



March 2, 2012

MEMORANDUM FOR: F/NWO3 – The File

FROM: F/NWO3 – Donna Darm

SUBJECT: National Environmental Policy Act (NEPA) Review of the 2012-2016 Proposal to Authorize the States of Idaho, Oregon and Washington to Lethally Remove California Sea Lions under Section 120 of the Marine Mammal Protection Act (MMPA)

I. Introduction

We, the National Marine Fisheries Service (NMFS), have since 2006 received three requests from the States of Oregon and Washington for authorization under Section 120 of the MMPA to lethally remove California sea lions (*Zalophus californianus*) in the Columbia River. The State of Idaho has joined in two of those requests, including the current request. This memorandum summarizes our compliance with NEPA in responding to these past requests, but focuses particularly on our most recent review of the August 18, 2011, request and our determination that it is unnecessary to supplement our 2008 Environmental Assessment (EA) and Finding of No Significant Impact (FONSI).

A. Current Requested Action

On August 18, 2011, the States of Idaho, Oregon, and Washington (states) requested authorization under Section 120 of the MMPA to lethally remove California sea lions in the Columbia River that are having a significant negative impact on the recovery of Pacific salmon and steelhead (*Onchorhynchus* spp.) listed as threatened or endangered under the Endangered Species Act (ESA). Impacted salmon and steelhead are from multiple listed populations that include lower Columbia River steelhead (threatened), middle Columbia River steelhead (threatened), upper Columbia River spring Chinook (endangered), Snake River spring/summer Chinook (threatened), and Snake River steelhead (threatened).

The states propose to lethally remove individually identifiable predatory California sea lions that are having a significant negative impact on ESA-listed salmonids, defined as animals that have natural or applied features that allow them to be individually distinguished from other California sea lions and:

- have been observed eating salmonids at Bonneville Dam, in the “observation area” below the dam, in the fish ladders, or above the dam, between January 1 and May 31 of any year;



- have been observed at Bonneville dam on a total of any 5 days (consecutive days, days within a single season, or days over multiple years) between January 1 and may 31 of any year; and
- are sighted at Bonneville Dam after they have been subjected to active non-lethal deterrence.

Capture, holding, and euthanasia of individually identifiable predatory California sea lions would be carried out under the guidance of a previously established institutional animal care and use committee. When possible the states would facilitate the transfer of predatory sea lions to pre-approved holding facilities for permanent captivity. The states would not remove more than 1% of the “potential biological removal” (PBR) limit for California sea lions annually and would continue to pursue non-lethal alternatives that reduce both sea lion predation on salmonids and the number of sea lions removed. The requested authorization is for a 5-year period with ability to extend the authorization if program evaluations indicate that such extension is needed.

B. Prior Authorizations Related to the Requested Action

The current request is similar to a previous request submitted by the states on December 5, 2006 (see Table 1 for chronology of events). In response to that request, consistent with the requirements of Section 120, we established a Pinniped-fishery Interaction Task Force (Task Force) to review the states’ application and available data and to recommend whether to approve or deny the application. The Task Force subsequently recommended (with one of 18 members dissenting) that we approve the states’ application for lethal take authority, while continuing non-lethal deterrence measures (Task Force 2007).

We prepared a draft EA under NEPA and made it available for public review (73 Fed. Reg. 3453, January 18, 2008). We considered the public comments on the draft EA and on March 17, 2008 completed a final EA to support a Letter of Authorization partially approving the request (Table 1).

