baja California, and the Gulf of California. Genetic analysis of California sea lions identified five genetically distinct geographic populations: (1) Pacific Temperate, (2) Pacific Subtropical, (3) Southern Gulf of California, (4) Central Gulf of California, and (5) Northern Gulf of California (Schramm *et al*., 2009). In that study, the Pacific Temperate population included rookeries within U.S. waters and the Coronados Islands just south of U.S./Mexico border. Animals from the Pacific Temperate population range north into Canadian waters, and movement of animals between U.S. waters and Baja California waters has been documented, though the distance between the major U.S. and Baja California rookeries is at least 740.8 km (400 nmi). Males from western Baja California rookeries may spend most of the year in the U.S.

The entire population cannot be counted because all age and sex classes are never ashore at the same time. In lieu of counting all sea lions, pups are counted during the breeding season (because this is the only age class that is ashore in its entirety), and the numbers of births is estimated from the pup count. The size of the population is then estimated from the number of births and the proportion of pups in the population. Censuses are conducted in July after all pups have been born. There are no rookeries at or near the Children's Pool. Population estimates for the U.S. stock of California sea lions, range from a minimum of 153,337 to an average estimate of 296,750 animals. They are considered to be at carrying capacity of the environment. The California sea lion is not listed under the ESA and the U.S. stock is not considered depleted or strategic under the MMPA.

Northern Elephant Seal

Northern elephant seals breed and give birth in California (U.S.) and Baja California (Mexico), primarily on offshore islands (Stewart *et al*., 1994), from December to March (Stewart and Huber, 1993). Males feed near the eastern Aleutian Islands and in the Gulf of Alaska, and females feed further south, south of 45º North (Stewart and Huber, 1993; Le Boeuf *et al*., 1993). Adults return to land between March and August to molt, with males returning later than females. Adults return to their feeding areas again between their spring/summer molting and their winter breeding seasons.

Populations of northern elephant seals in the U.S. and Mexico were all originally derived from a few tens or a few hundreds of individuals surviving in Mexico after being nearly hunted to extinction (Stewart *et al*., 1994). Given the very recent derivation of most rookeries, no genetic differentiation would be expected. Although movement and genetic exchange continues between rookeries when they start breeding (Huber *et al*., 1991), the California breeding population is now demographically isolated from the Baja California population. The California breeding population is considered in NMFS stock assessment report to be a separate stock.

A complete population count of elephant seals is not possible because all age classes are not ashore at the same time. Elephant seal population size is typically estimated by counting the number of pups produced and multiplying by the inverse of the expected ratio of pups to total animals (McCann, 1985). Based on the estimated 35,549 pups born in California in 2005 and an appropriate multiplier for a rapidly growing population, the California stock was approximately 124,000 in 2005. The minimum population size for northern elephant seals can be estimated very conservatively as 74,913, which is equal to twice the observed pup count (to account for the pups and their mothers), plus 3,815 males and juveniles counted at the Channel Islands and central California sites in 2005 (Lowry, NMFS unpublished data). Based on trends in pup counts, northern elephant seal colonies were continuing to grow in California through 2005, but appear to be stable or slowly decreasing in Mexico (Stewart *et al*., 1994). Northern elephant seals are not listed under the ESA and are not considered as depleted or a strategic stock under the MMPA.

Further information on the biology and local distribution of these marine mammal species and others in the region can be found in the City of San Diego's application, and the NMFS Marine Mammal Stock Assessment Reports, which are available online at: http://www.nmfs.noaa.gov/pr/sars/.

1.2 PURPOSE AND NEED

The MMPA prohibits "takes" of marine mammals, with only a few specific exceptions. The applicable exceptions in this case are an exemption for incidental take of marine mammals in section 101(a)(5)(D) of the MMPA.

Section 101(a)(5)(D) of the MMPA directs the Secretary of Commerce (Secretary) to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if we make certain findings and provide a notice of a proposed IHA to the public for review. Entities seeking to obtain authorization for the incidental take of marine mammals under our jurisdiction must submit such a request (in the form of an application) to us. Section 101(a)(5)(D) of the MMPA also establishes a 45-day time limit for our review of the application for an IHA followed by a 30-day public notice and comment period on any

proposed authorization for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, we must either issue or deny the IHA.

We have promulgated regulations to implement the permit provisions of the MMPA (50 CFR Part 216) and have produced Office of Management and Budget (OMB)-approved application instructions (OMB Number 0648-0151) that prescribe the procedures necessary to apply for permits. All applicants must comply with these regulations and application instructions in addition to the provisions of the MMPA. Applications for an IHA must be submitted according to regulations at 50 CFR § 216.104.

1.2.1 PURPOSE OF ACTION

The primary purpose of our proposed action, the issuance of an IHA to the City of San Diego is to authorize the take of marine mammals incidental to the City of San Diego's proposed activities. The IHA, if issued, would provide an exception to the City of San Diego from the take prohibitions contained in the MMPA and would allow take of marine mammals, incidental to the conduct of the demolition and construction activities from June through December 2013. To authorize the take of small numbers of marine mammals in, we must evaluate the best available scientific information to determine whether the take would have a negligible impact on marine mammals or stocks and have an unmitigable impact on the availability of affected marine mammal species for subsistence use. We cannot issue an IHA if it would result in more than a negligible impact on marine mammals or stocks or result in an unmitigable impact on subsistence. The statute also requires that NMFS prescribe, where applicable, permissible methods of taking and other means of effecting the least practicable impact on the species or stocks of marine mammals and their habitat (i.e. mitigation), paying particular attention to rookeries, mating grounds, and areas of similar significance. If appropriate, we must prescribe means of effecting the least practicable impact on the availability of the species or stocks of marine mammals for subsistence uses. IHAs must also include requirements or conditions pertaining to the monitoring and reporting of such taking in large part to better understand the effects of such taking on the species. A proposed IHA must be published in the *Federal Register* for public notice and comment. The purpose of this action is therefore to fashion an IHA that meets statutory and regulatory requirements if it is feasible to do so.

1.2.2 NEED FOR ACTION

As noted above, the MMPA establishes a general moratorium or prohibition on the take of marine mammals, including take by Level B (behavioral) harassment. The MMPA establishes a process discussed in Section 1.2.1 by which individuals engaged in specified activities within a specified geographic area may request an IHA for the incidental tale of small numbers of marine mammals.

On December 3, 2012, the City of San Diego submitted an application demonstrating both the need and potential eligibility for issuance of an IHA in connection with the demolition and construction activities described in Section 1.1.1. We now have a corresponding duty to determine whether and how we can fashion an IHA authorizing take incidental to the activities described in the City of San Diego's application. The need for this action is therefore established and framed by the MMPA and our responsibilities under section 101(a)(5)(D) of the MMPA, its implementing regulations, and other applicable requirements which will influence our decision making, such as section 7 of the ESA which is discussed in more detail below this section. In order for an alternative to be considered reasonable it must meet the statutory and regulatory

requirements. The previously mentioned purpose and need guides us in developing reasonable alternatives for consideration, including alternative means of mitigating potential adverse effects. We are thus developing and analyzing alternative means of developing and issuing an IHA, not alternative means of the applicant carrying out the underlying activities described in its application. We do recognize though that mitigation measures developed and included in a final IHA might affect those activities.

1.3 THE ENVIRONMENTAL REVIEW PROCESS

NEPA compliance is necessary for all "major" Federal actions with the potential to significantly affect the quality of the human environment. Major Federal actions include activities that are fully or partially funded, regulated, conducted, or approved by a Federal agency. Because our issuance of an IHA would allow for the taking of marine mammals consistent with provisions under the MMPA and incidental to the applicant's activities, we consider this as a major Federal action subject to NEPA.

We prepared this EA to determine whether the direct, indirect and cumulative impacts related to its issuance of the IHA for incidental take of marine mammals under the MMPA during demolition and construction activities in La Jolla, California are likely to be significant. If we deem the potential impacts to be not significant, this analysis, in combination with other analyses incorporated by reference, may support the issuance of a Finding of No Significant Impact (FONSI) for the proposed IHA.

1.3.1 LAWS, REGULATIONS, OR OTHER NEPA ANALYSES INFLUENCING THE EA'S SCOPE

We have based the scope of the proposed action and nature of the two alternatives considered in this EA on the relevant requirements in section 101(a)(5)(D) of the MMPA. The scope of our analysis is thus bounded by our decision making discussed in Section 1.3.2. We believe this analysis fully evaluates the impacts associated with this demolition and construction activities with mitigation and monitoring for marine mammals.

MMPA APPLICATION AND NOTICE OF THE PROPOSED IHA

The MMPA and its implementing regulations governing the issuance of an IHA (50 CFR § 216.107) require that upon receipt of an adequate and complete application for an IHA, we must publish a notice of preliminary determinations and a proposed IHA in the *Federal Register* (FR) within 45 days.

The regulations published by the Council on Environmental Quality (CEQ regulations) 40 CFR §1502.25 encourage Federal agencies to integrate NEPA's environmental review process with other environmental review laws. We rely substantially on the public process for developing proposed IHAs under the MMPA and its implementing regulations to develop and evaluate relevant environmental information and provide a meaningful opportunity for public participation as we develop corresponding EAs. We fully consider public comments received in response to our publication of the notice of proposed IHA during the corresponding NEPA review process.

