

## **Willamette Falls Pinniped-Fishery Interaction Task Force**

### **Marine Mammal Protection Act**

#### **Section 120 Overview/Task Force Instructions**

##### **Introduction**

The United States Congress created Section 120 of the Marine Mammal Protection Act (MMPA) as part of its 1994 amendments to the Act. This section provides an exception to the MMPA “take” moratorium and authorizes the Secretary of Commerce, acting through the Assistant Administrator for Fisheries (AA), acting through the West Coast Regional Administrator (RA), National Marine Fisheries Service (NMFS), to permit the intentional lethal taking of individually identifiable pinnipeds (seals and sea lions) that are having a significant negative impact on the decline or recovery of salmonids listed under the Endangered Species Act (ESA) or approaching threatened or endangered status.

The Section 120 process begins with an application from one or more states. The application is reviewed by the RA to determine if it provides sufficient evidence to warrant establishing a Pinniped-Fishery Interaction Task Force (Task Force) to consider the situation described in the application. If the RA determines a Task Force is warranted, NMFS publishes a *Federal Register* notice announcing receipt of a complete application, the intent to establish a Task Force and a request for public comment on the application.

##### **Purpose of Convening the Task Force**

As required by the MMPA §120(c), NMFS is convening this Task Force to provide NMFS with a recommendation to either approve or deny the states’ October 6, 2017, application for the intentional lethal taking of California sea lions (CSL) that are having a significant negative impact on the recovery of Upper Willamette River (UWR) steelhead distinct population segment (DPS) and the UWR spring Chinook salmon evolutionarily significant unit (ESU). In formulating its recommendation, NMFS asks the Task Force to follow the process and address the questions identified below in the section titled “NMFS’ Expectations of the Task Force.”

##### **State of Oregon Application**

On October 6, 2017, NMFS received an application signed by the director of the Oregon Department of Fish and Wildlife (ODFW), on the states’ behalf, requesting authorization under section 120 of the MMPA to intentionally take, by lethal methods, individually identifiable predatory CSL in the Willamette River, which are having a significant negative impact on the recovery of the UWR steelhead DPS and the UWR spring Chinook salmon ESU. Both species are listed as threatened species under the Endangered Species Act (ESA).

The states’ application described the means of identifying individual pinnipeds and listed salmonids in the vicinity of Willamette Falls, the criteria and conditions under which lethal removals would be conducted, a thorough description of the problem interaction,

and a description of the expected benefits of the taking. The application also describes past non-lethal efforts to deter or remove pinnipeds from areas where pinnipeds have posed a significant risk to salmonid fishery stocks. A summary of the impact of pinniped predation for the years 2014 through 2017 on UWR steelhead and UWR Chinook salmon are provided in Table 1.

**Table 1. Estimated salmonid predation by California sea lions at Willamette Falls, 2014-2017.**

Run*	Estimated Predation					Percent of Potential Escapement			
	2014	2015	2016	2017		2014	2015	2016	2017
<b>wSTH</b>	780	557	915	270		13%	11%	14%	25%
<b>nmCH</b>	496	899	650	399		7%	9%	9%	6%
<b>sSTH</b>	712	172	768	181		3%	4%	3%	8% **
<b>mCH</b>	1,703	4,149	2,252	1,824		7%	9%	9%	6%

\*wSTH = winter steelhead; nmCH = spring Chinook salmon (not marked); sSTH = summer steelhead; mCH = spring Chinook salmon (marked) (\*\*as of 8/15/2017). Source: ODFW – MMPA Section 120 application.

NMFS reviewed the states’ application and determined that it provided sufficient evidence to warrant establishing a Task Force and published the required *Federal Register* notice on November 9, 2017. In the notice NMFS solicited public comment on the states’ application and requested additional information that should be considered by the Task Force in making its recommendation, and by NMFS in making its determination whether to approve or deny the application. NMFS also solicited the names and affiliations of experts from the academic and scientific community, tribes, federal and state agencies, and the private sector for consideration as potential Task Force members. During the 60-day public comment period, 792 comments and 12 Task Force member nominations were received.