Table 1. Bonneville MMPA Section 120 – Chronology of Events

Date:	Context:	Event:
December 5, 2006	MMPA	Oregon, Washington, Idaho Submit MMPA Section 120 Application for Lethal Removal Authority
January 3, 2007	MMPA	Lohn NMFS/NWR to Hogarth NMFS/AA Decision Memo: Receipt of States' MMPA Application
January 30, 2007	MMPA	72 Fed. Reg. 4239. Receipt of States' MMPA Application and Request for Public Comment
March 13, 2007	ESA	Biological Assessment, Determination that Non-Lethal Deterrence is Not Likely to Adversely Affect ESA Species
April 2, 2007	MMPA	Public Comment Period Closes
July 25, 2007	MMPA	Norberg NMFS/NWR to File Memo: Achieving Equitable Balance of View for the Task Force
July 26, 2007	MMPA	Lohn NMFS/NWR to Hogarth NMFS/AA Decision Memo: Intent to Establish a Task Force
August 9, 2007	MMPA	72 Fed. Reg. 44833. Establishing a Pinniped-Fishery Interaction Task Force
September 4-5, 2007	MMPA	Task Force First Meeting, Portland OR
October 9-10, 2007	MMPA	Task Force Second Meeting, Portland OR
November 5, 2007	MMPA	Task Force Submits Its' Report and Recommendations
November 29, 2007	NEPA	Darm NMFS/NWR to File Memorandum: NEPA Compliance Work Group Recommended Alternatives
January 2, 2008	NEPA	Lohn NMFS/NWR to Rauch NMFS/Dep. AA Issues Advisory Memo: Draft Environmental Assessment
January 18, 2008	NEPA	73 Fed. Reg. 3453. Draft Environmental Assessment and Request for Public Comment
February 19, 2008	NEPA	Public Comment Period Closes
March 11, 2008	ESA	ESA Biological Opinion Consultation # F/NWR 2008/00486
March 12, 2008	MMPA	Lohn NMFS/NWR to Balsiger NMFS/AA Decision Memo: Approval of MMPA Application
March 12, 2008	NEPA	Final Environmental Assessment and Finding of No Significant Impact (FONSI)
March 14, 2008	NEPA	Lohn NMFS/NWR to Weiher NOAA/NEPA Decision Memo: Announcing FONSI
March 17, 2008	MMPA	Lecky NMFS/OPR to Oregon, Washington, Idaho Letter of Authorization (LOA): Authorizing Lethal Removal
March 24, 2008	Litigation	Humane Society of the United States (HSUS) v. Gutierrez et al. District Court, Oregon
March 28, 2008	Litigation	HSUS Request for Injunction
April 16, 2008	Litigation	HSUS Injunction Request Denied, District Court, Oregon
April 17, 2008	Litigation	HSUS Appeal for Emergency Relief
April 23, 2008	Litigation	HSUS Emergency Injunctive Relief Granted, Ninth Circuit

May 4, 2008	MMPA, ESA	Trapping Accident – Four California sea lions and two Steller sea lions die
November 25, 2008	Litigation	Opinion and Order, District Court, Oregon: Plaintiffs' Motion for Summary Judgment Denied
December 5, 2008	Litigation	HSUS Appeal to Ninth Circuit Court
February 20, 2009	ESA	ESA Biological Opinion Consultation # F/NWR 2008/08780 Re-initiation of F/NWR 2008/00486
September 3, 2010	MMPA	Stelle, Jr. NMFS/NWR to Task Force Invitation to Three Year Evaluation of the Lethal Removal Program
October 25-26, 2010	MMPA	Task Force First Evaluation Meeting
November 9-10, 2010	MMPA	Task Force Second Evaluation Meeting
November 23, 2010	Litigation	Opinion and Order, Ninth Circuit Court: NMFS MMPA Decision Vacated and Remanded
December 7, 2010	MMPA	Oregon, Washington, Idaho Request Re-Issuance of MMPA Section 120 Letter of Authorization
December 17, 2010	MMPA	Task Force Submits Three Year Review and Evaluation Report
January 19, 2011	MMPA	NMFS Announces Plan to Issue MMPA Authorization
May 9, 2011	NEPA	2008 Environmental Assessment - Supplemental Information Report
May 10, 2011	ESA	ESA Biological Opinion Updated
May 12, 2011	MMPA	Stelle Jr. NMFS/NWR to Schwaab NMFS/AA Decision Memo: Issuing New Letter of Authorization
May 12, 2011	MMPA	Lecky NMFS/OPR to Oregon and Washington MMPA Letter of Authorization for Lethal Removal
May 19, 2011	Litigation	HSUS v Locke (D.D.C.)
July 22, 2011	MMPA	Lecky NMFS/OPR to Oregon and Washington Revoking Letter of Authorization
August 15, 2011	Litigation	HSUS v Locke: Case voluntarily dismissed by HSUS
August 18, 2011	MMPA	Oregon, Washington, Idaho Submit MMPA Section 120 Application for Lethal Removal Authority
September 12, 2011	MMPA	76 Fed. Reg. 56167. Announcing Receipt of MMPA Section 120 Application and Request for Public Comment
October 12, 2011	MMPA	Public Comment Period Closes
October 24, 2011	MMPA	Task Force New Application Review Meeting
November 14, 2011	MMPA	Task Force Submits Facilitator's Final Report
November 15, 2011	NEPA	NEPA Compliance Working Group 2008 Environmental Assessment Review and Scoping Meeting
February 29, 2012	ESA	ESA Supplemental Biological Opinion Prepared
March 2, 2012	NEPA	2008 Environmental Assessment - Supplemental Information Report Prepared
March 2, 2012	MMPA	NWR Regional MMPA Analysis and Report Prepared
March 2, 2012	NEPA	NEPA Compliance Memo Prepared