On May 3, 2013, we published a notice of a proposed IHA with our preliminary determinations in the *Federal Register* (78 FR 25958). The notice included a detailed description of the revised proposed action resulting from the MMPA consultation process; consideration of environmental issues and impacts of relevance related to the issuance of an IHA; and potential mitigation and

monitoring measures to avoid and minimize potential adverse impacts to marine mammals and their habitat. We explained in that notice that we would use it to provide all relevant environmental information to the public and to solicit the public's comments on the potential environmental effects related to the proposed issuance of the IHA and issues for consideration in this EA.

This EA titled, *Environmental Assessment on the Issuance of an Incidental Harassment Authorization to the City of San Diego to Take Maine Mammals by Harassment Incidental to Demolition and Construction Activities at the Children's Pool Lifeguard Station in La Jolla, California*, incorporates by reference and relies on the City of San Diego's December 2012 application, our notice of a proposed IHA (78 FR 25958, May 3, 2013), and their environmental analyses by reference to avoid duplication of analysis and unnecessary length.

Our notice of a proposed IHA (78 FR 25958, May 3, 2013) included a detailed description of the proposed project, an assessment of the potential impacts on marine mammals, mitigation and monitoring measures, reporting requirements planned for this project and preliminary determinations required by the MMPA. The notice provided information on our proposal to issue an IHA to the City of San Diego to incidentally harass by Level B harassment only, three species of marine mammals during the proposed demolition and construction activities. Within the notice of the proposed IHA (78 FR 25958, May 3, 2013) we considered the applicant's proposed action and their proposed mitigation and monitoring measures that would effect the least practicable impact on marine mammals including:

(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 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.

We preliminarily determined, provided that the City of San Diego implemented the required mitigation and monitoring measures, that the impact of conducting the demolition and construction activities at the Children's Pool Lifeguard Station in La Jolla, California, from June through December 2013, would result, at worst, in a modification in behavior and/or low-level physiological effects (Level B harassment) of certain species of marine mammals.

PROPOSING NEPA ANALYSIS ON THE PROPOSED DEMOLITION AND CONSTRUCTION ACTIVITIES AND ISSUANCE OF AN ASSOCIATED IHA

After conducting an independent review of the information and analyses for sufficiency and adequacy, we incorporate by reference the relevant analyses for the City of San Diego's proposed action as well as a discussion of the affected environment and environmental consequences within the following documents per 40 CFR 1502.21 and NAO 216-6 § 5.09(d):

- The City of San Diego's 2013 *Application for Incidental Harassment Authorization under the Marine Mammal Protection Act for City of San Diego, Public Works Department, Engineering and Capital Projects Branch, Architectural Engineering and Parks Division*, prepared by Dr. Doyle Hanan of Hanan & Associates, Inc. (Hanan, 2013).

In summary, the City of San Diego's analyses conclude that with incorporation of monitoring and mitigation measures proposed by the City of San Diego, the potential impacts of the proposed action to marine mammals would be limited to localized changes in behavior and distribution near the demolition and construction activities and would qualify as Level B harassment under the MMPA. The City of San Diego did not identify any significant environmental issues or impacts.

1.3.2 Scope of Environmental Analysis

This EA is intended to provide more focused information on the primary issues and impacts of environmental concern related specifically to our issuance of the IHA.

1.3.3 NEPA Public Scoping Summary

NAO 216-6 established agency procedures for complying with NEPA and the implementing NEPA regulations issued by the CEQ. Consistent with the intent of NEPA and NAO 216-6 to involve the public in NEPA decision-making, we requested comments on the potential environmental impacts described in the MMPA IHA application and in the *Federal Register* notice of the proposed IHA. The CEQ regulations further encourage agencies to integrate the NEPA review process with review under the environmental statutes. Consistent with agency practice we provided the public with environmental information related to the proposed action and all potential effects through our MMPA process.

The *Federal Register* notice of the proposed IHA with our preliminary determinations (78 FR 25958, May 3, 2013), supporting analyses, and corresponding public comment period are instrumental in providing the public with information on relevant environmental issues and offering the public a meaningful opportunity to provide comments to us for consideration in the MMPA and NEPA decision-making processes.
The notice of the proposed IHA was available for public review and comment from May 3, 2013 to June 3, 2013.

We posted the City of San Diego's IHA application on our website at: http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications concurrently with the release of our *Federal Register* notice requesting comments on the proposed IHA (78 FR 25958, May 3, 2013). At the conclusion this process, we will post the final EA, and, if appropriate, FONSI, on the same website.

1.3.4 Relevant Comments on our *Federal Register* Notice

During the 30-day public comment period on the notice of the proposed IHA we received comments from the Western Alliance for Nature (WAN), San Diego Council of Divers, La Jolla Friends of the Seals, and numerous individuals. Public comments on the notice of the proposed IHA postmarked by June 3, 2013 are a part of the public record and are available on our website.

We briefly summarize WAN's comments here. Generally, WAN recommended that we:

- All work cease after November 1st.
- A sound barrier consisting of two layers of plywood with acoustic deadening material between or a temporary sound wall be erected that is wider (broader) than it is high.
- The use of mufflers and sound blankets be required on noise-generating equipment.
- The City of San Diego obtain data from the WAN and use it to determine a baseline for the presence of harbor seals and their distribution with time and adjust the construction hours if the baseline indicates the need and also use this data to help analyze the impacts of the construction.
- If monitoring indicates that the number of takes is exceeding the number allowed under the IHA all construction activities cease until a revised mitigation plan be devised.
- The City of San Diego should be required to close the beach during construction to enable a more accurate determination as to what the impacts of the construction are on the harbor seals. Unless the beach is closed there is no way to distinguish between the impacts caused by the presence of people and the impacts caused by the construction.
- The monitoring plan should include observations of numbers of people on the beach and their location relative to the harbor seals and any impacts of the presence at the time of counting the harbor seals on the beach.
- The number of takes should be reduced to a smaller percentage of the population stock so as to meet the small numbers requirement of the MMPA.
- Monitoring should continue for 60 days after the cessation of construction to determine long term impacts. If reduction in numbers continues or site abandonment has occurred, the City of San Diego should work with NMFS on a plan to help re-establish the colony.

On May 21, 2013, we received comments from the Marine Mammal Commission (Commission) on the notice of the proposed IHA. The Commission provides comments on all proposed ITAs as part of their established role under the MMPA (16 U.S.C. 1402).

We briefly summarize the Commission's comments here. Generally, the Commission recommended that we:

- NMFS issue the IHA, subject to inclusion of the proposed mitigation and monitoring measures.

We have considered the comments regarding monitoring and mitigation measures within the context of the MMPA requirement to effect the least practicable impact to marine mammals and their habitats. We have developed responses to specific comments related to the incidental harassment of marine mammals; will provide those responses in the *Federal Register* notice announcing the issuance of the IHA; and address them in Chapters 2, 3, and 4 of this EA. We fully considered WAN and the Commission's comments, particularly those related to mitigation, monitoring, and adaptive management measures in preparing the final IHA and this EA.

Based on those comments, we have re-evaluated the mitigation and monitoring proposed for incorporation in the IHA and have determined, based on the best available data that the mitigation measures proposed by the applicant and revised by NMFS are the most feasible and effective monitoring and mitigation measures to achieve the MMPA requirement of effecting the least practicable impact on each marine mammal species or stock. Public comments therefore revealed several additional feasible means of effective mitigation for the proposed action.

1.4 OTHER PERMITS, LICENSES, OR CONSULTATION REQUIREMENTS

This section summarizes Federal, state, and local permits, licenses, approvals, and consultation requirements necessary to implement the proposed action.

1.4.1 U.S. ENDANGERED SPECIES ACT OF 1973

Section 7 of the ESA requires consultation for actions funded, authorized or carried out by federal agencies (i.e., Federal actions) that may affect a species listed as threatened or endangered or that may affect designated critical habitat under the ESA. The regulations at 50 CFR § 402 specify the requirements for these consultations with the NMFS.

NMFS (Permits and Conservation Division) has 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 (ESA)-listed marine mammal species under its jurisdiction, as no ESA-listed marine mammals will be affected by the project.

CHAPTER 2 – ALTERNATIVES INCLUDING THE PROPOSED ACTION

2.1 INTRODUCTION

The NEPA and the implementing CEQ regulations (40 CFR §§ 1500-1508) require consideration of alternatives to proposed major Federal actions and NAO 216-6 provides agency policy and guidance on the consideration of alternatives to our proposed action. An EA must consider all reasonable alternatives, including the preferred action. It must also consider the no action alternative, even if it does not meet the stated purpose and need, so as to provide a baseline analysis against we can compare the action alternative.

To warrant detailed evaluation as a reasonable alternative, an alternative must meet our purpose and need. In this case, as we previously explained, an alternative will only meet the purpose and need if it satisfies the requirements under section 101(a)(5)(D) the MMPA (see Chapter 1). We evaluated each potential alternative against these criteria. Based on this evaluation, we have identified one action alternative as reasonable and, along with the No Action alternative, have carried two alternatives forward for evaluation in this EA.[1]

We did not carry forward alternatives that we considered not reasonable for detailed evaluation in this EA.

The action alternative includes a suite of mitigation measures intended to minimize potentially adverse interactions with marine mammals. This chapter describes both alternatives and compares them in terms of their environmental impacts and their achievement of objectives.

2.2 DESCRIPTION OF THE CITY OF SAN DIEGO'S PROPOSED DEMOLITION AND CONSTRUCTION ACTIVITIES

The City of San Diego plans to conduct demolition and construction activities at the Children's Pool Lifeguard Station in La Jolla, California (Figure 1 and 2). The project includes the demolition of the existing lifeguard station and construction of the new, three-story, lifeguard station on the same site using equipment that includes a backhoe, dump truck, air compressor, electric screw guns, jackhammer, concrete saw, and chop saws.

