

Children's Pool Beach Harbor Seal Rookery Project Description

Implementation of Council Resolution R-305837:

1. Amend La Jolla Community Plan/Local Coastal Program to:
 - a. designate the seal rookery as “Environmentally Sensitive Habitat Area” (“ESHA”) per Coastal Act Section 30107.5 and,
 - b. align access policies with ESHA designation to prevent “significant disruption” per of the Coastal Act Section 30240.
2. Approve [two]Coastal Development Permit(s) for the “development” associated with the seasonal access prohibition.
3. Adopt ordinance prohibiting beach access during pupping season.

Children's Pool Beach Harbor Seal Rookery Project Description - Proposed SDMC Amendment

Add Section as follows:

It is unlawful for any person to be upon or to cause any person to be upon the beach of the La Jolla Children's Pool, starting from the lower stairs to the beach beginning with the second landing, from December 15 to May 15.

Children's Pool Beach Harbor Seal Rookery Project Description - "ESHA"

Coastal Act Section 30107.5, definition of "Environmentally sensitive area":

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem **and** which could be easily disturbed or degraded by human activities and developments".

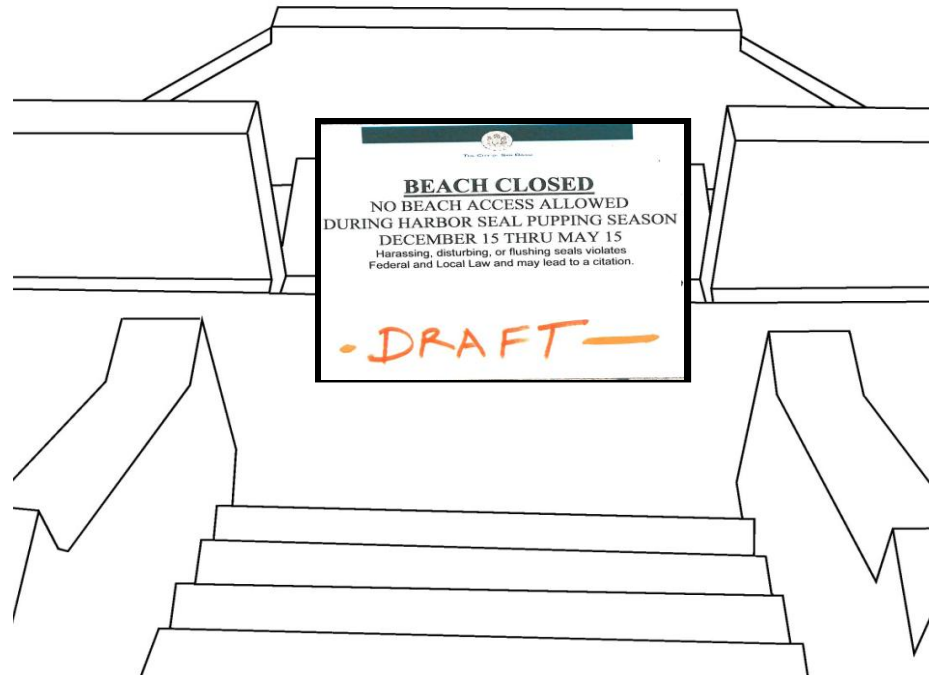
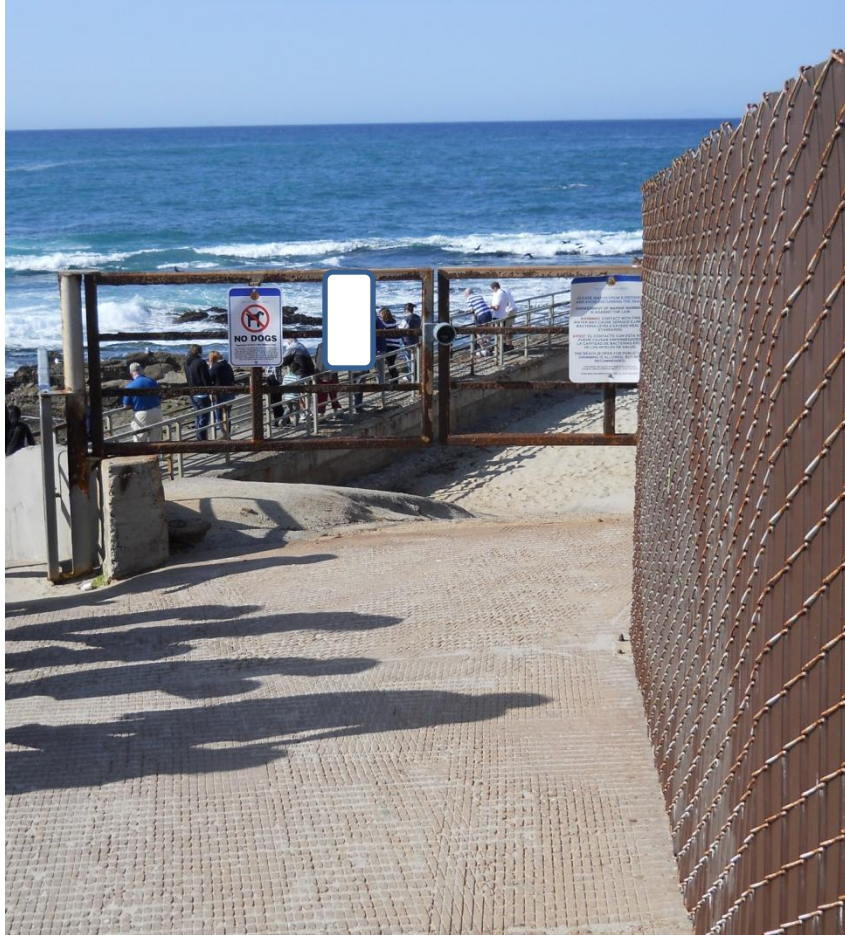
Coastal Act Section 30240:

"Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values...".

Children's Pool Beach Harbor Seal Rookery Project Description



Children's Pool Beach Harbor Seal Rookery Project Description - Signage



Children's Pool Beach Harbor Seal Rookery CP/LCP amendment



Community Plan and Local Coastal Program Land Use Plan

April 2013 Edits
CPA for Children's Pool ESHA

Children's Pool Beach Harbor Seal Rookery

CP/LCP amendment, page 26

- **Environmentally Sensitive Habitat Areas**

The Natural Resources and Open Space System and Residential Elements recommend that development be designed to prevent significant impacts upon sensitive habitats and identified endangered or threatened plant and animal species. In addition, a specific Environmentally Sensitive Habitat Area that has seasonal access restrictions and buffer is designated for the Children's Pool Beach in order to protect breeding pinnipeds. No public access is permitted below the top of the lower staircase leading down to the sand from the sidewalk during seal pupping season. The beach area is designated as an Environmentally Sensitive Habitat Area pursuant to Sections 30107.5 and 30240 of the California Coastal Act and the lower staircase is a buffer for the ESHA.

Children's Pool Beach Harbor Seal Rookery

CP/LCP amendment, page 30

- Physical Access Points:

6. Princess Street (emergency access)
7. Scenic overlook from Coast Walk off of Torrey Pines Road (public parking, lateral access)
8. Cave Store access to Goldfish Point
9. La Jolla Cove -Ellen B. Scripps Park *
10. Coast Boulevard Park: Boomer Beach
11. Coast Boulevard Park: Shell Beach
12. Coast Boulevard Park: Children's Pool [\(For more information regarding the ESHA with seasonal access restrictions refer to Appendix G Subarea E\)](#)
13. Coast Boulevard Park: South Casa Beach

Children's Pool Beach Harbor Seal Rookery CP/LCP amendment, page 40

- Shoreline Areas and Coastal Bluffs:

The maximum use and enjoyment of La Jolla's shoreline is dependent upon providing safe and adequate public access to such major and special use recreational areas as La Jolla Shores Beach, Ellen B. Scripps Park, Coast Boulevard Park, Marine Street Park, Coast Walk, Windansea Beach, Calumet Park, Tourmaline Surfing Park and the Bird Rock tidepool areas.

