

ENDANGERED SALMON AND FISHERIES PREDATION
PREVENTION ACT

DECEMBER 8, 2011.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural
Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3069]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3069) to amend the Marine Mammal Protection Act of 1972 to reduce predation on endangered Columbia River salmon and other nonlisted species, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 3069 is to amend the Marine Mammal Protection Act of 1972 to reduce predation on endangered Columbia River salmon and other nonlisted species.

BACKGROUND AND NEED FOR LEGISLATION

The Marine Mammal Protection Act (MMPA) has resulted in California sea lions and certain populations of Steller sea lions being restored to historic levels. Steller sea lions are protected under the MMPA and the Endangered Species Act (ESA), because the Western and Eastern populations of this species are listed as endangered and threatened, respectively. In August 2010, the States of Washington, Oregon and Alaska filed two petitions with

the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS) to de-list the Eastern population of Steller sea lions, and NMFS has announced it is reviewing those petitions for a decision by the end of 2011.

The current MMPA allows for the lethal removal of marine mammals in narrow instances. Section 120, which was added in 1994 amendments to the MMPA, allows States to apply to the Secretary of Commerce for an authorization to lethally take a nuisance pinniped, except those listed under the ESA, identified as having a "significant negative impact" on ESA listed salmon stocks. This section requires the Secretary of Commerce to review the impacts of California sea lions and Pacific harbor seals on West Coast salmon and recommend a course of action. The original report was completed and submitted to Congress. A second report with specific recommendations for MMPA amendments was submitted by NMFS in 1999. NMFS recommended that Congress amend MMPA to include site-specific management, including use of lethal and non-lethal removal of California sea lions and harbor seals. No changes have been made to this authority since then, and the result has been a huge increase in sea lions feasting on an increasing amount of ESA-listed and other fish species in the Columbia River and other tributaries.

Increasing Numbers of Sea Lions in Columbia River. The Army Corps of Engineers reports that the daily average of pinnipeds (harbor seals, steller sea lions, and California sea lions) at Bonneville Dam on the Columbia River have steadily increased over the past several years. NMFS reported that in a typical May there are roughly 3,000 Pacific harbor seals, 1,000 Steller sea lions, and 800 California sea lions resting in haul-out sites in the Columbia River estuary. All of these animals feed in the Columbia River and near-shore marine areas on a variety of prey, including squid, smelt, herring, flatfish, perch, pollock, hake, rockfish, sturgeon and salmon.

Impacts on Endangered Species Act-listed Salmon and Steelhead and White Sturgeon. Estimates of annual predation on spawning ESA-listed salmon range between 4,000 to 6,000 per year since 2008 for spring salmon. The actual number is likely much higher, since many fish kills by sea lions are out of sight of observers. In addition, a growing number of Steller sea lions at Bonneville have increased predation of both salmon and non-listed white sturgeon, which are important species for State and tribal fisheries. An expert with the Oregon Department of Fish and Wildlife testified that data suggests that sea lions are consuming as much as 16 to 20 percent of endangered Spring Chinook salmon, an alarming number.

Ineffectiveness and Litigation on Current Section 120. Due to increasing numbers of sea lions preying on salmon runs, in 2006, the States of Oregon, Washington, and Idaho applied to NOAA for lethal take authority under Section 120 of the MMPA. NMFS established an 18-member Task Force, representing academic, scientific, environmental, tribal, federal and State agencies, that transmitted recommendations to NMFS on November 5, 2007. The Task Force's recommendations ultimately resulted in partial approval of the States' application by NMFS on March 18, 2008, to remove as many as 85 sea lions annually, with specific conditions.

Shortly after, the Humane Society of the United States and other groups filed a federal lawsuit, alleging NMFS' approval of the lethal removal of California sea lions violated the MMPA and the National Environmental Policy Act (NEPA). In November 2008, the district court upheld NMFS' approval of the lethal removal program and NMFS' evaluation of impacts under NEPA. Plaintiffs appealed. During the period between 2008 and 2010, the States of Washington and Oregon and the Columbia River Inter-Tribal Fish Commission continued to conduct non-lethal and lethal removal activities, and the U.S. Army Corps of Engineers modified fish passage facilities at Bonneville Dam to exclude sea lions and conducted active hazing. Between 2008 and 2010, the States removed a total of 40 California sea lions. Ten were placed in public display facilities, four died while being examined and 26 were euthanized.