[1] For instances involving Federal decisions on proposals for projects, the single action alternative would consider the effects of permitting the proposed activity which would be compared to "No action" alternative. In this case, the proposed activity would not take place, and the resulting environmental effects from taking no action would be compared with the effects of permitting the proposed activity to proceed (NEPA; Section 1502.14(d)). NEPA Sec. 1508.23 states that an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated.

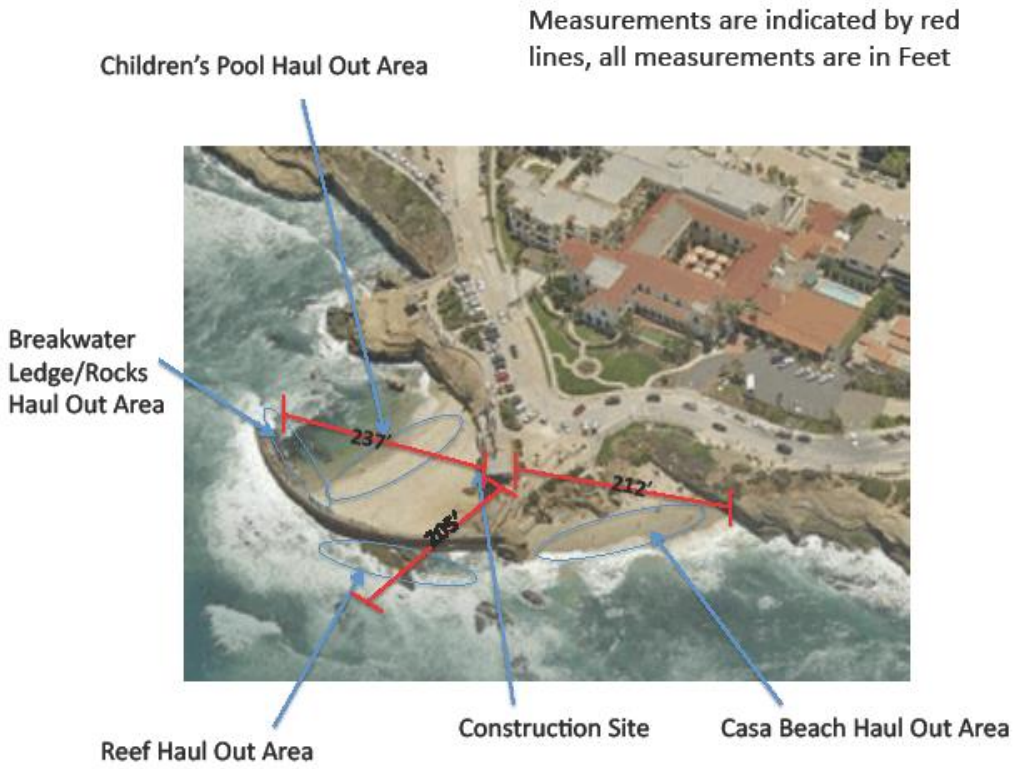

Figure 1. Location of the proposed action area for the demolition and construction activities in La Jolla, California, June through December 2013.

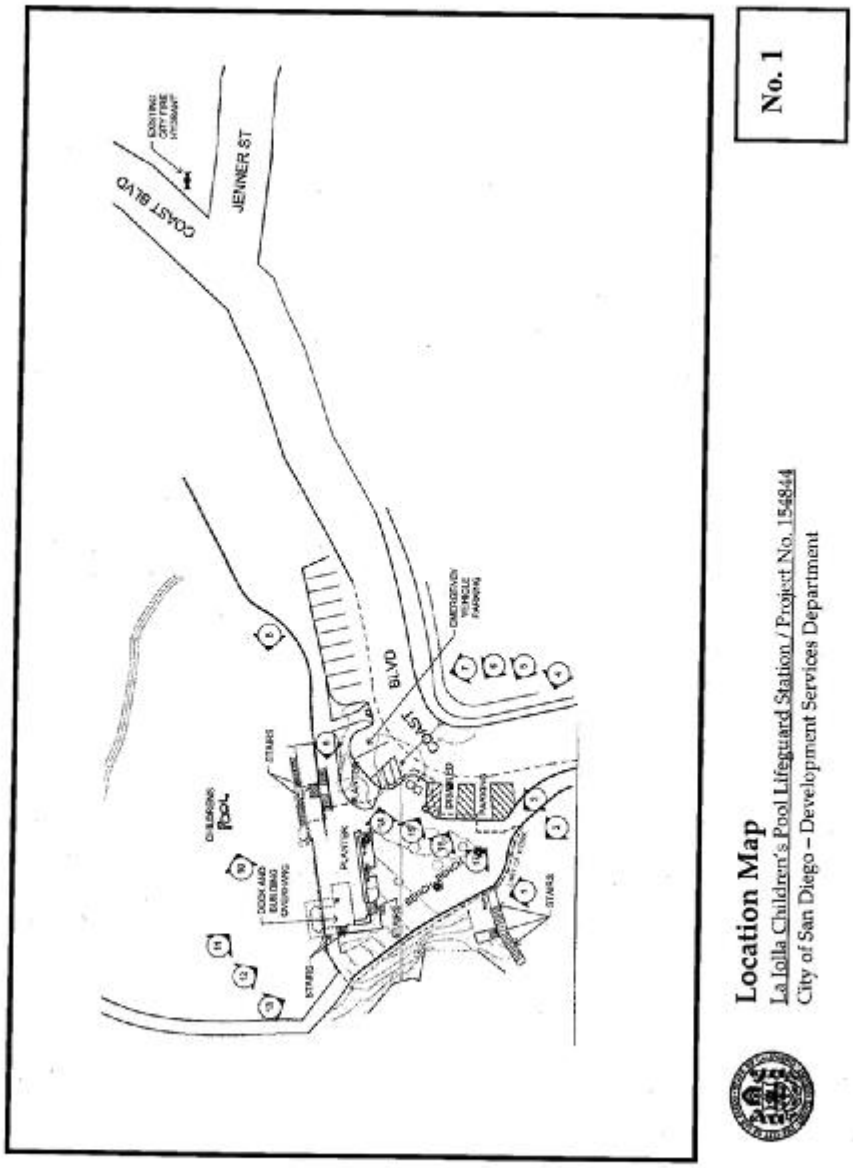

Figure 2. Location map for the La Jolla Children's Pool Lifeguard Station in La Jolla, California.

2.2.1 SPECIFIED TIME AND SPECIFIED AREA

The La Jolla Children's Pool Lifeguard Station is located at 827 ½ Coast Boulevard, La Jolla, California 92037 (32º 50' 50.02" North, 117º 16' 42.8" West. Because the City of San Diego is already requiring a moratorium on all construction activities during harbor seal pupping and weaning (i.e., December 15th to May 30th; see page 5 of the Negative Declaration in the IHA application), work on this project can only be performed between June 1st and December 15th of any year. The City of San Diego is planning to begin the project at the Children's Pool in La Jolla, California on June 28, 2013, with site preparation (see page 30 to 31 of the Negative Declaration in the IHA application) followed by demolition of the existing station and construction of the new lifeguard station to be completed by December 15, 2013. The IHA may extend through June of 2014 to finish the demolition and construction activities if needed. The locations and distances (in ft) from the demolition/construction site to the Children's Pool haul-out area, breakwater ledge/rocks haul-out area, reef haul-out area, and Casa Beach haul-out area can be found in the City of San Diego's IHA application. Therefore, we propose to issue an IHA that is effective from June 28, 2013 to June 27, 2014.

2.2.2 DEMOLITION AND CONSTRUCTION ACTIVITIES

The City of San Diego's IHA application and our notice of the proposed IHA (78 FR 25958, May 3, 2013) describe the proposed demolition and construction activities protocols in detail. We incorporate those descriptions by reference in this EA.

The Children's Pool was created in 1931 by building a breakwater wall which created a protected pool for swimming. This pool has partially filled with sand, but still has open water for swimming, as well as a beach for sunbathing and walking. The Children's Pool and nearby shore areas are used by swimmers, sunbathers, SCUBA divers and snorkelers, shore/surf fishermen, school classrooms, tide pool explorers, kayakers, surfers, boogie and skim boarders, seal, bird and nature waters as well as other activities by the general public. Over the last three years (2010 through 2012), an average of 1,556,184 people have visited the Children's Pool and lifeguards have taken an average of 8,147 preventive actions and 86 water rescues annually (CASA, 2010; 2011; 2012). The existing lifeguard facility was built in 1967, it is old, deteriorating from saltwater intrusion, and no longer serves the needs of the lifeguard staff nor the beach-going public. The structure was condemned on February 22, 2008 due to its deteriorated conditions and the lack of structural integrity; therefore, it can no longer be used in its current state. Since the existing building is no longer viable, a temporary lifeguard tower was moved in, but because of basic year-round working condition needs for the lifeguards and the demand for lifeguard services, a new station is required. The project includes the demolition of the existing lifeguard station and construction of a new, three-story, lifeguard station on the same site. The new facility will have an observation tower, first aid room, male/female locker rooms, and a second observation/ready room area, an accessible ramp to the new unisex public restrooms on the lower floor, a public viewing area, and a plaza in front of the lifeguard station. The new lifeguard station facilities will provide a 270º view of beaches, bluffs, and reefs for continued service to the public onshore as well as in the water.

