



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648-XW004**

**Marine Mammals; Pinniped Removal Authority**

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

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

**SUMMARY:** On June 13, 2019, NMFS received an application from the Oregon Department of Fish and Wildlife, the Washington Department of Fish and Wildlife, the Idaho Department of Fish and Game, on behalf of their respective states; the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakama Nation; and the Willamette Committee (hereafter called – “eligible entities”). The eligible entities are requesting authorization to intentionally take, by lethal methods, California sea lions (*Zalophus californianus*) and Steller sea lions (*Eumetopias jubatus*: Eastern stock) that are located in the main stem of the Columbia River between river mile 112 and McNary Dam (river mile 292), or in any tributary to the Columbia River that includes spawning habitat of threatened or endangered salmon or steelhead (*Onchorynchus* spp.). This action is intended to reduce or eliminate sea lion predation on the fishery stocks that are listed as threatened or endangered under the Endangered Species Act of 1973.

**DATES:** Comments must be received by *[INSERT DATE 60 DAYS AFTER PUBLICATION DATE IN THE FEDERAL REGISTER]*.

**ADDRESSES:** You may submit comments, identified by NOAA-NMFS-2019-0073, by any

of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>. Go to <https://www.regulations.gov/docket?D=NOAA-NMFS-2019-0073>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Comments on the application should be addressed to: National Marine Fisheries Service, 1201 NE Lloyd Blvd, Suite 1100, Portland, OR 97232 ATTN: Protected Resources Division, NOAA-NMFS-2019-0073.

*Instructions:* All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address, etc.) voluntarily submitted by the commenter may be publically accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter “N/A” in the required fields, if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Anderson, NMFS, West Coast Region (503) 231-2226.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

The application is available via the Internet at the following address:  
[http://www.westcoast.fisheries.noaa.gov/protected\\_species/marine\\_mammals/authorized\\_state.shtml](http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/authorized_state.shtml)

**Statutory Authority**

Section 120 of the Marine Mammal Protection Act (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 ESA, are approaching threatened species or endangered species status (as those terms are defined in that Act), or migrate through the Ballard Locks at Seattle, Washington.

Section 120(b)(1) establishes the criteria whereby a state may apply to the Secretary requesting authorization for the intentional lethal taking of individually identifiable pinnipeds which are having a significant negative impact on the decline or recovery of salmonid fishery stocks. Section 120(b)(2) requires that any such application shall include a means of identifying the individual pinniped or pinnipeds, and shall include a detailed description of the problem interaction and expected benefits of the taking.

Section 120(c)(1) requires the Secretary to determine whether an application has produced sufficient evidence to warrant establishing a Pinniped-Fishery Interaction Task Force (Task Force). On June 18, 2019, NMFS determined that the application received on June 13, 2019, contained sufficient evidence to warrant establishing a Task Force, which will be established after the closing of a public comment period.

Public Law 115-329, the Endangered Salmon Predation Prevention Act of 2018, amended Public Law 103-238, the MMPA Amendments of 1994, by replacing section 120(f) California sea lions and Pacific harbor seals; investigation and report, with a new section 120(f) Temporary Marine Mammal Removal Authority on the Waters of the Columbia River or its Tributaries.

The 2018 amendments to section 120(f) superseded the individually identifiable and

significant negative impact criteria, within the meaning of section 120(b)(1), by statutory exception. The 2018 Amendments also included additional eligible entities<sup>1</sup> not identified in section 120(b)(1), that may apply for authorization to intentionally take, by lethal methods, sea lions present within the geographic area (see Summary) established in section 120(f). For the purposes of this application, a sea lion or sea lions present within the geographic area (see Summary) established in section 120(f) are deemed to be individually identifiable and to be having a significant negative impact, within the meaning of section 120(b)(1), as defined by section 120(f)(7) and (8) (MMPA; 16 U.S.C. 1389(f)(7) and (8)). As such, and even though an application submitted under section 120(f) is still required to provide a detailed description of the problem interaction (or future potential interaction) and the expected benefits of the taking, an eligible entity is not required to include in their application a means of identifying the individual sea lion or sea lions, or demonstrate that the sea lion predation impacts are having a significant negative impact on the decline or recovery of the above-mentioned at-risk fish stocks, within the meaning of section 120(b)(1).

Section 120(f)(2)(C) requires the Secretary to establish procedures to coordinate issuance of permits [authorizations] under this subsection, including application procedures and timelines, delegation and revocation of permits to and between eligible entities, monitoring, periodic review, and geographic, seasonal take, and species-specific considerations. Therefore, in establishing the procedures pursuant to section 120(f)(2)(C), NMFS will continue to rely on existing timelines, procedures, considerations, and information

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<sup>1</sup>The Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakama Nation; and the section 120(f)(6)(D) Committee. The 120(f)(6)(D) Committee fulfills the requirements for an eligible entity under section 120(f)(6)(A)(iii) of the MMPA. Pursuant to this section of the statute, the Committee members include the Oregon Department of Fish and Wildlife, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes of the Grand Ronde Community, and the Confederated Tribes of the Siletz Indians of Oregon.

requirements in sections 120(b), 120(c), 120(e), and 120(i), to assist the Task Force with its deliberations and recommendation, and for the Secretary to make a decision to approve or deny an application.

Pursuant to section 120(f)(2)(C), on June 4, 2019, NMFS issued a Decision Memorandum establishing application requirements and program implementation procedures for prospective and approved authorizations issued to an eligible entity under section 120(f). The June 4, 2019, Decision Memorandum fulfilled the statutory requirement that the Secretary establish procedures to coordinate issuance of permits [authorizations] pursuant to section 120(f). Taken together, NMFS will consider existing section 120 procedures and the 120(f)(2)(C) procedures to fulfill the information requirements for applications submitted under section 120(f).