On November 23, 2010, the Ninth Circuit instructed the district court to vacate NMFS' Section 120 decision and remand the decision to NMFS "to afford the agency the opportunity either to articulate a reasoned explanation for its action or to adopt a different action with a reasoned explanation that supports it." *Humane Society of the U.S. v. Locke*, 626 F.3d 1040, 1053 (2010).

On May 13, 2011, NMFS, following recommendations by an independent Pinniped Task Force that the current non-lethal program was not effective in reducing impacts on salmon, announced it had properly responded to the federal district court's concerns and that it was resuming permission for Washington and Oregon to lethally remove individual identifiable California sea lions that were observed eating salmon or steelhead in the area immediately below Bonneville Dam. The Humane Society filed a lawsuit to block implementation a week later, and the States announced they would suspend lethal removal pending further direction. On July 26, 2011, NOAA announced it was withdrawing its authorization for Washington and Oregon to lethally remove California sea lions at Bonneville Dam, and instead accepted a new request, that the States, including the State of Idaho, submitted on August 22, 2011. On September 12, 2011, NOAA announced it was convening the Pinniped Task Force to review the application.

H.R. 3069 amends Section 120 of the Marine Mammal Protection Act to allow the Secretary of Commerce to issue permits to eligible States and tribes to lethally remove sea lions on the Columbia River or its tributaries. This new Secretarial authority could be suspended at the discretion of the Secretary, after consultation with effected States and tribes five years after the date of enactment if the Secretary determines that the lethal take of predatory sea lions is no longer necessary to protect salmon stocks. NEPA would not apply to this subsection or to any permits issued during the five-year period beginning on the date of enactment of the Act.

The Administration testified in support of a provision in an earlier version of the bill (H.R. 946) that attempted to streamline procedures necessary to take action on a growing wildlife problem, but did not officially endorse or oppose the bill. It raised concerns about H.R. 946, which have been addressed in H.R. 3069, including the removal of a provision that required identification of individual predatory sea lions, which NOAA noted would be impractical to apply; removal of a provision requiring a determination that non-lethal measures are ineffective, something that has already been

determined by the Pinniped Task Force; removal of the reporting requirement, which NOAA noted has been complied with; and streamlining of the specific, difficult to implement provisions of the permits.

The Directors of the Washington and Oregon Departments of Fish and Wildlife, the Columbia River Inter-Tribal Fish Commission, and the Confederated Tribes of the Yakama Indian Nation submitted letters supporting H.R. 3069.

COMMITTEE ACTION

H.R. 3069 was introduced with broad bipartisan support on September 29, 2011, by Congressman Doc Hastings (R-WA), and co-sponsored by Congressman Norm Dicks (D-WA), Congresswoman Jaime Herrera Beutler (R-WA), Congressman Kurt Schrader (D-OR), Congressman Greg Walden (R-OR) and Congressman Mike Simpson (R-ID). It followed several versions from two previous Congresses, including one introduced by former Congressman Brian Baird (D-WA) in 2007. H.R. 3069 was referred to the Committee on Natural Resources, and on October 5, 2011, the Full Natural Resources Committee met to consider the bill. Congresswoman Madeleine Bordallo (D-GU) offered amendment designated .002 to the bill; the amendment was not adopted by voice vote. Congresswoman Bordallo offered amendment designated .003 to the bill; the amendment was not adopted by voice vote. Congresswoman Bordallo offered amendment designated .010 to the bill; the amendment was not adopted by a rollcall vote of 17 to 26, as follows:

Committee on Natural Resources
U.S. House of Representatives
112th Congress

Date: October 5, 2011

Recorded Vote #: 16

Meeting on / Amendment: **H.R. 3069** – An amendment offered by Ms. Bordallo.010 was **NOT AGREED TO**
by a roll call vote of 17 yeas and 26 nays.