C. Distinctions between the 2006 Approved Action and the 2011 Requested Action

In the current request, the states propose to lethally remove California sea lions from the Columbia River in a manner and under conditions that are similar to the original authorization issued in 2008, with two minor exceptions. The specific exceptions/changes in the request include: (1) the elimination of a 1% average salmonid predation rate threshold for suspending lethal removal activities (Condition 15 in the 2008 Letter of Authorization); and (2) modification of the criteria for defining a “individually identifiable predatory California sea lion” to include animals seen taking salmonids in the fish ladders or above Bonneville Dam.

II. Background

A. 2008 Letter of Authorization

On March 17, 2008, we issued a Letter of Authorization, based on the proposed action analyzed in the final EA, which was to partially approve the states’ request for authorization. The Letter of Authorization permitted the states to lethally remove individually identifiable predatory California sea lions that were having a significant negative impact on ESA-listed salmonids under the following terms and conditions:

- 1) California sea lions are defined as *individually identifiable predatory California sea lions that are having a significant negative impact on ESA-listed salmonids* if they display natural or applied features that allow them to be individually distinguished from other California sea lions and
 - a) have been observed eating salmonids in the “observation area” below Bonneville Dam between January 1 and May 31 of any year, and
 - b) have been observed in the observation area below Bonneville Dam on a total of any 5 days (consecutive days, days within a single season, or days over multiple years) between January 1 and May 31 of any year, and
 - c) is sighted in the observation area below Bonneville Dam after they have been subjected to active non-lethal deterrence.
- 2) The California sea lions that were identified as meeting the description in paragraph 1, at the time of the 2008 authorization, were included in an Appendix to the Letter of Authorization. In consultation with the states, the NMFS Northwest Regional Administrator could periodically amend the Appendix to accurately report those individuals that met the description in paragraph 1 and thus, would be authorized for removal.
- 3) The states were prohibited from lethally removing more than 1% of the potential biological removal level (PBR) annually. The PBR for the United States population of California sea lions in 2008 was 8,511. NMFS periodically revises the PBR of California sea lions as new

information becomes available. Any revised PBR calculations would be reported in annual marine mammal stock assessment reports.

