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Dick Wallace
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Tom Karier
Washington

Melinda S. Eden
Oregon

Joan M. Dukes
Oregon

December 2, 2010

MEMORANDUM

TO: Council Members

FROM: Jim Ruff -- Manager, Mainstem Passage and River Operations

SUBJECT: Update on NOAA's Pinniped-Fishery Interaction Task Force

On September 3, 2011, NOAA Fisheries sent a letter (Attachment) to the 18 members of the task force charged with advising the agency on interactions between California sea lions and salmon at Bonneville Dam, asking the group to reconvene.

The group, known formally as the [Pinniped-Fishery Interaction Task Force](#), first met in 2007 and produced a report recommending that NOAA Fisheries take actions to reduce California sea lion predation on salmon, including capturing and killing specific animals, below Bonneville Dam.

In early 2008, NOAA Fisheries gave [permission to Oregon, Washington and Idaho to permanently remove certain California sea lions from below Bonneville Dam](#). That permission remains in effect until June 30, 2012.

Earlier this fall, NOAA reconvened the Pinniped-Fishery Interaction Task Force and asked it to evaluate how effective these removal actions have been so far and to provide recommendations for different or additional actions, if necessary. Accordingly, the task force met twice, first on October 25-26 and again on November 9-10 in Portland.

After the task force has completed its deliberations and submitted its recommendations, NOAA Fisheries will determine a course of action informed by the task force recommendations. NOAA's decisions could include no modifications to the currently approved sea lion protocols, modification of the intentional removal authority through altered terms and conditions in the letter of authorization, modifications to the non-lethal deterrence measures, or a determination that the permitted lethal removals have been effective.

At the December 15 Council meeting Garth Griffin, a biologist for NOAA Fisheries in the Protected Resources Division, will brief the Council on the deliberations of the Pinniped-Fishery Interaction Task Force at its most recent meetings and any recommendations that the task force may have developed.

A week ago the Ninth Circuit Court of Appeals in San Francisco ruled that NOAA Fisheries, in its March 2008 decision, failed to adequately explain how the lethal removal of California sea lions that prey on salmon below Bonneville Dam is consistent with the Marine Mammal Protection Act. The Ninth Circuit opinion ordered that the lawsuit brought by the Humane Society and the Wild Fish Conservancy be remanded to the district court “with instructions to vacate the decision of NMFS and remand to NMFS.” Accordingly, Council members may want to ask Mr. Griffin how the agency plans to respond to this recent opinion by the Ninth Circuit.

Attachment

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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E. Bldg 1
Seattle, WA 98115

September 3, 2010

Dear Task Force Member:

Thank you for your continuing participation on the Pinniped-Fishery Interaction Task Force for the California sea lion/salmonid conflict at the Bonneville Dam. We look forward to seeing you again at our meetings in Portland on October 25-26 and November 9-10, 2010. We appreciate your thoughtful service and dedication to a productive dialogue on this difficult and emotional wildlife management matter.

The National Marine Fisheries Service (NMFS) is reconvening the Task Force following the third field season of sea lion removals as recommended in the 2007 Task Force report and in accordance with our March 17, 2008, Letter of Authorization to the States of Idaho, Oregon, and Washington, under Section 120(c)(5) of the Marine Mammal Protection Act (MMPA). The purpose of the Task Force, at this time, is to evaluate the effectiveness of the actions taken to reduce California sea lion impacts to listed salmonids and if necessary provide recommendations for different or additional actions. NMFS will consider the available data and any additional recommendations from the Task Force to determine how to proceed. Until or unless we make a change to the current program, the States' authorization remains valid until June 30, 2012.

As you know, we have again engaged DS Consulting (owner Donna Silverberg) to facilitate and manage the Task Force meetings. I understand that DS Consulting has contacted each of you to ask for your help in identifying what information you believe will be useful to the Task Force's evaluation. NMFS is compiling the available information in preparation for the Task Force discussions. Please contact DS Consulting or my project staff lead, Garth Griffin, if you have any further thoughts on information that will be of use to the Task Force.

