

Comments on Idaho, Oregon, and Washington States' January 27, 2016, MMPA Section 120 Application for the Lethal Removal of California Sea Lions at Bonneville Dam

June 2016

The National Marine Fisheries Service (NMFS) published the Idaho, Oregon, and Washington (states') Section 120 application in the Federal Register on March 28, 2016, and accepted comments from the public for 30 days. *See* 81 FR 17141. We received 1,128 comments, most of which were form letters opposing the permanent removal of California sea lions at Bonneville Dam. We did not provide specific responses to these types of comments as the issues raised were similar, if not identical, to the views we considered during our 2008, 2011, and 2012 Section 120 process. We did receive two substantive comment letters, one for the Humane Society United States (HSUS) and, the other one from the Marine Mammal Commission (Commission). However, many of the comments received from the HSUS and the Commission on the states' January 27, 2016, application were identical or similar to previous comments received on the States' previous Section 120 applications: HSUS (March 3, 2007; February 19, 2008; and October 12, 2011) and the Commission (April 2, 2007; November 23, 2007; and October 11, 2011), and have been previously addressed by NMFS and are incorporated herein by reference. Therefore, we provide a summary of the new issues/information received, and our responses, from the HSUS and the Commission that have not been addressed previously. All of the comments received on the application were considered as part of the MMPA decision-making process.

Comment 1: Relevant Scientific Information (p. 2-3, HSUS).

Response: In our March 28, 2016, Federal Register Notice, we specifically requested any additional information to be considered by the Task Force and to be considered by NMFS in making its determination whether or not to approve or deny the application. Furthermore, as this is an extension to the existing Letter of Authorization (LOA), the states' January 27, 2016, application carries forward all of the supporting information, including the content and justifications in the states' August 18, 2011, application that was part of NMFS' decision to approve the state's request in 2011 and issue the March 15, 2012 LOA. Therefore, NMFS did request information important to determining the need to authorize lethal management.

Comment 2: New Information on the Abundance of Sea Lions at the Dam (p. 4-6, HSUS).

Response: The reports provided by the U.S. Army Corps of Engineers (Corps) provides the best available information on pinnipeds at Bonneville Dam and in the action area.

Comment 3: New Information on the Abundance of Sea Lions at the Dam (p. 6, HSUS):

It continues to be true that new animals arrive each year and lethal removal is not actually addressing or reducing predation as was predicted by the states. The states' data show that removals have not slowed the rate of predation as new animals replace others at the dam.

Response: This statement assumes that the area at Bonneville Dam is space-limited. There is no known threshold for the number of predatory sea lions that can show up at Bonneville Dam on a year-to-year basis. The current monitoring efforts at Bonneville Dam cannot capture/estimate the total predation and predation rate of all pinnipeds in the vicinity of the dam. The predation estimates reflect only what is observable in the immediate tailrace of the dam. Since we lack data on the total consumption and total predation rate at Bonneville Dam, we cannot determine if the pinniped removals have resulted in changes in the overall predation. Observations of pinniped predation on salmonids in the vicinity of Bonneville Dam outside of the estimation area in the tailrace of the dam (e.g., during non-lethal hazing efforts) support the conclusion that pinniped predation at Bonneville Dam is not space limited, and that the removal of predatory pinniped individuals does result in a reduction of total consumption by their removal from the predatory population. Furthermore, while removing predatory sea lions may or may not slow the rate of predation for reasons previously stated, it does reduce the consumption of at-risk salmonids resulting in more fish ascending Bonneville Dam than would have if the pinniped removal authority was not in place.

Comment 3: New Information on Populations of California Sea Lions (p. 6-7, HSUS):

Since 2013, thousands of young CSL have died as a result of a series of El Niño events and the collapse of the sardine population that was a major source of adequate nutrition for pregnant and nursing females near their California rookeries. Over 5,400 young CSL stranded in the years 2013-2015, leading The National Oceanic and Atmospheric Association (NOAA) to express “concern about 2015 pup survival rates.” Many more died in offshore island rookeries and their deaths went unseen. A NOAA wildlife biologist speculated in the press that, in 2013 alone, “up to 70% of all the sea lion pups born the previous year may have died due to environmental events . . . twice the amount that might not make it to maturity in a normal year.” Continuing losses of this sort will have a noticeable effect on the population trajectory for CSL yet NMFS has not updated the abundance estimate for CSL in its annual Stock Assessments since 2007” (HSUS).