Sound levels during all phases of the project will not exceed 110 dB re 20 µPa at five feet from the sound sources. The 110 dB estimate is based on equipment manufacturers estimates obtained by the construction contractor. The City of San Diego utilized the published manufacturers data based on the proposed equipment (i.e., a 980 Case backhoe, dump truck, air compressor, electric screw guns, jackhammer, concrete saw, and chop saws) to be utilized on the project site. Operation of the equipment is the primary activity within the demolition and construction of

activities that is likely to affect marine mammals by potentially exposing them to in-air (i.e., airborne or sub-aerial) noise. Generally, harbor seals are considered skittish and have the tendency to react or flush into the water at low levels of sound and/or movements. While a range of behavioral responses can be expected, it is difficult to predict what activities might cause noticeable behavioral reactions with Pacific harbor seals at this site. Children's Pool is a highly disturbed haul-out site and rookery, and the harbor seals observed at this location are unusually tolerant to the presence of humans, and do not respond in the same manner when exposed to stimuli (e.g., laughing, clapping, stomping, climbing, snorkeling, swimming, wading, traffic, sirens, barking dogs, and road construction) when compared to the behavior of other harbor seals in other "non-urbanized" areas (Yochem and Stewart, 1998; Hanan & Associates, 2004; 2011; Hanan, 2005) (see http://www.youtube.comwatch?v=4IRUYVTULsg). During the working day, the City of San Diego estimates there will be sound source levels above 90 dB re 20 µPa during 106 days, including 27 days of 100 to 110 dB re 20 µPa at the demolition and construction site. The contractor used published or manufacturer's measurements to estimate sound levels. On average, pinnipeds will be about 30.5 meters (m) (100 feet [ft]) or more from the construction site with a potential minimum of about 15.2 m (50 ft) and a peak of about 83 dB re 20 µPa at the mean hauling-out distance (30.5 m). The City of San Diego used the formula and online calculator on the website: http://sengpielaudio.com/calculator-distance.htm and measured distances from the sound source to determine the area of potential impacts from in-air sound. No studies of ambient sound levels have been conducted at the Children's Pool. The City of San Diego intends to measure in-air background noise levels in the days immediately prior to, during, and after the demolition and construction activities.

The existing lifeguard station is located on a bluff above Children's Pool (32º 50' 50.02" North, 117º 16' 42.8" West) nearby reef and beach areas (see detailed maps and photographs on pages 30 to 31 of the "Mitigated Negative Declaration" in the IHA application). The building has deteriorated significantly and must be removed. A backhoe will be used for demolishing the existing structure, and materials will be loaded into dump trucks to be hauled offsite. Material will be hauled to a local landfill where it will be separated into recycled content and waste. In its place, a new lifeguard station is scheduled to be constructed within and adjacent to the existing facility. The new three-story, building will contain beach access level public restrooms and showers, lifeguard lockers, and sewage pump room; second level containing two work stations, ready/observation room, kitchenette, restroom, and first aid station. The third "observation" level will include a single occupancy observation space, radio storage closet, and exterior catwalk. Interior stairs will link the floors. The existing below grade retaining walls will remain in place and new retaining walls will be constructed for a ramp from street level to the lower level for emergency vehicle beach access and pedestrian access to the lower level restrooms and showers. A 5.6 m (18. 5 ft) wall would be located along the north end of the lower level. The walls would be designed for a minimum design life of 50 years and would not be undermined from ongoing coastal erosion. The walls would not be readily viewed from Coast Boulevard, the public sidewalks or the surrounding community.

Lower level improvements include new beach access restrooms and showers, lifeguard lockers, and a sewage pump room. The plaza level plan includes two work stations, a ready/observation room, kitchenette, restroom and first aid station. The observation level includes a single occupancy observation space, radio storage closet, and exterior catwalk. The existing plaza would be reconfigured to provide a 3.1 m (10 ft) wide ramp for emergency vehicles to the beach and for pedestrians to the lower level accessible restrooms and showers. Enhanced paving, seating and viewing space, drinking fountains, adapted landscaping and water efficient irrigation

is also included. 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 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.

Demolition and construction of the new lifeguard station is estimated to take approximately 7 months (148 actual demolition and construction days) and be completed by December 15, 2013. Demolition and construction activities will occur Monday through Friday (no work will occur on holidays) during daylight hours only, as stipulated in the "Mitigated Negative Declaration" and local ordinances. Demolition and construction activities are divided into phases:

(1.) Mobilization and temporary facilities;
(2.) Demolition and site clearing;
(3.) Site preparation and utilities;
(4.) Building foundation;
(5.) Building shell;
(6.) Building exterior;
(7.) Building interior;
(8.) Site improvements; and
(9.) Final inspection and demobilization.

Detail summary (phases overlap in time):

(1.) <u>Mobilization and temporary facilities</u>:

Install – temporary perimeter fencing, temporary utilities and foundation, temporary life guard tower, temporary office trailer, temporary sanitary facilities, and temporary sound wall/visual barrier.

Equipment – truck, backhoe, trailer, small auger, hand/power tools, and concrete truck.

Timeframe – Approximately 12 days.

(2.) <u>Demolition and site clearing</u>:

Dismantle and remove existing station, remove hardscape and landscape, trucks expected to haul-off less than 5 loads of debris via Coast Boulevard.

Equipment – excavator, hydraulic ram, jackhammer, trucks, and hand/power tools.

Timeframe – Approximately 13 days.

(3.) <u>Site preparation and utilities</u>:

Rough grade building site and modify underground utilities.

Equipment – loader, backhoe, and truck.

Timeframe – Approximately 17 days.

(4.) <u>Building foundation</u>:

Dig/shore foundation, pour concrete, waterproofing, and remove shoring.

Equipment – backhoe, concrete pump/truck, hand/power tools, small drill rig, and crane.

Timeframe – Approximately 22 days.

(5.) Building shell:

Pre-cast concrete panel walls, panel walls, rough carpentry and roof framing, wall board, cable railing, metal flashing, and roofing.

Equipment – crane, truck, fork lift, hand/power tools.

Timeframe – Approximately 35 days.

(6.) Building exterior:

Doors and windows, siding paint, light fixtures, and plumbing fixtures.

Equipment – truck, hand/power tools, and chop saw.

Timeframe – Approximately 4 weeks.

(7.) Building interiors:

Walls, sewage lift station, rough and finish mechanical electrical plumbing structural (MEPS), wall board, door frames, doors and paint.

Equipment – truck, hand/power tools, and chop saw.

Timeframe – Approximately 37 days.

(8.) Site improvements:

Modify storm drain, concrete seat walls, curbs, and planters, fine grade, irrigation, hardscape, landscape, hand rails, plaques, and benches.

Equipment – backhoe, truck, hand/power tools, concrete pump/truck, and fork lift.

Timeframe – Approximately 37 days.

(9.) Final inspection, demobilization:

System testing, remove construction equipment, inspection, and corrections.

Equipment – truck, and hand/power tools.

Timeframe – Approximately 41 days.

The exact dates of the planned activities depend on logistics and scheduling. Additional details regarding the demolition and construction activities of the Children's Pool Lifeguard Station can be found in the City of San Diego's IHA application. The IHA application can also be found online at: http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications

2.3 DESCRIPTION OF ALTERNATIVES

2.3.1 ALTERNATIVE 1 – ISSUANCE OF AN AUTHORIZATION WITH MITIGATION MEASURES

The Proposed Action constitutes Alternative 1 and is the Preferred Alternative. Under this alternative, we would issue an IHA (valid from June through December 2013) to the City of San Diego allowing the incidental take, by Level B harassment, of three species of marine mammals during the demolition and construction activities subject to the mandatory mitigation and monitoring measures and reporting requirements set forth in the final IHA.

The City of San Diego's analyses and our *Federal Register* notice requesting comments on the proposed IHA (78 FR 25958, May 3, 2013) analyzed the potential impacts of this alternative in detail. We preliminarily determined, under section 101(a)(5)(D) of the MMPA that the measures included in the proposed IHA were sufficient to reduce the effects of the City of San Diego's activity on marine mammals to the level of least practicable adverse impact. In addition, we preliminarily determined that the taking of small numbers of marine mammals incidental to the City of San Diego's action would constitute no more than a negligible impact on the relevant species or stocks (78 FR 25958, May 3, 2013).

We have not altered the mitigation, monitoring and reporting requirements to be included in the final IHA; nor have we received any information that would cause us to change our negligible impact or no unmitigable adverse impact determinations. Accordingly, this Preferred Alternative (Issuance of an IHA with Mitigation Measures) would satisfy the purpose and need of our proposed action under the MMPA.

MITIGATION AND MONITORING MEASURES

To reduce the potential for disturbance from in-air acoustic stimuli associated with the activities, the City of San Diego and/or its designees have proposed to implement the following monitoring and mitigation measures for 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.

If we issue the IHA to the City of San Diego, we would include mandatory requirements for them to achieve the MMPA requirement of effecting the least practicable impact on each species or stock of marine mammals.

