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May 3, 2007

MEMORANDUM

TO: Council Members

FROM: Mark Walker, Director of Public Affairs

SUBJECT: Marine Mammals Taking Legislation

At the April Council meeting in Libby, Montana, staff briefed Council members on H.R. 1769, the *Endangered Salmon Predation Prevention Act*, legislation introduced in the House of Representatives by Congressmen Baird, Hastings, Dicks and Walden. The bill proposes to streamline the process for the taking of California sea lions in the Columbia River and its tributaries. At the conclusion of the briefing, Council members instructed staff to investigate possible avenues where the Council could be helpful in facilitating the removal of sea lions congregating at Bonneville Dam.

Proposed Action:

Staff recommends that the Council agree on a letter in support of H.R. 1769 that will be sent to the Northwest congressional delegation and other relevant Members of Congress. A draft letter will be circulated to Council members in advance of the Walla Walla meeting.

Staff also looked into the ongoing takings permitting process that the states of Idaho, Oregon and Washington initiated last November. NOAA Fisheries solicited public comment on the states' application, but the comment period ended on April 2, 2007. Accordingly, staff does not believe a letter to NOAA Fisheries would be a worthwhile exercise at this time.

Summary of H.R. 1769:

- Upon enactment, the Secretary of Commerce has 90 days to determine whether non-lethal alternative measures adequately protect ESA-listed salmon from California sea lions.
- Within the 90-day period, the Secretary must provide a 30-day public comment period on his/her determination.

- The Secretary's final determination is published in the Federal Register.
- If the final determination finds that non-lethal alternative measures do not adequately protect ESA-listed salmon, eligible entities (i.e., states and tribes) may apply for a permit for the lethal taking of sea lions in the Columbia River and its tributaries.
- The Secretary must approve or deny the permit application within 30 days.
- If the application is approved, the Secretary may issue more than one permit to an eligible entity, but no more than one permit can be used in any 14-day period.
- Permits are effective for no more than one year.
- A single permit shall not authorize more than 10 takings.
- The cumulative number of takings may not exceed 1 percent of the annual potential biological removal level of California sea lions.
- NEPA requirements are waived.
- The statute sunsets after 5 years, or when the Secretary determines that lethal removal is no longer necessary.