Response: Although the unusual mortality events referred to by the HSUS are likely to affect population abundance, and in time, recruitment, however, as it relates to male California sea lions, especially ones that migrate and enter into the Columbia River, these unusual mortality events will have little effect on the number of mature male California sea lions in the U.S. population.

The West Coast region has made a request of the Southwest Fisheries Science Center, in collaboration with the Alaska Fisheries Science Center and the National Marine Mammal Laboratory, to update the population estimate for California sea lions. Once this work is completed, an updated Stock Assessment Report will be published.

Comment 4: Estimates of Predation (p. 7-9, HSUS).

Response: The only reason California sea lions are at Bonneville Dam is to consume high caloric prey, such as spring-run Chinook salmon. We find the bioenergetics model used by

the States' to be a credible method to estimate the energetic requirements of California sea lions and to estimate the benefits of the removal program.

Comment 5: “Although we do not dispute that the spring salmon run contains some runs of fish that are listed under the Endangered Species Act (ESA), the Task Force, of which HSUS is a member, was told by NMFS that the ESA-listed fish comprise less than 20 percent of the spring run and the states' reports appear to confirm this” (HSUS).

Response: Table 3.5-4 in the 2008 Environmental Assessment (EA) shows that the estimated percentage of the run that is listed ranges between 25 and 35 percent. For steelhead, the estimated percentage of the run that is listed ranges between 28 and 60 percent.

Comment 6: Status and Trends in the Spring Run Salmonids (p. 10, HSUS).

Response: Refer to: Final Environmental Assessment: 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. March 12, 2008.

Refer to: Supplemental Information Report to the 2008 Final Environmental Assessment - 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. May 9, 2011.

Refer to: Authorizing the States of Washington and Oregon to Lethally Remove California Sea Lions at Bonneville Dam under Section 120 of the Marine Mammal Protection Act - DECISION MEMORANDUM. May 12, 2011.

Refer to: Supplemental Information Report in Response to the August 18, 2011, Application by the Idaho, Oregon, and Washington for the Lethal Removal Authority under Section 120 of the Marine Mammal Protection Act. March 2, 2012.

Refer to: Comments on Idaho, Oregon, and Washington States' August 18, 2011, MMPA Section 120 Application for the Lethal Removal of California Sea Lions at Bonneville Dam. March 1, 2012.

Refer to National Marine Fisheries Service Report on Consideration of Statutory Factors under Section 120 of the MMPA. March 2, 2012.

Refer to (81 FR 33468), NMFS 5-Year Status Reviews, May 26, 2016 (available at: http://www.westcoast.fisheries.noaa.gov/publications/status_reviews/salmon_steelhead/2016_status_review.html).

Refer to the 2015 status review update for Pacific salmon and steelhead listed under the Endangered Species Act: Pacific Northwest. NWFSC 2015 (available at: http://www.westcoast.fisheries.noaa.gov/publications/status_reviews/salmon_steelhead/2016_status_review.html).

Comment 7: Status and Trends in the Spring Run Salmonids (p. 10, HSUS).

It does not appear that the spring run is in imminent danger. NMFS itself acknowledges in its most recent report to Congress that ESA-listed salmon runs in the Columbia during springtime are “stable.”

Response: Stable does not equate to “not at risk.” As note above in the previous response, these stocks are still at risk of extinction, but that the current trend in abundance is stable and not declining. In fact, while it is true that NMFS has acknowledged that some ESA-listed stocks of salmon and steelhead in the Columbia River are exhibiting stable trends in, many stocks, and certainly many populations within these up-river stocks affected by predatory pinnipeds at Bonneville Dam, remain far below their recovery targets. Furthermore, many up-river populations remain at high risk of extinction, as documented in our 2016 5-year status review for Pacific salmon and steelhead listed under the Endangered Species Act: Pacific Northwest, including the updated viability report prepared by the Northwest Fisheries Science Center (NWFSC 2015).

