



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648-XA315

Marine Mammals; Pinniped Removal Authority; Approval of Application

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

ACTION: Notice of availability.

SUMMARY: NMFS announces approval of an application 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 (I-205 bridge) and river mile 292 (McNary Dam), 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 species that are listed as threatened or endangered under the Endangered Species Act of 1973, and species of lamprey or sturgeon that are not listed as endangered or threatened but are listed as a species of concern. This authorization is pursuant to section 120(f) of the Marine Mammal Protection Act (MMPA). NMFS also announces availability of decision documents and other information relied upon in making this determination.

ADDRESSES: Additional information about our determination may be obtained by visiting the NMFS West Coast Region's website:

<http://www.westcoast.fisheries.noaa.gov>, or by writing to us at: NMFS West Coast

Region, Protected Resources Division, 1201 Lloyd Blvd, Suite 1100, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Anderson at the above address, by phone at (503) 231-2226, or by e-mail at *robert.c.anderson@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 120 (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 species 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 species. 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.

The Endangered Salmon Predation Prevention Act of 2018 (Public Law 115-329) replaced the existing MMPA section 120(f) with a new section 120(f) – Temporary Marine Mammal Removal Authority on the Waters of the Columbia River or its Tributaries. The new 120(f) provides separate authority for NMFS to issue permits

allowing the intentional lethal taking of sea lions for the purpose of protecting ESA-listed fish species and species of lamprey and sturgeon that are listed as species of concern. Under section 120(f), sea lions are deemed to be individually identifiable and having a significant negative impact on the protected fish species when the sea lions are located in defined areas of the Columbia River and its tributaries. These areas include the mainstem of the Columbia River between river mile 112 (I-205 bridge) and river mile 292 (McNary Dam), and in any tributary to the Columbia River that includes spawning habitat of threatened or endangered salmon or steelhead (*Onchorynchus* spp.) 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)). Public Law 115-329 also included additional eligible entities¹ 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 established in section 120(f).

Pursuant to section 120(f) of the MMPA, 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 Pinniped-Fishery Interaction Task Force (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

¹ 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 as defined in section 120(f)(6)(D) of the MMPA.

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 under contract to such agencies (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 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 recommendations for 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.

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. Pursuant to section 120(f)(2)(C), on June 4, 2019, NMFS issued a Decision Memorandum to fulfill this statutory requirement by establishing application requirements and program implementation procedures for prospective and approved authorizations issued to an eligible entity under section

120(f). Permits issued under section 120(f) may only authorize take of sea lions that are not listed under the ESA, or designated as a depleted or strategic stock under the MMPA.

On June 13, 2019, NMFS received an application pursuant to section 120(f) from the following entities: Oregon Department of Fish and Wildlife, the Washington Department of Fish and Wildlife, the Idaho Department of Fish and Game, 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 Committee² (hereafter referred to as the “eligible entities”). The eligible entities requested authorization to intentionally take, by lethal methods, California sea lions and Steller sea lions that are located in the mainstem of the Columbia River between river mile 112 and river mile 292 (McNary Dam), 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 species 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

² The Willamette 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. The Confederated Tribes of the Grand Ronde Community and the Confederated Tribes of the Siletz Indians of Oregon will coordinate and conduct lethal removal activities in the Willamette River Basin with the member co-managers, but not elsewhere in the Columbia River Basin.

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*), the southern distinct population segment of eulachon (*Thaleichthys pacificus*), and species of lamprey or sturgeon that are not listed as threatened or endangered but are listed as a species of concern. California and Steller sea lions are not listed under the ESA nor are they designated as a depleted or strategic stock under the MMPA.

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. On August 30, 2019, NMFS published a notice in the **Federal Register** (84 FR 45730) requesting public comment on the application, any additional information NMFS should consider in making its decision, and nominations for potential Task Force members. As required under the MMPA, after the close of the public comment period NMFS established the Task Force and convened a Task Force meeting on May 12, 2020 through May 14, 2020. The Task Force meeting was open to the public.

The Task Force completed and submitted its report to NMFS on July 14, 2020. The majority of Task Force members present at the meeting (16 of 22) recommended that NMFS approve the eligible entities' application with certain terms and conditions, while two Task Force members recommended that NMFS deny the application, one Task Force member abstained, and three Task Force members were intermittently absent and did not provide a recommendation. The Task Force report also included

recommendations pursuant to the requirements in section 120(c)(3)(A) of the MMPA and also considered the factors identified in MMPA section 120(d). All decision documents, including a copy of the authorization, are available on NMFS' West Coast Region web page (see **ADDRESSES**).

Findings

As required under section 7(a)(2) under the ESA, NMFS completed informal consultation, and in accordance with the National Environmental Policy Act, NMFS completed an environmental assessment with a finding of no significant impact.

Based on these requirements, NMFS has determined that the requirements of section 120(f) of the MMPA have been met and it is therefore reasonable to issue a permit to the eligible entities authorizing them to remove (*i.e.*, place in permanent captivity or kill) no more than 540 California sea lions and no more than 176 Steller sea lions (eastern stock) through August 14, 2025.

Dated: August 19, 2020.

Angela Somma,

Acting Director, Office of Protected Resources,

National Marine Fisheries Service.