

WRITTEN TESTIMONY OF

MR. ROBIN F. BROWN  
PROGRAM LEADER, MARINE MAMMAL RESEARCH  
OREGON DEPARTMENT OF FISH AND WILDLIFE  
STATE OF OREGON

LEGISLATIVE HEARING ON H.R. 1769

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

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Introduction

The Oregon Department of Fish and Wildlife appreciates the opportunity to present the following written testimony to the chair and members of this subcommittee on the issue of pinniped predation on threatened and endangered salmon and steelhead of the Columbia River Basin, and other important fish populations and fishery resources. We are very thankful that the U.S. House of Representatives is taking action to address these issues and hope that our presence at your hearing today, along with the following comments, demonstrates the significance of this matter from our perspective.

I am Robin Brown, Program Leader for Marine Mammal Research for the Oregon Department of Fish and Wildlife (ODFW). I have worked with the issues of pinniped (seal and sea lion) distribution, abundance, population growth, movements, food habits, foraging behaviors, interactions with fish resources, fisheries and human activities in the Pacific Northwest for more than 30 years.

ODFW's mission is to protect and enhance Oregon's fish and wildlife resources and their habitats for the use and enjoyment by present and future generations. ODFW is mandated by state law to carry out this mission by employing sound conservation and management practices which include the use of proactive and solution-based fish and wildlife management principles. We consider the many marine mammal species that occur in Oregon waters to be integral components of our coastal marine ecosystems and fully recognize their important ecological and aesthetic values.

The Marine Mammal Protection Act

We recognize the great success of the Marine Mammal Protection Act (MMPA) in supporting the recovery of many marine mammal species. In particular, the pinnipeds of the Pacific Northwest are a prime example of population growth and recovery following the many years these populations remained at low abundance levels. While providing

important and needed protection to many marine mammal species, one limitation of the MMPA is the lack of recognition of the great differences between these species. Many aspects of pinniped life history, biology, and distribution are vastly different from the great whales for example, as well as from many of the dolphins and porpoises occurring in coastal waters. These differences call for a more flexible and varied approach when dealing with the conservation and management of these widely different species. Pinnipeds and their interactions with other resources and human activities are more akin to terrestrial carnivores such as coyotes, bears, and wolves. Most state and federal agencies have ongoing programs to address resource conflicts involving these species that are widely accepted, highly effective and are based on sound wildlife management principles and practices. The options available to resource managers in these cases typically include such practices as non-lethal harassment, trap and relocate, and lethal removal. ODFW feels that a full suite of management options should be readily available for dealing with conflicts surrounding abundant pinnipeds.

Another important principle of fish and wildlife conservation and management that is missing from the MMPA is the option for “delisting” from the complete protections provided under the law once a population has recovered to Optimum Sustainable Population (OSP) levels. This approach is integral to the Endangered Species Act and to most fish and wildlife management programs. It recognizes that once populations have recovered to optimum levels they no longer require the highest and most restrictive levels of protection and that certain management actions may need to be taken to effectively resolve important resource conflicts (e.g. abundant pinnipeds preying on ESA listed salmon and steelhead). The MMPA should be amended to recognize these inter-specific differences and the varying levels of interaction the species have with other resources and with human activities, and to provide all of the management options required to resolve conflicts readily and effectively.

In our view, the options currently available under the MMPA to deal with the issues presented in our testimony (e.g. a Section 101 waiver of the moratorium, Section 109 transfer of management to the states, Section 120 application for lethal removal authority) are not likely to be successful for a variety of reasons. For each of these options, the complexities, costs, time required for completion, and expected challenges from those in opposition to their implementation are prohibitive and ultimately are not likely to provide the timely and effective actions needed to resolve the many emergent resource conflict issues surrounding growing pinniped populations. ODFW does not consider any of the above provisions to be a functional option for resolving the issue of abundant California sea lions preying on ESA listed salmon and steelhead in the lower Columbia River.

