



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

XRIN 0648-XF763

Marine Mammals; Pinniped Removal Authority

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: On October 6, 2017, NMFS received an application under section 120 of the Marine Mammal Protection Act (MMPA) from the state of Oregon (state) requesting authorization to intentionally take, by lethal methods, individually identifiable California sea lions (CSLs; *Zalophus californianus*) in the Willamette River that are having a significant negative impact on the recovery of Upper Willamette River (UWR) steelhead and UWR Chinook salmon (*Onchorhynchus spp.*). Both of these salmonid fishery stocks are listed as threatened under the Endangered Species Act (ESA) of 1973.

This authorization is requested as part of a larger effort to protect and recover listed salmonid stocks in the Willamette River basin. NMFS has determined that the application contains sufficient information to warrant establishing a Pinniped-Fishery Interaction Task Force (Task Force), which will be established after the closing of a public comment period. NMFS solicits public comments on the state's application, other relevant information related to pinniped predation on salmonids in the Willamette River, and nominations for potential members of a Task Force.

DATES: Comments must be received by [*INSERT DATE 60 DAYS AFTER PUBLICATION DATE IN THE FEDERAL REGISTER*].

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2017-0126, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>. Go

to <https://www.regulations.gov/docket?D=NOAA-NMFS-2017-0126>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Comments on the application should be addressed to: National Marine Fisheries Service, 1201 NE Lloyd Blvd, Suite 1100, Portland, OR 97232 ATTN: Protect Resources Division, Portland Branch Chief, NOAA-NMFS-2017-0126.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, etc.) voluntarily submitted by the commenter may be publically accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter “N/A” in the required fields, if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Robert Anderson, NMFS, West Coast Region (503) 231-2226.

SUPPLEMENTARY INFORMATION:

Electronic Access

The state's application is available via the Internet at the following address:

http://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/fisheries_interactions.html

Statutory Authority

Section 120 of the MMPA (16 U.S.C. 1361, *et seq.*) allows the Secretary of Commerce, acting through the Assistant Administrator for Fisheries, and the West Coast Regional Administrator of NMFS, to authorize the intentional lethal taking of individually identifiable pinnipeds that are having a significant negative impact on the decline or recovery of salmonid fishery stocks which have been listed as threatened or endangered species under the ESA, are approaching threatened species or endangered species status (as those terms are defined in that Act), or migrate through the Ballard Locks at Seattle, Washington. The authorization applies only to pinnipeds that are not listed under the ESA, or designated as a depleted or strategic stock under the MMPA. California sea lions are neither listed under the ESA nor have they been designated as a depleted or strategic stock under the MMPA. Pursuant to section 120(b) and (c) of the MMPA, a state may request authorization to lethally remove pinnipeds, and the Regional Administrator is required to: (1) review the application to determine whether the applicant has produced sufficient evidence to warrant establishing a Task Force to address the situation described in the application; (2) publish a notice in the *Federal Register* requesting public comment on the application, if sufficient evidence has been produced; (3) establish and convene a Task Force; (4) consider any recommendations made by the Task Force in making a determination whether to approve or deny the application; and (5) if approved, 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.

The MMPA requires the Task Force be composed of the following: (1) NMFS/NOAA staff, (2) scientists who are knowledgeable about the pinniped interaction, (3) representatives of affected conservation and fishing community organizations, (4) Indian Treaty tribes, (5) the state, and (6) such other organizations as NMFS deems appropriate. The Task Force reviews the state's application, the factors contained in section 120(d), and public comments and, as required by section 120, recommends to NMFS whether to approve or deny the application. The Task Force is also required to submit with its 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; the duration of the intentional lethal taking authority; and a suggestion for non-lethal alternatives, if available and practicable, including a recommended course of action.

Background

On October 6, 2017, NMFS received an application signed by the director of the Oregon Department of Fish and Wildlife (ODFW) on the state's behalf, requesting authorization under section 120 of the MMPA to intentionally take, by lethal methods, individually identifiable CSLs in the vicinity of Willamette Falls, which are having a significant negative impact on the decline or recovery of salmonid fishery stocks listed as threatened under the ESA. According to the state's application, impacted salmon and steelhead include UWR steelhead (threatened) and UWR Chinook salmon (threatened).

On October 10, 2017, NMFS provided the director of the ODFW a letter acknowledging receipt of the application and a determining that the application produced sufficient evidence of the problem interaction to warrant establishing a Task Force.

The state's application provides information on studies conducted by the state that document when pinniped predation occurs in the vicinity of Willamette Falls, numbers of pinnipeds present, numbers of individual sea lions observed, numbers of salmonids consumed, the proportion of all salmonids passing Willamette Falls that are taken by pinnipeds in the vicinity of Willamette Falls, and a population viability analysis that predicts the extinction risks to UWR steelhead due to pinniped predation.

