



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XE461**

**Marine Mammals; Pinniped Removal Authority**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce (NOAA).

**ACTION:** Notice; request for comments.

**SUMMARY:** On March 15, 2012, NMFS issued a Letter of Authorization (LOA) under section 120 of the Marine Mammal Protection Act (MMPA) to the States of Idaho, Oregon, and Washington (States) for the intentional take, by lethal methods, of individually identifiable California sea lions (*Zalophus californianus*) in the vicinity of Bonneville Dam, on the Columbia River in Washington and Oregon, that are having a significant negative impact on Pacific salmon and steelhead (*Onchorhynchus spp.*) listed as threatened or endangered species under the Endangered Species Act (ESA). The 2012 LOA expires on June 30, 2016. On January 27, 2016, NMFS received an application from the same States to extend the 2012 LOA through June 30, 2021. The States are not requesting any changes or modifications to the terms and conditions of the 2012 LOA.

The States' application contains a summary of the status and management of California sea lions and salmonid populations as they relate to the problem interaction at Bonneville Dam. Pursuant to the MMPA, NMFS has determined that the application contains sufficient information to warrant convening a Pinniped-Fishery Interaction Task Force (Task Force), which will deliberate after the closing of a public comment period. NMFS is soliciting comments on the

States' application and other relevant information related to pinniped predation on salmonids at Bonneville Dam.

**DATES:** Comments must be received by *[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

**ADDRESSES:** You may submit comments, identified by NOAA-NMFS-2016-0034, by either of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal.
  1. Go to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0034](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0034)
  2. Click the “Comment Now!” icon, complete the required fields
  3. Enter or attach your comments.
- *Mail:* Comments on the application should be addressed to: National Marine Fisheries Service, West Coast Region, 1201 NE Lloyd Blvd, Suite 1100, Portland, OR 97232; ATTN: Robert Anderson, Protected Resource Division.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Robert Anderson, (503) 231-2226.

**SUPPLEMENTARY INFORMATION:**

The States' application and further information is available on the NMFS West Coast Region website, including but not limited to: the States' application; background information on pinniped predation on listed salmonids; NMFS' past and current authorizations of lethal removal at Bonneville Dam; descriptions of nonlethal efforts to address the predation; Bonneville Dam field reports; Oregon Department of Fish and Wildlife field reports; NMFS' 2008 Final Environmental Assessment; NMFS' 2011 Supplemental Information Report to the Final Environmental Assessment; and NMFS' 2012 Report on Consideration of Statutory Factors under section 120 of the MMPA. The information can be accessed at:

[http://www.westcoast.fisheries.noaa.gov/protected\\_species/marine\\_mammals/authorized\\_states.html](http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/authorized_states.html)

### **Statutory Authority**

Section 120 of the MMPA (16 U.S.C. 1361, *et seq.*) allows the Secretary of Commerce, acting through the Assistant Administrator for Fisheries, and the West Coast Regional Administrator of NMFS, to authorize the intentional lethal taking of individually identifiable pinnipeds that are having a significant negative impact on the decline or recovery of salmonid fishery stocks which have been listed as threatened or endangered species under the Endangered Species Act (ESA) of 1973 (19 U.S.C. 1531 *et seq.*). The authorization applies only to pinnipeds that are not listed under the ESA, or designated as a depleted or strategic stock under the MMPA. California sea lions are neither listed under the ESA nor designated as a depleted or strategic stock under the MMPA. Pursuant to section 120(b) and (c), a State may request authorization to lethally remove pinnipeds, and the Regional Administrator is required to: (1) review the application to determine whether the applicant has produced sufficient evidence to warrant establishing a Pinniped-Fishery Interaction Task Force (Task Force) to

address the situation described in the application; (2) establish the Task Force and publish a notice in the **Federal Register** requesting public comment on the application if sufficient evidence has been produced; (3) consider any recommendations made by the Task Force in making a determination whether to approve or deny the application; and (4) if approved, immediately take steps to implement the intentional lethal taking, which shall be performed by Federal or State agencies, or qualified individuals under contract to such agencies.

The MMPA requires the Task Force be composed of the following: (1) NMFS/NOAA staff, (2) scientists who are knowledgeable about the pinniped interaction, (3) representatives of affected conservation and fishing community organizations, (4) treaty Indian tribes, (5) the States, and (6) such other organizations as NMFS deems appropriate. The Task Force reviews the application, other background information, the factors contained in MMPA section 120(d), and public comments and, as required by section 120, recommends to NMFS whether to approve or deny the application. The Task Force is also required to submit with its recommendation a description of the specific pinniped individual or individuals; the proposed location, time, and method of such taking; criteria for evaluating the success of the action; the duration of the intentional lethal taking authority; and a suggestion for non-lethal alternatives, if available and practicable, including a recommended course of action.