Public access to this resource is limited, particularly along portions of Bird Rock, La Jolla Hermosa and in La Jolla Farms, due to steep slopes, cliff erosion and sensitive rock formations and restricted parking. Beach access is also limited in the seasonal Children's Pool Beach Environmentally Sensitive Habitat Area and buffer during the seal pupping season in order to prevent significant disruption.

This plan identifies two types of physical access: lateral (movement along the shoreline) and vertical (access to the shoreline from a public road). Public access at designated beach and shoreline points has been improved with the addition of stairways or ramps at certain points along the coastline including Tourmaline Surfing Park, Linda Way, Bird Rock Avenue, Windansea Park, La Jolla Strand Park, Jones Beach, Coast Boulevard Park, Shell Beach, Scripps Park, Children's Pool and La Jolla Shores Beach.

Children's Pool Beach Harbor Seal Rookery

CP/LCP amendment, page 168

- Appendix G, Subarea E, Coast Boulevard, Shoreline Access

d. Children's Pool. Small (.7-acre) artificial pocket beach held in place by seawall. Lifeguard facilities. Stairway access down bluff. Heavily utilized. A specific, Environmentally Sensitive Habitat Area that has seasonal access restrictions is designated for the Children's Pool Beach in order to protect breeding Harbor Seals. No public access is permitted below the top of the lower staircase leading down to the sand from the sidewalk during seal pupping season. This area is designated as an Environmentally Sensitive Habitat Area pursuant to Sections 30107.5 and 30240 of the California Coastal Act. *See discussion below.

Children's Pool Beach Harbor Seal Rookery

CP/LCP amendment, page 168

- Appendix G, Subarea E, Coast Boulevard, Shoreline Access

* On June 8, 2010, the City of San Diego City Council, via Resolution R-305837, directed the City Attorney "to draft an ordinance amending the Municipal Code... to prohibit public access to the Children's Pool beach during harbor seal pupping season, from December 15 to May 15" and directed the Mayor or his designee "to amend the Local Coastal Program, only if required, to prohibit the public from entering the beach during harbor seal pupping season from December 15th through May 15th. In order to effect this directive, staff proposed the establishment of an Environmentally Sensitive Habitat Area during pupping season for the Children's Pool beach in accordance with California Coastal Act Section 30107.5:

Children's Pool Beach Harbor Seal Rookery CP/LCP amendment, page 169 (top)

- Subarea E, Coast Boulevard, Shoreline Access

"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments."

Upon adoption of an ESHA, Coastal Act section 30240 requires:

"Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas ..." and "[d]evelopment in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas."

The La Jolla Community Plan/LCP places high value on coastal access and resource protection and the community plan policies are all considered to have equal value. In addition, the Coastal Act recognizes the value of various, competing goals in Section 30001, it also sets out a strategy on how to resolve conflicts between those goals in Section 30007.5:

Children's Pool Beach Harbor Seal Rookery CP/LCP amendment, page 169 (top)

- Subarea E, Coast Boulevard, Shoreline Access

The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.

Therefore, in order for the LCP to be consistent with the Coastal Act, compliance with Section 30007.5 is required. The basis for the prohibition of public access onto the lower staircase leading down to the sand from the sidewalk and onto the Children's Pool beach during the seal pupping season via establishment of an ESHA that restricts seasonal access is based on such a prohibition being the most protective of significant coastal resources.

In conjunction with the LCP amendment, the City Council also adopted an ordinance by adding a Section 63.0102(e)(2) as follows: It is unlawful for any person to be upon or to cause any person to be upon the beach of the La Jolla Children's Pool, starting from the lower stairs to the beach beginning with the second landing, from December 15 to May 15.