### **The Role of the Task Force**

Once established, the Task Force has 60 days to consider relevant information and recommend to NMFS whether to approve or deny the states’ request. If the Task Force recommends approval, it also includes a description of the specific pinniped individuals, the proposed location, time, and method of taking, criteria for evaluating the success of the action, and the duration of the intentional lethal taking authority; and suggest nonlethal alternatives, if available and practicable, including a recommended course of action. In formulating its recommendations, the Task Force is to review the states’ application, the available information regarding the problem interaction, public comments received by NMFS in response to the *Federal Register* notice, and also consider [MMPA §120(d)]:

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

- (b) 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;
- (c) 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
- (d) The extent to which such pinnipeds are exhibiting behavior that presents an ongoing threat to public safety.

Taking into consideration the aforementioned, the charge before the Task Force is to provide a recommendation to NMFS to either approve or deny the states' application to permit the intentional lethal taking of individually identifiable pinnipeds that are having a significant negative impact on the decline or recovery of salmonids listed under the ESA.

### **NMFS' Expectations of the Task Force**

In evaluating the states' application, NMFS expects the Task Force to work together during the meeting to develop recommendations that document the points of consensus reached by the group, as well as the alternate points of view when consensus is not reached. Task Force recommendations should fairly reflect the full range of opinion of the group. NMFS expects the Task Force to acknowledge differences of opinion and include minority views with its recommendations. To enhance this process, NMFS is providing a professional facilitator to manage the meetings of the Task Force, record meeting notes, and assist the group in assembling its recommendations.

The Task Force should specifically address those considerations outlined above in formulating its recommendations. The enclosed materials provide relevant data and information on the status and trends of the CSL population, the number of individual pinnipeds and feeding habits at the location of the interaction, and past efforts to non-lethally deter pinnipeds involved in the interaction. Information on the status and trends of the salmonid stocks involved in the interaction and impact of predation are also included.

In addition to the MMPA Section 120(d) Considerations, NMFS requests that the Task Force respond to the following questions when preparing its recommendations:

- (1) If the Task Force recommends approving the states' application for lethal removal, what (if any) additional criteria, does the Task Force recommend that would improve the effectiveness of the lethal removal program?
- (2) If the Task Force recommends approving the states' application for lethal removal, does the Task Force recommend a limit, different than the limit proposed by the state in their application, to the number of sea lions that may be removed, and if so what is the justification for that limit?

(3) If the Task Force recommends approving the states' application for lethal removal, what limitations (if any) would the Task Force recommend on timing, location, take methods or duration of the authorization?

(4) There are various proposed pieces of legislation to amend Section 120 of the MMPA (e.g., HR 2083, S 1702S, 3119) in Congress. Of particular interest are the proposed modifications to the individually identifiable and significant negative impact criteria. Our initial assessment of the proposed legislation as it relates to these two criteria, is that measures for identifying predatory sea lions via branding, natural features, etc., and documenting predation to determine its impact on salmonid fishery stocks, would no longer be required. Instead, identification of sea lions for removal would be based on a geographic criterion, so that any sea lion within a specified geographic area, e.g., above river mile 112 on the Columbia River, or a tributary to the Columbia River that includes spawning habitat of threatened or endangered salmon or steelhead, would be deemed eligible for removal.

Therefore, we are asking the Task Force to provide us with their views regarding the proposed modifications to the individually identifiable and significant negative impact criteria, and include those considerations in your recommendations to NMFS.

(5) For purposes of post-implementation evaluation, what criteria does the Task Force recommend for evaluating whether the implementation of the lethal removal program has been successful in addressing the pinniped—fishery interaction?

(6) Regardless of the outcome of this process, what might be the most effective means to achieve a long-term resolution to the pinniped—fishery interaction?

## Task Force Members and Other Participants

- A. Members: The following will be decision-making members of the work group, representing the organization or interest listed.

