

**WRITTEN TESTIMONY OF
D. ROBERT LOHN
REGIONAL ADMINISTRATOR, NORTHWEST REGION
NATIONAL MARINE FISHERIES SERVICE
NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE**

LEGISLATIVE HEARING ON H.R. 1769

**BEFORE THE
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON FISHERIES, WILDLIFE AND OCEANS
UNITED STATES HOUSE OF REPRESENTATIVES**

AUGUST 2, 2007

Introduction

Good morning, Madam Chair and members of the Subcommittee. Thank you for the opportunity to present views on California sea lion predation on at-risk, threatened, and endangered salmon and steelhead and H.R. 1769, which was introduced by Representative Baird for himself, and Representatives Hastings, Dicks, and Walden. This bill would establish a temporary expedited procedure for removing California sea lions to protect salmonids in the Columbia River.

I am Bob Lohn, Regional Administrator of the Northwest Region in NOAA's National Marine Fisheries Service (NMFS). I am a long-time resident of the Pacific Northwest and have been in my present position since 2001. I am very familiar with the range of issues related to increasing populations of California sea lions along the West Coast of the United States and with the many efforts to promote the recovery of Pacific salmonids (salmon and steelhead).

NOAA is responsible for protecting many marine mammal populations along the West Coast under the Marine Mammal Protection Act (MMPA) and for promoting the recovery of many fish, marine mammals, sea turtles, and other species listed as threatened or endangered under the Endangered Species Act. This bill is important to NOAA since it affects sea lion and salmonid conservation and our mission goal to protect, restore, and manage the use of coastal and ocean resources through an ecosystem approach.

NOAA agrees that lethal take of certain pinnipeds may be warranted to promote the conservation and recovery of certain stocks of salmonids or other fish. We also agree that this should be achieved through a well-considered process to determine which pinnipeds would have to be removed to provide appropriate protection for the at-risk fish stocks. We note that the existing MMPA section 120 contains a process for this purpose;

however, as we have indicated in a prior report to Congress, this process as currently written has been difficult to implement effectively and could be improved. We recognize that H.R. 1769 was introduced to address these kinds of concerns, but the bill, as currently drafted, would neither fully realize the goals of the MMPA, nor meet the objectives expressed in the bill. We believe changes can be made to the existing section 120 process consistent with the intent of this legislation that could, when combined with sound principles of wildlife management, achieve the goals and objectives of the MMPA. We look forward to working with the Committee on this issue.

NOAA is committed to working with our partners to find a process that address all concerns, but we have not yet come to consensus on specific text to make the necessary changes to the MMPA to address conflict with pinnipeds, especially California sea lions; however, the following principles should be considered: (1) The process should provide NMFS with sufficient flexibility to allow the agency to respond quickly to pinniped predation on listed fish stocks or those approaching threatened or endangered status; (2) NMFS should act carefully and thoughtfully so any efforts to reduce pinniped predation do not result in unforeseen problems; (3) Any removal of pinnipeds should be included in a comprehensive plan to promote recovery of the affected fish stocks; and (4) Only the minimum number of pinnipeds should be removed to effect adequate protection of fish.

In my remarks today, I will describe the ecological and management context of pinniped predation on salmonids, discuss NOAA's previous experience in addressing conflicts with increasing populations of pinnipeds under existing authorities, and provide views on H.R. 1769.

Ecological and Management Context

I am pleased to report that the MMPA has been a highly successful tool in the recovery of most stocks of seals and sea lions along the West Coast. California sea lions have increased from a few thousand in the 1920s to more than 230,000 today. An analysis of pup counts in California through 2005 suggests the population likely achieved its optimum sustainable population level in 1997 and may currently be at or near its carrying capacity. Populations of harbor seals and elephant seals are healthy and in the Pacific Northwest we have seen steady improvements in the eastern stock of Steller sea lions, which are listed as threatened under the Endangered Species Act.

After breeding in southern California rookeries, male sea lions migrate north in search of food. Some of these animals will be content feeding along the California coast, while others will disperse as far north as Alaska. During winter and spring, more than 1,000 California sea lions may be found in the lower Columbia River. Some of these animals make their way up the Columbia River to Bonneville Dam (nearly 150 miles up-river) to feed on spring smelt and salmonid runs.

In contrast to robust West Coast seal and sea lion populations, many West Coast salmonid populations are doing poorly. Of 52 population groups of salmonids recognized as spawning in California, Oregon, Idaho, and Washington, 27 are listed as

threatened or endangered under the Endangered Species Act, and 13 of these groups migrate through the Columbia River.

Many dams and locks on the West Coast have facilities to pass fish up and down stream. Upstream migrating fish generally congregate below these facilities while they locate the entrance to fish ladders. This creates predation opportunities that do not exist in free flowing portions of rivers.

