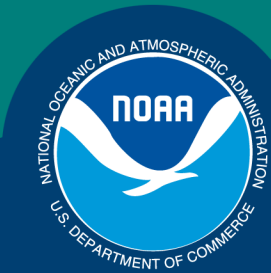


Science, Service, Stewardship



Marine Mammal Protection Act §120–Pinniped Removal Authority

MMPA §120 Pinniped–Fishery Interaction Task Force Program Evaluation Bonneville Dam

NOAA

**NOAA
FISHERIES
SERVICE**

January 12, 2022

Robert Anderson
National Marine Fisheries Service

Marine Mammal Protection Act §120 Program Overview

- Overview of §120 of the MMPA and removal program at Bonneville Dam
- Program Evaluation
- Questions

MMPA §120-Pinniped Removal Authority

Pacific Coast Task Force; Gulf of Maine
16 U.S.C. 1389

Sec. 120. (a) PINNIPED REMOVAL AUTHORITY. — Notwithstanding any other provision of this title, the Secretary may permit the intentional lethal taking of pinnipeds in accordance with this section.

(b) APPLICATION. —

(1) A State may apply to the Secretary to authorize the intentional lethal taking of individually identifiable pinnipeds which are having a significant negative impact on the decline or recovery of salmonid fishery stocks which—

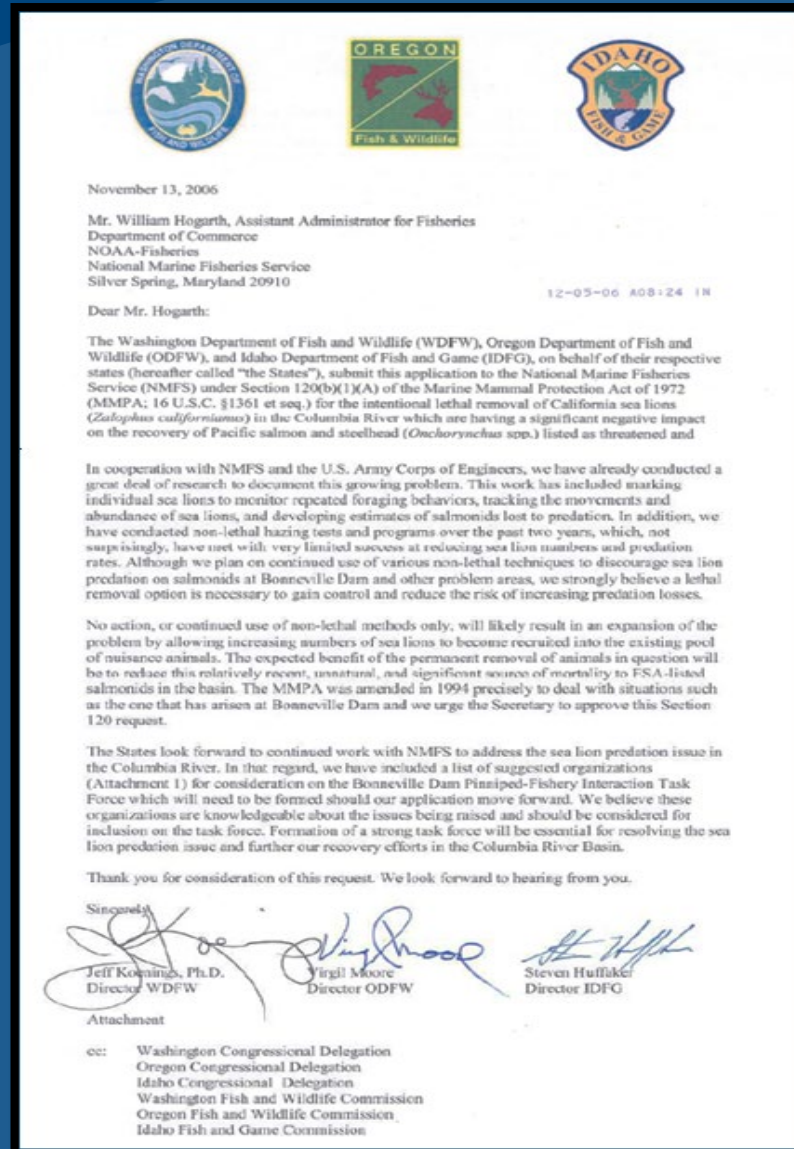
(A) have been listed as threatened species or endangered species under the Endangered Species Act of 1973 (16 U. S.C. 1531 et seq.);

(B) the Secretary finds are approaching threatened species or endangered species status (as those terms are defined in that Act); or

(C) migrate through the Ballard Locks at Seattle, Washington.