Prospective authorizations apply only to sea lions that are not listed under the ESA, or designated as a depleted or strategic stock under the MMPA. California and Steller sea lions are not listed under the ESA nor are they designated as a depleted or strategic stock under the MMPA.

Pursuant to section 120(f), an eligible entity may request authorization to lethally remove sea lions, and the Regional Administrator is required to: (1) review the application to determine whether the applicant has produced sufficient evidence to warrant establishing a Task Force to address the situation described in the application; (2) publish a notice in the *Federal Register* requesting public comment on the application, if sufficient evidence has been produced; (3) establish and convene a Task Force; (4) consider any recommendations made by the Task Force in making a determination whether to approve or deny the application; and (5) if approved, immediately take steps to implement the intentional lethal taking, which shall be performed by agencies or qualified individuals described in section

120(c)(4), or by individuals employed by the eligible entities described in section 120(f)(6).

Section 120(c)(2) requires the Task Force be composed of the following: (1) employees of the Department of Commerce; (2) scientists who are knowledgeable about the pinniped interaction; (3) representatives of affected conservation and fishing community organizations; (4) Indian Treaty tribes; (5) the states; and (6) such other organizations as NMFS deems appropriate. The Task Force reviews the application, the factors contained in 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**

On June 13, 2019, NMFS received an application pursuant to section 120(f) from the above-mentioned eligible entities. The eligible entities are requesting authorization to intentionally take, by lethal methods, California sea lions (*Zalophus californianus*) and Steller sea lions (*Eumetopias jubatus*: Eastern stock) that are located in the mainstem of the Columbia River between river mile 112 and McNary Dam (river mile 292), or in any tributary to the Columbia River that includes spawning habitat of threatened or endangered salmon or steelhead (*Onchorynchus* spp.) to reduce or eliminate sea lion predation on the following fishery stocks that are listed as threatened or endangered under the ESA: Lower Columbia River Chinook salmon (*O. tshawytscha*), Snake River Fall-run Chinook salmon, Snake River Spring/Summer-run Chinook salmon, Upper Columbia River Spring-run Chinook salmon, Upper Willamette River Chinook salmon, Lower Columbia River steelhead, Middle

Columbia River steelhead (*O. mykiss*), Snake River Basin steelhead, Upper Columbia River steelhead, Upper Willamette River steelhead, Columbia River chum salmon (*O. keta*), Lower Columbia River coho salmon (*O. kisutch*), Snake River sockeye salmon (*O. nerka*), and Southern Distinct Population Segment of eulachon (*Thaleichthys pacificus*).

According to the information in the application, sea lion predation, within the geographic area (see Summary) established in section 120(f), is having a significant negative impact on the recovery on the above-mentioned fishery stocks. Additionally, the application states that removal of sea lions is also intended to protect species of lamprey or sturgeon that may not be listed as endangered or threatened but are listed as a species of concern.

On June 18, 2019, NMFS provided the above-mentioned eligible entities a letter acknowledging receipt of their application and a determination that the application produced sufficient evidence of the problem interaction to warrant establishing a Task Force. The application provides: detailed information that documents sea lion population trends; a detailed description of the problem interaction, including estimates of the numbers of sea lions present within the geographic area (see Summary) established in section 120(f); numbers of salmonids consumed and the proportion of all salmonids that have been taken by sea lions at Bonneville Dam and Willamette Falls (a subarea of the geographic area (see Summary) established in section 120(f); past efforts to nonlethally deter sea lions; methods for capturing, handling and euthanizing sea lions; and a detailed description of the expected benefits of the taking of sea lions.

The proposed action to address sea lion predation is part of a comprehensive salmon and steelhead recovery strategy. As reported in the application, significant actions to address the decline of salmon and steelhead stocks in the Columbia River basin have been underway for several decades, and are progressing each year as a result of the implementation of ESA

recovery plans throughout the Columbia River basin. These actions include harvest reductions, hydroelectric system mitigation, habitat restoration, predation management, and hatchery reforms.

In considering whether the application should be approved or denied, the MMPA requires that the Task Force and NMFS consider: (1) population trends, feeding habits, the location of the pinniped interaction, how and when the interaction occurs, and the number of animals involved; (2) past efforts to deter such pinnipeds, and whether the applicant has demonstrated that no feasible and prudent alternatives exist and that the applicant has taken all reasonable nonlethal steps without success; (3) the extent to which such pinnipeds are causing undue injury 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.

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

NMFS solicits public comments on the application and any additional information that should be considered by the Task Force in making its recommendation, or by NMFS in making its determination whether to approve or deny the application. NMFS is interested in receiving additional information related to the factors that must be considered in determining whether to approve or deny the application (see Background), and on the impact of sea lion predation within the geographic area (see Summary) established in section 120(f) on the above-mentioned fish stocks.

NMFS requests that comments be specific. In particular, we request information regarding: (1) observations of sea lion predation activity on salmonids and eulachon within the geographic area (see Summary) established in section 120(f); (2) information on areas where numbers of sea lions are concentrated within the geographic area (see Summary)

established in section 120(f), including resting/haul out sites and locations where sea lions have been repeatedly observed taking salmonids and eulachon; and (3) dates when sea lions have been observed within the geographic area (see Summary) established in section 120(f).

NMFS also solicits 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. A Task Force, established under section 120(c) must, to the maximum extent practicable, consist of an equitable balance among representatives of resource users and non-users as outlined above. Nominations for Task Force membership must include sufficient background information (*e.g.*, 1-page resume) on the candidate to allow us to judge their expertise and should indicate the prospective candidate's willingness to serve without compensation.

Dated: August 26, 2019.

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Catherine Marzin,

Acting Director, Office of Protected Resources,

National Marine Fisheries Service.  
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