- 4) The states had to appoint a standing Animal Care Committee, to be approved by NMFS, composed of qualified veterinarians and biologists to advise the states on protocols for capturing, holding, and euthanizing predatory sea lions.
- 5) The states, in consultation with NMFS, assumed the lead role for the capture of predatory sea lions. Individually identifiable predatory sea lions, captured in a trap were to be held in a temporary holding facility approved by the Animal Care Committee for at least 48 hours prior to being euthanized; pending a determination of the availability of NMFS pre-approved permanent holding facilities. Such sea lions could, in coordination with NMFS, be transferred to a NMFS pre-approved holding facility (research, zoo, aquarium) to be maintained in permanent captivity. If no pre-approved research, zoo, or aquarium facility was willing to accept an animal within 48 hours of its capture, the states were to euthanize it. The method of euthanizing captured predatory sea lions had to be approved by the Animal Care Committee.
- 6) Free-ranging, individually identifiable predatory sea lions could be shot by a qualified marksman when hauled-out onto the concrete apron along the North side of Cascade Island, on the flow deflectors along the base of the dam's spillway, or in the water within 50 feet of the concrete apron or the face of the dam at powerhouse one and two. In all cases the marksman had to shoot from land, the dam, or other shoreline structures. Potential options for lethal removal using firearms were: 1) the marksman could shoot sea lions at close range (less than 25 yards) using a shotgun loaded with a slug or 00 buckshot, when the animal was on shore, and 2) the marksman could shoot sea lions from the powerhouse deck or other shoreline area at ranges greater than 25 yards using a hunting rifle with a minimum caliber of .240, when the animal was on shore or in the water as described above. Ammunition could not contain lead.
- 7) The states were to make all reasonable efforts to retrieve carcasses of animals that had been shot. The states had to monitor nearby downstream areas for stranded animals that had been shot, but not retrieved immediately.
- 8) Safety and security during lethal removal activities were to be provided by the states of Oregon and Washington in coordination with the Columbia Basin Law Enforcement Council. The states would establish an Incident Command Center (ICC) during lethal removal activities. The ICC would direct safety and security and provide a media interface. The ICC would coordinate security and safety activities with the U.S. Army Corps of Engineers, the U.S. Coast Guard, and other agencies as necessary.
- 9) The states were to notify the U.S. Army Corps of Engineers, Portland District, and the Project Manager at Bonneville Locks and Dam, prior to lethal removal operations. The ICC would consult with the Corps regarding road closures or changes to visitation on U.S. Army Corps of Engineers property/dam facilities.

- 10) The states had to ensure that the transfer or disposal of any carcasses was in accordance with applicable law. At NMFS' request and to the extent practicable, the states were to make the carcasses, or tissues from them, of sea lions killed pursuant to the authorization available for use in scientific research or for educational purposes.
- 11) The states were required to report any permanent removals of predatory sea lions (either transferred to permanent captivity or lethally) to the Regional Administrator, NMFS Northwest Region, within 3 days following removal.
- 12) The states were also required to develop and implement a monitoring plan to evaluate 1) the impacts of predation, 2) the effectiveness of non-lethal deterrence, and 3) the effectiveness of permanent removal of individually identifiable predatory sea lions as a method to reduce adult salmonid mortality. To the extent practicable, the states could use data collected by the U.S. Army Corps of Engineers or other agencies to help fulfill the monitoring requirement, to avoid duplication of effort, and to ensure data consistency across programs.
- 13) The states had to submit monitoring reports to the Regional Administrator, NMFS Northwest Region, annually, on or before November 1. The reports were to include a summary of actions taken to reduce predation (non-lethal and lethal), the states' compliance with the terms and conditions of the authorization, and plans for future actions in compliance with the authorization.
- 14) The states could periodically review observation data collected by the U.S. Army Corps of Engineers Fisheries Field Unit to determine if additional individually identifiable California sea lions qualified as predatory (as defined in paragraph 1) and notify the NMFS Northwest Regional Administrator if any additional sea lions were identified. NMFS would then amend the Appendix, as described in paragraph 2.
- 15) After the third year of sea lion removals (in June of 2011), the states and NMFS would review whether the average observed salmonid predation rate had fallen below 1% of the observed fish passage at the dam. If the Regional Administrator, NMFS Northwest Region determined that the predation rate had fallen below 1%, lethal removal would be suspended for the following year.
- 16) The authorization could be modified or revoked by NMFS at any time with 72 hours' notice.
- 17) The authorization was to be valid until June 30, 2012, at which time it could be extended for an additional 5 year period.