(2) Any such application shall include a means of identifying the individual pinniped or pinnipeds, and shall include a detailed description of the problem interaction and expected benefits of the taking.

States of Oregon, Washington, and Idaho MMPA §120 Application



MMPA §120-Pinniped Removal Authority

Pacific Coast Task Force; Gulf of Maine
16 U.S.C. 1389

(c) ACTIONS IN RESPONSE TO APPLICATION. —

(1) Within 15 days of receiving an application, the Secretary shall determine whether the application has produced sufficient evidence to warrant establishing a Pinniped-Fishery Interaction Task Force to address the situation described in the application. If the Secretary determines sufficient evidence has been provided, the Secretary shall establish a Pinniped-Fishery Interaction Task Force and publish a notice in the Federal Register requesting public comment on the application.

(2) A Pinniped-Fishery Interaction Task Force established under paragraph (1) shall consist of designated employees of the Department of Commerce, scientists who are knowledgeable about the pinniped interaction that the application addresses, representatives of affected conservation and fishing community organizations, Indian Treaty tribes, the States, and such other organizations as the Secretary deems appropriate.

(3) Within 60 days after establishment, and after reviewing public comments in response to the Federal Register notice under paragraph the Pinniped-Fishery Interaction Task Force shall—

(A) recommend to the Secretary whether to approve or deny the proposed intentional lethal taking of the pinniped or pinnipeds, including along with the recommendation a description of the specific pinniped individual or individuals, the proposed location, time, and method of such taking, criteria for evaluating the success of the action, and the duration of the intentional lethal taking authority; and

(B) suggest nonlethal alternatives, if available and practicable, including a recommended course of action.

(4) Within 30 days after receipt of recommendations from the Pinniped-Fishery Interaction Task Force, the Secretary shall either approve or deny the application. If such application is approved, the Secretary shall immediately take steps to implement the intentional lethal taking, which shall be performed by Federal or State agencies, or qualified individuals under contract to such agencies.

(5) After implementation of an approved application, the Pinniped-Fishery Interaction Task Force shall evaluate the effectiveness of the permitted intentional lethal taking or alternative actions implemented. If implementation was ineffective in eliminating the problem interaction, the Task Force shall recommend additional actions. If the implementation was effective, the Task Force shall so advise the Secretary, and the Secretary shall disband the Task Force.

MMPA §120-Pinniped Removal Authority

Pacific Coast Task Force; Gulf of Maine
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(d) CONSIDERATIONS. — In considering whether an application should be approved or denied, the Pinniped-Fishery Interaction Task Force and the Secretary shall consider—