Children's Pool Beach Harbor Seal Rookery Characterization

- From the Coastal Commission's 2012 staff report on the year-round rope barrier:

“As provided for in Sections 30210, 30212, and 30214 of the Coastal Act cited above, public access shall be provided for all people consistent with public safety needs and the need to protect natural resource areas from overuse. Children's Pool Beach...must be balanced with the protection of fragile coastal resources at the subject site. The proposed year-round rope barrier, as conditioned, is consistent with Sections 30210, 30212, and 30214 of the Coastal Act because it maintains public access to the beach while providing protection of the haul out site, or natural resource area, from overuse by people”.

Children's Pool Beach Harbor Seal Rookery

Protecting Fragile Coastal Resources

- The ranger on duty for 40-48 hours/week (~25% of the time) observed 67 flushes caused by people on the beach or lower seawall stairs between 11/6/12 and 4/8/13. It is likely that more flushes occurred when the ranger was absent.
- San Diego Coastal Commission staff has noted that unauthorized harassment or incidental taking of the seals at the Children's Pool area are not consistent with Chapter 3 policies of the Coastal Act

Children's Pool Beach Harbor Seal Rookery Access and Fragile Coastal Resources

Statewide Interpretive Guidelines for Public Access (Coastal Commission, February, 1980):

“Where fragile coastal resources exist on the site...and if full public access would have an adverse impact on such resources...limitations on public use should be imposed to allow for public access consistent with the protection of the values of the site. Restrictions on the seasons during which public access would be allowed...may be imposed to mitigate impacts on the access on the fragile resources”.

Children's Pool Beach Harbor Seal Rookery California Recreation Plan Standards

Designing Accessways: Coastal Access Standards Element of the California Recreation Plan, (a joint publication of the State Coastal Conservancy and the California Coastal Commission, California State Coastal Conservancy, and California Dept. of Parks and Recreation, 1982):

“Accessways and trails should be sited and designed: ... to prevent misuse of environmentally sensitive habitat areas...”

Children's Pool Beach Harbor Seal Rookery

Coastal Commission Precedents

<http://www.coastal.ca.gov/la/lcpguide/lcpguide.pdf>

CCC LCP Update Guide *Natural Resources*

➤ *Where can I read some examples of updated resource policies?*

- City of Malibu LUP policies pages 38-75 of the LUP at <http://www.coastal.ca.gov/ventura/malibu-lup-final.pdf>
- City of Malibu Zoning Ordinance provisions at <http://www.coastal.ca.gov/ventura/malibu-lip-final.pdf>

San Luis Obispo County Periodic LCP Review at:

- <http://www.coastal.ca.gov/recap/slo/slo-intro.pdf>
- <http://www.coastal.ca.gov/recap/slo/slo-asha.pdf>

City of Newport Beach LUP Coastal Resource Protection at:

- <http://www.city.newport-beach.ca.us/Pln/LCP/Internet%20PDFs/CLUP%20Part%204.pdf>

“Accessways...shall be sited, designed and managed to avoid and/or protect marine mammal hauling grounds”

“To protect marine mammal haul out areas...a limited period during which public access should be controlled maybe be necessary such as during nesting and breeding seasons...”

“Establish standards and programs to manage human visitation ... of beaches used by elephant seals”

“Identify Western snowy plover and Elephant seal habitats, and update LCP to designate these areas as ESHA”.

Not applicable; no NOAA-mapped haul-outs or rookeries in LCP.

Children's Pool Beach Harbor Seal Rookery

Other ESHA and Protections

- City of Carpinteria
 - ESHA for “marine mammal rookeries and hauling grounds” in Local Coastal Plan
 - Municipal Code closes City beach to all people during the harbor seal pupping season
- Monterey County - County Code prohibits entering designated restricted areas set up to protect harbor seals
- City of Goleta - Local Coastal Plan identifies marine mammal habitats, including haul-out areas as a “Marine ESHA”.
- City of Half Moon Bay - Local Coastal Program identifies “coastal and off-shore areas containing breeding and/or nesting sites” as ESHA

Children's Pool Beach Harbor Seal Rookery

Rookery Access Restrictions Elsewhere

- Federal:
 - Channel Islands National Park (48/48*)
 - Military Installations (22/22)
 - Other National Parks, Monuments, Recreation Areas (5/6**)
- State Parks, MLPA and Caltrans (7/7)
- Cities (1/2)

Of the 85 rookeries on and off the California coast, only two with historic human/pinniped interaction issues (Bollinas lagoon and Children's Pool), have no existing access restrictions.

