

Section 120 Overview and Task Force Instructions

Introduction

The United States Congress created Section 120 of the Marine Mammal Protection Act (MMPA) as part of its 1994 amendments to the Act. This section provides an exception to the MMPA “take” moratorium and authorizes the Secretary of Commerce, acting through the Assistant Administrator for Fisheries (AA), National Marine Fisheries Service (NMFS), to permit the intentional lethal taking of individually identifiable pinnipeds (seals and sea lions) that are having a significant negative impact on the decline or recovery of salmonids listed under the Endangered Species Act (ESA) or approaching threatened or endangered status.

The Section 120 process begins with an application from one or more States. The application is reviewed by the AA to determine if it provides sufficient evidence to warrant establishing a Pinniped – Fishery Interaction Task Force to consider the situation described in the application. If the AA determines a Task Force is warranted, NMFS publishes a *Federal Register* notice announcing receipt of a complete application, the intent to establish a Task Force and a request for public comment on the application.

The Role of the Pinniped-Fishery Interaction Task Force

Once established, the Task Force has 60 days to consider relevant information and recommend to NMFS whether to approve or deny the States’ request. If the Task Force recommends approval, it also includes a description of the specific pinniped individuals, the proposed location, time, and method of taking, criteria for evaluating the success of the action, and the duration of the intentional lethal taking authority. The Task Force may also suggest non-lethal alternatives, if available and practicable. In formulating its recommendations, the Task Force is to review public comments received by NMFS in response to its *Federal Register* notice, and also consider:

- (1) population trends, feeding habits, the location of the pinniped interaction, how and when the interaction occurs, and how many individual pinnipeds are involved;
- (2) 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;
- (3) 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
- (4) the extent to which such pinnipeds are exhibiting behavior that presents an ongoing threat to public safety.

History of the Current Application

On December 5, 2006, NMFS received an application¹ co-signed by the Washington Department of Fish and Wildlife (WDFW), the Oregon Department of Fish and Wildlife (ODFW) and the Idaho Department of Fish and Game (IDFG), requesting authorization

to kill individually identifiable California sea lions in the Columbia River, which are having a significant negative impact on the recovery of threatened and endangered Pacific salmon and steelhead. According to the States' application, affected salmon and steelhead include Lower Columbia River Chinook (threatened),^{2,3} Lower Columbia River steelhead (threatened),^{4,5} Middle Columbia River steelhead (threatened),^{4,6} Upper Columbia River Spring Chinook (endangered),^{2,3} Snake River Spring/Summer Chinook (threatened),^{3,7,8} Snake River Basin steelhead (threatened),^{5,9} Upper Willamette Chinook (threatened),^{3,6} and Upper Willamette steelhead (threatened),^{5,6} The application describes the means of identifying individual pinnipeds, includes a detailed description of the problem interactions between pinnipeds and listed salmonids at and below Bonneville Dam, and describes the expected benefits of the potential taking of pinnipeds. The application also documents past non-lethal efforts to prevent the problem interactions. The States requested that NMFS establish a Pinniped – Fishery Interaction Task Force and initiate the process provided by Section 120 of the MMPA.

NMFS reviewed the application and determined that it provided sufficient evidence to warrant establishing a Task Force and published the required *Federal Register* notice on January 30, 2007.¹⁰ In the notice NMFS solicited public comment on the States' application and requested additional information that should be considered by the Task Force in making its recommendation, and by NMFS in making its determination whether to approve or deny the application. NMFS also solicited the names and affiliations of experts from the academic and scientific community, Tribes, Federal and State agencies, and the private sector for consideration as potential Task Force members. During the 60-day public comment period, 288 comments and 29 Task Force member nominations were received.¹¹

NMFS' Expectations of the Task Force

NMFS expects the Task Force to work together to develop recommendations that document the points of consensus reached by the group as well as the alternate points of view when consensus is not reached. Task Force recommendations should fairly reflect the full range of opinion of the group. NMFS expects the Task Force to acknowledge differences of opinion and include minority views with its recommendations. To enhance this process, NMFS is providing a professional facilitator to manage the meetings of the Task Force, record meeting notes, and assist the group in assembling its recommendations.

The Task Force should specifically address those considerations outlined above in formulating its recommendations. The enclosed references provide pertinent data on the status and trends of the California sea lion population,^{12,31} the number of individual pinnipeds and feeding habits at the location of the interaction,^{13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23,32} and efforts to non-lethally deter pinnipeds involved in the interaction.^{24, 25, 26, 27, 28,29,33} Information on the status and trends of the salmonid stocks involved in the interaction³⁰ and impact of predation are also included.