Comment 8: Impact of Human Fisheries (p. 10-12, HSUS).

Response: Refer to: Final Environmental Assessment: 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. March 12, 2008.

Refer to: Supplemental Information Report to the 2008 Final Environmental Assessment - 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. May 9, 2011.

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For the years 2011 through 2015, the harvest rate has averaged 10.9 percent. In contrast to a managed harvest regime, which can reduce mortality in response to decreased run sizes, pinniped predation has the potential to increase even when run sizes are depressed, magnifying the impact.

Comment 9: New information concerning non-lethal deterrence measures (p. 12-13, HSUS).

Response: Refer to: Final Environmental Assessment: 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. March 12, 2008.

Refer to: Supplemental Information Report to the 2008 Final Environmental Assessment - 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. May 9, 2011.

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Refer to the 2015 status review update for Pacific salmon and steelhead listed under the Endangered Species Act: Pacific Northwest. NWFSC 2015 (available at: http://www.westcoast.fisheries.noaa.gov/publications/status_reviews/salmon_steelhead/2016_status_review.html).

Refer to Douglas R. Hatch, John M. Whiteaker and Robert Lessard: Sea Lions Monitoring and Non-Lethal Hazing, 1/1/2015 – 12/31/2015 Annual Report, 2008-004-00. March 2016.

Comment 10: The effect of permanent pinniped removals carried out under the letter of authorization (i.e., impacts to CSL populations or salmonid populations). Permanently removing CSL in the past five years has wasted the lives of around 100 individuals that were killed—members of a legally protected species. (p. 13-14, HSUS).

Response: We respectfully disagree. The removal of predatory California sea lions at Bonneville Dam is expected to benefit the affected salmonid species by decreasing predation events at Bonneville Dam, improving passage conditions (opportunity), and increasing the number (abundance) of adult salmon and steelhead that reach their respective up-river spawning areas. In their January 27, 2016, application, the States estimated that the removal program has prevented the loss of 15,000 to 20,000 salmonids at Bonneville Dam since the program began in 2008 NMFS expects a comparable range of benefits from implementation of the pinniped removal program through 2021. Additionally, if approved, the states would be authorized to remove (i.e., place in permanent captivity or kill) no more than 1 percent of the potential biological removal (PBR) level annually through 2021. Permanent removal of this minimal number from the population will have neither a measurable effect on the local abundance of California sea lions elsewhere in the lower Columbia River, nor will there be any effect on the overall range-wide abundance (the most recent stock assessment report reveals the current population estimate for the United States stock of California sea lions is 296,750 (Carretta et al. 2015), distribution, and productivity of the California sea lion population because the number of sea lions affected is extremely small compared to the current number of animals (9,200) that can be safely removed from the US population, without affecting its status.

Comment 11: New information concerning predation on salmonids by other species (p. 14-16, HSUS).

Response: Refer to: Final Environmental Assessment: 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. March 12, 2008.

Refer to: Supplemental Information Report to the 2008 Final Environmental Assessment - 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. May 9, 2011.
Refer to: Authorizing the States of Washington and Oregon to Lethally Remove California Sea Lions at Bonneville Dam under Section 120 of the Marine Mammal Protection Act - DECISION MEMORANDUM. May 12, 2011.

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Refer to the 2015 status review update for Pacific salmon and steelhead listed under the Endangered Species Act: Pacific Northwest. NWFSC 2015 (available at: http://www.westcoast.fisheries.noaa.gov/publications/status_reviews/salmon_steelhead/2016_status_review.html).

Comment 12: Additional Information on Largely Unaddressed Threats to Salmonid Recovery (p. 16-17, HSUS).

Response: We respectfully disagree with the assertion. We, the states, the Corps, the Bonneville Power Administration, along with many other agencies and organizations, have undertaken a large number of actions aimed at reducing the losses of ESA-listed salmonids from a number of sources. These combined actions represent an extraordinary and unprecedented cooperative effort in the Columbia River basin to protect and recover salmon and steelhead. ESA-guided recovery plans have been developed and implemented in every watershed, including actions to: restore important habitat; improve dam passage survival; re-tool hatchery programs to assist production in wild populations; and close, reduce or reshape fisheries to limit fishery-related mortality of listed stocks and focus on selectively harvesting healthy stocks. These efforts equate to hundreds of millions of dollars invested annually and billions over the past decades.