## **Background**

In December 2006, NMFS received an application co-signed by the directors of the Washington Department of Fish and Wildlife, the Oregon Department of Fish and Wildlife, and the Idaho Department of Fish and Game, on the States' behalf, requesting authorization under section 120 of the MMPA to intentionally take, by lethal methods, individually identifiable predatory California sea lions in the Columbia River, which were then having a significant

negative impact on the recovery of threatened and endangered Pacific salmon and steelhead. After deeming the States' application complete, NMFS published a notice in the **Federal Register** seeking public comment on the application and also requested names of potential members of the Task Force (72 FR 4239, January 30, 2007). After the close of the public comment period, NMFS established the Bonneville Task Force under MMPA section 120(d) in August 2007, which consisted of 18 members (72 FR 44833, August 9, 2007). The Bonneville Task Force completed and submitted its report to NMFS on November 5, 2007. Seventeen of the eighteen members supported lethal removal of California sea lions while one member from the Humane Society of the United States (HSUS) opposed the States' application and any lethal removal. NMFS partially approved the State's 2006 request in 2008, issuing its LOA on March 18, 2008.

Shortly after NMFS issued the LOA, HSUS filed a lawsuit in the U.S. District Court in Oregon, alleging that NMFS' LOA violated section 120 of the MMPA and the National Environmental Policy Act (NEPA). In November 2008, the district court issued an order upholding NMFS' approval of the lethal removal program and its evaluation of impacts under NEPA. Plaintiffs appealed to the Ninth Circuit Court of Appeals, which declined to halt the removal program while the appeal was pending. On the merits the Ninth Circuit vacated and remanded the LOA in November 2010. *Humane Society of the United States, et al. v. Locke*, 626 F.3d 1040 (9<sup>th</sup> Cir. 2010). In response to the court's 2010 decision, the States submitted a new request for lethal removal authorization on December 7, 2010. NMFS considered the request and new information available since its prior authorization, including the Bonneville Task Force's recommendations. NMFS again authorized lethal take, under similar conditions to the 2008 authorization (albeit with modifications), issuing a new LOA on May 13, 2011. HSUS again

filed suit this time in federal court for the District of Columbia, alleging, among other things, that NMFS had not followed procedural requirements under MMPA section 120 prior to issuing the new authorization (including public notice and comment on the States' application). In coordination with the States, NMFS revoked the May 13 authorization on July 22, 2011, and HSUS voluntarily withdrew their lawsuit.

On August 18, 2011, the States submitted a new request for lethal removal of California sea lions at Bonneville Dam under essentially the same conditions as the prior authorizations. NMFS published notice of the States' application in the **Federal Register** on September 12, 2011, and requested comment on the application and other relevant information concerning the pinniped-salmonid conflict at Bonneville Dam (76 FR 56167; September 12, 2011). NMFS reconvened the Bonneville Task Force in October 2011 to evaluate the States' application and public comments and to recommend whether NMFS should approve or deny the proposed intentional lethal taking program. The Bonneville Task Force's final report and recommendation was provided to NMFS on November 14, 2011. On March 15, 2012, NMFS issued the current LOA to the States. In renewed litigation by HSUS, this LOA was upheld in district court on February 15, 2013, and later affirmed by the Ninth Circuit Court of Appeals. *Humane Society of the US v. Bryson*, 924 F.Supp.2d 1228 (D. Or., 2013); *HSUS v. Pritzker*, No. 13-35195 (9<sup>th</sup> Cir., 9/27/13).

The NMFS West Coast Regional Administrator has considered the States' application and determined that it provides sufficient evidence to warrant reconvening the Bonneville Task Force. The application, based on NMFS' 2012 LOA and its implementation, describes the continuing problem of interactions between pinnipeds and listed salmonids at and below Bonneville Dam, and describes the expected benefits from the removal of pinnipeds. The

application also documents past nonlethal efforts to prevent problem pinniped-salmonid interactions.

The MMPA requires NMFS to consider the recommendations of the Task Force when determining whether to issue a section 120 LOA. In order to obtain the Bonneville Task Force's views regarding this extension of the existing LOA, NMFS will consult with Bonneville Task Force members after the 30-day public comment period closes.

### **Request for Comments and Other Information**

NMFS solicits public comments on the States' application and any additional information that should be considered by the Bonneville Task Force in making its recommendation, or by NMFS in making its determination whether to approve or deny the application.

Dated: March 22, 2016

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Nicole R. LeBoeuf,

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