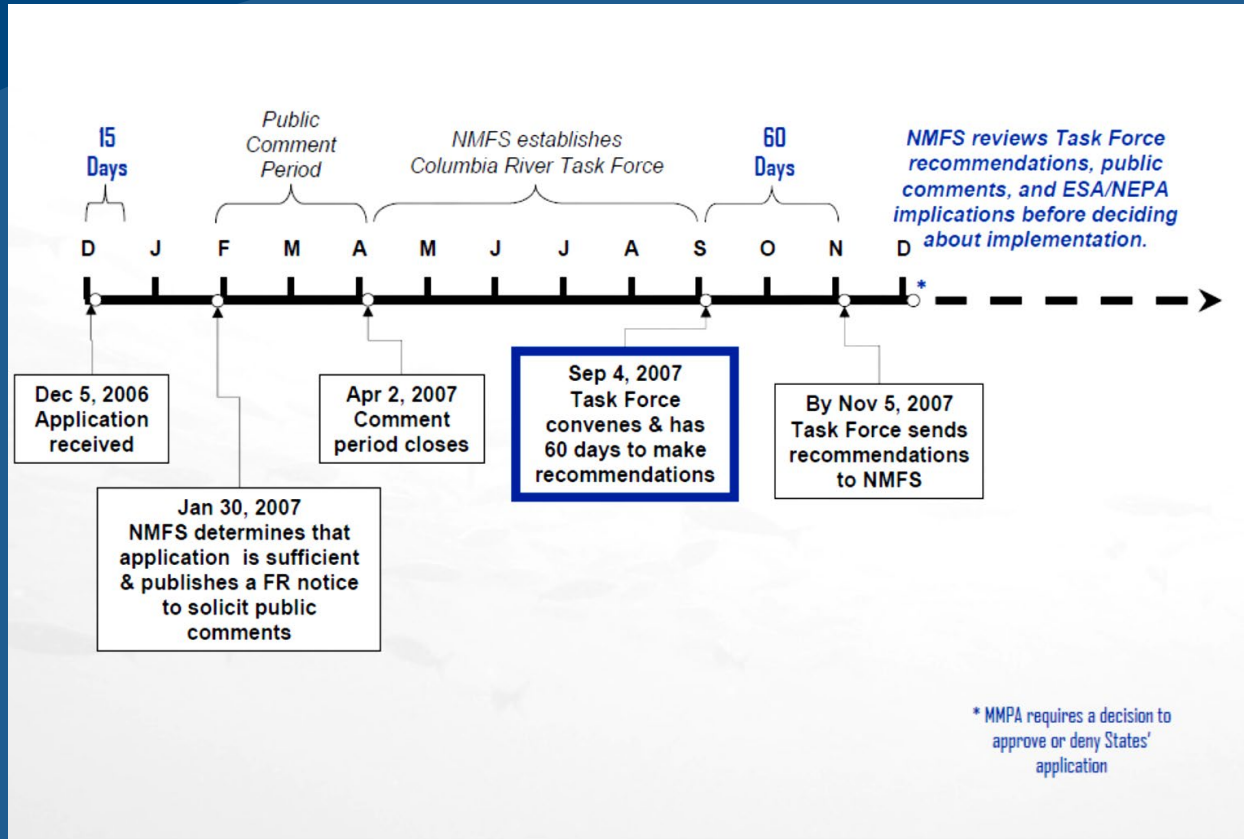
(1) population trends, feeding habits, the location of the pinniped interaction, how and when the interaction occurs, and how many individual pinnipeds are involved;

(2) past efforts to nonlethally deter such pinnipeds, and whether the applicant has demonstrated that no feasible and prudent alternatives exist and that the applicant has taken all reasonable nonlethal steps without success;

(3) the extent to which such pinnipeds are causing undue injury or impact to, or imbalance with, other species in the ecosystem, including fish populations; and

(4) the extent to which such pinnipeds are exhibiting behavior that presents an ongoing threat to public safety.

MMPA §120-Pinniped Removal Authority



The state's 2006 application was submitted to NMFS HQ. At the time, the MPPA §120 program was administered by NMFS HQ.

The West Coast Region (then the Northwest Region) received the state's MPPA §120 application on December 5, 2006.

The MPPA §120 program authority was delegated from HQ to the West Coast Region in 2015.

Task Force Report - November 2007

**FINAL REPORT AND RECOMMENDATIONS
OF THE
MARINE MAMMAL PROTECTION ACT,
SECTION 120**

**PINNIPED-FISHERY INTERACTION TASK FORCE:
COLUMBIA RIVER**

November 5, 2007



2008 Letter of Authorization



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

MAR 17 2008

Mr. Roy Elicker
Director
Oregon Department of Fish and Wildlife
3406 Cherry Avenue, Northeast
Salem, Oregon 97303

Dear Mr. Elicker:

Your co-signed request to the Assistant Administrator for Fisheries, National Marine Fisheries Service (NMFS) to authorize the intentional lethal taking of California sea lions that prey on salmon and steelhead (salmonids), listed under the Endangered Species Act (ESA), below Bonneville Dam in the lower Columbia River has been partially approved with specific conditions.