Beginning with the issuance of the Letter of Authorization in 2008 through May 2011, 37 individually identifiable predatory California sea lions were intentionally removed under the authorization (10 transferred to captivity, 27 euthanized). Four California sea lions died accidentally when the traps malfunctioned in 2008. One of those four animals was on the list of animals approved for removal.

B. Litigation on 2008 Authorization

Shortly after we issued the 2008 Letter of Authorization, the Humane Society of the United States and others filed a complaint in the U.S. District Court for the District of Oregon. Plaintiffs alleged that our approval of the lethal removal of California sea lions violated the MMPA and NEPA. In November 2008, the district court issued an order upholding our approval of the lethal removal program and evaluation of impacts under NEPA (Table 1). Plaintiffs appealed.

On November 23, 2010, the Ninth Circuit affirmed summary judgment in favor of defendants on plaintiffs' NEPA claim, but reversed summary judgment on plaintiffs' MMPA claim (Table 1). The court instructed the district court to vacate our Section 120 decision and remand the decision "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 (9th Cir. 2010).

C. 2008 NEPA Review and ESA Biological Opinions

In 2008, after convening the Task Force, we reviewed and considered: (1) the state's application; (2) public comment on the states' application; (3) the Task Force report and recommendations, (4) comments and information presented by the Marine Mammal Commission (MMC), and (5) other information about sea lion predation on salmonids at Bonneville Dam. We prepared a draft EA under NEPA and made it available for public review (*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* (73 Fed. Reg., 3453, January 18, 2008)) (NMFS 2008) (Table 1).

To define the purpose and need for the proposed action, the 2008 draft EA described California sea lion predation at Bonneville Dam, efforts by the U.S. Army Corps of Engineers to quantify the predation, efforts by the states to deter the predation through non-lethal means, and the administrative requirements of Section 120. The need for the proposed action in 2008 was to respond to the states' request and the purpose was to support the states' efforts to improve adult salmon survival by reducing California sea lion predation at Bonneville Dam. The proposed action analyzed in the draft EA was to: (1) continue non-lethal deterrence activities; (2) authorize lethal removal of California sea lions; and (3) monitor and evaluate the success of the removals in reducing predation on salmonids. The draft EA analyzed the effects of the proposed action and three alternatives on the human environment:

- Air
- Water Quality
- Marine Mammals
 - California sea lions
 - Steller sea lions
 - Harbor seals
- ESA-listed Salmonids
- Other Fish Species
- Fish Habitat

- Terrestrial Wildlife and Birds
- General Vegetation
- Social and Economic Resources
- Tourism and Recreation
- Cultural Resources
- Noise
- Aesthetics
- Transportation
- Public Services; and
- Safety and Human Health

Following internal scoping, the NMFS Regional Administrator concurred in the recommendation of the NEPA Compliance Working Group that the following resources did not warrant further analysis (Donna Darm, NMFS, memorandum sent to Robert Lohn, Regional Administrator, NMFS, March 29, 2007, regarding NEPA Compliance Working Group):

- Geology and Soils
- Groundwater and Hydrology
- Wetlands
- Listed Plants
- Environmental Justice
- Land Use and Ownership
- Light and Glare

After completing the draft EA we made it available for public comment for 30 days and received over 3,500 comments, including 16 substantive comments. After considering public comments we issued a final EA and FONSI on March 14, 2008 (NMFS 2008a) (Table 1). Separately under the ESA we analyzed the impacts of the proposed action on listed anadromous salmonids, eulachon, and Steller sea lions in ESA biological opinions prepared on March 11, 2008 (Consultation # F/NWR/2008/00486) and February 20, 2009 (Consultation # F/NWR/2008/08780).

