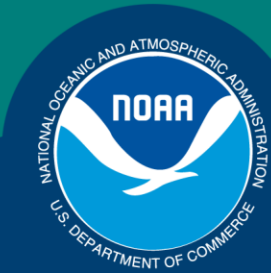


*Science, Service, Stewardship*



## Marine Mammal Protection Act Section 120–Pinniped Removal Authority

### MMPA §120(f) Pinniped–Fishery Interaction Task Force

NOAA

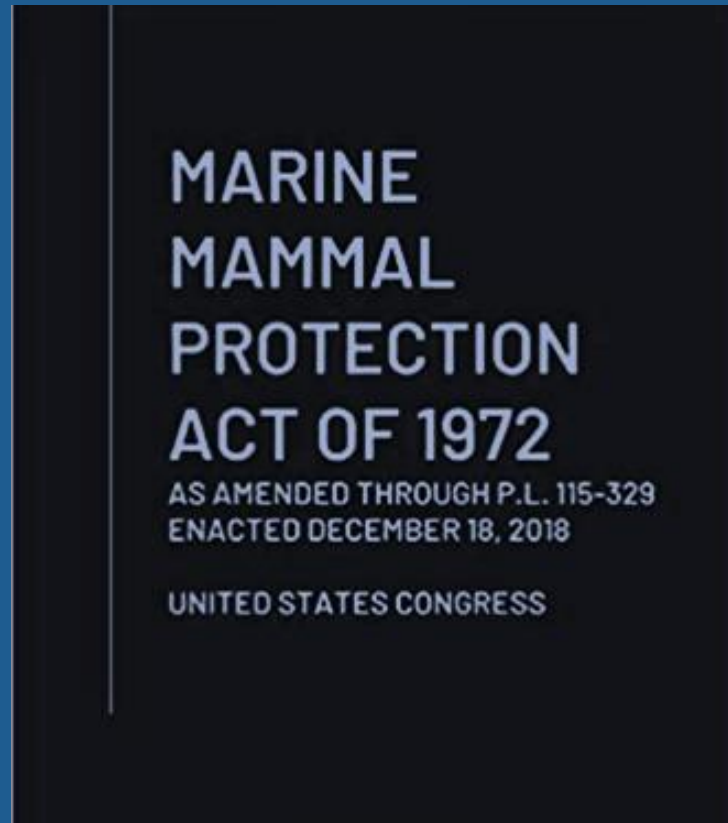
**NOAA  
FISHERIES  
SERVICE**

May 8, 2020

Robert Anderson  
National Marine Fisheries Service

- **Marine Mammal Protection Act §120 Overview and Context**
  - MMPA §120 – Pinniped Removal Authority
  - MMPA §120(f) – Temporary Marine Mammal Removal Authority
  - Purpose of Convening the Task Force
  - Role of the Task Force
  - Charge to the Task Force
  - NMFS' Expectations of the Task Force
  - MMPA §120 Decision-Making Process and Timeframes
- **MMPA §120(f) Application**
- **MMPA §120 Case Studies**
- **Endangered Species Act Listings and Recovery Efforts**

# Marine Mammal Protection Act §120 Overview and Context



## MMPA §120–Pinniped Removal Authority

The United States Congress created §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, acting through the West Coast Regional Administrator, National Marine Fisheries Service (NMFS), to authorize 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.

## MMPA §120(f)–Temporary Marine Mammal Removal Authority on the Waters of the Columbia River or its Tributaries

Public Law 115-329, the Endangered Salmon Predation Prevention Act of 2018, amended Public Law 103-238, the MMPA Amendments of 1994, by replacing §120(f) of the MMPA with a new subsection (f): Temporary Marine Mammal Removal Authority on the Waters of the Columbia River or its Tributaries.

Section 120(f) of the MMPA authorizes the intentional lethal taking of sea lions, for the purpose of protecting species of salmon, steelhead, or eulachon that are listed as endangered species or threatened species under the ESA, and for species of lamprey or sturgeon that are not listed as endangered or threatened but are listed as a species of concern; in the mainstem of the Columbia River from river mile 112 to river mile 292 (McNary Dam); and any tributary within the state of Washington and Oregon that includes spawning habitat for species of salmon or steelhead listed as threatened or endangered under the ESA.

Key changes in the 2018 amendments - specifies that any sea lion in the mainstem of the Columbia River from river mile 112 to river mile 292; or in any tributary within the state of Washington and Oregon that includes spawning habitat for species of salmon or steelhead is deemed to be individually identifiable and having a significant negative impact.

## MMPA §120(f)–Temporary Marine Mammal Removal Authority on the Waters of the Columbia River or its Tributaries

Public Law 115-329 required the Secretary, and by delegation, the NMFS to establish procedures to coordinate issuance of authorizations under §120(f)(2)(C) of the MMPA.

On June 4, 2019, the West Coast Regional Administrator signed a Memorandum concurring that the §120(f)(2)(C) Procedures Document developed by the West Coast Region meets the requirements in Public Law 115-329 to establish procedures under §120(f)(2)(C) of the MMPA.