The City of San Diego has established the Children's Pool as a shared beach for pinnipeds and people. In the past, during the pupping season a rope was placed along the upper part of the beach to designate how close people can come to the haul-out area. The timeframe for the rope has been extended so that it is now present year-round. The proposed demolition and

construction activities are planned to occur outside the harbor seal pupping and weaning periods. Visual and acoustic barriers will be constructed. The visual and acoustic barrier will be constructed of plywood, 1.8 to 2.4 m (6 to 8 ft) tall. The barriers will be placed at the site with input from NMFS Southwest Regional Office (SWRO) personnel so that they will hide as advantageously as possible the demolition and construction activities that may be seen by pinnipeds. The barriers may dampen the acoustic sound sources, but are not expected to exclude sound from the environment. As the site is a beach with construction along the cliff and on flat areas above the cliff, a complete barrier cannot likely be constructed to hide all demolition and construction activities for the project. Once the walls of the lifeguard station's building are in place, much of the demolition and construction activities will take place above the Children's Pool beach (i.e., out of sight) as well as inside the building (i.e., a visual and partial sound barrier). There will be no activities in the ocean or closer to the water's edge and since harbor seals mate underwater in the ocean, there will be no impacts on mating activities. California sea lions and northern elephant seals are such infrequent users of this area and their rookeries are so far away (at least 104.6 km [65 miles] at offshore islands) that there will be no adverse impact on these species.

Since the notice of the proposed IHA (78 FR 25958, May 3, 2013), NMFS has modified several of the monitoring and mitigation measures included in the proposed IHA for practicability reasons, as well as included several additional measures. These include changing the pupping season from December 15th to May 15th and prohibiting demolition and construction activities during this time; extending demolition and construction activities from 7:00 a.m. to 7:00 p.m. to help assure that the project is completed during the 2013 demolition and construction window; continuing monitoring for 60 days following the end of demolition and construction activities; and triggering a shut-down of demolition and construction activities in the unexpected event of abandonment of the Children's Pool site. The mitigation measure on scheduling the heaviest demolition and construction activities (with the highest sound levels) during the annual period of lowest haul-out occurrence (October to November) was removed as it was included in the City of San Diego's Mitigate Negative Declaration when it was anticipated that the City of San Diego would obtain an IHA in the summer of 2012 and begin demolition of construction activities in the fall of 2012. This is no longer practicable due to logistics, scheduling, and to allow the panned activities to be completed before the next pupping season.

The activity proposed by the applicant includes a variety of measures calculated to minimize potential impacts on marine mammals, including:

- Construction shall be prohibited during the Pacific harbor seal pupping season (December 15th to May 15th) and for an additional four weeks to accommodate lactation and weaning of late season pups. Thus, construction shall be prohibited from December 15th to June 1st.
- Demolition and construction shall be scheduled, to the maximum extent practicable, during the daily period of lowest haul-out occurrence, from approximately 8:30 a.m. to 3:30 p.m.; however, demolition and construction activities may be extended from 7:00 a.m. to 7:00 p.m. to help assure that the project can be completed during the 2013 demolition and construction window. Harbor seals typically have the highest daily or hourly haul-out period during the afternoon from 3:00 p.m to 6:00 p.m.
- A visual and acoustic barrier will be erected and maintained for the duration of the project to shield demolition and construction activities from beach view. The temporary barrier shall consist of ½ to ¾ inch (1.3 to 1.9 centimeters [cm]) plywood constructed 1.8 to 2.4 meters (m) (6 to 8 feet [ft]) high depending on the location.

- Use of trained PSOs to detect, document, and minimize impacts (i.e., possible shut-down of noise-generating operations [turning off the equipment so that in-air sounds associated with construction no longer exceed levels that are potentially harmful to marine mammals]) to marine mammals.

Timing Constraints for In-Air Noise

To minimize in-air noise impacts on marine mammals, underwater construction activities shall be limited to the period when the species of concern will be least likely to be in the project area. The construction window for demolition and construction activities shall be from June 1 to December 15, 2013. The IHA may extend through June of 2104 to finish the demolition and construction activities if needed. Avoiding periods when the highest number of marine mammals (i.e., individuals) are in the action area is another mitigation measure to protect marine mammals from demolition and construction activities.

Abandonment

After the first two months of monitoring during demolition and construction activities, the City of San Diego will take the mean number of observed harbor seals at the Children's Pool in a 24-hour period across that two months and compare it to the mean of the lower 95 percent confidence interval in Figure 3 (see below). If the observed mean is lower, the City of San Diego will shut-down demolition and construction activities and work with NMFS and other harbor seal experts (e.g., Mark Lowry, Dr. Sarah Allen, Dr. Pamela Yochem, and/or Dr. Brent Stewart) to develop and implement a revised mitigation plan to further reduce the number of takes and potential impacts. Once a week every week thereafter, the City of San Diego will take the same mean of observed harbor seals across the previous three tide cycles (a tide cycle is approximately 2 weeks) and compare it to the 95% lower confidence interval in Figure 3 for the same time period. If the observed mean is lower, the City of San Diego will shut-down and take the action described above. If abandonment of the site is likely, monitoring will be expanded away from the Children's Pool to determine if animals have been temporarily displaced to haul-out sites in the southern California area (e.g., Torrey Pines, Point Loma, etc.).

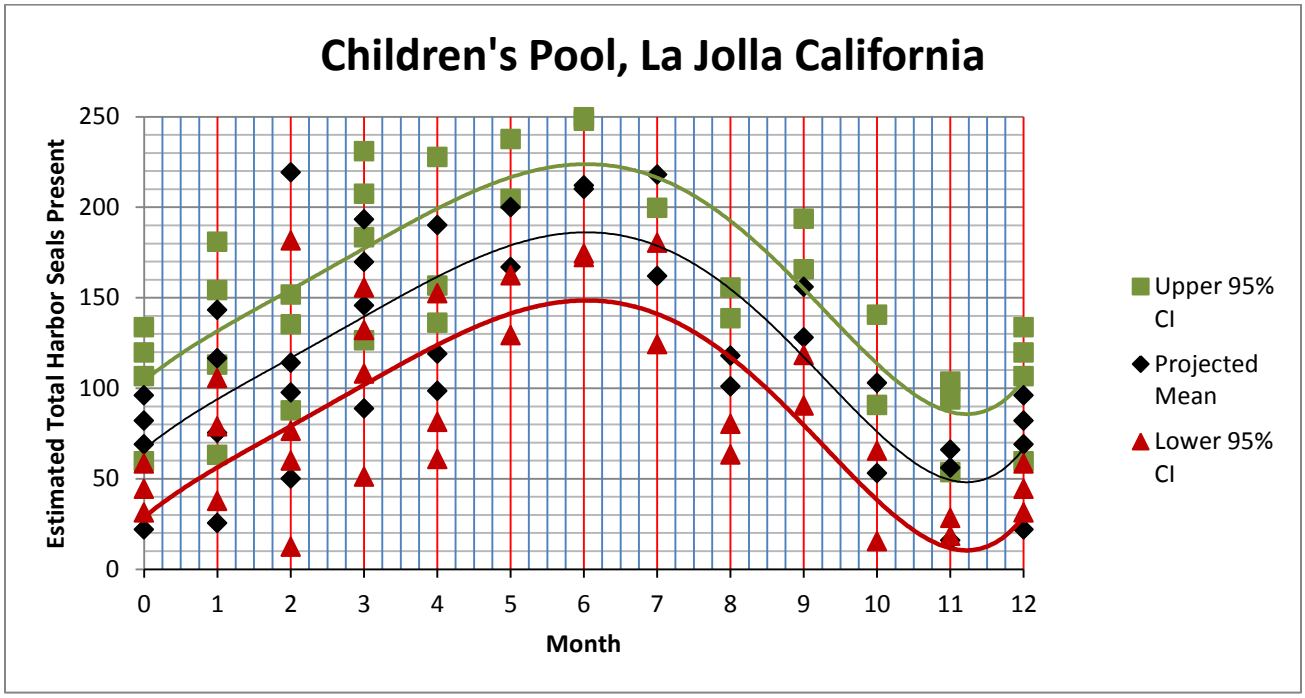

Figure 3. Estimated total harbor seals by month based on counts at the site by Hanan & Associates, Yochem and Stewart, and Children's Pool docents. The polynomial curve fits to counts by moths, which includes the project mean as well as the upper 95% and lower 95% confidence intervals, was used to estimate harbor seals expected to be hauled-out by day.

More information regarding the City of San Diego's monitoring and mitigation measures, for the demolition and construction activities at the Children's Pool Lifeguard Station can be found in the IHA application.

The City of San Diego has developed a monitoring plan (see Appendix I. Mitigated Negative Declaration in the IHA application) based on discussions between the project biologist, Dr. Doyle Hanan, and NMFS biologists. The plan has been vetted by City of San Diego planners and reviewers. The plan has been formally presented to the public for review and comment. The City of San Diego has responded in writing and in public testimony (see City of Council Hearing, December 14, 2011) to all public concerns.

The basic plan is to survey prior to construction activities and then monitor demolition and construction activities by NMFS-approved Protected Species Observers (PSOs) with high-resolution binoculars and handheld digital sound level meters (measuring devices). PSOs will observe from a station along the breakwater wall as well as the base of the cliff below the demolition/construction area. PSOs will be on site approximately 30 minutes before the start of demolition and construction activities and continue for 30 minutes after activities have ceased. Monitors will have authority to stop construction as necessary depending on sound levels, pinniped presence, and distance from sound sources. Daily monitoring reports will be maintained for periodic summary reports to the City of San Diego and to NMFS. Observations will be entered into maintained Hanan & Associates computers. The City of San Diego plans to follow the reporting in the Mitigated Negative Declaration that states "the biologist shall document field activity via the Consultant Site Visit Record. The Consultant Site Visit Record shall be either emailed or faxed to the City of San Diego's Mitigation Monitoring Coordination

process (MMC) on the 1st day of monitoring, the 1st week of each month, the last day of monitoring, and immediately in the case of any undocumented discovery. The project biologist shall submit a final construction monitoring report to MMC within 30 days of construction completion." The MMC "coordinates the monitoring of development projects and requires that changes are approved and implemented to be in conformance with the permit requirements and to minimize any damage to the environment." These documents will also be sent to NMFS.

