

112TH CONGRESS
1ST SESSION

H. R. 3069

To amend the Marine Mammal Protection Act of 1972 to reduce predation on endangered Columbia River salmon and other nonlisted species, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2011

Mr. HASTINGS of Washington introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

To amend the Marine Mammal Protection Act of 1972 to reduce predation on endangered Columbia River salmon and other nonlisted species, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Endangered Salmon
5 and Fisheries Predation Prevention Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) There are 13 groups of salmon and
9 steelhead that are listed as threatened species or en-

1 dangered species under the Endangered Species Act
2 of 1973 that migrate through the lower Columbia
3 River.

4 (2) The people of the Northwest United States
5 are united in their desire to restore healthy salmon
6 and steelhead runs, as they are integral to the re-
7 gion’s culture and economy.

8 (3) The Columbia River treaty tribes retain im-
9 portant rights with respect to salmon and steelhead.

10 (4) Federal, State, and tribal governments have
11 spent billions of dollars to assist the recovery of Co-
12 lumbia River salmon and steelhead populations.

13 (5) One of the factors impacting salmonid pop-
14 ulations is increased predation by marine mammals,
15 including California sea lions.

16 (6) The population of California sea lions has
17 increased 6-fold over the last 3 decades, and is cur-
18 rently greater than 250,000 animals.

19 (7) In recent years, more than 1,000 California
20 sea lions have been foraging in the lower 145 miles
21 of the Columbia River up to Bonneville Dam during
22 the peak spring salmonid run before returning to the
23 California coast to mate.

1 (8) The percentage of the spring salmonid run
2 that has been eaten or killed by California sea lions
3 at Bonneville Dam has increased 7-fold since 2002.

4 (9) In recent years, California sea lions have
5 with greater frequency congregated near Bonneville
6 Dam and have entered the fish ladders.

7 (10) These California sea lions have not been
8 responsive to extensive hazing methods employed
9 near Bonneville Dam to discourage this behavior.

10 (11) The process established under the 1994
11 amendment to the Marine Mammal Protection Act
12 of 1972 to address aggressive sea lion behavior is
13 protracted and will not work in a timely enough
14 manner to protect threatened and endangered
15 salmonids in the near term.

16 (12) In the interest of protecting Columbia
17 River threatened and endangered salmonids, a tem-
18 porary expedited procedure is urgently needed to
19 allow removal of the minimum number of California
20 sea lions as is necessary to protect the passage of
21 threatened and endangered salmonids in the Colum-
22 bia River and its tributaries.

23 (13) On December 21, 2010, the independent
24 Pinniped-Fishery Interaction Task Force rec-

1 ommended lethally removing more of the California
2 sea lions in 2011.

3 (14) On August 18, 2011, the States of Wash-
4 ington, Oregon, and Idaho applied to the National
5 Marine Fisheries Service, under section
6 120(b)(1)(A) of the Marine Mammal Protection Act
7 of 1972 (16 U.S.C. 1389(b)(1)(A)), for the lethal re-
8 moval of sea lions that the States determined are
9 having a “significant negative impact” on the recov-
10 ery of Columbia River and Snake River salmon and
11 steelhead.

12 (15) On September 12, 2011, the National Ma-
13 rine Fisheries Service announced it was accepting
14 the States’ application for lethal removal of sea lions
15 and that it would reconvene the Pinniped-Fishery
16 Interaction Task Force to consider the States’ appli-
17 cation. This Act will ensure the necessary authority
18 for permits under the Marine Mammal Protection
19 Act of 1972 to be issued in a timely fashion.

20 (16) During a June 14, 2011, hearing, the
21 Committee on Natural Resources of the House of
22 Representatives received testimony from State and
23 tribal witnesses expressing concern that significant
24 pinniped predation of important Northwest fish re-
25 sources other than salmonids is severely impacting

1 fish stocks determined by both Federal and State
2 fishery management agencies to be at low levels of
3 abundance, and that this cannot be addressed by
4 section 120 of the Marine Mammal Protection Act
5 of 1972 (16 U.S.C. 1389), which as in effect before
6 the enactment of this Act restricted control of preda-
7 tory pinnipeds' impact only with respect to endan-
8 gered salmonids.