| MEMBERS | Yea | Nay | Pres | MEMBERS | Yea | Nay | Pres |
|----------------------------------|-----|-----|------|----------------------------|-----|-----|------|
| Mr. Hastings, WA Chairman | | X | | <i>Mr. Heinrich, NM</i> | X | | |
| <i>Mr. Markey, MA Ranking</i> | X | | | Mr. Benishek, MI | | X | |
| Mr. Young, AK | | X | | <i>Mr. Lujan, NM</i> | X | | |
| <i>Mr. Kildee, MI</i> | X | | | Mr. Rivera, FL | | X | |
| Mr. Duncan of TN | | X | | <i>Mr. Sarbanes, MD</i> | X | | |
| <i>Mr. Defazio, OR</i> | X | | | Mr. Duncan of SC | | X | |
| Mr. Gohmert, TX | | X | | <i>Ms. Sutton, OH</i> | | | |
| <i>Mr. Faleomavaega, AS</i> | X | | | Mr. Tipton, CO | | X | |
| Mr. Bishop, UT | | X | | <i>Ms. Tsongas, MA</i> | X | | |
| <i>Mr. Pallone, NJ</i> | X | | | Mr. Gosar, AZ | | X | |
| Mr. Lamborn, CO | | X | | <i>Mr. Pierluisi, PR</i> | X | | |
| <i>Mrs. Napolitano, CA</i> | X | | | Mr. Labrador, ID | | X | |
| Mr. Wittman, VA | | X | | <i>Mr. Garamendi, CA</i> | X | | |
| <i>Mr. Holt, NJ</i> | X | | | Ms. Noem, SD | | X | |
| Mr. Broun, GA | | X | | <i>Ms. Hanabusa, HI</i> | X | | |
| <i>Mr. Grijalva, AZ</i> | X | | | Mr. Southerland, FL | | X | |
| Mr. Fleming, LA | | X | | Mr. Flores, TX | | X | |
| <i>Ms. Bordallo, GU</i> | X | | | Mr. Harris, TX | | X | |
| Mr. Coffman, CO | | X | | Mr. Landry, LA | | X | |
| <i>Mr. Costa, CA</i> | | | | Mr. Fleischmann, TN | | | |
| Mr. McClintock, CA | | X | | Mr. Runyan, NJ | | X | |
| <i>Mr. Boren, OK</i> | | | | Mr. Johnson, OH | | X | |
| Mr. Thompson, PA | | X | | | | | |
| <i>Mr. Sablan, CNMI</i> | X | | | | | | |
| Mr. Denham, CA | | X | | | | | |
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| | | | | TOTALS | 17 | 26 | |

Congressman Ed Markey (D-MA) offered amendment designated .001; the amendment was withdrawn. The bill was then ordered favorably reported to the House of Representatives by a bipartisan rollcall vote of 29 to 13, as follows:

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This Act may be cited as the “Endangered Salmon and Fisheries Predation Prevention Act.”

Section 2. Findings

This section provides findings for the bill.

Section 3. Taking of sea lions on the Columbia River and its tributaries to protect endangered and threatened species of salmon and other nonlisted fish species

Section 3 authorizes the Secretary of Commerce to issue annual permits to “eligible entities” to lethally remove up to 10 sea lions per permit, no more than 1 percent of potential biological removal level per year. “Eligible entities” are defined to include the States of Washington, Oregon and Idaho, 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 Columbia Intertribal Fish Commission.

The section authorizes any eligible permitted entity to lethally remove sea lions, to delegate its authority to any other eligible entity, and to allow States and tribes to further coordinate these ongoing efforts. Further, the section waives the application of the National Environmental Policy Act with regard to the process or implementation of lethal permits.

The section also allows the Secretary of Commerce to suspend permitting authority, after consultation with the affected States and tribes, if the Secretary believes lethal removal is no longer necessary to protect fish species.

Section 4. Sense of Congress

Section 4 includes the sense of the Congress that preventing predation by sea lions, recovery of listed salmon stocks, and preventing future listings of fish stocks in the Columbia River is a vital priority; permit holders exercising lethal removal authority should be trained in wildlife management; and the federal government should continue to fund lethal and nonlethal removal measures for preventing such predation.

Section 5. Treaty rights of federally recognized Indian tribes

Section 5 ensures that the bill’s provisions do not impact the treaty rights of any federally-recognized tribe.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a compari-

son by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 3069—Endangered Salmon and Fisheries Predation Prevention Act

H.R. 3069 would authorize the National Oceanic and Atmospheric Administration (NOAA) to issue permits to allow states and tribal entities in the Northwest United States to kill (engage in the lethal taking of) California sea lions under certain circumstances. Each permit would allow up to 10 sea lions a year to be removed from healthy populations that threaten species of salmon and other fish that are listed as endangered or threatened under the Endangered Species Act.