Prior to the meetings in October, we will provide further instructions regarding your responsibilities for the evaluation process as outlined in Section 120(c)(5) of the MMPA. We will also ask you to consider several questions to help us with our review of the program to date and in weighing future recommendations of the Task Force. For example, your 2007 recommendations included adaptive management of non-lethal hazing efforts and an interim goal for removal activities to reduce California sea lion predation to a 3-year average of 1 percent (of adult salmonids) within 6 years. These recommendations were incorporated into the NMFS' decision to partially approve the States' application for lethal removal. We would appreciate a Task Force assessment of whether the interim goal appears to meet the expectations of the group as a measure of the removal efforts, based on the first three years of data.

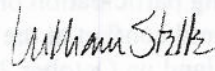
ATTACHMENT



As mandated by Section 120 the upcoming Task Force meetings will be open to the public and notice of the meetings, with supplemental information, will be announced to the public on our Northwest Region website and through a media advisory. We intend to provide time at the beginning of the second day of the meetings to allow the public to provide or identify new or relevant information to the Task Force to aid its deliberations. The public will not be allowed to discuss or debate issues with the Task Force during working sessions.

Thank you again for your attentive and professional assistance. Your contribution to this effort has greatly improved NMFS' ability to manage a complex wildlife management program.

Sincerely,



William W. Stelle, Jr.
Regional Administrator

ATTACHMENT

List of Task Force Members:

Daryl Boness (Marine Mammal Commission)
Bruce Buckmaster (Salmon for All)
Jody Calica (Warm Springs Tribes)
Joyce Casey (Corps of Engineers)
Bob DeLong (National Marine Fisheries Service)
Patty Dornbusch (National Marine Fisheries Service)
Doug Hatch (Columbia River Inter-Tribal Fish Commission)
Tom Loughlin (Marine Mammal Scientist)
Deb Marriott (Lower Columbia River Estuary Partnership)
Barry McPherson (American Fisheries)
Guy Norman (Washington Department of Fish and Wildlife)
Joe Oatman (Nez Perce Tribes)
Dennis Richey (Oregon Anglers)
Carl Scheeler (Confederated Tribes of the Umatilla Indian Reservation)
David Shepherdson (Oregon Zoo)
Paul Ward (Yakama Tribes)
Steve Williams (Oregon Department of Fish and Wildlife)
Sharon Young (Humane Society)



Pinniped-Fishery Interactions 2010 Effectiveness Evaluation Update

December 14-15, 2010
Portland, OR

**NOAA
FISHERIES
SERVICE**

Garth Griffin

Northwest Region, Protected
Resources Division

**NOAA
FISHERIES
SERVICE**



States' Section 120 Application



November 13, 2006

“Lethal removal is a management method we prefer not to use, but one that may be necessary to restore balance to the Columbia River ecosystem where threatened and endangered stocks of salmon and steelhead are being preyed on by a healthy and growing population of California sea lions”



MMPA Section 120 - Basics

❖ Begins with an application from one or more States:

120(b)(1) – A State may apply to the Secretary to authorize the intentional lethal taking of individually identifiable pinnipeds which are having a significant negative impact on the decline or recovery of salmonid fishery stock which –

- Has been listed as Threatened or Endangered under the ESA;
- Is approaching T or E status; or
- Migrates through Ballard Locks



Limitation – Lethal taking is NOT allowed for pinnipeds listed as T or E under the ESA or classified as “Depleted” or “Strategic” under the MMPA.

Key Tenets

...**individually identifiable pinnipeds** which are having a **significant negative impact** on the decline or recovery of salmonid fishery stock...