#### Issues of abundant pinniped populations and conflicts with other important resources

All pinniped species occurring in the coastal waters of the Pacific Northwest are considered to be within or very close to their OSP levels as defined under the MMPA. In particular, Pacific harbor seals and California sea lions are very abundant and widespread, and their populations in California, Oregon and Washington are healthy and

robust. At present these populations are at no significant risk of falling below their OSP levels. As pinnipeds have become more abundant and widespread, their interactions with other important resources and with human activities in the coastal zone have increased significantly. Many of these interactions are negative in nature; they may be one of the factors slowing the recovery of fish populations at risk (e.g. ESA listed salmon and steelhead) and often result in damage to property (boats, docks, marinas) or place people at risk of serious injury.

Following the amendments to the MMPA enacted by Congress in 1994, the states of Oregon, Washington and California worked with the National Marine Fisheries Service (NMFS) to prepare a report on the status and significance of interactions between abundant pinnipeds, other resources at risk, and human activities in the coastal zone. That report, which included a proposed framework for the management of these issues by state and federal resource agencies was submitted to Congress in 1999. All of the issues and proposed actions presented in that report are still valid today and the framework outlined for resolving the identified conflicts is needed more than ever as pinniped populations have become more abundant, widespread and many negative interactions have increased.

We wish to make it very clear that ODFW is not attributing the decline in certain fish resources (e.g. ESA listed salmon and steelhead of the Columbia Basin) to predation by pinnipeds. There have been many causes for declines in salmonid abundance in the Pacific Northwest (hatchery practices, harvest levels, habitat degradation, and hydro management), but natural predation by pinnipeds in their normal coastal habitat is not considered to be a significant factor for decline. However, as pinnipeds such as California sea lions find new foraging areas that may be many miles up rivers at areas of restricted fish passage (nearly 150 miles up the Columbia River in the case of sea lions at Bonneville Dam), it is considered significant that high predation rates in such areas can contribute to the slowing or lack of recovery of some of these fish populations.

This latter situation is one type of problem that was identified in the 1999 Report to Congress. The proposed site-specific management framework outlined in that report is needed to effectively manage these resource conflicts. The issue your committee is focusing on today, that of California sea lions foraging on threatened and endangered salmon and steelhead at Bonneville Dam is an excellent example of what the management framework proposed in the 1999 report was intended to address and resolve. When this situation began in the early 2000's, the lethal removal of very small numbers of sea lions could have prevented the escalation of this problem to the current high predation levels involving ten times the number of animals that occurred there just a few years ago.

We would like to stress that the problem of California sea lions foraging on ESA listed salmon and steelhead below Bonneville Dam is a very new source of mortality for these fish populations that did not exist at a significant level as recently as five years ago. We and others (the states of Washington and Idaho, NMFS, U.S. Army Corps of Engineers (ACOE), and the treaty tribes of the Columbia Basin) are very concerned with the growing nature of this problem. Three years of progressively intensified non-lethal

harassment of California sea lions feeding here has proven largely ineffective at deterring those animals most determined to occupy this area. We are concerned that if unchecked, this new source of mortality to salmon and steelhead attempting to pass Bonneville Dam to upriver spawning areas will continue to grow. Most sources of mortality for ESA listed salmon and steelhead in the Columbia Basin have management programs in place to address their impact on these fish populations. Examples of such programs include fishery restrictions, adaptive hatchery practices, land use restrictions (especially for agriculture and forest industries), and Columbia River hydro operations. We feel that the newly emergent source of mortality caused by California sea lions is no different and should be managed to limit the loss to predation as quickly and effectively as possible.

#### Comments on H.R. 1769

We offer the following comments based on our experience with these issues in hopes of contributing to the successful implementation of a bill that will provide the management options needed to resolve the growing conflicts between abundant pinnipeds and at-risk fish populations (e.g. ESA listed salmonids of the Columbia River).

ODFW is concerned about the temporary and geographically restricted nature of the authorities proposed in H.R. 1769. We have witnessed the increasing nature of these problems in many areas and see the need for an ongoing management program to address these issues. As mentioned above, ODFW and other wildlife management agencies regularly deal with conflicts involving terrestrial carnivores using well-established and effective management programs that include options for lethal removal. A similar ongoing management authority is needed here.

