

MARINE MAMMAL COMMISSION
4340 EAST-WEST HIGHWAY, ROOM 905
BETHESDA, MD 20814

2 April 2007

Donna Darm
Assistant Regional Administrator
Protected Resources Division
National Marine Fisheries Service
1201 NE Lloyd Boulevard, Suite 1100
Portland, OR 97232

Dear Ms. Darm:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the application from Oregon, Washington, and Idaho seeking lethal removal authority for pinnipeds preying on salmon and steelhead in the Columbia River. We also have reviewed the National Marine Fisheries Service's 30 January 2007 *Federal Register* notice concerning the application.

The application is intended to address a risk factor for endangered and threatened salmonids in the Columbia River. The Marine Mammal Protection Act (MMPA) provides the framework for doing so. The Act's primary objective is to maintain the health and stability of the marine ecosystem, and we consider actions to recover and conserve endangered and threatened salmonid stocks in the Columbia River as essential to that objective. Further, we do not believe that Congress intended that the well-being of marine mammals would automatically take precedence where other elements of the ecosystem are at risk of extinction. Regrettably, the involved ecosystem is sufficiently disrupted (i.e., the salmonid stocks are sufficiently at risk) that conservation measures for them may require lethal removal of some marine mammals. Furthermore, the available information may not be sufficient to provide an unequivocal justification for that removal. Almost surely, the available information will be compromised by some degree of uncertainty and decision-makers will be faced with difficult choices. If the issue boils down to a choice between conservation of endangered and threatened salmonid stocks versus removal of individual sea lions from healthy stocks that are contributing significantly to the problem, then we believe the MMPA gives clear direction that conservation of the salmonid stocks takes precedence. The Commission wishes to be completely clear on this point.

That being said, the MMPA also makes it clear that authority for lethal removal should be granted only after rigorous review and deliberation to ascertain that all of the statutory requirements have been met, including safeguards intended to minimize the risk of killing animals unnecessarily. To provide the best possible basis for informed decision making in this case, the Service should make every reasonable effort to ensure that the Pinniped-Fishery Interaction Task Force being formed considers all relevant information and evaluates all pertinent circumstances in accordance with section 120 of the Act. To that end, the Commission offers the following comments and recommendations, which should not be viewed as an attempt to place constraints on the Task Force and decision-makers, but

rather as an effort to ensure that the review is fully consistent with the letter and spirit of the MMPA.

RECOMMENDATIONS

The Marine Mammal Commission recommends that—

- As one of its first activities, the Task Force consider and explain in detail what constitutes a “significant negative impact” from sea lion predation on endangered and threatened salmonid stocks in the Columbia River;
- The Service provide and the Task Force review all the available information on the various salmonid stocks in the Columbia River, their status under the ESA, and their temporal overlap with each other and with the occurrence of pinnipeds in the Columbia River, as well as all available information on fishing and other forms of human-related take of those stocks;
- The Task Force describe the specific sea lion individuals that are having significant negative impacts on salmonid stocks in the Columbia River so that, to the extent possible, only those animals are subject to lethal removal;
- the Service and the Task Force consider whether lethal removal authority should be limited to individually identifiable (e.g., marked) animals that are actively engaged in predation of listed salmonid stocks at the dam rather than being based on past involvement in such predation or involvement in other areas of the river;
- The Task Force take a hard look at the justification for the number of any lethal removals that it recommends be authorized based on (1) all available information about the presence and behavior of sea lions near Bonneville Dam, (2) experience at Ballard Locks, (3) evidence that most of the predation may be caused by a few individuals, and (4) other relevant information;
- The Task Force assess the feasibility of non-lethal alternatives to lethal removal in light of the number of such removals it believes are necessary; and
- An individual associated with the Commission be appointed to the Task Force.

RATIONALE

Before lethal taking is to be authorized, a threshold determination to be made is whether individually identifiable pinnipeds are having “a significant negative impact on the decline or recovery of salmonid fishery stocks” that are listed as threatened or endangered under the Endangered Species Act (ESA) or that otherwise meet the criteria set forth in section 120(b)(1) of the MMPA. For clarity, the Marine Mammal Commission recommends that the Task Force thoroughly describe whether and, if so, why it believes that pinnipeds are having “a significant negative impact” in this case (i.e., why pinniped predation, in combination with other threats, poses substantial risks to salmonid stocks). That description need not conform to the standard used in the Ballard Locks case (the only previous issuance of lethal removal authority), but should be sufficiently complete to explain the rationale for any deviation therefrom.