With passage of the MMPA amendments of 1994, Congress recognized the limits of non-lethal deterrence of pinnipeds as a means to protect at-risk, threatened, and endangered salmonids along the West Coast. These amendments included MMPA section 120, which allows states to apply for authority to lethally remove California sea lions or Pacific harbor seals to protect salmonids. These amendments also required NMFS to prepare a report to Congress addressing the impacts of pinniped predation on the recovery of threatened and endangered salmonid fishery stocks and on broader impacts to coastal ecosystems of Washington, Oregon, and California. NMFS completed the requisite scientific investigation for this report in March 1997 and submitted its report to Congress in February 1999 (copies of this report are provided for the record).

The report to Congress described the potential for pinniped impacts on the decline or recovery of at-risk fish stocks in Washington, Oregon, Idaho, and California, and the expanding pinniped conflict with human economic and recreational activity in the affected areas. As a result of these findings, NMFS recommended that Congress amend the MMPA to include a site-specific management regime including the use of lethal and non-lethal removal of California sea lions and harbor seals. The report also recommended that Congress consider a selective re-instatement of the intentional lethal removal of California sea lions and Pacific harbor seals that are caught incidentally by commercial fishing operations, and suggested further investigation of non-lethal deterrence methods and the collection of information needed to allow more informed decision-making for appropriate conservation of pinnipeds and other living marine resources.

NMFS has testified before this Subcommittee twice in support of the recommendations of the 1999 report. Joe Scordino (retired, Deputy Regional Administrator, NMFS Northwest Region) represented NMFS at a hearing in Washington, D.C., in October 2001, and Jim Lecky (Director, Office of Protected Resources) represented NMFS at a field hearing in San Diego, California, in August 2003.

Reducing Sea Lion Predation on Salmonids

Besides the 1994 addition of section 120, which permits states to apply for lethal removal authority, the MMPA includes two potential alternatives for authorizing lethal taking of marine mammals in response to marine resource management challenges such as those I have described. Section 101 provides authority for the Secretary to waive the moratorium on taking marine mammals and adopt suitable regulations that permit taking by lethal methods, and section 109 provides Secretarial authority to transfer management

authority for marine mammals to a state. Prior to transferring management authority, the Secretary must find that the state has developed and will implement a conservation and management program (which could include lethal taking of marine mammals) for a particular species. Each of these alternatives, however, is a lengthy process and likely unsuitable for use in response to emergent situations.

NMFS has received two section 120 applications from states to lethally remove California sea lions to protect salmonids. In 1994, the State of Washington requested authority to remove selected sea lions to protect winter run Lake Washington steelhead at Ballard Locks in Seattle. During a years-long effort, NMFS, the State of Washington, and the Pinniped–Fishery Interaction Task Force employed a number of non-lethal deterrence actions such as acoustic barriers, flow modification, trap and hold, and trap and haul before NMFS approved the state’s request for lethal removal of five specific animals in March 1996. None of those animals were lethally removed but three were relocated to Sea World of Orlando for permanent captivity and public display. California sea lion predation events on steelhead returning to Lake Washington subsided following the 1996 steelhead return due to (1) the removal of the worst-offending animals, (2) continued implementation of a non-lethal deterrence strategy, and (3) the lack of returning steelhead available for predation.

In November 2006, the States of Oregon, Washington, and Idaho applied to NMFS for authority to lethally remove California sea lions at Bonneville Dam to protect threatened or endangered salmonids in the Columbia River. The States’ application noted that sea lion predation on salmonids at the dam is a relatively recent phenomenon with only occasional sightings of sea lions at or near the dam prior to 2000. In 2000, predation events began to increase and have been documented since 2002, when 31 animals were identified feeding at the dam. More recently, the number of sea lions at the dam has increased to around 100 animals per year. It is estimated that in 2007, California sea lions consumed about 4 percent of returning adult spring Chinook salmon immediately below the dam. This level of predation is based on documented predation events in the vicinity of Bonneville Dam. At this location, predation events are particularly intense due to the constriction of migrating adult salmon and steelhead passage can be observed from the dam structure. It is important to note, however, that the mortality rate at the dam does not represent the full level of sea lion predation on salmonids in the Columbia River.

Although NMFS, the U.S. Army Corps of Engineers (which operates Bonneville Dam), the States, and the Columbia River Intertribal Fisheries Commission and their member tribes are aggressively employing non-lethal deterrence methods to protect salmonids near the dam, these extensive efforts have achieved only limited success.

In addition to reviewing the conflicts between pinnipeds and salmon, the States’ application also describes many other efforts, for which hundreds of millions of dollars have been spent, to provide a comprehensive recovery strategy for salmonids in the Columbia River basin. These efforts include harvest reduction, hydroelectric system modification and mitigation, habitat improvement, and hatchery reform.