Under current law, NOAA has the authority to issue permits to kill certain marine mammals that threaten other species. Based on information provided by the agency, CBO estimates that providing NOAA with the authority to issue such permits for California sea lions would have a negligible impact on the federal budget. Enacting H.R. 3069 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 3069 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFaye. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. Under current law, NOAA has the authority to issue permits to kill certain marine mammals that threaten other species. Based on information provided by the agency, CBO estimates that providing NOAA with the authority to issue permits for California sea lions would have a negligible impact on the federal budget.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Marine Mammal Protection Act of 1972 to reduce predation on endangered Columbia River salmon and other nonlisted species.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e),

9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

MARINE MAMMAL PROTECTION ACT OF 1972

* * * * *

TITLE I—CONSERVATION AND PROTECTION OF MARINE MAMMALS

* * * * *

SEC. 120. PACIFIC COAST TASK FORCE; GULF OF MAINE.

(a) * * *

* * * * *

[(f) CALIFORNIA SEA LIONS AND PACIFIC HARBOR SEALS; INVESTIGATION AND REPORT.—

[(1) The Secretary shall engage in a scientific investigation to determine whether California sea lions and Pacific harbor seals—

[(A) are having a significant negative impact on the recovery of salmonid fishery stocks which have been listed as endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or which the Secretary finds are approaching such endangered species or threatened species status; or

[(B) are having broader impacts on the coastal ecosystems of Washington, Oregon, and California.

The Secretary shall conclude this investigation and prepare a report on its results no later than October 1, 1995.

[(2) Upon completion of the scientific investigation required under paragraph (1), the Secretary shall enter into discussions with the Pacific States Marine Fisheries Commission, on behalf of the States of Washington, Oregon, and California, for the purpose of addressing any issues or problems identified as a result of the scientific investigation, and to develop recommendations to address such issues or problems. Any recommendations resulting from such discussions shall be submitted, along with the report, to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

【(3) The Secretary shall make the report and the recommendations submitted under paragraph (2) available to the public for review and comment for a period of 90 days.

【(4) There are authorized to be appropriated to the Secretary such sums as are necessary to carry out the provisions of this subsection.

【(5) The amounts appropriated under section 308(c) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(c)) and allocated to the Pacific States Marine Fisheries Commission may be used by the Commission to participate in discussions with the Secretary under paragraph (2).】

(f) *TEMPORARY MARINE MAMMAL REMOVAL AUTHORITY ON THE WATERS OF THE COLUMBIA RIVER OR ITS TRIBUTARIES.*—

(1) *REMOVAL AUTHORITY.*—*Notwithstanding any other provision of this Act, the Secretary may issue a permit to an eligible entity authorizing the intentional lethal taking on the waters of the Columbia River and its tributaries of sea lions that are part of a healthy population that is not listed as an endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), to protect endangered and threatened species of salmon and other nonlisted fish species.*

(2) *PERMIT PROCESS.*—

(A) *IN GENERAL.*—*An eligible entity may apply to the Secretary for a permit under this subsection.*

(B) *DEADLINE FOR CONSIDERATION OF APPLICATION.*—*The Secretary shall approve or deny an application for a permit under this subsection by not later than 30 days after receiving the application.*

(C) *DURATION OF PERMIT.*—*A permit under this subsection shall be effective for no more than one year after the date it is issued, but may be renewed by the Secretary.*

(3) *LIMITATIONS.*—

(A) *LIMITATION ON PERMIT AUTHORITY.*—*Subject to subparagraph (B), a permit issued under this subsection shall not authorize the lethal taking of more than 10 sea lions during the duration of the permit.*

(B) *LIMITATION ON ANNUAL TAKINGS.*—*The cumulative number of sea lions authorized to be taken each year under all permits in effect under this subsection shall not exceed one percent of the annual potential biological removal level.*

(4) *DELEGATION OF PERMIT AUTHORITY.*—*Any eligible entity may delegate to any other eligible entity the authority to administer its permit authority under this subsection.*

(5) *NEPA.*—*Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) shall not apply with respect to this subsection and the issuance of any permit under this subsection during the 5-year period beginning on the date of the enactment of this subsection.*

(6) *SUSPENSION OF PERMITTING AUTHORITY.*—

If, 5 years after enactment, the Secretary, after consulting with State and tribal fishery managers, determines that lethal removal authority is no longer necessary to protect salmonid and other fish species from sea lion predation, may suspend the issuance of permits under this subsection.