The state began a pinniped predation monitoring program at Willamette Falls in 1995 followed by a CSL branding program in Astoria, Oregon, in 1997 to monitor foraging behavior throughout the Columbia River basin. The trend in CSL abundance at the Willamette Falls over this period has been steadily upward, with single-day maximum counts increasing each year as follows: 27 (2014), 32 (2015), 35 (2016), and at least 40 (2017). The state's application indicates that pinniped predation on wild UWR steelhead and wild UWR Chinook salmon in 2014 was estimated at 780 (12 percent of the total return) and 496 (7 percent of the total return) fish, respectively. In 2015 pinniped predation on wild UWR steelhead and wild UWR Chinook salmon was estimated at 577 (11 percent of the total return) and 899 (9 percent of the total return) fish, respectively. In 2016 pinniped predation on wild UWR steelhead and wild UWR Chinook salmon was estimated at 915 (14 percent of the total return) and 650 (9 percent of the total return) fish, respectively. In 2017 pinniped predation on wild UWR steelhead and wild UWR Chinook salmon was estimated at 270 (25 percent of the total return) and 399 (6 percent of the total return) fish, respectively. Pinniped predation estimates at Willamette Falls represent a minimum of the total river-wide predation because they apply only to the area immediately in the vicinity of Willamette Falls, apply only to the sampling period, and CSLs have been documented feeding on salmonids throughout the Columbia River estuary.

The state initiated non-lethal deterrence methods to deter CSLs at Willamette Falls starting in 2010, with the goal to move CSLs down river and away from Willamette Falls to reduce predation on salmon and steelhead stocks. However, these efforts, like the non-lethal deterrence efforts at Ballard Locks and Bonneville Dam, have been largely unsuccessful. Over time, non-lethal deterrence methods have done little to eliminate or reduce predation of salmon and steelhead at Ballard Locks, Bonneville Dam, and Willamette Falls. Despite more than 35 years of exhaustive efforts to find an effective, long-term, non-lethal solution to eliminating or reducing predation on salmonids, such efforts have proven to be unsuccessful. With this in mind, the state, as stated in their application, proposes not to conduct non-lethal hazing concurrent with the lethal removal as efforts to non-lethally deter CLSs have proven ineffective at reducing or eliminating the problem interaction.

The state proposes to lethally remove a limited number of CSLs in the vicinity of Willamette Falls. In addition to animals located in the vicinity of Willamette Falls, all individually identifiable CSLs that have been documented feeding on salmonids, and have been approved for lethal removal by NMFS, would be candidates for removal without restriction to time or location. Annual removals under the proposed action are expected to be less than 0.5 percent of the Potential Biological Removal (PBR) level for CSLs (current PBR level is 9,200 animals out of an estimated population of 296,740). Individual CSLs would be lethally removed by humane methods following recommendations of a Safety and Animal Care committee convened by the state.

The proposed action to address pinniped predation is part of a comprehensive salmon and steelhead recovery strategy. As reported in the application, significant actions to address the decline of salmon and steelhead stocks in the Willamette River basin have been underway for

several decades, and are progressing each year as a result of the implementation of ESA recovery plans throughout the Willamette River basin. These actions include harvest reductions, hydroelectric system mitigation, habitat restoration, predation management, and hatchery reforms.

In their application, the state asserts that taking no action or continued use of only non-lethal methods will likely result in an expansion of the problem interaction by allowing CSLs to become recruited into the pool of nuisance animals. The expected benefit of permanent removal of the animals in question will be to reduce a significant source of mortality that has jeopardized state, Federal, and non-governmental efforts to recover ESA-listed salmon and steelhead stocks in the Willamette River basin. The state's population viability analysis predicts that elimination of the problem interaction will reduce the probability of extinction of the three independent UWR steelhead populations from 20-64 percent to <5 percent.

In considering whether the application should be approved or denied, the MMPA requires that the Task Force and NMFS consider: (1) population trends, feeding habits, the location of the pinniped interaction, how and when the interaction occurs, involved; (2) past efforts to 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 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. The NMFS West Coast Regional Administrator has considered the state's application and determined that it provides sufficient evidence to warrant establishing a Task Force. The application describes the means of identifying individual pinnipeds, includes a detailed description of the problem interaction

between pinnipeds and listed salmonids in the vicinity of Willamette Falls, and describes the expected benefits of potential taking of pinnipeds. The application also documents the state's past non-lethal efforts to deter pinnipeds in the vicinity of Willamette Falls.

Request for Comments and Other Information

NMFS solicits public comments on the state's application and any additional information that should be considered by the Task Force in making its recommendation, or by NMFS in making its determination whether to approve or deny the application. NMFS is interested in receiving additional information related to the factors that must be considered in determining whether to approve or deny the application (see Background), and on the impact of sea lion predation in the vicinity of Willamette Falls on the affected salmonid stocks.

NMFS requests that comments be specific. In particular, we request information regarding: (1) Observations of pinnipeds (number, species and predation on salmonids) in the Willamette River;

(2) Information on areas where numbers of pinnipeds are concentrated in the Willamette River, including resting/haul out sites and locations where pinnipeds have been repeatedly observed taking salmonids; and

(3) Dates when pinnipeds have been observed in the Willamette River.

NMFS also solicits 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. A Task Force, established under section 120(c) of the MMPA must, to the maximum extent practicable, consist of an equitable balance among representatives of resource users and non-users as outlined above. The state's application included a list of suggested agencies and organizations for inclusion in the Task Force (see Electronic Access).

Nominations for Task Force membership must include sufficient background information (*e.g.*, 1–page resume) on the candidate to allow us to judge their expertise and should indicate the prospective candidate’s willingness to serve without compensation.

Dated: November 3, 2017.

Donna S. Wieting,
Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 2017-24352 Filed: 11/8/2017 8:45 am; Publication Date: 11/9/2017]