We determined, based on the information and analysis contained in the EA, that the proposed action would not significantly impact the quality of the human environment and that preparation of an Environmental Impact Statement under NEPA was not necessary (NMFS 2008a).

D. States' 2010 Request and NMFS' 2011 NEPA Finding

On December 7, 2010, in response to the 2010 Court decision vacating the 2008 authorization, the states requested that the Letter of Authorization be reissued (Table 1). We evaluated the request and developed a Supplemental Information Report (SIR), dated May 9, 2011, to determine whether there was a need to supplement the 2008 final EA and FONSI. We also considered the recently completed Task Force report (*Final Report and Recommendations of the Marine Mammal Protection Act Section 120 Pinniped-fishery Interaction Task Force: Columbia River 3-Year Review and Evaluation, December 17, 2010*) (Task Force 2010)), and prepared a

comprehensive MMPA analysis that took into account the Ninth Circuit's concerns (William Stelle, Jr., Regional Administrator, NMFS, decision memorandum sent to Eric C. Schwab, Assistant Administrator, NMFS, May 12, 2011, regarding authorizing lethal removal of California sea lions on the Columbia River). On May 12, 2011, we reissued a Letter of Authorization to the states, relying on the record supporting the 2008 Letter of Authorization and the new analyses prepared since the Ninth Circuit decision (Table 1) (See <http://www.nwr.noaa.gov/Marine-Mammals/Seals-and-Sea-Lions/Sec-120-Authority.cfm>).

Our May 12, 2011, authorization was the subject of additional litigation and subsequently rescinded on July 22, 2011 (Table 1).¹ On August 18, 2011 the states submitted the current request.

III. Pinniped-fishery Interaction Task Force and Public Comment Processes

Section 120 of the MMPA establishes a process for states to apply for authority to lethally remove "individually identifiable pinnipeds which are having a significant negative impact on the decline or recovery" of salmonids that have been listed under the ESA as threatened or endangered or those that are approaching listed status. 16 U.S.C. § 1389. The application must include a means of identifying the individual pinniped or pinnipeds, a detailed description of the problem interaction, and the expected benefits of removal. If we conclude that the application presents sufficient information to warrant further action, we are to convene a Pinniped-Fishery Interaction Task Force, and the Task Force is required to recommend whether to approve or deny the request. The MMPA also requires NMFS and the Task Force to consider four factors when evaluating whether an application should be approved or denied. These include:

1. Population trends and feeding habits of the pinnipeds; location, timing and manner of the interaction; and number of individual pinnipeds involved,
2. Past non-lethal deterrence efforts 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. Extent to which the pinnipeds are causing undue injury or impact, or imbalance with, other species in the ecosystem, including fish populations, and
4. Extent to which the pinnipeds are exhibiting behavior that presents an ongoing threat to public safety

We determined that the states' 2006 application provided sufficient evidence to warrant establishing a Pinniped-Fishery Interaction Task Force. On January 30, 2007, we announced receipt of the states' application and solicited public comments (72 Fed. Reg., 4239, January 30, 2007) (Table 1). The Task Force convened in September 2007 (72 Fed. Reg., 44833, August 9, 2007) and, after considering the states' application, public comments on the application, and other information, delivered its recommendation on November 5, 2007. Task force meetings were open to the public. Of the 18 Task Force members, all recommended that non-lethal

¹ The litigation was dismissed in August 2011 after we rescinded the May 2011 Letter of Authorization.

deterrence activities continue, and 17 recommended that NMFS authorize lethal removal. The Task Force offered two options for lethal removal.