(7) *ELIGIBLE ENTITY DEFINED.*—*In this subsection, the term “eligible entity” means each of the State of Washington, the State of Oregon, the State of Idaho, 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 Columbia River Inter-Tribal Fish Commission*

* * * * *

DISSENTING VIEWS

H.R. 3069, the Endangered Salmon and Fisheries Predation Prevention Act, would amend the Marine Mammal Protection Act (MMPA) to authorize the Secretary of Commerce to issue annual permits to Washington, Oregon, Idaho and five tribal groups (Nez Perce, Umatilla, Warm Springs, Yakama, and the Columbia River Inter-Tribal Fish Commission) to lethally take sea lions. The bill's stated intent is intended to reduce the effect of predation by sea lions on salmon listed under the Endangered Species Act (ESA) and any non-listed fish. Under H.R. 3069, as many as 85 sea lions could be taken in a year, which exceeds the number of individuals identified at the Bonneville Dam in 2011 (50 animals). H.R. 3069 also waives the application of Section 102(2)(c) of the National Environmental Policy Act (NEPA) to the permit process. This would eliminate the requirement that the Secretary consider the environmental impacts associated with the permit, and alternatives to the permitted action.

H.R. 3069 targets the threat that any fish face from predation by marine mammals, specifically sea lions, but does not address other far more significant factors which impact endangered salmon or non-listed fish. Other threats to ESA-listed salmon and non-listed fish in the Columbia River include hydropower development and habitat loss, fishing pressure, interactions with hatchery fish, climate change, pesticides, and predation.

In contrast, the salmon predation rate by California sea lions (predation as a percent of the salmon run) below Bonneville Dam from January to May has declined each year since 2007 from 4.2 percent to 2.2 percent in 2010. Preliminary results for 2011 indicate a predation rate of 1.4 percent with the fewest number of California sea lions than any year since 2002. With a run size of 205,000 fish, 2011 marks the third highest spring salmon run size since 2002. California sea lions are eating only 10 percent the amount of salmon that fishermen are court-approved to take. Ironically, while H.R. 3069 focuses on the "threat" that marine mammals pose to salmon and other fish, the fact is that rates of predation increase in areas where human barriers, such as fishing locks or dams with fish ladders, increase the concentration of adult and juvenile salmon and other fish.

During full committee mark-up of this bill on October 5, 2011, Congresswoman Bordallo offered an amendment to require the Secretary of Commerce to make a determination that the killing of a sea lion is conducted humanely before a permit can be issued. H.R. 3069 places no stipulation as to the distance from which sea lions can be shot or the platforms from which shooting can take place. If a person is allowed to shoot a sea lion from an unstable platform, like a boat, this could result in an unpredictable and inhumane

death. This amendment was defeated, with the Majority voting in opposition.

H.R. 3069 has not received a legislative hearing, although on June 14, 2011, the Fisheries, Wildlife, Oceans, and Insular Affairs Subcommittee held a hearing on a predecessor bill, H.R. 946, the Endangered Salmon Predation Prevention Act. The Administration did not support H.R. 946, due to concerns with streamlining the process for the lethal take of sea lions and the NEPA exemption. Despite these objections, H.R. 3069 expands the scope of H.R. 946 to allow the take of *any* sea lion, including California sea lions, which eat *any* fish, including but not limited to, endangered salmon. H.R. 3069 allows the Secretary of Commerce to renew permits to take sea lions without review. H.R. 3069 extends the NEPA waiver from 3 to 5 years and expands the entities eligible to take sea lions to include the State of Idaho and the Columbia River Inter-Tribal Fish Commission.

H.R. 3069, if enacted, would not put into place meaningful action needed to address all the threats faced by endangered salmon and non-listed species. For these reasons, we oppose H.R. 3069 as reported.