Children's Pool Beach Harbor Seal Rookery Coastal Commission Staff Position

In a December 13, 2012 letter to City staff, Coastal Commission staff:

- Supported a seasonal, full beach closure during pupping season
- Advised the City not to invoke an ESHA due to:
 - Close proximity to urban setting
 - Current joint use management strategy
 - Beach is easily accessible to the public
 - Beach has a dedicated user group

Children's Pool Beach Harbor Seal Rookery

ESHA Test 1 - Special Nature/Role

U.S. Congress Findings and Declaration of Policy in the Marine Mammal Protection Act:

“Marine mammals have proven themselves to be resources of great international significance, **esthetic and recreational as well as economic**, and it is the sense of the Congress that they should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem”.

Children's Pool Beach Harbor Seal Rookery

ESHA Test 2 – Easily Disturbed

- NOAA Fisheries, Office of Protected Resources, lists as a threat to Harbor Seals:
 - humans may harass and disturb hauled out seals while the seals are resting
 - NOAA sent a letter to the City in 2010 advocating beach closure
- Ca Dept of Fish and Game:
 - easily disturbed or frightened into the water by human presence
- Testimony, pictures, and video show disturbance by human activities.



Coastal Commission June, 2011 training:

“Examples of ESHA include marine mammal haul-out areas, an ‘Especially Valuable Habitat Area’ due to its ‘especially valuable ecosystem function’”.

The Children’s Pool beach supports the more sensitive marine mammal rookery, not just a haul-out.

Children's Pool Beach Harbor Seal Rookery ESHA Precedents in County LCPs

County	NOAA Haul-out?	NOAA Rookery?	LCP ESHA?
Del Norte	Yes	No	No*
Humboldt	Yes	No	Some, haul-out areas for harbor seals
Mendocino	Yes	No	Yes, marine mammal haulout areas
Sonoma	Yes	No	Yes/Some, marine mammal haul-out grounds
Marin	Yes	No	No**
San Mateo	Yes	Yes	Yes, coastal breeding sites
Santa Cruz	Yes	No	Yes, marine mammal hauling grounds

Children's Pool Beach Harbor Seal Rookery ESHA Precedents in County LCPs

County	NOAA Haul-out?	NOAA Rookery?	LCP ESHA?
Monterey	Yes	Yes	Yes, rookeries and haul-out sites
San Luis Obispo	Yes	Yes	Yes, marine habitat
Santa Barbara	Yes	Yes	Yes, rookeries and haul-out areas
Ventura	Yes (Pt. Mugu NAS)	Yes (Pt. Mugu NAS)	No
Los Angeles	No	Yes (Catalina Island)	No
Orange	No	No	No
San Diego	Yes	Yes	No (City or County)

Children's Pool Beach Harbor Seal Rookery

Next Steps

- Finalize Negative Declaration (amcpherson@sandiego.gov)
- Planning Commission
 - CPA/LCP recommendation
- City Council
 - CPA/LCP action
 - SDMC amendment action
 - CDP for “development” on seawall
- Coastal Commission
 - LCP amendment certification
 - CDP for “development” on beach

Children's Pool Harbor Seal Rookery

Court Rulings on ESHA Designation

- Bolsa Chica v. Superior Court

Under the existing statutory scheme, ESHA's, whether they are pristine and growing or fouled and threatened, receive uniform treatment and protection.

- Conway v. City of Imperial Beach/Dunn v. County of Santa Barbara

In determining ESHA status, a county had the discretion to be more restrictive than the Coastal Commission to the extent its regulations were consistent with legislative intent (i.e., as long as there is no conflict with the Coastal Act).

