



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: Celia Perez Martinez, Business Manager

MEETING DATE: December 19, 2007

SUBJECT: Consider a Resolution to Establish a City Council Policy – Program to Prevent Harbor Seals from Establishing Habitat at Lovers Point Beach and Harbor Seal Mother and Pup Protection at Lovers Point Beach.

RECOMMENDATION:

Receive report and approve a resolution to establish a policy to deter seal harbors from establishing habitat on Lovers Point and to establish protection procedures in the event of seal births at Lovers Point Beach.

DISCUSSION:

History:

Seals crowd the west beach of Hopkins Marine Station. In 2006, a few mother seals used the next beach west at the base of 5th Street to bear their pups. The small beach was closed and temporary protective fencing and signage was erected to protect the seals. In 2007, more harbor seals used the beach for pupping. Given the small size of the beach and increased use, docents and marine staffs from local agencies have considered the possibility of the seals moving onward in a westerly direction to Lovers Point Beach. The docents asked the City through the Beautification and Natural Resources Commission (BNRC) to draft a policy and ask the City Council to establish this policy should seals try to habitat and give birth at Lovers Point.

In general, the experts believe that the “humanness” of Lovers Point Beach will deter the seals from establishing themselves there for a pupping season. Marine biologists believe that the human odors and activity at Lovers Point Beach will deter the seals from establishing habitat.

Current:

The BNRC invited experts from National Oceanic and Atmospheric Administration, (NOAA), the National Marine Fisheries Service (NMFS), and the Marine Mammal Rescue Center to its September meeting. In addition, a local marine biologist who has studied the local population for 20 years attended. The concern was presented and discussed. Consensus by these experts was that the City should not allow the seals to establish at Lovers Point Beach, and that should pupping occur, the mammals should be protected until the time the pups are able to swim away with their mothers, and, that they be discouraged from returning.

NOAA law enforcement and the regional director for the National Marine Fisheries Service strongly recommended that the City establish a plan to prevent the establishment of seals on Lovers Point Beach.

It was pointed out to the committee that San Diego failed to take action when they had a similar phenomenon occurred at a popular beach called Children’s Pool. The City did not have a policy in place

nor intent for management of the situation on that particular beach. As a result, the conflict plays out in court.

Based on the discussion at the September meeting, a sub-committee was formed. It was comprised of Bill Kampe, Thom Akeman, who is a docent, and Roger Phillips, of the Monterey Bay Aquarium. NOAA law enforcement provided federal law citations discussing that the seal are protected by federal law. In addition, they provided the provisions that allow state and local officials to take action to protect the seals or public health and welfare. The methods allowed by law to discourage what is known as “hauls outs”, when seals literally haul themselves out of the water to the land. The methods are varied and range from non-aggressive to aggressive. All the methods are approved by NOAA. The committee has made recommendations for the policy that includes an action plan and the methods of deterrent.

FISCAL IMPACT:

None

ATTACHMENTS:

Policy Guidelines, BNRC report, Resolution

RESPECTFULLY SUBMITTED:



Celia Perez Martinez
BUSINESS MANAGER

REVIEWED BY:

James J. Colangelo

Digitally signed: I have reviewed this document

James J. Colangelo
CITY MANAGER



CITY OF PACIFIC GROVE
Public Works Department

Policy for Mitigation Measures to for Prevention of
Seal Haul Outs at Lovers Point Beach
December 19, 2007

Policy:

The City of Pacific Grove intends to discourage seal haul outs at Lovers Point Beach. The City will use selective proactive measures to achieve this goal. No action will be taken for sporadic seal presence at other beaches outside of the pupping season.

If seal pups are delivered on any beach in the city, the city will temporarily close the beach to public uses and provide fencing and signage to protect the seals and their pups for the season, February through May. In this area the season traditionally runs March to June.

Action Plan:

For Haul Outs at Lovers Point.