The City of San Diego will include sound measurements at and near the demolition and construction site in their initial survey prior to the activities as a background and baseline for the project. While no specific acoustic study is planned, the City of San Diego's Mitigated Negative Declaration states that marine mammal monitoring shall be conducted for three to five days prior to construction and shall include hourly systematic counts of pinnipeds using the beach, Seal Rock, and associated reef areas. Monitoring three to five days prior to construction will provide baseline data regarding recent haul-out behavior and patterns as well as background noise levels near the time of demolition and construction activities. The City of San Diego has modified its monitoring program to include 60 days of monitoring post-demolition and construction activities. Following demolition and construction, the City of San Diego will have a program of onsite PSOs that will randomly select a day per week integrated with 10 randomly selected 30 minute monitoring periods using the WAN webcam on three non-observed days via their computers when the WAN webcam is working. During the demolition and construction activities, monitoring shall assess behavior and potential behavioral responses to demolition and construction noise and activities. Visual digital recordings and photographs shall be used to document individuals and behavioral responses to construction. The City of San Diego plans to make hourly counts of the number of pinnipeds present and record sound or visual events that result in behavioral responses and changes, whether during construction or from public stimuli. During these events, pictures and video will also be taken when possible. The "Mitigated Negative Declaration" states "monitoring shall assess behavior and potential behavioral responses to construction noise and activities. Visual digital recordings and photographs shall be used to document individuals and behavioral responses to construction."

The City of San Diego is open to working with the WAN's La Jolla Harbor Seal Webcam, which can be found online at: http://www.wanconservancy.org/la_jolla_harbor_seal_earthcam.htm. The City of San Diego may do periodic checks using the webcam for monitoring purposes. The camera is not expected to replace NMFS-qualified PSOs at the site making accurate counts, measuring sound levels and observing the public and the construction, as well as the harbor seals. In the camera view, you may be able to see visual evidence of Level B harassment, but it probably would not be able to be distinguished between harassment from demolition and construction activities and the public since the camera has a limited scope and only shows the Children's Pool beach and pinnipeds (usually a specific portion of the beach, but not the reef nor nearby beaches).

Consistent with NMFS procedures, the following marine mammal monitoring and reporting shall be performed for the proposed action:

(1) A NMFS-approved or -qualified PSO shall attend the project site prior to, during, and after construction activities cease each day throughout the demolition and construction window.
(2) The PSO shall be approved by NMFS prior to demolition and construction activities.
(3) The PSO shall search for marine mammals within the Children's Pool area.
(4) The PSO shall be present during demolition and construction activities to observe for the presence of marine mammals in the vicinity of the proposed specified activity. All such

activity will occur during daylight hours (i.e., 30 minutes after sunrise and 30 minutes before sunset). If inclement weather limits visibility within the area of effect, the PSO will perform visual scans to the extent conditions allow

(5) If marine mammals are sighted by the PSO within the acoustic thresholds areas, the PSO shall record the number of marine mammals within the area of effect and the duration of their presence while the noise-generating activity is occurring. The PSO will also note whether the marine mammals appeared to respond to the noise and if so, the nature of that response. The PSO shall record the following information: date and time of initial sighting, tidal stage, weather, conditions, Beaufort sea state, species, behavior (activity, group cohesiveness, direction and speed of travel, etc.), number, group composition, distance to sound source, number of animals impacted, demolition/construction activities occurring at time of sighting, and monitoring and mitigation measures implemented (or not implemented). The observations will be reported to NMFS.

(6) A final report will be submitted summarizing all in-air demolition and construction activities and marine mammal monitoring during the time of the authorization, and any long term impacts from the project.

A written log of dates and times of monitoring activity will be kept. The log shall report the following information:

- Time of observer arrival on site;
- Time of the commencement of in-air noise generating activities, and description of the activities;
- Distances to all marine mammals relative to the sound source;
- For harbor seal observations, notes on seal behavior during noise-generating activity, as described above, and on the number and distribution of seals observed in the project vicinity;
- For observations of all marine mammals other than harbor seals, the time and duration of each animal's presence in the project vicinity; the number of animals observed; the behavior of each animal, including any response to noise-generating activities;
- Time of the cessation of in-air noise generating activities; and
- Time of observer departure from site.

All monitoring data collected during demolition and construction will be included in the biological monitoring notes to be submitted. A final report summarizing the demolition and construction monitoring and any general trends observed will also be submitted to NMFS within 90 days after monitoring has ended during the period of the lifeguard station demolition and construction.

The City of San Diego would notify NMFS Headquarters and the NMFS Southwest Regional Office prior to initiation of the demolition and construction activities. A draft final report must be submitted to NMFS within 90 days after the conclusion of the demolition and construction activities of the Children's Pool Lifeguard Station. The report would include a summary of the information gathered pursuant to the monitoring requirements set forth in the IHA, including dates and times of operations, and all marine mammal sightings (dates, times, locations, species, behavioral observations [activity, group cohesiveness, direction and speed of travel, etc.], tidal stage, weather conditions, Beaufort sea state and wind force, activities, associated demolition and construction activities). A final report must be submitted to the Regional Administrator within 30 days after receiving comments from NMFS on the draft final report. If no comments are received from NMFS, the draft final report would be considered to be the final report.

While the IHA would not authorize injury (i.e., Level A harassment), serious injury, or mortality, should the applicant, contractor, monitor or any other individual associated with the demolition and construction project observe an injured or dead marine mammal, the incident (regardless of cause) will be reported to NMFS as soon as practicable. The report should include species or description of animal, condition of animal, location, time first found, observed behaviors (if alive) and photo or video, if available.

In the unanticipated event that the City of San Diego discovers a live stranded marine mammal (sick and/or injured) at the Children's Pool, they shall immediately contact Sea World's stranded animal hotline at 1-800-541-7235. Sea World shall also be notified for dead stranded pinnipeds so that a necropsy can be performed. In all cases, NMFS shall be notified as well, but for immediate response purposes, Sea World shall be contacted first.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury or mortality, the City of San Diego shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and/or by email to Jolie.Harrison@noaa.gov and Howard.Goldstein@noaa.gov and the Southwest Regional Stranding Coordinator (Sarah.Wilkin@noaa.gov). The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- The type of activity involved;
- Description of the circumstances during and leading up to the incident;
- Status of all sound source use in the 24 hours preceding the incident; water depth; environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of marine mammal observations in the 24 hours preceding the incident; species identification or description of the animal(s) involved;
- The fate of the animal(s); and photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with the City of San Diego to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The City of San Diego may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that the City of San Diego discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), the City of San Diego will immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401, and/or by email to Jolie.Harrison@noaa.gov and Howard.Goldstein@noaa.gov, and the NMFS Southwest Regional Office (562-980-4017) and/or by email to the Southwest Regional Stranding Coordinator (Sarah.Wilkin@noaa.gov). The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with the City of San Diego to determine whether modifications in the activities are appropriate.

In the event that the City of San Diego discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the City of San Diego shall report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401, and/or by email to Jolie.Harrison@noaa.gov and Howard.Goldstein@noaa.gov, and the NMFS Southwest Regional Office (562-980-4017) and/or by email to the Southwest Regional Stranding Coordinator (Sarah.Wilkin@noaa.gov), within 24 hours of the discovery. The City of San Diego shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

REPORTING MEASURES

The City of San Diego would submit a comprehensive report to us within 90 days after the end of the demolition and construction activities. The report would describe the activities that were conducted and sightings of marine mammals near the activities generating in-air sounds. The report would provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report would summarize the dates and locations of demolition and construction activities, and all marine mammal sightings (i.e., dates, times, locations, activities, and associated demolition and construction activities). The report would also include estimates of the number and nature of exposures that could result in takes of marine mammals by harassment or in other ways.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury (Level A harassment), serious injury or mortality, The City of San Diego shall immediately cease the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources. The City of San Diego may not resume activities until we are able to review the circumstances of the prohibited take.

2.3.2 ALTERNATIVE 2 – NO ACTION

We are required to evaluate the No Action Alternative per CEQ NEPA regulations. The No Action Alternative serves as a baseline to compare the impacts of the Proposed Action.

Under the No Action Alternative, we would not issue an IHA to the City of San Diego for the taking, by Level B harassment, of small numbers of marine mammals, incidental to the conduct of demolition and construction activities. The City of San Diego would not receive an exemption from the MMPA prohibition against the take of marine mammals, and would therefore choose not to continue forward with the project. The current structure has deteriorated and no longer provides safe living conditions for employees stationed there or recreational users. Without improvements, the current structure is at risk of sudden collapse and a hazard to lifeguard staff and visitors.

CHAPTER 3 – AFFECTED ENVIRONMENT

This chapter describes existing conditions in the project area. We briefly summarize the relevant sections for marine mammals in the following subchapters.

3.1 PHYSICAL ENVIRONMENT

We are required to consider impacts to the physical environment under NOAA NAO 216-6. As discussed in Chapter 1, our proposed action and alternatives relate only to the authorization of incidental take of marine mammals and not to the physical environment. Certain aspects of the physical environment are not relevant to our proposed action (see subchapter 1.3.2 - Scope of Environmental Analysis). Because of the requirements of NAO 261-6, we briefly summarize the physical components of the environment here.