As you are aware, a pinniped fishery-interaction task force was established under section 120 of the Marine Mammal Protection Act (MMPA) to review your application and make recommendations to NMFS on whether lethal removal should be approved and suggest non-lethal alternatives, if available and practicable. The task force convened three meetings, which were open to the public, and reviewed and discussed pertinent information on California sea lions, ESA listed and unlisted salmonids, and the nature and extent of the interaction between these species at the dam, as well as past measures and considerations for reducing or eliminating the sea lion - salmonid interaction. Applying these factors and considerations, all but one member of the task force concluded that California sea lions are having a significant negative impact on the recovery of Columbia Basin threatened and endangered salmonids (the dissenting member maintained that the level of pinniped predation at Bonneville Dam is not significant when considered in the context of other sources of mortality, such as hydropower operations and harvest).

After reviewing and considering (1) the States' application, (2) public comment on the States' application, (3) the task force report, (4) comments and information presented by the Marine Mammal Commission, and (5) other information related to sea lion predation on salmon and steelhead at Bonneville Dam, NMFS prepared a draft Environmental Assessment (EA) pursuant to the National Environmental Policy Act (NEPA). The draft EA, Reducing the Impact on At-risk Salmon and Steelhead by California Sea Lions in the Area Downstream of Bonneville Dam on the Columbia River, Oregon, and Washington, was released for public comment on January 18, 2008 (73 FR 3453). After considering the comments on the draft EA and completing its regulatory reviews under NEPA, ESA, and the MMPA, NMFS has decided to grant authority to the States to lethally remove identified California sea lions. This letter serves as authorization under MMPA section 120 for the lethal removal of individually identifiable predatory California sea lions that are having a significant negative impact on the decline or recovery of ESA listed salmonids at Bonneville Dam. Lethal removal is authorized only if the States are in compliance with the following terms and conditions.

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“This letter serves as authorization under the MMPA §120 for the lethal removal of individually identifiable predatory California sea lions that are having a significant negative impact on the decline or recovery of ESA-listed salmonids in the vicinity of Bonneville Dam.”

MMPA §120 Authorizations at Bonneville Dam – A Brief History

On **March 17, 2008**, NMFS issued a Letter of Authorization (LOA) to the states authorizing them to remove certain California sea lions having a significant negative impact on ESA-listed salmon and steelhead. Our action immediately faced legal challenge. On November 23, 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) instructed the district court to vacate our lethal removal authorization and remand the decision to us for further explanation. The states' again requested authorization to lethally remove California sea lions from the Columbia River on December 7, 2010.

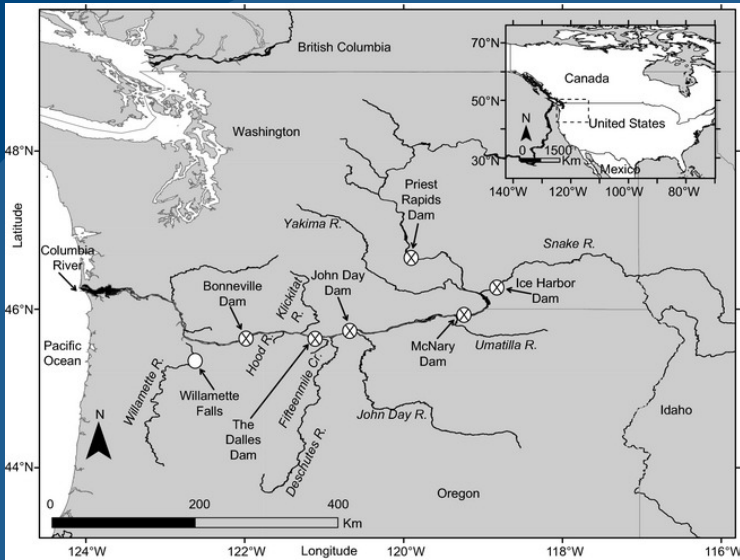
We reviewed the instructions from the district court, evaluated the states' request, and on **May 12, 2011**, we issued another LOA to the states. In doing so, we also provided the additional explanation required by the district court, prepared a NEPA Supplemental Information Report, and prepared a memorandum addressing ESA consultation for the proposed authorization. The 2011 LOA was challenged in Federal district court in Washington, D.C. The plaintiffs alleged, similar to the 2008 lawsuit, that our issuance of the §120 Letter of Authorization violated the MMPA and NEPA. To ensure full compliance with all procedural requirements of §120, we notified the states on July 26, 2011, that we were withdrawing the 2011 LOA. The plaintiffs voluntarily dismissed their lawsuit after learning that we withdrew the LOA.