ODFW feels that a determination by the Secretary of Commerce (NMFS) that non-lethal measures are often ineffective was already made in the 1999 Report to Congress. That determination was followed by a proposal for a site-specific management framework that would include options for lethal removal. State and federal resource management agencies dealing with wildlife damage problems regularly make determinations of the need to undertake lethal removal of many species of wildlife in many types of resource conflict situations. These decisions are based on well-established protocols that provide for the best outcome of the resource conflict, most often with the approach of considering the needs of the resource at greatest biological risk first. We feel the authority to decide if lethal takes are necessary in each case should be granted directly to the state and federal management agencies and should not require additional and repeated approval from the Secretary.

ODFW sees the approach of issuing multiple permits to multiple entities for limited takes over limited periods as somewhat problematic. With respect to the issue at Bonneville Dam, an annual permit (California sea lions occur there from January through May at present) for an annual take level may be more appropriate and functional. With the overall restriction of not exceeding one percent of the Potential Biological Removal (as defined by NMFS) for California sea lions in any one year, the added complexity of the permit process as proposed may be unnecessary. While apparently not a responsibility of

the states, it seems the burden of tracking multiple permits and takes by multiple entities over relatively short periods would be high. At the least, it would be desirable for the various entities that may be granted permits to closely coordinate their lethal take activities.

The requirement for determining that an individual sea lion has preyed upon salmon and/or steelhead and that non-lethal measures have not been effective on that sea lion may be difficult to accomplish in all but a very few cases. The sea lions foraging at Bonneville Dam have traveled nearly 150 miles from the ocean to feed on salmon and steelhead attempting to pass the dam. Direct observations by ACOE staff have shown that salmon and steelhead are the primary prey taken in this area, with lamprey and a few other species taken in very small proportions. Biologically there is no reason to expect a sea lion at Bonneville Dam would eat other prey in the area and not take salmon and steelhead as well. Every California sea lion fecal sample collected at Bonneville Dam has contained salmon and/or steelhead remains. We have permanently marked 1/3 to 1/2 of all sea lions seen foraging here on any day (35-50 of the approximately 100 individual sea lions occurring there in the past few years). Every one of the marked sea lions has been observed taking salmon and/or steelhead. With a sample size that large, there is no sound biological explanation to support the conclusion that unmarked sea lions (i.e. those not individually known or identifiable) are not eating salmon and steelhead. ODFW feels it is quite safe to conclude that any California sea lion observed in this area is consuming salmon and steelhead.

Similarly, making the determination that an individual sea lion that was seen to consume salmon and/or steelhead has also been directly harassed using non-lethal tools, but has not left the area or stopped foraging for salmon and steelhead is not practical in all but a very few cases. In 2007, ODFW, Washington Department of Fish and Wildlife, ACOE and Columbia River Intertribal Fish Commission personnel used non-lethal means to harass sea lions foraging below Bonneville Dam during nearly all daylight hours seven days per week from the beginning of March through the end of May. It is highly probable that every California sea lion occurring in the area was hazed using non-lethal methods at some point in time. However, this may be very difficult to demonstrate with absolute confidence.

### Conclusions

ODFW appreciates the efforts by the Congress to address this important problem and we certainly recognize the challenges, difficulties and complexities involved. The additional management options proposed in H.R. 1769 are an important first step in providing for the reduction of pinniped predation on ESA listed salmon and steelhead in the lower Columbia River. Again, ODFW continues to support the more encompassing management framework proposed in the 1999 NMFS Report to Congress that would provide even broader options for state and federal management agencies to deal with the problems related to growing pinniped populations and their interactions with other important resources and human activities. If we hope to prevent similar situations in other areas from developing into significant problems, we need all of the management

options available from the beginning, without having to repeatedly amend the MMPA as each new conflict arises. We feel that management programs for these conflicts need to include effective provisions for lethal takes. Such programs can be undertaken to reduce the loss of at-risk fish resources to pinniped predation and at the same time retain the overall MMPA objectives of maintaining pinniped populations at OSP levels and insuring their continuation as fully functioning components of healthy marine ecosystems. ODFW looks forward to working with this Subcommittee on this and similar initiatives in the future.