EDWARD J. MARKEY.
RUSH HOLT.
DALE E. KILDEE.
GRACE F. NAPOLITANO.
NIKI TSONGAS.
RAÚL M. GRIJALVA.
JOHN GARAMENDI.

ADDITIONAL INFORMATION



Confederated Tribes and Bands
of the Yakama Indian Nation

Established by the
Treaty of June 9, 1855

October 5, 2011

Honorable Doc Hastings
Chairman
Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

Honorable Ed Markey
Ranking Minority Member
Committee on Natural Resources
1329 Longworth House Office Building
Washington, DC 20515

Honorable John Fleming
Chairman
Subcommittee on Fisheries, Wildlife
Oceans and Insular Affairs
140 Cannon House Office Building
Washington, DC 20515

Honorable Gregorio Sablan
Ranking Minority Member
Subcommittee on Fisheries, Wildlife
Oceans and Insular Affairs
1329 Longworth House Office Building
Washington, DC 20515

Dear Chairmen Hastings and Fleming, Ranking Members Markey and Sablan and Committee Members,

The Yakama Nation is pleased that the full committee will be marking up HR 3069, the "Endangered Salmon and Fisheries Predation Prevention Act" this week. As indicated in the bill's text, this legislation proposes to amend the Marine Mammal Protection Act of 1972 to reduce predation on endangered Columbia River salmon.

I was honored to represent both the Yakama Nation, where I chair the Fish and Wildlife Committee, and the Columbia River Inter-Tribal Fish Commission (CRITFC) when I testified before the Subcommittee on June 14 in support of this legislation. In addition to the Yakama Nation, the other members of CRITFC are the Warm Springs and Umatilla Tribes of Oregon and the Nez Perce Tribe of Idaho. We all enthusiastically support HR 3069 for the reasons laid out in my testimony and quite simply to stem the tide against the serious damage predatory sea lions are doing to fragile runs of salmon in the Columbia River. We appreciate the fact that HR 3069 has bi-partisan sponsorship and is supported by the Fish and Wildlife Departments of the various state governments in the Northwest. We were glad that representatives of the States of Oregon and Washington testified with us in June, urging passage.

It is important that the members of the Committee understand that a relatively small number of sea lions (perhaps a couple hundred) have learned to swim 135 miles upstream in the Columbia River from the Pacific all the way to Bonneville Dam. Once at Bonneville the salmon, that we and the states and the Federal government are working so hard to restore, must go up a fish ladder in order to continue their amazing trek to their spawning grounds further upriver. In doing so they are following a hereditary pattern they have followed for thousands of years. These sea lions have learned that if they wait at the bottom of the fish ladder and in the river miles below, they can consume massive numbers of defenseless salmon. This is not a situation of one species in the wild versus another. Once man forced the salmon to get upstream via the Bonneville ladder we changed the equation and we must act to ensure this endangered species is not further damaged. These salmon have tremendous value to the Indian people who rely on them for sustenance, for our cultural and religious ceremonies and for income. They also have great value to our non-Indian neighbors and to the economy of the Pacific Northwest. Furthermore, the electric ratepayers of our region are paying a lot of money to protect this icon.

We must not allow for a repetition of what happened in the Seattle area at Ballard Locks in the 1970s when sea lions learned that if they stayed in the locks while the Winter run Steelhead were returning to Lake Washington that they could gorge themselves on massive quantities of fish. Then the Washington State Department of Fisheries, after trying all manner of non-lethal hazing as well as catching and moving sea lions, endeavored to remove the most problematic sea lions through lethal action. The Humane Society fought the state and tied their hands for such a long time that the Lake Washington Winter Run Steelhead essentially went extinct. It is no longer considered a valid run.

