

Committee on Natural Resources

Rob Bishop, Chairman
Markup Memorandum

July 24, 2017

To: All Natural Resources Committee Members

From: Majority Committee Staff
Subcommittee on Water, Power and Oceans (x5-8331)

Mark-Up: **H.R. 2083 (Rep. Jaime Herrera Beutler, R-WA)**, 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.
July 25-26, 2017; 1324 Longworth House Office Building

H.R. 2083 (Rep. Jaime Herrera Beutler, R-WA), *“Endangered Salmon and Fisheries Predation Prevention Act”*

Bill Summary:

To assist the recovery of Endangered Species Act (ESA) listed salmon in the Columbia River watershed and to protect tribal ceremonial, subsistence and commercial fisheries, H.R. 2083 authorizes the U.S. Secretary of Commerce to issue expedited permits authorizing states and tribes to lethally take California sea lions and non-ESA listed Steller sea lions (hereinafter referred to as “sea lions”) under certain conditions.

Cosponsors:

Reps. Kurt Schrader (D-OR), Dan Newhouse (R-WA), Don Young (R-AK)

Background:

The Lower Columbia River is home to multiple species of salmon listed under the Endangered Species Act (ESA), including the Lower Columbia River chinook, steelhead, coho, and chum salmon.¹ A 2013 ESA recovery plan for these species released by the National Oceanic and Atmospheric Administration (NOAA) cited marine mammal predation, specifically by California sea lions, as a significant factor in the initial species listings and a hurdle to their recovery.² Further, testimony submitted by a NOAA official to the Committee on Natural Resources during the 114th Congress stated that the agency is “very concerned about the impact

¹ [National Oceanic and Atmospheric Administration – Lower Columbia River Salmon and Steelhead ESA Recovery Plan Executive Summary. June 2013](#)

² [Id at 1](#)

robust populations of pinnipeds in the Columbia River and elsewhere in the Pacific Northwest are having on ESA-listed salmon and steelhead stocks.”³



Sea lion feeding on a chinook salmon near Bonneville Dam on the Columbia River.

Source: Oregon Department of Fish & Wildlife

The NOAA official further testified that “from 2002-2015, California sea lions consumed an estimated 46,000 salmonids within a quarter mile of the Bonneville Dam.”⁴ Written testimony submitted by the Columbia River Inter-Tribal Fish Commission (CRITFC) in the 115th Congress, however, states that sea lion consumption has dramatically increased since. According to CRITFC Chairman Leland Bill, sea lions killed over 8,900 salmon in the same area in just 2016 alone.⁵

The Marine Mammal Protection Act (MMPA), enacted in 1972, prohibits, with certain exceptions, the lethal take of any marine mammal in United States waters and by United States citizens on the high seas.⁶ NOAA, the agency that implements and enforces MMPA as well as ESA-listed salmon and steelhead species, defines a “marine mammal” as any species of dolphin, porpoises, whales, seals, and sea lions.⁷ In a June 2013 Committee on Natural Resources hearing, Mr. Guy Norman, Regional Director of the Washington Department of Fish and Wildlife, discussed how the MMPA increased sea lion populations and the effects of the population increases:

“The effects of certain natural predators of salmon in the [Lower Columbia River] basin has increased dramatically from historic levels...due to increased numbers of predators due to various protection measures, including the Marine Mammal Protection Act...The U.S. California sea lion population has rebounded since the MMPA was enacted and is now estimated at nearly 310,000 animals.... Male California sea lions have learned a new behavior, with many of the animals swimming 145 miles up the Columbia River in the winter and spring to prey on threatened adult salmon...”⁸

³ [Submitted testimony of Mr. Barry Thom, NMFS Deputy West Coast Regional Administrator, to the House Committee on Natural Resources, 114th Cong. Legislative Hearing on H.R. 564, July 23, 2015](#)

⁴ [Id at 3](#)

⁵ [Submitted testimony of the Honorable Leland Bill, Chairman of the Columbia River Tribal Fish Commission, to the House Committee on Natural Resources, 115th Cong. Legislative Hearing on H.R. 2083, June 8, 2017](#)

⁶ <http://www.nmfs.noaa.gov/pr/laws/mmpa/>

⁷ <http://www.nmfs.noaa.gov/pr/species/mammals/>

⁸ [Submitted testimony of Mr. Guy Norman, Regional Director - Washington Department of Fish and Wildlife, to the House Committee on Natural Resources, 113th Cong. Legislative Hearing on H.R. 1308, June 13, 2013](#)

Currently, Section 120 of MMPA allows States to apply to the Secretary of Commerce (Secretary) for intentional lethal taking of specific “individually identifiable” predator seals and sea lions that are having a significant negative impact on ESA listed salmon stocks.⁹ NOAA authorized the States of Oregon, Washington and Idaho to permanently remove sea lions in 2008.¹⁰ This authority to the states was reauthorized by NOAA in 2016.¹¹ In that period, the Oregon Department of Fish and Wildlife estimates that 166 sea lions have been taken under this authority.¹² However, some – including the States and Columbia River tribes – believe that the current federal application process needs an update.

