





## Pinniped-Fishery Interactions 2010 Effectiveness Evaluation Update

December 14-15, 2010 Portland, OR

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#### **Garth Griffin**

Northwest Region, Protected Resources Division

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### **States' Section 120 Application**







November (Ap. 2001)
Mr. William Hogarth, Assistant Administrator for Fisheries
Department of Communes
NOAA-Fisheries
National Marline Fisheries Service
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Thank you for consideration of this request. We look forward to hearing from you



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### **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:



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



<u>Past efforts</u> to non-lethally deter such pinnipeds, and whether the applicant has demonstrated that <u>no feasible and prudent alternatives</u> 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.



### **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		4
Non-lethal Only	1	17
Limited Lethal Removal	10	8
Maximum Lethal Removal	7	11

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### NMFS Finding on States' Application

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





### **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**"



# 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

- X Take No Action
- X 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

### UNITED STATES DEPARTMENT OF COMMER NEUTONI Oceanie and Atmospheric Administret NATIONAL MARINE PRO-BRISS SERVICE

Mr. Roy Elicker Director Oregon Department of Fish and Wildlife 3406 Cherry Avenue, Northeast

Dear Mr. Elicker

Your co-signed request to the Assistant Administrator for Fisheries, National Marine Fisheries Service (NMFS) to authorize the intentional lethal taking of California sea linous that prey on salmon and steelhead (salmonids), listed under the Endangered Species Act (ESA), below Bonneville Dam in the lower Columbia River has been partially approved with specific conditions.

As you are owner, a principed fishery-interaction task force was established under section. IZO of the Marine Mannal Protection and Child's) to review you are glorisation and make the Marine Mannal Protection and Child's) to review you are glorisation and make the control of the Child and the Ch

After reviewing and considering (1) the States' application, (2) packin comment on the States' application, (3) packin comments on the States' application, the state fine report of the comments and information presented by the Marine Manmad Commission, and (5) other information related to one line, production on saiston and after the state of the state o

#### Predatory California Sea Lions Authorized For Immediate Removal

Sea lions identified with brands applied by ODFW at Astoria, Oregon C319 C443 C444 C640 C507 C257 C309 C322 C390 C360 C645 C455 C635 C404 C417 C287 C622 C669

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

"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."



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







• 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

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



Dear Task Force Membo

hank you for your continuing participation on the Pluniped-Fishery Interaction Tank Force for the California area Bon/sulmontal conflict at the Benereville Dam. We look forward to seeing for again at our meetings in Portland on October 25-26 and November 9-10, 2010. We appreciate our thoughtful service and dedication to a productive dialogue on this difficult and emotional visibilit smangement statter.

The National Mariner Federates Service (NMFS) is monoiveriming the Task Force (1600-sing the American Company of the Company of the Company of the Company of the Company Washington, under Sectional 120(25) of the Marine Manneal Protection Act (MMFA). The propose of the Task Force, at this time, in a covalant the efficiences of the actions taken to fire different explaints of the Company of the Company of the Company of the Company for different explaints and company of the Company of the Company of the Company for different explaints and company of the Company of the Company of the Company for different explaints and company of the Company of the Company of the Company of the Company for different explaints and company of the Company of t

As you know, we have again engaged DS Consulting (owner Donna Silverberg) to facilitate and monage the Task Force mortings. I understand that DS Consulting has contacted each of you to ask fit your bejo in identifying what information you bejore will be useful to her Task Force's columns. NMPS is compiling the available information in preparation for the Task Force's discussions. Please cented DS Consulting or my project staff Insel, Garb Criffin, if you have

Friet to the monthings in October, we will provide father instructions regarding your reoperabilities for the evaluation process as outlined in Section 120(c)(5) of the MMA. We will also ask you to consider several questions to help us with our review of the programs to date and in weighing father recommendations of the Task Power. For example, your Oscillation recommendations included adaptive management of from-boths having efforts and no interior processing the property of the property of the property of the property of the death active control within Savar. There was then production at 3.2-pear aroungs of a possible of death active control within Savar.

> Sincerety, Unlarent Stalk

William W. Stelle, Jr. Regional Administrat



- ❖ 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?















## **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

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



### **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 <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 9<sup>th</sup> Circuit court ruling/remand...?

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