NEPA requires Federal agencies to evaluate the environmental consequences of their actions. Depending on the action and whether the impacts to the environment would be significant, Federal agencies may prepare an EA or an Environmental Impact Statement. In announcing the intention to convene a Pinniped-Fishery Interaction Task Force, we also advised the public that necessary analyses under NEPA would be conducted. Prior to convening the Task Force, the NMFS Northwest Region formed a NEPA Compliance Working Group comprised of NMFS employees to conduct internal scoping under NEPA, which reviewed the states' application and other relevant information. The Working Group recommended preparing an EA to evaluate the environmental impacts associated with any future decision to lethally remove sea lions at Bonneville Dam, and the Regional Administrator concurred (Donna Darm, NMFS, memorandum sent to Robert Lohn, Regional Administrator, NMFS, March 29, 2007, regarding NEPA Compliance Working Group). After receiving and reviewing the Task Force recommendations, the NEPA Compliance Working Group developed a proposed action and a reasonable range of alternatives and evaluated their environmental impacts in the EA (Donna Darm, NMFS, memorandum to the file, NMFS Northwest Region, November 29, 2007, regarding NEPA Compliance Working Group development of alternatives). As described above, we made the draft EA available for public comment and considered the comments in preparing the final EA and FONSI.

IV. Summary of Public Comments on the Current Request for Authorization

In September 2011, we announced that we had received a request from the states under Section 120 request for authorization to remove California sea lions from the Columbia River. In the announcement we solicited public comment on the application, as required by Section 120 (76 Fed. Reg., 56167, September 12, 2011) (Table 1). We received 812 electronic comments from the public on the states' request (posted on line at www.Regulations.gov, <http://www.nwr.noaa.gov/Marine-Mammals/Seals-and-Sea-Lions/Sec-120-TF.cfm>.) Substantive written comments were provided by the Humane Society of the United States along with copies of published reports on predation by non-indigenous fish on salmonids in the Columbia River and on salmonid hatchery practices. The Marine Mammal Commission also provided substantive comments.

In addition, approximately 2,000 "form letter" comments, 400 modified "form letter" comments, and 80 scanned, hand-written comment cards were received as attachments to comments received from the Humane Society of the United States. Comments received on the 2011 application were similar to comments received and summarized for the 2006 application and analyzed in the 2008 Environmental Assessment (NMFS 2008a). The majority of commenters expressed the view that killing sea lions is morally wrong or a poor substitute for resolving larger threats to salmon recovery. A minority of commenters were supportive of the application. The comments are similar to those raised in response to the states' original 2006 application and addressed in the 2008 NEPA analysis and decision documents (NMFS 2008a). In addition, in conjunction with our consideration of the current request, we prepared a separate document

responding to all substantive comments received in response to the September 2011 request for comments.

V. Current Proposed Action

In response to the state's current request, we propose to authorize lethal removal of California sea lions, as previously authorized in 2008 (i.e., Alternative 3 from the 2008 EA) (NMFS 2008a). In particular, the measures, standards, and levels of sea lion removal identified in the 2008 authorization and evaluated in the 2008 final EA and FONSI would be continued, with the exception of two minor changes: (1) elimination of a 1% average salmonid predation rate threshold for suspending lethal removal activities (Condition 15 in the 2008 Letter of Authorization); and (2) modification of the 2008 criteria defining "individually identifiable predatory California sea lion" to now include animals seen taking salmonids in the fish ladders or above Bonneville Dam.

VI. NEPA Compliance and Supporting Analyses

Approving the states' Section 120 application may affect the quality of the human environment and, therefore, we must comply with NEPA. Council on Environmental Quality (CEQ) regulations state "[a]gencies shall prepare supplements to either draft or final environmental impact statements if: (i) the agency makes *substantial* changes in the proposed action that are relevant to environmental concerns; or (ii) there are *significant* new circumstances or information relevant to environmental concerns *and* bearing on the proposed action or its impacts" [emphasis added] (40 C.F.R. § 1502.09(c)).

A. NEPA Compliance Working Group

The NEPA Compliance Working Group met on November 15, 2011 to review the 2008 EA and FONSI; the 2008 authorization for lethal removal of California sea lions; the States' August 18, 2011 application; and any other relevant information (Table 1). The working group identified two changes in the proposed action: (1) the elimination of a 1% average salmonid predation rate threshold for suspending lethal removal activities (Condition 15 in the 2008 Letter of Authorization); and (2) modification of criteria for defining "individually identifiable predatory California sea lion" to include animals seen taking salmonids in the fish ladders or above Bonneville Dam.