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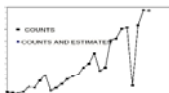


MMPA Section 120 Task Force Duties

❖ Task Force duties included recommendations to NMFS re:

- (1) Whether to approve or deny the States' application.
- (2) Non-lethal alternatives, if available and practicable.

❖ Task Force Considerations:



Population trends, feeding habits, the location of the pinniped interaction, how and when the interaction occurs, and how many individual pinnipeds are involved;



Past efforts to non-lethally deter such pinnipeds, and whether the applicant has demonstrated that no feasible and prudent alternatives exist and that the applicant has taken all reasonable non-lethal steps without success;



The extent to which such pinnipeds are causing undue injury or impact to, or imbalance with, other species in the ecosystem, including fish populations; and



The extent to which such pinnipeds are exhibiting behavior that presents an ongoing threat to public safety.

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Task Force Report - November 2007

FINAL REPORT AND RECOMMENDATIONS
OF THE
MARINE MAMMAL PROTECTION ACT,
SECTION 120

PINNIPED-FISHERY INTERACTION TASK FORCE:
COLUMBIA RIVER

November 5, 2007

Range of
Recommendations



Non-lethal Only

1

17

Limited Lethal
Removal

10

8

Maximum Lethal
Removal

7

11

5



NMFS Finding on States' Application

- ✓ States' Application
- ✓ CR Task Force Recommendations
- ✓ Marine Mammal Commission Input & Public Comments



- ✓ Other Relevant Federal Statutes



National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment reviewing alternatives, including "No Action" and "Proposed Action" alternatives. Issued a **"Finding of No Significant Impact"**



Endangered Species Act (ESA)

NMFS considered whether there are any ESA implications (e.g., salmon, steelhead, Steller sea lions & their critical habitats). Concluded **"No Jeopardy"**



NMFS Decision

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Final Environmental Assessment March 12, 2008

ENVIRONMENTAL ASSESSMENT

Reducing the Impact on At-risk
Salmon and Steelhead by California Sea Lions
in the Area Downstream of Bonneville Dam
on the Columbia River, Oregon and Washington



National Marine Fisheries Service
Northwest Region

- ☒ Take No Action
- ☒ Non-lethal deterrence only
- ☒ Lethal removal of certain California sea lions after non-lethal deterrence. Limit removal to ≤ 85 animals/year or # animals to keep observed predation rate at 1% or less
- ☒ Lethal removal of all California sea lions within 5 miles of dam with no requirement for non-lethal deterrence. Limit removal to ≤ 170 animals/year or # animals to keep observed predation rate at 0.5% or less

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States' Letter of Authorization

Predatory California Sea Lions Authorized For Immediate Removal

Sea lions identified with brands applied by ODFW at Astoria, Oregon.

C319	C443	C444	C640	C644
C265	C507	C257	C668	C586
C309	C322	C390	C360	C645
C643	C440	C635	C455	C653
C404	C417	C287	C622	C669
C192	C247	C554	C578	C652
C699	C398	C379		

Sea lions identified from the Corps database with highly distinguishable natural markings.

B130	B214	B2	B127	B194
B9	B136	B47	B198	B221
B108	B32	B208	B88	B40
B63	B46	B194	B81	B132
B66	B137	B220	B204	B97

Sea lions identified with brands applied by NMFS at San Miguel Island, California.

3341
4140

"This letter serves as authorization under MMPA section 120 for the lethal removal of individually identifiable predatory California sea lions that are having a significant negative impact on the decline or recovery of ESA listed salmonids at Bonneville Dam. Lethal removal is authorized only if the States are in compliance with the following terms and conditions."