NMFS is continuing to evaluate the States' application under the MMPA and other applicable laws (e.g., National Environmental Policy Act and the Endangered Species Act). NMFS could not complete the process prior to the 2007 spring salmonid run to the Columbia River due to the date NMFS received the States' application and the time it takes to make a decision. NMFS' goal is to complete this process before the start of the 2008 spring Chinook salmon run. NMFS believes it would be useful to gain experience from this ongoing process and use that experience to recommend improvements to the MMPA, if necessary.

In accordance with the MMPA, NMFS solicited public comments on the application. The application, public comments, and other relevant background information will be provided to the Pinniped–Fishery Interaction Task Force when it is convened on September 4, 2007. Members of the Task Force have been identified, queried regarding their availability and willingness to serve on the Task Force, and invited to participate. NMFS has procured the services of a professional facilitator to promote productive, focused discussions and deliberations by the Task Force so that its recommendations are submitted to NMFS within 60 days, as required by the MMPA. Based on the Task Force's recommendations, public comments, and relevant scientific information, by March 2008 NMFS intends to approve or deny the States' application, after analyzing the impacts of a reasonable range of alternatives as required by NEPA and evaluating the proposed action under the Endangered Species Act.

H.R. 1769

Representative Baird and his colleagues introduced H.R. 1769 in March 2007. This bill is a modified version of a bill introduced to the 109th Congress in September 2006 (H.R. 6241). Several aspects of H.R. 1769 are consistent with our 1999 Report to Congress. The bill identifies and aims to address the complicated and controversial wildlife management conflict we face on the Columbia River today. It recognizes the importance of including Columbia River Intertribal Fish Commission and their member tribes in addressing this conflict; the limitations of non-lethal methods to protect salmonids from sea lion predation; and the enormous investment made by many agencies, organizations, and the public to conserve and recover at-risk salmon and steelhead populations in the Columbia River basin.

However, H.R. 1769 has some provisions that we would like to work with the Committee to refine. Although the bill sets out to streamline procedures necessary to take action towards addressing lethal removal of California sea lions or Pacific harbor seals to protect salmonids, it still contains a number of difficult and time consuming requirements. For example, the bill would require a permit holder to identify the individual predatory California sea lion before it could be lethally removed, and demonstrate that non-lethal measures have in general been ineffective for "such sea lion." While we agree with the principle of only removing the minimum number of individuals necessary to provide adequate protection of at-risk fish populations, these could be challenging, particularly due to conditions on the Columbia River and the fact that many

marked and unmarked sea lions occupy the Columbia River from its mouth to Bonneville Dam.

Moreover, the bill would require NMFS to make a determination that non-lethal measures are ineffective (following a public review and comment period) and then requires each permit holder to duplicate that determination for each sea lion prior to removal. It is not clear why the permit holder determination is necessary when NMFS would have already made such a determination.

Next, the bill would require NMFS to prepare a report to Congress on the need for additional legislation. NMFS prepared such a report in 1999 and little has changed since the report was completed, making another report unnecessary.

Finally, coordinating the activities of permit holders could be difficult because multiple permits may be issued to six different “eligible entities” but each entity may use only one permit during any 2-week period. Tracking such a system could be daunting.

NMFS and other agencies would welcome an opportunity to work with the Committee to develop solutions that will accomplish the goals of H.R. 1769 and the MMPA.

Conclusions

This bill or any other effort to streamline the process for using lethal removal of pinnipeds will be highly controversial. The MMPA has provided strong protections for all marine mammals, regardless of their population status, for more than 30 years. Any attempt to modify it to allow removal of pinnipeds, even for essential resource management purposes, will be perceived as reducing protections for marine mammals and thereby weakening the Act. We believe changes can be made to the section 120 process that could, when combined with sound principles of wildlife management, achieve the goals and objectives of the MMPA.

Because the bill would not address the full scope of issues related to pinniped conflict in the United States, it is correctly described as a stop-gap measure. If the intent of the bill is to eliminate or greatly reduce the level of predation by California sea lions throughout the entire Columbia River basin, it is unclear whether this goal will be achieved; the conflict in the Columbia River basin covers nearly 150 miles in a river that at times is more than a mile wide and 100 feet deep.

In 1999, NMFS recommended to Congress that the MMPA be amended to, among other things; allow lethal removal of pinnipeds to protect threatened or endangered fish and fish that are species of concern in the affected states and to resolve human–pinniped conflicts other than predation. These recommendations are still valid, and the Subcommittee should consider a comprehensive approach to the use of lethal measures to manage pinnipeds when Congress takes up the reauthorization of the MMPA. Lethal removal is used for many high-profile species of terrestrial animals to control wildlife damage to other species or to property and resources valued by people. We would be

happy to work with the Subcommittee to recommend statutory changes that would provide resource managers with greater flexibility to adequately address interactions involving pinnipeds along the West Coast, while ensuring that the goals and objectives of the MMPA are achieved.