In addition, the working group considered all resources potentially affected by the proposed action, and identified changed circumstances or information potentially affecting those resources. Appendix A describes the working group's consideration of new circumstances and information and shows that for 9 of the 16 categories of potentially affected resources there is "no change" (that is, no new circumstances or information) (Air, Water Quality, Terrestrial Wildlife and Birds, General Vegetation, Cultural Resources, Noise, Aesthetics, Public Services, and Safety and Human Health). We therefore did not consider these resources further.

For the two changes in the proposed action, and for the six categories of resources where there are new circumstances or information, we prepared a more detailed evaluation in the form of a new SIR to determine whether there was a need to supplement the 2008 EA and FONSI. In preparing this evaluation, we were guided by the CEQ regulations described above (40 C.F.R. § 1502.09(c)) and also considered CEQ's "significance" criteria at 40 C.F.R. §1508.27 and the criteria relied upon for the 2008 FONSI to determine whether any new circumstances or information are "significant," thereby requiring supplementation of the 2008 EA. The SIR is attached as Appendix B.

B. Supplemental Information Report

The SIR first evaluates the two changes in the proposed action – elimination of the 1% predation threshold and change in eligibility of animals authorized for removal. The evaluation demonstrates that the changes are not "substantial" because neither would result in impacts that are significant or uncertain or outside the range of impacts we considered in the 2008 EA and FONSI. The SIR next evaluates whether any circumstances or information that are relevant to environmental concerns and bearing on the proposed action or its impacts are "significant." For this consideration we consulted, among other sources, our files, state and Federal field reports and publications from 2008-2011, presentations made during the 2010 and 2011 Task Force meetings, and public comments received on the states' August 2011 MMPA Section 120 application. The new circumstances and information are related to: (1) updated information on pinnipeds in the action area (population, presence, predation); (2) updated salmonid information (status and trends, recovery planning, passage counts, predation versus run size, hatchery versus wild components); (3) non-lethal deterrence efforts; (4) permanent pinniped removals carried out under the previous section 120 LOA; (5) impacts of predation on other fish species; (6) recent recommendations from the Task Force; and (7) substantive public comment. The evaluation demonstrates that none of the new circumstances or information indicates that the proposed action would result in any impacts that are significant or uncertain or outside the range of impacts we considered in the 2008 EA and FONSI.

VI. Conclusion

Based on the analysis described in this document and the SIR, I have determined the 2008 EA and FONSI remain valid; thus, there is no need to supplement the 2008 EA and FONSI. The minor changes in the action will not result in impacts that are significantly different from those previously considered, and the new circumstances and information do not raise new concerns of sufficient gravity to warrant a more in-depth review of the proposed action's impacts.

VII. Appendices

Appendix A – Summary of 2008 Environmental Assessment and Comparison of New Information from 2008 through 2011.

Appendix B – Supplemental Information Report.

VIII. References

- Brown, R., S. Jeffries, D. Hatch, B. Wright. 2008. Field Report: 2008 Pinniped Management Activities at Bonneville Dam, September 23, 2008. ODFW, WDFW, CRTFC Field Report. 8pp.
- Brown, R., S. Jeffries, D. Hatch, B. Wright, S. Jonker, J. Whiteaker. 2009. Field Report: 2009 Pinniped Management Activities at and Below Bonneville Dam, October 28, 2009. ODFW, WDFW, CRTFC Field Report. 32pp.
- Brown, R., S. Jeffries, D. Hatch, B. Wright, S. Jonker. 2010. Field Report: 2010 Pinniped Management Activities at and Below Bonneville Dam, October 18, 2010. ODFW, WDFW, CRTFC Field Report. 38pp.
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