



Pinniped-Fishery Interactions 2010 Effectiveness Evaluation Update

December 14-15, 2010
Portland, OR

**NOAA
FISHERIES
SERVICE**

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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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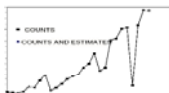


MMPA Section 120 Task Force Duties

❖ 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

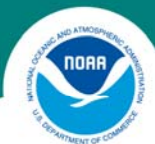
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Maximum Lethal
Removal

7

11

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NMFS Finding on States' Application

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



- ✓ 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... ?**