### **Scientists Knowledgeable about Pinniped-Fishery Interactions**

Robin Brown, Marine Mammal Scientist (retired)

### **Conservation Organizations**

Sara LaBorde, Wild Salmon Center

Sharon Young, Humane Society of the United States

Charles Harry, International Fund for Animal Welfare

### **Fishing Organizations**

Liz Hamilton, NW Sport Fishing Industry Association

Bob Reese, Association of NW Steelheaders

Norm Ritchie, Alternate, Association of NW Steelheaders

### **Indian Treaty Tribes**

Olney “JP” Pratt, Confederated Tribes of the Warm Springs Reservation

Carl Scheeler, Confederated Tribes of the Umatilla Indian Reservation

Paul Ward, Confederated Tribes and Bands of the Yakama Nation

### **Indian Tribes**

Kelly Dirksen, Confederated Tribes of the Grand Ronde Community of Oregon

Robert Kentta, Confederated Tribes of Siletz Indians of Oregon

### **Employees of Dept. of Commerce**

Robert (Bob) DeLong, NOAA/National Marine Mammal Laboratory

Eric Murry, NOAA/NMFS, West Coast Region

### **States**

Meagan West, Washington Dept. of Fish and Wildlife

Shaun Clements, Oregon Dept. of Fish and Wildlife

### **Other**

Doug Hatch, Columbia River Inter Tribal Fish Commission

Amy Gibbons, U.S. Army Corps of Engineers

Tim Ragen, Marine Mammal Commission (retired)

- B. Technical Resources and Advisors: The following will participate as technical resources or advisors to the Task Force and NMFS, following the proceedings and providing feedback, but not necessarily attending all meetings and not participating in the ultimate decision-making of the group. Additional technical advisors or resources may be brought in as needed to support the effective and efficient work of the Task Force:

Robert Anderson, NOAA

Chris Yates, NOAA

Laurie Beale, NOAA

Bryan Wright, ODFW

Matt Falcy, ODFW

Bernadette Graham-Hudson, ODFW

- C. Members represent the interest, group or government for which they are listed, and are responsible for keeping that group informed of the process.
- D. All participating Members must be part of any consensus recommendation of the Task Force.
- E. Members commit to be prepared for and participate in all meetings to the extent possible. Members may have one alternate, who may take the members' place when the member is absent. It is the Members' responsibility to keep the alternate well briefed so the alternate may be an active participant in the Task Force discussions and decisions, as needed. Alternates are welcome to attend meetings. However, only primary members will speak and make decisions for their interest group or organization at those meetings at which they are present.
- F. Technical resource persons will assist with information and resources, but will not be a part of the consensus decision-making process. Additional advisors or resources may be brought in as needed to support the effective and efficient work of the Task Force.

### **Procedures for Task Force Meetings**

- A. Members will treat each other with respect throughout the process. They will listen to each other to seek to understand others' perspectives, even if they disagree. One person will speak at a time. Members will participate fully in letting the group know their perspective on issues, their concerns and their differing points of view. At the same time, members will respect time constraints and will share the time with others. Members will follow through with assignments between meetings.

- B. All participants will act in good faith in all aspects of these discussions. This includes being honest and refraining from undertaking any actions that will undermine or threaten this process.
- C. Members shall make every effort to bring all aspects of their concerns about these issues into this process to be addressed. Members shall refrain from generating controversy in the press and from publicly criticizing or misstating the positions taken by any other participants during the process.
- D. Any written communications, including e-mails, will be mindful of these procedural ground rules, and will maintain a respectful tone even if highlighting different perspectives.
  - a. Members are reminded that all e-mail messages about this process should be considered public documents.
  - b. Any e-mails intended for the entire group will be distributed via the facilitation team.
- E. All participation in this process is voluntary and may be withdrawn. However, members agree that, before withdrawing from the process while Task Force deliberations are underway, they will discuss the reason for their possible withdrawal with the facilitators and the other members. This will give the Task Force the opportunity to understand the reasons and provide an opportunity to encourage continued participation, if appropriate.