One complicating factor associated with the Task Force's charge is that the Columbia River is habitat for a number of natural and hatchery-raised salmonids, not all of which are listed as endangered or threatened. Thus, some pinniped predation, even on salmonids, may not affect listed stocks. In addition, to put the estimated level of pinniped predation on listed stocks in context, it should be compared to other sources of mortality, including the various forms of human-related take (e.g., commercial and sport fishing). To ensure that the Task Force can adequately assess the effects of predation on those wild populations listed as threatened or endangered, the Marine Mammal Commission recommends that the Service provide the Task Force with the available information on the various salmonid stocks, their status under the ESA, and their temporal overlap with each other and with the occurrence of pinnipeds in the Columbia River, as well as all available information on fishing and other forms of human-related take of those stocks.

Section 120 specifies that only removals of "individually identifiable pinnipeds" that are having a negative impact on the salmonid stocks may be authorized. Consistent with this and related requirements, the Commission recommends that the Task Force describe the specific pinniped individual or individuals that are having significant negative impacts and that only those animals be subject to lethal removal. The applicants are requesting authority to remove marked sea lions "that have been documented feeding on salmonids at Bonneville Dam...without restriction to time or location in the river." The applicants also are seeking authority for the removal of all animals that occur above Navigation Marker 85. The Service and the Task Force should consider whether this sort of authorization is too open-ended and non-specific to be consistent with section 120. Therefore, the Commission recommends that the Service and the Task Force consider whether lethal removal authority should be limited to individually identifiable (e.g., marked) animals that are actively engaged in predation of listed salmonid stocks at the dam rather than being based on past involvement in such predation or involvement in other areas of the river.

The Commission also recommends that the Task Force review the justification for the number of California sea lions that could be removed. The applicants request a cap of one percent of the stock's potential biological removal level, or about 83 animals per year. This approximates the total number of sea lions observed at the Bonneville Dam tailrace in a given year and suggests that all animals that spend any time in the area of the dam could warrant removal regardless of the amount of time they spend in the area or the contribution they make to the predation problem. The application provides information on the total number of individual sea lions present at Bonneville Dam each year, the maximum daily number of sea lions, the number of days the most persistent sea lion was present, and the total number of days any seal lion appeared at the Dam, but does not include other information on pinniped presence that would be useful in assessing the impacts of sea lions on salmonid stocks and in tailoring a response. The Commission recommends that, to the extent it is available, the Task Force review both the history of each specific individual being considered for removal, as well as more general attendance and behavior patterns for all sea lions observed in the vicinity of the dam.

In addition, the Commission recommends that the Task Force assess the feasibility of non-lethal alternatives in light of the number of such removals it believes are necessary. In

particular, the Task Force should review the experience at Ballard Locks, where lethal removals were authorized but not needed, for insights into possible responses to the Columbia River situation. In 1999 NOAA characterized the key to its success in handling the Ballard Locks situation as “the determination to target only those few sea lions that were known to cause most of the predation.” The value of reviewing the Ballard Locks case is reinforced by information in one of the reports referenced in the application (Stansell 2004, see page 10) that states that more than 50 percent of individual sea lions appear to take two or fewer salmon each season, and “a few individuals account for the majority of fish caught.” If the two cases are similar, a more tailored program that, at least initially, targets fewer animals should be considered by the Task Force.

The Task Force also is required to consider the extent to which non-lethal alternatives to killing pinnipeds are available and practical. The applicants reviewed various non-lethal alternatives and concluded that they either are ineffective or impractical for established animals but can be effective on “new” or naïve animals. This observation presumably led them to conclude that the number of removals needed in future years would eventually approach zero. We do not take issue with the scope of the non-lethal alternatives identified by the applicants or with the descriptions of their effectiveness. We point out, however, that feasibility determinations depend, in part, on the numbers of animals involved. For example, if dozens of sea lions must be removed, maintenance in captivity may not be feasible. If, however, fewer removals are necessary, captive maintenance may be practical. Thus, determinations of the feasibility of non-lethal alternatives by the Task Force necessarily go hand in hand with an examination of the number of sea lions that it believes should be subject to removal.

The *Federal Register* notice solicits nominations for the Task Force. The Commission and its Committee of Scientific Advisors on Marine Mammals include knowledgeable individuals who would make excellent additions to the Task Force. Rather than naming a specific individual at this point, the Commission requests that it be allowed to reserve a position on the Task Force and select an appropriate member as the meeting schedule is determined. Although affiliated with the Commission, this individual would participate in their personal capacity to ensure the Commission retains its independence and ability to comment on Task Force recommendations. I would welcome an opportunity to discuss this request with you.

Again, we are eager to see the involved listed salmonid stocks given the protection that they need to recover and become fully functioning elements of their ecosystems. Should the Task Force and the Service conclude that lethal removal is necessary, the strength of that conclusion will depend on the rigor of the review process. We hope our comments and recommendations lend such rigor to the process. Please don't hesitate to contact me if you have any questions concerning the Commission's comments and recommendations.

Sincerely,



Timothy J. Ragen, Ph.D.

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Executive Director