On August 18, 2011, the states submitted a new request for the lethal removal of California sea lions at Bonneville Dam under essentially the same conditions as our prior authorizations. We published the states' application in the Federal Register on September 12, 2011, and requested comment on the application and other relevant information concerning the pinniped-salmonid conflict at Bonneville Dam. We reconvened the Task Force, as required under the MMPA in October 2011 to evaluate the states' application and public comments and to recommend whether we should approve or deny the proposed intentional lethal taking program. The Task Force's final report and recommendation were produced on November 14, 2011. On **March 15, 2012**, we issued a new LOA to the states. In September 2013, the Ninth Circuit affirmed and upheld our action to grant the states the 2012 LOA.

On January 27, 2016, the states submitted a new request for the lethal removal of California sea lions at Bonneville Dam under essentially the same conditions as our prior authorizations. On **June 28, 2016**, we issued a new MMPA §120 authorization to the states, and **April 17, 2019**, based on recommendations from the Task Force, we issued the states a revised MMPA §120 authorization. That authorization expired on June 30, 2021.

MMPA §120 Bonneville Dam, Columbia River, Washington and Oregon

MMPA Authorizations: 2008, 2011, 2012, 2016, 2019



CSL C404, Bonneville Dam. R. Stansell, Corps.

At Bonneville Dam, consumption estimates by all pinnipeds on spring-run Chinook salmon has ranged from a low of 0.4 percent of the runs in 2002 to a high of 5.9 percent of the runs in 2016. Consumption estimates on steelhead runs has ranged from a low of 2.2 percent in 2014 to a high of 11 percent of the runs in 2009. In 2020, consumption estimates were 2.5 percent and 8.7 percent of the spring-run Chinook salmon run and steelhead runs (2019), respectively (no consumption data are available for steelhead in 2020 due to COVID-19).



Photo Credit: L.E. Baskow

Summary of California sea lion removals under states' Bonneville Dam MMPA §120 removal authorization. Removals are categorized by location, season, and outcome. Accidental mortalities are further categorized by whether animals were on the list for removal or had qualified to be on the list.

Year	Bonneville Dam				Euthanized	Willamette Falls Euthanized (spring)	Astoria		Total
	Placed in captivity	Accidental mortality		Euthanized (spring)			Euthanized (spring)	Euthanized (fall)	
		On list	Qualified						
2008	6	2	1	2				11	
2009	4				10		1	15	
2010					12		2	14	
2011						1		1	
2012	1				11		1	13	
2013	2				2			4	
2014					15			15	
2015	2			2	30			34	
2016					59			59	
2017					24			24	
2018					28	1		29	
2019					19	3		22	
2020	NO SEA LION REMOVALS DUE TO COVID-19								
2021					4			4	
Total	15	2	1	4	214	1	1	4	245

Marine Mammal Protection Act §120 Program Evaluation

Purpose of Convening the Task Force:

MMPA 120(c)(5) ACTIONS IN RESPONSE TO APPLICATION.

After implementation of an approved application, the Pinniped-Fishery Interaction Task Force shall evaluate the effectiveness of the permitted intentional lethal taking or alternative actions implemented. If implementation was ineffective in eliminating the problem interaction, the Task Force shall recommend additional actions. If the implementation was effective, the Task Force shall so advise the Secretary, and the Secretary shall disband the Task Force.



MMPA § 120(f) Permit

To address the severity of pinniped predation throughout the Columbia River Basin, NMFS, on August 14, 2020, issued a permit under §120(f)¹ of the MMPA to the eligible entities² to remove CSL and SSL in select areas of the Columbia River Basin.

The MMPA §120(f) permit expires on August 14, 2025.

¹Public Law 115-329, the Endangered Salmon Predation Prevention Act of 2018 (December 18, 2018), amended Public Law 103-238, the MMPA Amendments of 1994, by replacing §120(f) of the MMPA with a new subsection.

²Oregon Department of Fish and Wildlife, the Washington Department of Fish and Wildlife, the Idaho Department of Fish and Game, 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 Willamette Committee.

Questions?