### **Decision Making: Commitment to Seeking Consensus**

- A. The Group agrees that consensus has a high value and that all members should strive to achieve it. Whenever possible, decisions on recommendations will be made by consensus of all participating Task Force Members in their representative capacity. They shall be empowered to represent their group, after agreed upon consultation.
- B. Agreements made on parts of recommendations will be considered tentative until the full package is put together. Tentative agreements may be made at meetings pending the opportunity for members to consult with their necessary constituencies. This will be done on a timely basis.
- C. Consensus means the willingness to go along with the recommendation either in active support of it or in not opposing it.
  - i. The commitment to seek consensus means that members will participate in the give and take of the process in a way that seeks to understand the interests of all and will work together to find recommendations workable for all.
  - ii. If no consensus is reached on an issue, the Task Force report will characterize and describe the various recommendations on the issue.

- D. The facilitators will draft a “Report to the Secretary of Commerce” that outlines the issues discussed, the areas in which there is consensus, and any issues on which consensus is not reached. Included in that report will be the Summary Notes from the Task Force meeting. Task Force members will have the opportunity to review and sign-off on the report.
- E. NMFS will be responsible for making the final decision about how to proceed with regards to the states’ permit.

### **Open Process**

- A. As required by the MMPA, Task Force meetings will be open to the public. Meeting notices and supplemental information will be announced to the public on NMFS’ West Coast Region website and through a media advisory.
- B. The public will not be allowed to discuss or debate issues with the Task Force during working sessions, but time will be allocated at the meeting to allow the public to provide or identify new or relevant information that may assist the Task Force in its deliberations.
- C. Members and Resource participants agree to maintain the respectful tone of the meetings outside the meetings, including all e-mail correspondence. Any reporting to constituents, speaking to the press or other discussion of the meetings will focus on issues, not on individuals.

### **The Facilitators**

- A. Write Brain LLC, are impartial professional facilitators funded through a contract with NMFS. They work for all the Task Force Members and will assist the members to work in a fair and balanced manner that fosters development of consensus recommendations where possible.
- B. The facilitators will be responsible for helping to ensure that the process runs smoothly, developing meeting agendas in consultation with NMFS, facilitating meetings and any working group or interim sessions as needed, and preparing and distributing meeting summaries and recommendations. They may also work with the members to help them resolve their differences and reach consensus on the various issues to be addressed.
- C. The facilitators will maintain confidentiality of any individual spoken communications with participants, unless authorized otherwise.
- D. The facilitators will not act as spokespersons for any party and will refer all media inquiries to the spokesperson for the relevant party.



- E. The facilitators will draft a report that outlines the issues discussed and highlights comments from the Task Force throughout this process. The Summary Notes from the Task Force meeting will be included in the report. Task Force Members will have the opportunity to review and sign-off on all summary notes and the report that is prepared.

### **NMFS' Decision and Implementation Process**

Once the Task Force has completed its deliberations and submitted its recommendations, NMFS will determine a course of action informed by the Task Force recommendations.

### **Attachments – CD Contents**

State of Oregon Section 120 Application (with Steelhead PVA)

State of Oregon Section 120 Application Cover Letter

State of Oregon Section 120 Application Attachment 1

Spring Chinook Status Assessment (PVA)

Federal Register Notice 82 FR 52038

Public Comments

Willamette Falls Pinniped Monitoring 2014

Willamette Falls Pinniped Monitoring 2015

Willamette Falls Pinniped Monitoring 2016

Willamette Falls Pinniped Monitoring 2017

Population Growth and Status of California Sea Lions

Upper Willamette River Conservation and Recovery Plan

2016 5-Year Review and Summary of UWR Steelhead and UWR Chinook salmon

Willamette Falls Fishway Counts 1946-2017

2018 Monthly Sheet as of July 31 2018

Marine Mammal Protection Act

HR 2083

S 3119