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Summary of Results from First 3 Years (2008 – 2010) of States' Lethal Removal Authority



- A variety of non-lethal deterrence techniques have been used below Bonneville Dam



- 10 California sea lions have been permanently relocated to zoos and aquariums for public display and breeding programs



- 27 California sea lions have been euthanized



- Several California sea lions have been tagged and tracked



- 78 animals are currently on the list



Reconvening the Pinniped-Fishery Interaction Task Force *November 2010*



- ❖ Recommended in 2007 Task Force Report & LOA
- ❖ Evaluate program's effectiveness (2008-2010)
- ❖ Document full range of Task Force opinions
- ❖ Develop recommendations
- ❖ Public participation



Task Force Members



- **Daryl Boness** - Retired Marine Mammal Scientist
- **Bruce Buckmaster** - Salmon for All
- **Jody Callica** - Confederated Tribes of the Warm Springs Reservation
- **Joyce Casey** - U.S. Army Corps of Engineers
- **Bob DeLong** - NOAA Marine Mammal Lab
- **Doug Hatch** - Columbia River Inter-Tribal Fish Commission
- **Tom Loughlin** - Retired Marine Mammal Scientist
- **Chris Hathaway** - Lower Columbia River Estuary Partnership
- **Barry McPherson** - American Fisheries Society
- **Guy Norman** - Washington Dept. of Fish and Wildlife
- **Joe Oatman** - Nez Perce Tribes
- **Dennis Richey** - Oregon Anglers
- **Carl Scheeler** - Confederated Tribes of the Umatilla Indian Reservation
- **David Shepherdson** - Oregon Zoo
- **Rob Walton** - NOAA Fisheries
- **Paul Ward** - Confederated Bands of the Yakama Nation
- **Steve Williams** - Oregon Dept. of Fish and Wildlife
- **Sharon Young** - Humane Society of the United States

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Questions for Task Force



- ❖ Is the interim predation rate criterion still a useful metric?
- ❖ Is non-lethal deterrence effective?
- ❖ Are the predatory sea lion ID criteria appropriate?
- ❖ Are removal activities displacing predation to other vulnerable sites?
- ❖ Are program changes needed?

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Litigation Update HSUS, et al. v. Gutierrez, et al.

❖ Complaint filed in March 2008 challenging NMFS' Section 120 authorization **Claims**

- ☐ MMPA – Failure to apply correct legal standard for authorizing lethal take
- ☐ APA - Factually indefensible and inconsistent with other decisions involving salmonids (e.g., fishery harvest or hydropower operations)
- ☐ NEPA – The EA/FONSI were legally inadequate; EIS should have been prepared

❖ Procedural History

- April 2008 – District court denies HSUS' request for preliminary injunction
- April 2008 – 9th Circuit suspends lethal removal program pending appeal of denial
- May 2008 – Parties agree to suspend remainder of 2008 lethal removal program in exchange for HSUS' withdrawal of appeal
- November 2008 – District court decision upholds the MMPA authorization
- February 2009 – 9th Circuit denies HSUS' request for stay pending appeal
- November 2009 – 9th Circuit appellate argument
- November 2010 – 9th Circuit ruling

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Litigation Update (cont.) HSUS, et al. v. Gutierrez, et al.

❖ **MMPA Holding:** The 9th Circuit court ruled against NMFS, vacating the approval of the states' application and remanding to NMFS to articulate a reasoned explanation for its action or to adopt a different action with a reasoned explanation that supports it.

❖ **NEPA Holding:** The court upheld NMFS' NEPA findings.

- ☐ An EIS is unnecessary because the lethal removal of a limited number of CSLs is not expected to cause a "significant degradation of some human environmental fact"
- ☐ NMFS' EA/FONSI were adequate

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Coming Soon...

❖ **Task Force review of removal program's effectiveness**

Anticipated findings include:

- Conclusion – Removal program has not succeeded in reducing salmonid predation problem below Bonneville Dam
- Goal of reducing predation to $\leq 1\%$ is still a reasonable target
- Relax criteria for adding problem animals to removal list
- Increase resources (e.g., traps) to improve effectiveness
- Some doubt that MMPA Section 120 can address this conflict

❖ **NMFS response to 9th Circuit court ruling/remand... ?**