1. Notify interested agencies and organizations of the plan and actions that will be taken
 - a. Prepare process
2. Designate "first responders", who may be city employees. They will be trained as to methods that can be used to deter the seals from coming onto the shore.
3. In the event of haul outs, first response will be to take direct action to deter the seals off the beach

Techniques will be those acceptable by National Oceanic and Atmospheric Administration.(NOAA) (there are several techniques acceptable by NOAA that the BNRC does not recommend)

Activities Recommended

 - a. Human presence
 - b. Acoustic devices such as pots and pans, noisemakers
 - c. Noise makers that dispense noise periodically (Digital Audio Repellers).
 - d. Sonic Repellers

- e. Scarecrows
- Activities Recommended Against
- a. Barriers, likely unworkable and ineffective for our beaches
 - b. Excessive or continuous noises
 - c. Direct physical contact with the seals, such as poking with dowels or tossing lightweight items at them.
- 4. The City will also have the option to solicit and train volunteers maintain visual diligence. Volunteers may come from beach goers, surfers, and local rental operators.
 - 5. Contact local NOAA offices to ensure collaboration in executing the plan.
 - 6. Initiate reporting activities and reporting to National Marine Fisheries Service (NMFS).
 - a. Prepare reporting forms and document process.

Pups delivered on a city beach including Lovers Point:

- 1. In the event there is a birth(s) at a city beach the deterrent activities shall change to protection for the pupping season.
- 2. Protection of seals with pups will include:
 - a. Fencing off the beach area and posting No Trespassing signs as provided by NOAA
 - b. Enlist in NOAA's help in posting at low tide where necessary.
 - c. Use docents to explain the pupping viewing sites and the nature of the mothers and their pups. This is currently done at the other sites.
- 3. Should Lovers Point Beach be a pupping site the next activity should be to encourage the seals from the beach so that the mother seals and their new offspring do not become habituated to the beach.
 - a. Methods used will be the same as the haul out prevention methods.
 - b. NOAA and the NMFS will provide the guidelines for when it is appropriate to begin this activity.

REPORT FROM BEAUTIFICATION AND NATURAL RESOURCES COMMITTEE – PREPARED BY SUBCOMMITTEE THOM AKEMAN, BILL KAMPE, AND ROGER PHILLIPS

Pacific Grove
Beautification and Natural Resources Committee
Harbor Seal Policy – Findings and Recommendations
Tuesday, October 23, 2007

Summary Recommendation:

Establish a Pacific Grove policy to: 1) deter harbor seals from Lovers Point beach, and; 2) protect harbor seal mothers and pups if birthing occurs on any Pacific Grove beach.

This recommendation is consistent with the suggestions of several experts and federal law enforcement officials who shared their knowledge of the applicable laws and their experiences with us.

Issue:

Seals now crowd the west beach of Hopkins Marine Station. In 2006 a few mother seals used the next beach west at 5th Street to bear their pups. The result is that the beach was closed and temporary fences were erected to protect the seals from the public. More harbor seals used the 5th Street beach for pupping in 2007. The concern that prompted our discussion is that seals may continue to migrate westward if crowding continues. The next beach west is Lovers Point, a popular human destination for thousands who sunbathe, swim, surf, scuba dive, and kayak.

Factors:

At the September 25 BNRC meeting, invited experts from National Oceanic and Atmospheric Administration (NOAA), the National Marine Fisheries Service (NMFS), and the Marine Mammal Rescue Center were invited to describe their perspectives on this possibility. Additional background was provided by a marine biologist who has studied the local harbor seal population for 20 years. We heard the following:

1. Pacific harbor seals are protected by federal law, as are all marine mammals.
2. The shoreline of Pacific Grove is a protected marine sanctuary.
3. In general, the protections of seals prohibit any actions that harass the animals with the effect of causing the seals to change their behavior or causing injury to the seals.
4. Nevertheless, there is an exception to this restriction. State and local officials may take action to protect either the seals or public health and welfare. The local officials include city employees and may include designated volunteers who receive proper training.
5. If a city employee should take action that influences the behavior of a seal, the action must be performed in a humane manner and it must return the seal to its native environment. Further, an annual report must be filed with NOAA/National Marine Fisheries Service describing each action and result.
- 6. The strong recommendation by NOAA law enforcement and the representative of the National Marine Fisheries Service was that the City of Pacific Grove establish a plan to try to prevent the establishment of seals on Lovers Point.**
7. San Diego now encounters great controversy as a result of seals on a beach called Children's Pool. Part of the difficulty is that San Diego did not have a clear plan and intent for management of the situation on that beach. The conflicts now play out in court.