3.1.1 MARINE MAMMAL HABITAT

The rocks and beaches at or near the Children's Pool in La Jolla, California, are almost exclusively Pacific harbor seal hauling-out sites. On rare occasions, one or two California sea lions or a single juvenile northern elephant seal, have been observed on the sand or rocks at or near the Children's Pool (i.e., breakwater ledge/rocks haul-out area, reef haul-out area, and Casa Beach haul-out area). These sites are not usual haul-out locations for California sea lions and/or northern elephant seals. The City of San Diego commissioned two studies of harbor seal abundance trends at the Children's Pool. Both studies reported rare appearances of California sea lions and northern elephant seals (Yochem and Steward, 1998; Hanan & Associates, 2004).

3.2 BIOLOGICAL ENVIRONMENT

3.2.1 MARINE MAMMALS

We provide information on the occurrence, distribution, population size, and conservation status for each of the species of marine mammals, including 20 marine mammal species under our jurisdiction that may occur in the proposed demolition and construction area, including 1 mysticete (baleen whales), 3 odontocetes (toothed cetaceans), and 6 pinnipeds (seals and sea lions) during June through December 2013. Only three species of pinnipeds are known to or could occur in the proposed Children's Pool action area. Pacific harbor seals, California sea lions, and northern elephant seals are the three species of marine mammals that occur and are likely to be found within the proposed activity area.

We presented this information earlier in Section 1.1.2 in this EA and in Table 1 in the *Federal Register* notice requesting comments on the proposed IHA (78 FR 25958, May 3, 2013) and we incorporate those descriptions by reference here. Our agency's Stock Assessment Reports, http://www.nmfs.noaa.gov/pr/sars/species.htm provide the latest abundance and life history information about each stock.

All of the marine mammals are protected under the MMPA, and none of these species are listed as endangered under the ESA.

CHAPTER 4 – ENVIRONMENTAL CONSEQUENCES

This chapter of the EA analyzes the impacts of the two alternatives and addresses the potential direct, indirect, and cumulative impacts of our issuance of an IHA. The *Federal Register* notice requesting comments on the proposed IHA facilitates an analysis of the direct, indirect, and cumulative effects of our proposed issuance of an IHA.

4.1 EFFECTS OF ALTERNATIVE 1 – ISSUANCE OF AN IHA WITH MITIGATION

Alternative 1 is the Preferred Alternative under which we would issue an IHA to the City of San Diego for the taking, by Level B harassment, of small numbers of marine mammals, incidental to the conduct of demolition and construction activities at the Children's Pool Lifeguard Station in La Jolla, California, June through December 2013. We would incorporate the mitigation and monitoring measures and reporting described earlier in this EA into a final IHA.

The *Federal Register* notice requesting comments on the proposed IHA describe, the potential effects of in-air noise from the demolition and construction equipment on marine mammals. We incorporate those descriptions by reference and briefly summarize or supplement the relevant sections in the following subchapters.

4.1.1 IMPACTS TO MARINE MAMMAL HABITAT

Our proposed action would have no additive or incremental effect on the physical environment beyond those resulting from the demolition and construction activities itself and evaluated in the referenced documents.

The effects of the demolition and construction activities would not result in substantial damage to ocean and coastal habitats that might constitute marine mammal habitats as they are temporary in nature. The issuance of an IHA would not affect physical habitat features, such as substrates and water quality.

4.1.2 IMPACTS TO MARINE MAMMALS

The impacts of the demolition and construction activities on marine mammals are specifically related to in-air acoustic activities. We expect that any effect to marine mammals within the vicinity of the activities would be limited to temporary behavioral responses and temporary changes in animal distribution. At most, we interpret these effects on marine mammals as falling within the MMPA definition of Level B (behavioral) harassment (e.g., tolerance, avoidance, flushing, etc.).

Under Alternative 1 – Preferred Alternative, we would authorize, the incidental, Level B harassment only, in the form of temporary behavioral disturbance, of three species of cetaceans and expect no long-term or substantial adverse effects on marine mammals, their habitats, or their role in the environment.

The City of San Diego proposed a number of monitoring and mitigation measures for marine mammals as part of our evaluation for the preferred alternative. In analyzing the effects of the preferred alternative, we anticipate the following monitoring and mitigation measures will minimize and/or prevent impacts to 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.

In the City of San Diego's application, they did not request authorization to take marine mammals by Level A Harassment because their environmental analyses estimate that marine mammals would not be exposed to levels of sound likely to result in Level A harassment. Consequently, the City of San Diego's request for take by Level A harassment is zero animals for any species.

We do not anticipate that take by injury (Level A harassment), serious injury, or mortalities would occur and expect that harassment takes should be at the lowest level practicable due to the incorporation of the mitigation measures proposed in the City of San Diego's application, nor would we authorize take by injury, serious injury, or mortality.

Demolition and Construction Timing: We expect the activity to result in limited to temporary behavioral responses (such as brief masking of natural sounds) and temporary changes in animal distribution.

Acoustic Thresholds: We have determined that for in-air acoustic effects, using acoustic thresholds in combination with corresponding buffer zones are an effective way to consistently apply measures to avoid or minimize the impacts of an action. The City of San Diego uses the thresholds to establish a monitoring zone for potential behavioral disturbance.

Estimated Take of Marine Mammals by Level B Incidental Harassment: The City of San Diego has requested take by Level B harassment as a result of their proposed demolition and construction activities. Acoustic stimuli (i.e., increased in-air sound) generated by equipment during the demolition and construction activities are expected to result in the behavioral disturbance of marine mammals.

The City of San Diego and NMFS anticipate takes of Pacific harbor seals, California sea lions, and northern elephant seals by Level B (behavioral) harassment only incidental to the proposed project at the Children's Pool. No takes by injury (Level A harassment), serious injury, or mortality is expected. There is a high likelihood that many of the harbor seals present during the demolition and construction activities will not be flushed off of the beach or rocks, as pinnipeds at this site are conditioned to human presence and loud noises (Hanan, 2004; 2011) (see http://www.youtube.com/watch?v=4IRUYVTULsg).

With demolition and construction activities scheduled to begin in June 2013, the City of San Diego expects a range of 0 to 190 harbor seals to be present daily during June and a seasonal decline through November to about 0 to 50 harbor seals present daily. If all of the estimated

harbor seals present are taken by incidental harassment each day, there could be a maximum of 12,783 takes (i.e., approximately 3,579 adult males and 2,684 juvenile males, 3,451 adult females and 2,429 juvenile females based on age and sex ratios presented in Harkonen *et al*., 1999) over the entire duration of the demolition and construction activities. The City of San Diego expects about 90% of the adult females to be pregnant after June and July (Greig, 2002). An unknown portion of the incidental takes would be from repeated exposures as harbor seals leave and return to the Children's Pool area. A polynomial curve fit to counts by month was used by the City of San Diego to estimate the number of harbor seals expected to be hauled-out by day (see below and Figure 1 of the IHA application).

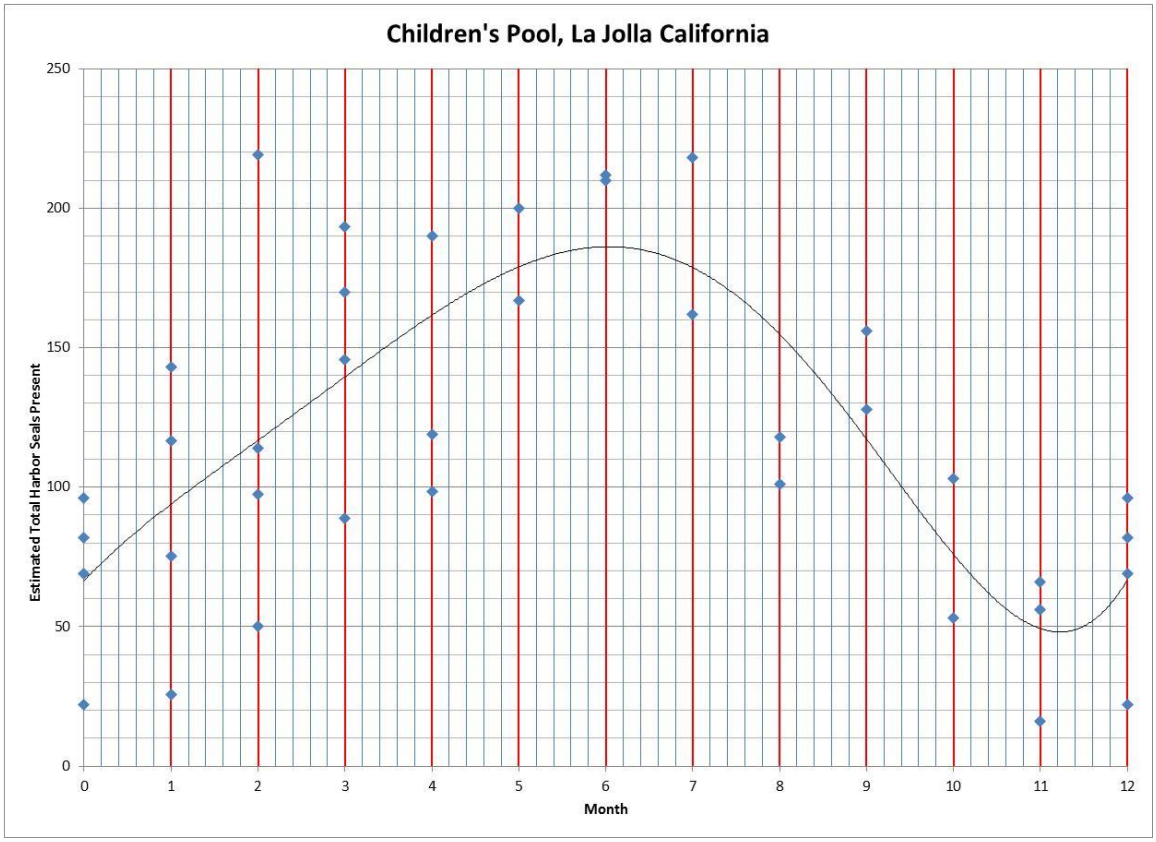

Figure 4. Estimated total harbor seals by month based on counts at the site by Hanan & Associates, Yochem and Stewart, and Children's Pool docents. The polynomial curve fits to counts by moths was used to estimate harbor seals expected to be hauled-out by day.