I was concerned by some of the misleading statements we heard at the June hearing from Sharon Young, a witness opposing the bill on behalf of the same entity that was so incredibly shortsighted in their actions at Ballard Locks. Perhaps most misleading was her suggestion that sea lions were only taking 1.2 to 2.4 percent of the spring Chinook salmon run. She suggested that such low numbers should not lead to the lethal take of any sea lions. These percentages are supplied by the Army Corps of Engineers and are based on the number of sea lions with salmon in their mouths that they can physically see while standing on top of Bonneville Dam. Mr. Chairman and committee members this is somewhat akin to me telling you how many goldfinches exist in central Washington and what their diet might be based on the number I can see in my backyard. It is not reflective of the problem. The Columbia is a massive river. According to the professional biologists who work for Oregon, Washington and our tribes if you only had 100 sea lions in question and they ate a diet of 8 kg of salmon a day for the 100 days that they are present each spring, they would take close to 13,000 salmon. Mr. Robin Brown, Oregon's marine mammal expert (and a witness at the hearing) estimates even higher numbers by taking into account a longer stretch of the river at and below the dam. His data suggests that sea lions are taking 16-20% of the spring Chinook run in the river. To allow for necessary escapement and propagation of the species in the Oregon v Washington litigation it was agreed that on a total run size of 200,000 salmon, that human harvest (including Indians practicing a treaty right that has been affirmed by the Supreme Court), needed to be limited to 11% of the run, potentially half the number being taken by predatory sea lions.

Ms. Young also stated that sea lions have always existed well up the Columbia and that Lewis and Clark documented their presence. In fact what Lewis and Clark reported (see their journal entry of February 3, 1806) was the presence of harbor seals, not sea lions. Archeological collections support the presence of harbor seals but provide no historical evidence of sea lions in this area. Swimming 135 miles upriver is a learned behavior practiced by a few of the over 300,000 sea lions estimated to exist in the Pacific. It should be observed that California Sea Lions are now fully recovered from the numbers seen in the 1970s. We wish the same could be said for threatened salmon. The legislation introduced by Doc Hastings and Norm Dicks would allow for the removal of only the problematic sea lions after they were identified. We hope you will support it.

Thank you.

Sincerely,



Virgil Lewis, Chairman
Fish and Wildlife Committee
Yakama Tribal Council



COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

729 NE Oregon, Suite 200, Portland, Oregon 97232

Telephone 503 238 0667

Fax 503 235 4228

October 5, 2011

Honorable Doc Hastings, Chairman
House Natural Resource Committee
1324 Longworth House Office Building
Washington, DC 20515

Re: The Endangered Salmon and Fisheries Predation Prevention Act (HR 3069)

Dear Chairman Hastings:

The Columbia River Inter-Tribal Fish Commission (CRITFC) was formed in 1977 by resolutions from the four Columbia River treaty tribes: Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Warm Springs Reservation of Oregon, Confederated Tribes and Bands of the Yakama Nation, and Nez Perce Tribe. CRITFC's mission is to ensure a unified voice in the overall management of the fishery resource and to assist in protecting reserved treaty rights through the exercise of the inherent sovereign powers of the tribes. CRITFC provides coordination and technical assistance to the tribes in regional, national and international efforts to ensure that outstanding treaty fishing rights issues are resolved in a way that guarantees the continuation and restoration of our tribal fisheries into perpetuity.

California sea lion problems exist in many waters along the Pacific coast but perhaps nowhere more alarmingly than in the Columbia River. That is why we support *The Endangered Salmon and Fisheries Predation Prevention Act* and encourage swift passage into law. This legislation will help us employ new alternatives to provide us with a means to help us deal with only those select animals responsible for the greatest impact. This legislation can ease the depredation occurring on our treaty protected resources as well as help curb predation on ESA listed species over the next five critical years. We should not be forced to stand back as sea lions cause other species, such as sturgeon and lamprey, to become listed under ESA.

The tribes, along with the states and NOAA, estimate 18,000 to 25,000 adult salmonids are lost to sea lions annually between Bonneville Dam and the mouth of the river. At Bonneville Dam salmon are concentrated at fish ladder entrances making them particularly vulnerable to sea lion predation. In addition, impacts by sea lions are disproportionately distributed on the early portion of the run. During March and April there are many days when the take by sea lions exceeds the fish count in the ladders. We are concerned that these early returning fish may be from stocks that are most at risk of

extinction. Every year a few sea lions pass through the Bonneville Dam lock. These animals damage fishing gear and steal salmon from our fishers. In 2009 and again in 2011, a California sea lion spent the entire summer upstream of the dam impacting fishers and feeding on fish as they exited the fish ladders.

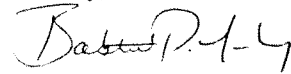
The latest available sampling data beginning in 2001 shows that each year slightly over 30% of the spring salmon passing through Bonneville's fish ladder have suffered some form of injury caused by marine mammals. Those salmon that escape with harsh wounds are less likely to survive their upstream journey and unlikely to successfully spawn. Tribal and non-tribal fishermen who harvest these injured fish cannot fully utilize them for their subsistence, sport and commercial value.