Elements of a Response Plan

Based on BNRC discussion, a subcommittee was appointed to develop a response plan to recommend a policy and actions by the City of Pacific Grove in the event of seal "haul outs" beyond the Hopkins Marine Station. The recommendation includes a Seal Policy and an Action Plan:

Seal Policy

1. The City of Pacific Grove intends to discourage seals at Lovers Point and will use selective proactive measures to achieve this goal. No action will be taken for sporadic seal presence at other beaches outside of the pupping season.

2. However, if seals pups are delivered on any beach in the city, including Lovers Point, the city will temporarily close that beach to public uses and provide fencing to protect the seals and their pups during the pupping season.

Action Plan

1. In preparation for the possibility of seals on Lovers Point, the city will
 - a. Designate the “first responders”, who may be city employees, and provide training in advance of need, so that the city can execute the plan quickly if required.
 - b. Prepare the reporting forms and process, so that there would be no delay if action is necessary
 - c. Notify interested agencies and organizations of the plan, explaining the reasons and rationale, so any activation will not be a surprise.
2. If seals are discovered on Lovers Point, the first response is to take direct action to encourage them to go elsewhere.
 - a. Apply selected permissible techniques as suggested by NOAA:
 - i. Use human presence and activity, acoustic devices acceptable to NOAA, and manual noise makers such as clanging of pots and pans.
 - ii. The BNRC recommends against
 1. Barriers and exclusion, which are likely to be unworkable and ineffective for our beaches
 2. Other listed visual repellants
 3. Excessive and continuous noise, which would be disruptive to residents and visitors
 4. Direct physical contact with seals
 - b. Solicit and train additional volunteers to maintain continual diligence. Potential volunteers may come from regular users of the beach, such as surfers, dive shops, and kayaking operators.
 - c. Initiate record keeping activities and reporting to NMFS
 - d. Contact local NOAA officials to ensure effective collaboration in executing the plan
3. However, if pups are delivered on any city beach, the situation now changes to a phase of protection during the pupping season. The pupping season typically runs from early April into June. At this point, any action to drive away adult seals could and would most likely result in abandonment of pups. The pups would starve without the mothers’ care.
4. Protection of seals with pups will include:
 - a. Fencing off the beach and prohibiting trespassing onto the beach.
 - b. Enlisting the aid of NOAA enforcement to post signs in low tides areas that might allow access to the beach areas occupied by the seals.
 - c. Possibly using docents to explain the pupping that can be witnessed on the beach.
5. Following the pupping season, if it occurs at Lovers Point, the action shifts again to encourage seals to move from the beach, so that mother seals and their new offspring do not become habituated to the beach. This phase could require some period of sustained effort to cause seals to move to another location.

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF PACIFIC GROVE ESTABLISHING COUNCIL POLICY NO. _____ PROGRAM TO PREVENT HARBOR SEALS FROM ESTABLISHING HABITAT AT LOVERS POINT BEACH AND HARBOR SEAL MOTHER AND PUP PROTECTION AT LOVERS POINT BEACH

WHEREAS, Pacific Harbor Seals are a marine mammal protected by federal law yet there are provisions that allow state and local officials to take action to protect the seals or public health and welfare; and

WHEREAS, the local seal population uses the Hopkins Marine Beach and the 5th Street Beach and could possible outgrow these sites and expand to other sites west; and

WHEREAS, marine docents, law enforcement from the National Oceanic and Atmospheric Administration, the regional director from the National Marine Fisheries Service, as well as local biologists who specialize in the local harbor seal population believe that the City of Pacific Grove should not allow the seals to establish themselves at Lovers Point Beach

NOW THEREFORE, THE COUNCIL OF THE CITY OF PACIFIC GROVE DOES RESOLVE AS FOLLOWS:

Adopt Council Policy No. _____ Program to Prevent Harbor Seals From Establishing Habitat at Loves Point Beach and Harbor Seal Mother and Pup Protection at Lovers Point Beach

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE this 19th day of December, 2007, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

DANIEL E. CORT, Mayor

ATTEST:

CHARLENE WISEMAN, City Clerk

APPROVED AS TO FROM:

DAVID C. LAREDO, City Attorney