Assuming the total harbor seals predicted to haul-out daily at the Children's Pool are exposed to sound levels that are considered Level B harassment during days where sound is predicted to exceed 90 dB (i.e., the threshold for Level B harassment for harbor seals) at the demolition/construction site (106 days), there could be a maximum of approximately 12,783 incidental takes (i.e., exposures) of approximately up to 600 individual Pacific harbor seals over the duration of the proposed activities. The estimated 600 individual Pacific harbor seals will be taken by Level B harassment multiple times during the demolition and construction activities. Very few California sea lions and/or northern elephant seals are ever observed at the Children's Pool (i.e., one or two individuals). The City of San Diego requests the authority to incidentally take (i.e., exposures) 12,783 Pacific harbor seals, 100 California sea lions, and 25 northern elephant seals of 600, 2, and 1 individual, respectively. More information on the number of

requested authorized takes, estimated number of individuals, and the approximate percentage of the stock for the three species in the action area can be found in Table 2 (below).

NMFS will consider pinnipeds flushing into the water; moving more than 1 m (3.3 ft), but not into the water; becoming alert and moving, but do not moving more than 1 m; and changing direction of current movement by individuals as behavioral criteria for take by Level B harassment. The City of San Diego will estimate the portion of pinnipeds present that are observed to exhibit these behaviors as well as the apparent source of the stimulus (i.e., if it is from human presence, demolition and construction activities, or other). NMFS has not established a threshold for in-air sound for Level A harassment (injury) for harbor seals and other pinniped species and NMFS does not believe that the City of San Diego's demolition and construction activities would cause injury, serious injury, or mortality to marine mammals and none are proposed to be authorized under the IHA. NMFS anticipates only behavioral disturbance to occur during the conduct of the demolition and construction activities at the Children's Pool Lifeguard Station.

Table 2. Summary of the anticipated incidental take by Level B harassment of pinnipeds for the City of San Diego's demolition and construction activities generating in-air noise at the Children's Pool Lifeguard Station in La Jolla, California.

Species	Requested Take Authorization (Number of Exposures)	Estimated Number of Individuals Taken	Approximate Percentage of Estimated Stock (Individuals)
Pacific harbor seal	12,783	600	1.98
California sea lion	100	2	<0.01
Northern elephant seal	25	1	<0.01

Indirect Impacts: Possible long-term impacts on the harbor seal population at the Children's Pool are from human presence due to the construction of the new lifeguard station. These new facilities could increase the number of visitors to the Children's Pool beach and lifeguard station. In particular, the current facilities are at street level and the new facilities will have bathrooms located at the beach level closer the hauled-out pinnipeds; this may increase the number of people that go down to the beach and therefore increase the incidents of harassment to harbor seals and other pinnipeds at this location.

4.2 EFFECTS OF ALTERNATIVE 2– NO ACTION ALTERNATIVE

Under the No Action Alternative, we would not issue an IHA to the City of San Diego. As a result, the City of San Diego would not receive an exemption from the MMPA prohibitions against take. Currently the structure is not usable, heavily damaged from the saltwater environment and is at risk of sudden failure. As the structure is unusable it does not serve the needs of the City of San Diego and poses a safety hazard to visitors.

The impacts to elements of the human environment resulting from the No Action alternative, conducting the demolition and construction activities in the absence of species protective measures required by the IHA under the MMPA would be similar to those resulting from the preferred alternative.

4.2.2 IMPACTS TO MARINE MAMMALS

Under the No Action alternative, the demolition and construction activities would likely result in additional impacts to marine mammals, specifically related to in-air acoustic activities, compared to the Proposed Action, due to the absence of mitigation and monitoring measures required under the IHA.

4.3 COMPLIANCE WITH NECESSARY LAWS – NECESSARY FEDERAL PERMITS

We have determined that the issuance of an IHA is consistent with the applicable requirements of the MMPA, ESA, and our regulations.

4.4 UNAVOIDABLE ADVERSE IMPACTS

Our *Federal Register* notice requesting comments on the proposed IHA summarize unavoidable adverse impacts to marine mammals or the populations to which they belong or on their habitats occurring in the demolition and construction area. We incorporate those documents by reference.

We acknowledge that the incidental take authorized by the IHA would potentially result in unavoidable adverse impacts. However, we do not expect the City of San Diego's activities to have adverse consequences on the viability of marine mammals in the study area and we do not expect the marine mammal populations in that area to experience reductions in reproduction, numbers, or distribution that might appreciably reduce their likelihood of surviving and recovering in the wild. Numbers of individuals of all species taken by harassment are expected to be small (relative to species or stock abundance), and the demolition and construction activities would have a negligible impact on the affected species or stocks of marine mammals.

4.5 CUMULATIVE EFFECTS

Cumulative effects are defined as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions" (40 CFR§1508.7). Cumulative impacts can result from individually minor but collectively significant actions that take place over a period of time.

Impacts to marine mammal populations include the following: human recreational activities, commercial whaling, altered prey base and habitat quality as a result of global warming, predation, ocean pollution, military training and testing activities, past and future research activities in the area, vessel noise and collisions, and commercial fisheries. These activities account for cumulative impacts to regional and worldwide populations of marine mammals, many of whom are a small fraction of their former abundance and are listed as endangered or threatened under the ESA and depleted under the MMPA.

Despite these regional and global anthropogenic and natural pressures, available trend information indicates that most local populations of marine mammals in the Pacific Ocean, and specifically in the Children's Pool area are stable or increasing (Caretta *et al*., 2013). The proposed demolition and construction activities would add another, albeit temporary activity to the marine environment in the Pacific Ocean and the proposed demolition and construction activities would be limited to a small area in the Pacific Ocean, in southern California, for a relatively short period of time; therefore, we believe our actions from the cumulative impacts will be minor to negligible.

The U.S. Navy's *Hawaii-Southern California Training and Testing Draft Environmental Impact*

Statement/Overseas Environmental Impact Statement (Navy, 2012) and NMFS Southwest Fisheries Science Center's 2013 *Draft Programmatic Environmental Assessment for Fisheries Research Conducted and Funded by the Southwest Fisheries Science Center* summarizes the potential cumulative effects to marine mammals or the populations to which they belong or on their habitats occurring in the action area. Our analyses which incorporate their analyses by reference and briefly summarize them here focuses on activities that could impact animals specifically in the proposed action area (i.e., research activities, military testing and training activities, vessel traffic, and commercial fisheries).

4.5.1 PAST, PRESENT, AND REASONABLY FORESEEABLE FUTURE ACTIVITIES IN THE NORTHEAST PACIFIC OCEAN OFF OF CALIFORNIA

Other demolition and construction activities have been and may be conducted in this region in the future, however, no other demolition and construction activities are proposed at the Children's Pool in the foreseeable future. Other human recreational activities, military training and testing activities, past and future research activities, vessel traffic, and commercial fishing have been and may be conducted in this region in the future. At the present time, the action proponents and NMFS are not aware of other demolition and construction activities planned to occur in the proposed action area during the June to December 2013 timeframe, but activities planned by other entities are possible.

Issuance of an IHA to the City of San Diego is not related to other actions with individually insignificant, but cumulatively significant impacts. There are currently no reasonably foreseeable projects planned for the Children's Pool area under NMFS authority that are currently ongoing. Any future authorizations would have to undergo the same permitting process and would have to take the demolition and construction activities into consideration when addressing cumulative effects. No other demolition and construction operations with an IHA from us are scheduled to occur at the Children's Pool Lifeguard Station in La Jolla, California, June through December 2013. Therefore, we are unaware of any synergistic impacts to marine resources associated with reasonably foreseeable future actions that may be planned or occur within the same region of influence. The impacts of conducting 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 impacts to marine mammals or to their role in the ecosystem. As described in Richardson *et al*. (1995), marine mammals are likely acclimated and tolerant to a certain degree of anthropogenic disturbance, including noise. Based on the summation of the activity in the area provided in this section, NMFS believes that the incremental impact of an IHA and the City of San Diego's proposed demolition and construction activities, when combined with other potential stressors (e.g., human recreational activities, military training and testing activities, research activities, vessel traffic, commercial fishing, etc.), would not be expected to result in a significant cumulative effect to the human environment from past, present, and future activities. The potential impacts to marine mammals, their habitats, and the human environment in general are expected to be minimal based on the limited and temporary in-air noise footprint and mitigation and monitoring requirements of the IHA described in Section 2.3.1.

CHAPTER 5 – LIST OF PREPARERS AND AGENCIES CONSULTED

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CHAPTER 6 – REFERENCES

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