There are provisions for de-listing species under the ESA; something we all aspire to achieve with salmon. The same consideration should be given to marine mammals who have achieved their optimum sustainable populations as provided under the MMPA. We agree with the legislative language calling for the Secretary of Commerce to issue Congress a report on the issue of marine mammal predation on ESA listed species. MMPA is overdue for reauthorization and we urge Congress and the Administration to take this matter up and reconcile the disparity over one species being caught in the middle when two environmental protection laws clash.

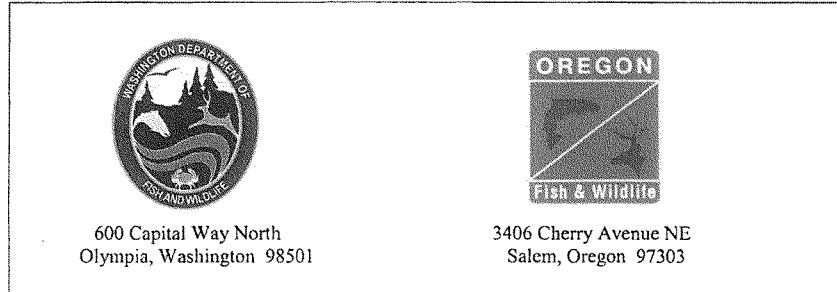
The U.S. made many promises beginning in 1855 with our treaties and subsequently when the dams were constructed. The treaty rights are meant to preserve our physical, cultural and economic livelihood. The U.S. committed to protecting these rights. We were further promised that any harm done to our fisheries attributed to the dams would be taken care of. Bonneville Dam has created an artificial situation the sea lions have learned to exploit. It is not our interest to select one species over another. Rather, we do accept the responsibility to strive for balance in a radically altered system. To that end we particularly endorse the inclusion of tribal management in H.R. 3069, the lack thereof being a weakness in the original Marine Mammal Protection Act that persists today.

We need effective management tools to deal with the growing sea lion depredation timely solutions to protect our ceremonial, subsistence and commercial harvests for salmon, lamprey and sturgeon. Therefore we support HR 3069 and encourage its timely passage into law.

Sincerely,



Baptist Paul Lumley
Executive Director



October 3, 2011

The Honorable Doc Hastings
Chair, Committee on Natural Resources
U.S. House of Representatives
1324 Longworth House Office Building
Washington, D.C. 20515

Dear Representative Hastings:

The Washington Department of Fish and Wildlife (WDFW) and Oregon Department of Fish and Wildlife (ODFW), the state agencies that jointly manage the lower Columbia River to protect and enhance fish and wildlife resources, support the amendment to the Marine Mammal Protection Act as provided in the Endangered Salmon and Fisheries Predation Protection Act, H.R. 3069.

We are encouraged that the provisions of H.R. 3069 will enable our respective agencies and our co-managers to more effectively manage the unusual and increasing behavior by members of healthy and growing sea lion populations that travel as far as 145 miles inland to feed on endangered salmon and other fishery resources.

Extensive actions have been taken and billions of dollars are being spent to improve the survival of Columbia River salmon populations. The recovery plans for the endangered salmon include reductions in all sources of mortality, including harvest, dam operations, hatchery reform, habitat restoration, and predation. No other source of salmon mortality would be allowed to rise from low levels just ten years ago to such high levels today. If the states, tribes, and federal governments are unable to effectively manage the sea lion predation, it is likely to continue to increase and offset improvements and expenditures from other recovery actions in the basin.

We appreciate the work the Natural Resource Committee has put into H.R. 3069. We are encouraged and hopeful that it will be passed by Congress and enable a more effective and

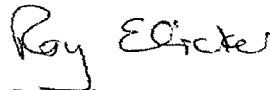
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efficient legal mechanism for the state, federal, and tribal governments of the Northwest to address this challenge in recovering and protecting Columbia River fishery resources.

Sincerely,



Philip Anderson
Director
Washington Department of Fish and Wildlife



Roy Ellicker
Director
Oregon Department of Fish and Wildlife

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