NMFS requests that the Task Force respond to the following questions when preparing its recommendations:

- (1) What criteria does the Task Force recommend to assist NMFS in the interpretation of “significant negative impact” and the extent to which pinnipeds are causing undue injury or impact to, or imbalance with listed species?
- (2) If available and practicable, what non-lethal measures does the Task Force recommend be taken prior to implementing lethal removal?
- (3) If lethal removal is included in the recommendations, what criteria did the Task Force use to individually identify the specific animals to be removed and which animals meet those criteria at the time the Task Force completed its deliberations?
- (4) If lethal removal is included in the recommendations, does the Task Force recommend a limit to the number of sea lions that may be removed and if so what is the justification for that limit?
- (5) If lethal removal is included in the recommendations, what limitations (if any) would the Task Force recommend on timing, location, take methods or duration of the authorization?
- (6) For purposes of post-implementation evaluation, what criteria does the Task Force recommend for evaluating whether the implementation of the Task Force recommendations have been successful in addressing the pinniped-fishery interaction?
- (7) Regardless of the outcome of this process, what might be the most effective means to achieve a long-term resolution to the pinniped – fishery conflict?

Pursuant to the MMPA, Task Force meetings will be open to the public and the date, time and location of the initial meeting will be published in the *Federal Register*. Scheduling of meetings after the first meeting will be determined by the Task Force and announced to the public on the NOAA Fisheries Northwest Region website and NOAA press releases. The public will not be allowed to discuss or debate issues with the Task Force during working sessions, but time will be allocated at the initial meeting (and possibly subsequent meetings) to allow the public to provide or identify new or relevant information that may assist the Task Force in its deliberations.

The complete Lower Columbia Salmon Recovery and Fish & Wildlife Plan may be found using the following URL:

http://www.lcfrb.gen.wa.us/December%20Final%20%20Plans/lower_columbia_salmon_recovery_a.htm

and may be used to help the Task Force consider the broader context of ongoing recovery efforts for listed salmonids and their habitat. However, NMFS is not seeking Task Force comments or recommendations on Recovery Planning. The area of consideration for the Task Force falls within Action Number 610 (Chapter 6.8.3, Measure LM10) of the Salmon Recovery and Fish & Wildlife Plan.

NMFS' Decision and Implementation Process

Once the Task Force has completed its deliberations and submitted its recommendations, NMFS will determine a course of action informed by the Task Force recommendations. The ultimate decision to approve or deny the States' application, and any terms or conditions applied to any approval, lies solely with NMFS.

If the application for lethal removal authority is approved, the MMPA requires that the Task Force evaluate the effectiveness of the permitted intentional lethal taking or alternative actions implemented. If implementation is found to be ineffective in eliminating the problem interaction, NMFS will ask the Task Force to recommend additional actions. If the implementation is effective, the Task Force shall so advise NMFS and the Task Force will be disbanded.

Other Applicable Laws

Besides the MMPA process described above, in considering the States' application, NMFS must also comply with the National Environmental Protection Act, the Endangered Species Act and other relevant statutes. Accordingly, NMFS plans to conduct an environmental review of the actions recommended by the Task Force along with other alternatives, including a "no-action" alternative, in support of its decision in response to the States' application.