- Sierra Club v. California Coastal Commission

-Two-part test for ESHA status

-Overturned County/Commission decision to not approve pygmy forest as ESHA (even though forest passed two-part test). Commission had argued against designation because forest is partially protected outside of Coastal Act and did not include rare or endangered plants.

Legislative findings and declarations; goals

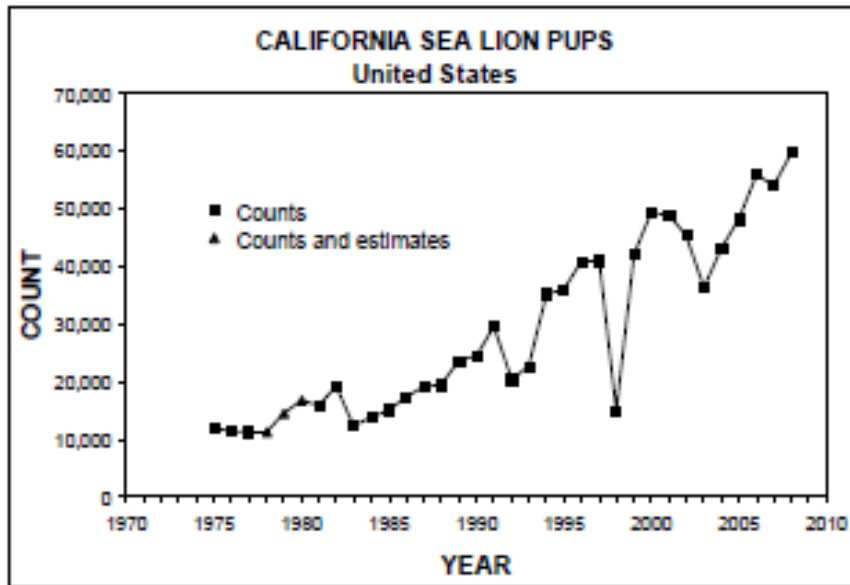
The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

- *(a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.*
- *(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.*
- *(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.*

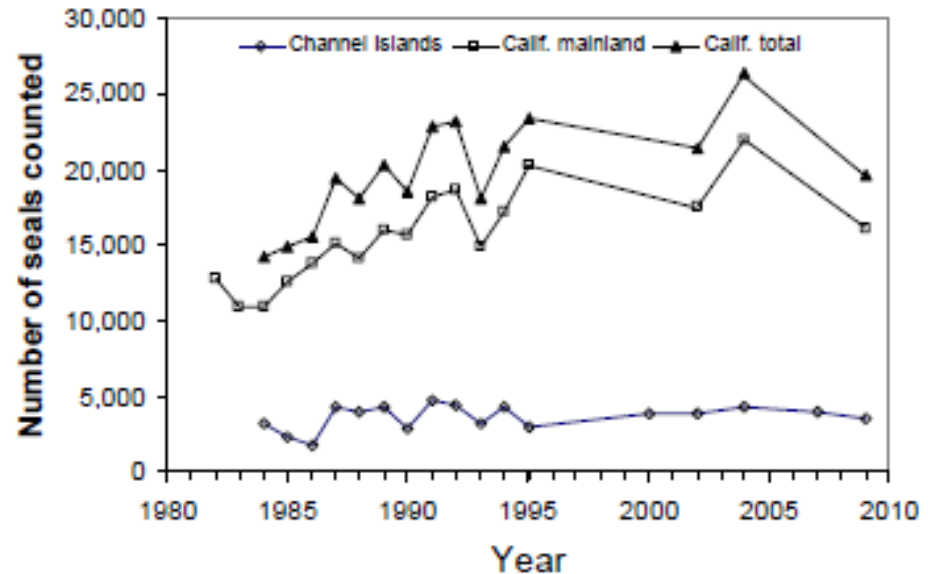
Legislative findings and declarations; resolution of policy conflicts

- *The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources.*

Harbor Seal and Sea Lion Population Trends



U.S. pup count index for California sea lions (1975-2005 2008).



Harbor seal haulout counts in California during May/June