The history of seemingly endless litigation challenges by certain groups surrounding issuance of these permits¹³ and the permit requirement are some reasons cited for the introduction of H.R. 2083. As Mr. Norman indicated: “[T]he conditions associated with the current requirements of Section 120 of the Marine Mammal Protection Act (MMPA) are challenging and expensive to implement, limited in scope, and legal challenges have slowed the progress in reducing impacts to salmon.”¹⁴ In addition, tribal requests to be eligible entities under Section 120 of the MMPA are further reasons for the bill.¹⁵

H.R. 2083 would clarify the authority and streamline the process afforded to the Secretary of Commerce under Section 120 of the MMPA to allow for lethal take of sea lion populations that are decimating ESA-listed salmon, steelhead and other non-listed species, such as white sturgeon, in the Lower Columbia River. The goal of the bipartisan legislation is to provide ESA-listed salmon in the Lower Columbia River a habitat where they can recover while controlling the stocks of sea lions on a limited basis. In CRITFC Chairman Leland Bill’s written testimony to the Subcommittee on Water, Power and Oceans he states, “H.R. 2083 is informed by evaluations from fisheries and marine mammal experts and will allow us to employ a management regimen that is appropriate for the Columbia River taking into consideration the years of data, observation and resources available.”¹⁶ Some have criticized the National Environmental Policy Act (NEPA) exemption.¹⁷ However, a Columbia River Inter-Tribal Fish Commission witness testified that “the real challenge has been NOAA’s ability to shepherd any

⁹ [16 U.S.C. 1389](#)

¹⁰ [Submitted testimony of Rear Admiral Gerd Glang, Director of Office and Coast Survey for the National Oceanic and Atmospheric Administration, to the House Committee on Natural Resources, 113th Cong. Legislative Hearing on H.R. 1308, June 13, 2013, at 2](#)

¹¹ [The Oregonian: NOAA Authorizes Oregon to continue killing sea lions to save endangered fish, Kale Williams, July 6, 2016](#)

¹² <http://www.dfw.state.or.us/fish/SeaLion/>

¹³ http://www.humanesociety.org/news/press_releases/2012/03/HSUS_file_suit_sea_lion_031912.html

¹⁴ [Submitted testimony of Mr. Guy Norman, Regional Director - Washington Department of Fish and Wildlife, to the House Committee on Natural Resources, 113th Cong. Legislative Hearing on H.R. 1308, June 13, 2013.](#)

¹⁵ [Submitted testimony of The Honorable Leotis McCormack, Commissioner of the Columbia River Inter-Tribal Fish Commission, to the House Committee on Natural Resources, 114th Cong., Legislative Hearing on H.R. 564, July 23, 2015](#)

¹⁶ [Submitted testimony of the Honorable Leland Bill, Chairman of the Columbia River Tribal Fish Commission, to the House Committee on Natural Resources, 115th Cong. Legislative Hearing on H.R. 2083, June 8, 2017](#)

¹⁷ [Dissenting views on H.R. 564, House Report 114-830, November 17, 2016](#)

decision through the NEPA process and to withstand relentless legal challenges by well-funded special interest groups.”¹⁸

Major Provisions/Analysis of H.R. 2083:

Section 4 of H.R. 2083 amends Section 120 of the MMPA (16 U.S.C. 1389) to authorize the Secretary of Commerce to issue permits to eligible entities authorizing the intentional lethal take of sea lions on the waters of the Columbia River and its tributaries as long as the sea lions are part of a non-listed ESA population. This section defines “eligible entities” as the States of Washington, Oregon, and Idaho, as well as 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, the Columbia River Inter-Tribal Fish Commission, and the Cowlitz Indian Tribe.

Each permit issued is active for one year from the date of issuance and authorizes the take of up to 100 sea lions. Permits may be renewed for an additional year at the discretion of the Secretary. This section also sets an annual cumulative limit for lethal takes of sea lions to “10 percent of the annual potential biological removal level.”

This section also directs the Secretary to approve or deny an application for a permit not later than 30 days after receiving the application. Further, this section states that NEPA does not apply with respect to the issuance of any permit under the authority of the bill during the five year period beginning on the date of the enactment. Permitting can expire five years after enactment if the Secretary determines that lethal removal authority is no longer necessary to protect salmonid and other fish species from sea lion predation.

Cost:

The Congressional Budget Office (CBO) has not completed a cost estimate of H.R. 2083. However, in the 114th Congress, CBO indicated that a nearly identical bill (H.R. 564) “would have a negligible impact on the federal budget. . . .”¹⁹

Administration Position:

The Administration has signaled support for the bill²⁰

¹⁸ [Submitted testimony of The Honorable Leotis McCormack, Commissioner of the Columbia River Inter-Tribal Fish Commission, to the House Committee on Natural Resources, 114th Cong., Legislative Hearing on H.R. 564, July 23, 2015](#)

¹⁹ [Congressional Budget Office cost estimate of H.R. 564, September 22, 2016](#)

²⁰ Submitted Comments from the National Oceanic and Atmospheric Administration on H.R. 2083 to the House Committee on Natural Resources, June 23, 2017

Effect on Current Law (Ramseyer):

Showing current law as amended by H.R. 2083

[new text is highlighted in yellow; text to be deleted is bracketed and highlighted in blue]

Section 120(f) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1389(f))

(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 4107(c) of this title 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 to authorize the intentional lethal taking on the

waters of the Columbia River and its tributaries of individually identifiable sea lions that are part of a population that is not categorized under this Act as depleted for the purpose of protecting species of salmon that are listed as endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) 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 100 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 10 percent of the annual potential biological removal level.

(4) TRAINING IN NATURAL RESOURCES MANAGEMENT.—Permit holders exercising lethal removal authority pursuant to this Act shall be trained in natural resource management.

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

(6) 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.

(7) SUSPENSION OF PERMITTING AUTHORITY.—If, 5 years after the date of the enactment of this subsection, 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, the Secretary may suspend the issuance of permits under this subsection.

(8) 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, the Columbia River Inter-Tribal Fish Commission, and the Cowlitz Indian Tribe.

(9) INDIVIDUAL PINNIPED EXCEPTION.—For purposes of this section, any pinniped located upstream of river mile 112 of the Columbia River and all tributaries that include spawning habitat of threatened or endangered salmon or steelhead is deemed to be individually identifiable.