Attachments – CD Contents

1. [Request for MMPA Section 120 Pinniped Removal Authority – Application](#)
2. [64 FR No. 56 March 24, 1999 14308](#)
3. [70 FR No. 123 June 28, 2005 37160](#)
4. [63 FR No. 53 March 19, 1998 13347](#)
5. [71 FR No. 3 January 5, 2006 834](#)
6. [64 FR No. 57 March 25, 1999 14517](#)
7. [57 FR No. 78 April 22, 1992 14653](#)
8. [57 FR No. 107 June 3, 1992 23458](#)
9. [62 FR No. 159 August 18, 1997 43937](#)
10. [72 FR No. 19 January 30, 2007 4239](#)
11. Public comments received during comment period (CD2)
12. Carretta, J.V., K.A. Forney, M.M. Muto, J. Barlow, J. Baker, and M. Lowry. 2004. California sea lion (*Zalophus californianus californianus*) U.S. Stock. In U.S. Pacific Marine Mammal Stock Assessments: 2003. [NOAA-TM-NMFS-SWFSC-358](#). p 1-7.
13. Stansell, R., S. Tackley, K. Gibbons. 2007a. Status Report – Pinniped predation and hazing at Bonneville Dam in 2007, 3/23/07. In season Rpt. 5pp.
14. Stansell, R., S. Tackley, K. Gibbons. 2007b. Status Report – Pinniped predation and hazing at Bonneville Dam in 2007, 5/11/07. In season Rpt. 7pp.
15. Stansell, R., S. Tackley, K. Gibbons. 2007c. Status Report – Pinniped predation and hazing at Bonneville Dam in 2007, 5/18/07. In season Rpt. 7pp.
16. Stansell, R., S. Tackley, K. Gibbons. 2007d. Status Report – Pinniped predation and hazing at Bonneville Dam in 2007, 5/25/07. In season Rpt. 8pp.
17. Stansell, R., S. Tackley, K. Gibbons. 2007e. Status Report – Pinniped predation and hazing at Bonneville Dam in 2007, 03/30/07. In season Rpt. 4pp.
18. Stansell, R., S. Tackley, K. Gibbons. 2007f. Status Report – Pinniped predation and hazing at Bonneville Dam in 2007, 04/06/07. In season Rpt. 5pp.
19. Stansell, R., S. Tackley, K. Gibbons. 2007g. Status Report – Pinniped predation and hazing at Bonneville Dam in 2007, 04/13/07. In season Rpt. 5pp.
20. Stansell, R., S. Tackley, K. Gibbons. 2007h. Status Report – Pinniped predation and hazing at Bonneville Dam in 2007, 05/04/07. In season Rpt. 8pp.
21. Stansell, R., S. Tackley, K. Gibbons. 2007i. Status Report – Pinniped predation and hazing at Bonneville Dam in 2007, 03/16/07. In season Rpt. 5pp.
22. Stansell, R., S. Tackley, K. Gibbons. 2007j. Status Report – Pinniped predation and hazing at Bonneville Dam in 2007, 04/27/07. In season Rpt. 5pp.
23. Stansell, R., S. Tackley, K. Gibbons. 2007k. Status Report – Pinniped predation and hazing at Bonneville Dam in 2007, 04/20/07. In season Rpt. 9pp.
24. Stansell, R.J.. 2004. [Evaluation of pinniped predation on adult salmonids and other fish in the Bonneville Dam tailrace, 2002-2004](#). US Army Corps of Engineers, CENWP-OP-SRF, Bonneville Lock and Dam, Cascade Locks, OR. 49pp.
25. Wright, B., S. Jeffries, R. Brown, R. Stansell, D. Hatch, and B. Norberg. 2007. [Field Report – Non-lethal pinniped deterrent activities at Bonneville Dam, Spring 2006](#). ODFW, NW Region, 7118 NE Vandenberg Ave., Corvallis, OR. 12pp.

26. Wright, B. 2007a. Summary of boat-based hazing activities at Bonneville Dam, ODFW 03/28/07. ODFW, NW Region 7118 NE Vandenberg Ave., Corvallis, OR. 4pp.
27. Wright, B. 2007b. Summary of boat-based hazing activities at Bonneville Dam, ODFW 05/01/07. ODFW, NW Region 7118 NE Vandenberg Ave., Corvallis, OR. 6pp.
28. Wright, B. 2007c. Summary of boat-based hazing activities at Bonneville Dam, ODFW 05/18/07. ODFW, NW Region 7118 NE Vandenberg Ave., Corvallis, OR. 7pp.
29. Wright, B. 2007d. Summary of boat-based hazing activities at Bonneville Dam, ODFW 06/15/07. ODFW, NW Region 7118 NE Vandenberg Ave., Corvallis, OR. 14pp.
30. Good, T.P., R.S. Waples, and P. Adams (editors). 2005 [Updated status of federally listed ESUs of West Coast salmon and steelhead](#). U.S. Dept. Commer., NOAA Tech. Memo. NMFS-NWFSC-66, 598pp.
31. NMFS. 2007. California Sea Lion (*Zalophus californianus californianus*). Pp. 1-14 in Carretta, J.V., Forney, K.A., Lowry, M.S., Barlow, J., Baker, J., Hanson, B., and Muto, M.M. Draft U.S. Pacific Marine Mammal Stock Assessments: 2007. In review.
32. Stansell, R. 2005. [Summary of pinniped observations at Bonneville Dam in 2005: Letter Report](#). Fisheries Field Unit, CENWP-OP-SRF, Bonneville Lock and Dam, Cascade Locks, OR 97041. 7p.
33. Norberg, B., R. Stansell, G. Griffin, R. Brown, S. Jeffries, P. Gearin. 2005. [Field Report – Preliminary observations of non-lethal deterrence measures for California sea lion predation at Bonneville Dam](#). NMFS, NWR, Protected Resources Division, 7600 Sand Point Way N.E., Seattle, WA 98115. 23p.