9 **SEC. 3. TAKING OF SEA LIONS ON THE COLUMBIA RIVER**
10 **AND ITS TRIBUTARIES TO PROTECT ENDAN-**
11 **GERED AND THREATENED SPECIES OF SALM-**
12 **ON AND OTHER NONLISTED FISH SPECIES.**

13 Section 120 of the Marine Mammal Protection Act
14 of 1972 (16 U.S.C. 1389) is amended by striking sub-
15 section (f) and inserting the following:

16 “(f) TEMPORARY MARINE MAMMAL REMOVAL AU-
17 THORITY ON THE WATERS OF THE COLUMBIA RIVER OR
18 ITS TRIBUTARIES.—

19 “(1) REMOVAL AUTHORITY.—Notwithstanding
20 any other provision of this Act, the Secretary may
21 issue a permit to an eligible entity authorizing the
22 intentional lethal taking on the waters of the Colum-
23 bia River and its tributaries of sea lions that are
24 part of a healthy population that is not listed as an
25 endangered species or threatened species under the

1 Endangered Species Act of 1973 (16 U.S.C. 1531 et
2 seq.), to protect endangered and threatened species
3 of salmon and other nonlisted fish species.

4 “(2) PERMIT PROCESS.—

5 “(A) IN GENERAL.—An eligible entity may
6 apply to the Secretary for a permit under this
7 subsection.

8 “(B) DEADLINE FOR CONSIDERATION OF
9 APPLICATION.—The Secretary shall approve or
10 deny an application for a permit under this sub-
11 section by not later than 30 days after receiving
12 the application.

13 “(C) DURATION OF PERMIT.—A permit
14 under this subsection shall be effective for no
15 more than one year after the date it is issued,
16 but may be renewed by the Secretary.

17 “(3) LIMITATIONS.—

18 “(A) LIMITATION ON PERMIT AUTHOR-
19 ITY.—Subject to subparagraph (B), a permit
20 issued under this subsection shall not authorize
21 the lethal taking of more than 10 sea lions dur-
22 ing the duration of the permit.

23 “(B) LIMITATION ON ANNUAL TAKINGS.—
24 The cumulative number of sea lions authorized
25 to be taken each year under all permits in ef-

1 fect under this subsection shall not exceed one
2 percent of the annual potential biological re-
3 moval level.

4 “(4) DELEGATION OF PERMIT AUTHORITY.—
5 Any eligible entity may delegate to any other eligible
6 entity the authority to administer its permit author-
7 ity under this subsection.

8 “(5) NEPA.—Section 102(2)(C) of the Na-
9 tional Environmental Policy Act of 1969 (42 U.S.C.
10 4332(2)(C)) shall not apply with respect to this sub-
11 section and the issuance of any permit under this
12 subsection during the 5-year period beginning on the
13 date of the enactment of this subsection.

14 “(6) SUSPENSION OF PERMITTING AUTHOR-
15 ITY.—

16 “If, 5 years after enactment, the Sec-
17 retary, after consulting with State and tribal
18 fishery managers, determines that lethal re-
19 moval authority is no longer necessary to pro-
20 tect salmonid and other fish species from sea
21 lion predation, may suspend the issuance of
22 permits under this subsection.

23 “(7) ELIGIBLE ENTITY DEFINED.—In this sub-
24 section, the term ‘eligible entity’ means each of the
25 State of Washington, the State of Oregon, the State

1 of Idaho, the Nez Perce Tribe, the Confederated
2 Tribes of the Umatilla Indian Reservation, the Con-
3 federated Tribes of the Warm Springs Reservation
4 of Oregon, the Confederated Tribes and Bands of
5 the Yakama Nation, and the Columbia River Inter-
6 Tribal Fish Commission”.

7 **SEC. 4. SENSE OF CONGRESS.**

8 It is the sense of the Congress that—

9 (1) preventing predation by sea lions, recovery
10 of listed salmonid stocks, and preventing future list-
11 ings of fish stocks in the Columbia River is a vital
12 priority;

13 (2) permit holders exercising lethal removal au-
14 thority pursuant to the amendment made by this
15 Act should be trained in wildlife management; and

16 (3) the Federal Government should continue to
17 fund lethal and nonlethal removal measures for pre-
18 venting such predation.

19 **SEC. 5. TREATY RIGHTS OF FEDERALLY RECOGNIZED IN-**
20 **DIAN TRIBES.**

21 Nothing in this Act or the amendment made by this
22 Act shall be construed to affect or modify any treaty or
23 other right of any federally recognized Indian tribe.

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