Comment 13: Additional Deficiencies in the Application (p.17-19, HSUS).

Response: We respectively disagree. The collective evidence demonstrates that the states' January 27, 2016, application, which carries forward all of the supporting information, including the content and justifications in the states' August 18, 2011, application that was part of NMFS' decision to approve the state's request in 2011 and issue the March 15, 2012 LOA. As such, the collective evidence is consistent with the seven "significance factors," and that predation by pinnipeds at Bonneville Dam is having a significant negative impact on at-risk salmon and steelhead stocks.

Comment 14: NEPA and ESA Requirements (p. 19, HSUS).

Response: NMFS concluded the appropriate level of analysis was to supplement the 2008 EA. NMFS has completed its evaluation of the environmental consequences of the proposed action and concluded that it will not result in any significant impacts on the human environment and, therefore, has made a finding of no significant impact (FONSI). The supplemental EA and FONSI were prepared in accordance with NEPA and implementing regulations at 40 CFR parts 1500 through 1508 and NOAA Administrative Order 216-6A.

Pursuant to section 7(a)(2) of the Endangered Species Act, NMFS completed formal consultation on the effects of the proposed action on ESA-listed species with a finding that the proposed

action will not jeopardize the continued existence of any listed species or adversely modify its critical habitat.

Comment 15: Significance Criteria-The pinniped removal authorization issued to the States in March 2012 includes three criteria for identifying individual California sea lions that are having a significant negative impact on endangered or threatened salmonids at Bonneville Dam—that they have been observed (1) eating salmonids in the “observation area” between 1 January and 31 May of any year, (2) at the Dam for a total of any five days and (3) at the Dam after having been subjected to active non-lethal deterrence. (p. 1-2, Commission).

Response: The criteria the Commission refers to was developed by the Task Force, refer to the states' 2012 Letter of Authorization, Term and Condition 1. This information is contained in the states' and the Corps' annual reports which are publically available.

Comment 16: Targeting Specific Sea Lions (p. 2-3, Commission).

Response: Refer to: Final Environmental Assessment: 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. March 12, 2008.

Refer to: Supplemental Information Report to the 2008 Final Environmental Assessment - 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. May 9, 2011.

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Refer to the 2015 status review update for Pacific salmon and steelhead listed under the Endangered Species Act: Pacific Northwest. NWFSC 2015 (available at: http://www.westcoast.fisheries.noaa.gov/publications/status_reviews/salmon_steelhead/2016_status_review.html).

Comment 17: Effectiveness of the removal program (p.3-5, Commission).

Response: Refer to: Final Environmental Assessment: 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. March 12, 2008.

Refer to: Supplemental Information Report to the 2008 Final Environmental Assessment - 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. May 9, 2011.

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Furthermore, we assert that the removal of predatory California sea lions at Bonneville Dam is expected to benefit the affected species by decreasing predation events at Bonneville Dam, improving passage conditions (opportunity), and increasing the number (abundance) of adult salmon and steelhead that reach their respective up-river spawning areas. In their January 27, 2016, application, the states estimated that the removal program has prevented the loss of 15,000 to 20,000 salmonids at Bonneville Dam since the program began in 2008 NMFS expects a comparable range of benefits from implementation of the pinniped removal program through 2021.

At the May 31, 2016, Task Force meeting NMFS specifically requested information from the Task Force members regarding the future evaluation of the effectiveness of the 2012-2016 pinniped removal authority at Bonneville Dam. Once the data from the 2016 season is finalized,

MNFS will work with the states and the Corps to address the requirement in section 120(c)(5) of the MMPA, and NMFS will then, once the analyses are completed, reconvene the Task Force in the future to address this matter.

Comment 18: Task Force Meeting (p. 5, Commission).

Response: NMFS convened the Task Force on May 31, 2016. The Facilitator's Summary and the Report and Recommendations of the Bonneville Pinniped-Fishery Interaction Task Force Marine Mammal Protection Act, Section 120 5-Year Extension document meeting details, some of which relate to the Commission's recommendations.