## MMPA §120(f)–Temporary Marine Mammal Removal Authority on the Waters of the Columbia River or its Tributaries

Public Law No. 115-329 provides that the Secretary shall recognize a Committee §120(f)(6)(D) that includes at least three separate Committee members: a) the state of Oregon; b) the Confederated Tribes of Siletz Indians or the Confederated Tribes of the Grand Ronde Community, or both; and c) the Confederated Tribes of the Warm Springs or the Confederated Tribes of the Umatilla Reservation, or both.

On April 24, 2019, NMFS received a letter from the state of Oregon requesting recognition of the §120(f)(6)(D) Committee that was formed by the Confederated Tribes of the Grand Ronde Community, and the Confederated Tribes of the Siletz Indians of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation, and the Oregon Department of Fish and Wildlife.

On June 4, 2019, NMFS sent a written response to the ODFW recognizing the establishment of the Committee in accordance with §120(f)(6)(D) as being an eligible entity for the purposes of §120(f)(6)(A)(iii).

## Purpose of Convening the Task Force

MMPA §120(c)(3)

NMFS is convening this Task Force to ... *recommend to the Secretary [NMFS] whether to approve or deny the proposed intentional lethal taking of the pinniped or pinnipeds [sea lions] ... in the MMPA §120(f) geographic area...*



## Role of the Task Force

### MMPA §120(c)(3)

Within 60 days after establishment, and after reviewing public comments in response to the Federal Register notice, the Task Force shall—

- (A) recommend to the Secretary whether to **approve or deny** the proposed intentional lethal taking of the pinniped or pinnipeds [sea lions], including along with the recommendation a description of the specific pinniped [sea lions] individual or individuals, the proposed location, time, and method of such taking, criteria for evaluating the success of the action, and the duration of the intentional lethal taking authority; and
  
- (B) **suggest nonlethal alternatives**, if available and practicable, including a recommended course of action.

## Role of the Task Force

In considering whether an application should be **approved or denied**, the Pinniped-Fishery Interaction Task Force and the Secretary [NMFS] shall consider [MMPA §120(d) Considerations]:

- (1) Population trends, feeding habits, the location of the pinniped interaction, how and when the interaction occurs, and how many individual pinnipeds are involved
- (2) Past efforts to nonlethally deter such pinnipeds [sea lions], 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 or 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.

## Charge to the Task Force

MMPA §120(c)(3) ... the Task Force shall—

- (A) ... including along with the recommendation a description of the specific pinniped [sea lions] individual or individuals, the proposed location, time, and method of such taking, criteria for evaluating the success of the action, and the duration of the intentional lethal taking authority; and
  
- (B) suggest nonlethal alternatives, if available and practicable, including a recommended course of action.

## Charge to the Task Force

MMPA §120(f)(2)(C) - COORDINATION (June 4, 2019, Procedures Document)

Application Procedures and Timelines

Monitoring

In addition to any recommendations from the Task Force that are adopted, an eligible entity that is authorized to remove sea lions under §120(f) shall develop and implement a monitoring plan to evaluate: (1) the impacts of sea lion predation on at-risk fish stocks, and (2) the effectiveness of permanent removal of predatory sea lions as a method to reduce mortality on at-risk fish stocks. Furthermore, an eligible entity shall:

- a) monitor and report on the number of sea lions observed in the action area;
- b) report the number of sea lions removed in the action area;
- c) monitor and report on the number of prey observed\* to have been taken by sea lions in the action area; and
- d) monitor and report on key population parameters for at-risk fish stocks so that the effectiveness of permanent removal of predatory sea lions as a method to reduce or eliminate mortality on at-risk fish stocks can be evaluated as required in §120(c)(5).

\*When predation impacts cannot be observed, an eligible entity shall use a bioenergetics model or equivalent method.

# Questions to the Task Force

1. What, if any, non-lethal measures does the Task Force recommend in areas identified as Category 1 and Category 2 to displace and-or minimize sea lion predation in salmon/steelhead “hot spots?”
2. What, if any, non-lethal measures does the Task Force recommend in areas identified as Category 3 to preclude the establishment of sea lions?
3. What methods and operating procedures does the Task Force recommend regarding the capture, removal, etc., of sea lions in areas identified as Category 2 and Category 3?
4. What criteria does the Task Force recommend regarding the use of wildlife darting techniques, for in-water retrieval, capture and handling of sea lions?
5. What criteria and-or metrics does the Task Force recommend regarding the proposed locations, timing, numbers, limitations, methods, and duration of sea lion takings?
6. What methods, criteria and-or metrics does the Task Force recommend for evaluating the expected benefits of the taking of sea lions on at-risk fish stocks?
7. What type of pinniped-predation data does the Task Force recommend be collected in areas identified as Category 1 to evaluate the problem interaction?
8. What type of pinniped-predation data does the Task Force recommend be collected in areas identified as Category 2 and Category 3 to evaluate the problem interaction?
9. What criteria and-or metrics does the Task Force recommend be used to assess the effectiveness of the removal program (post-implementation evaluation)?
10. What methods, criteria and-or metrics does the Task Force recommend regarding the development and implementation of a long-term management plan by the eligible entities to preclude naïve sea lions from becoming habituated predators in the 120(f) geographic area?
11. What actions does the Task Force recommend be implemented by the eligible entities to reduce the social transmission between habituated sea lions and naïve sea lions to minimize/eliminate future recruitment of naïve sea lions into the 120(f) geographic area?

## NMFS' Expectations of the Task Force

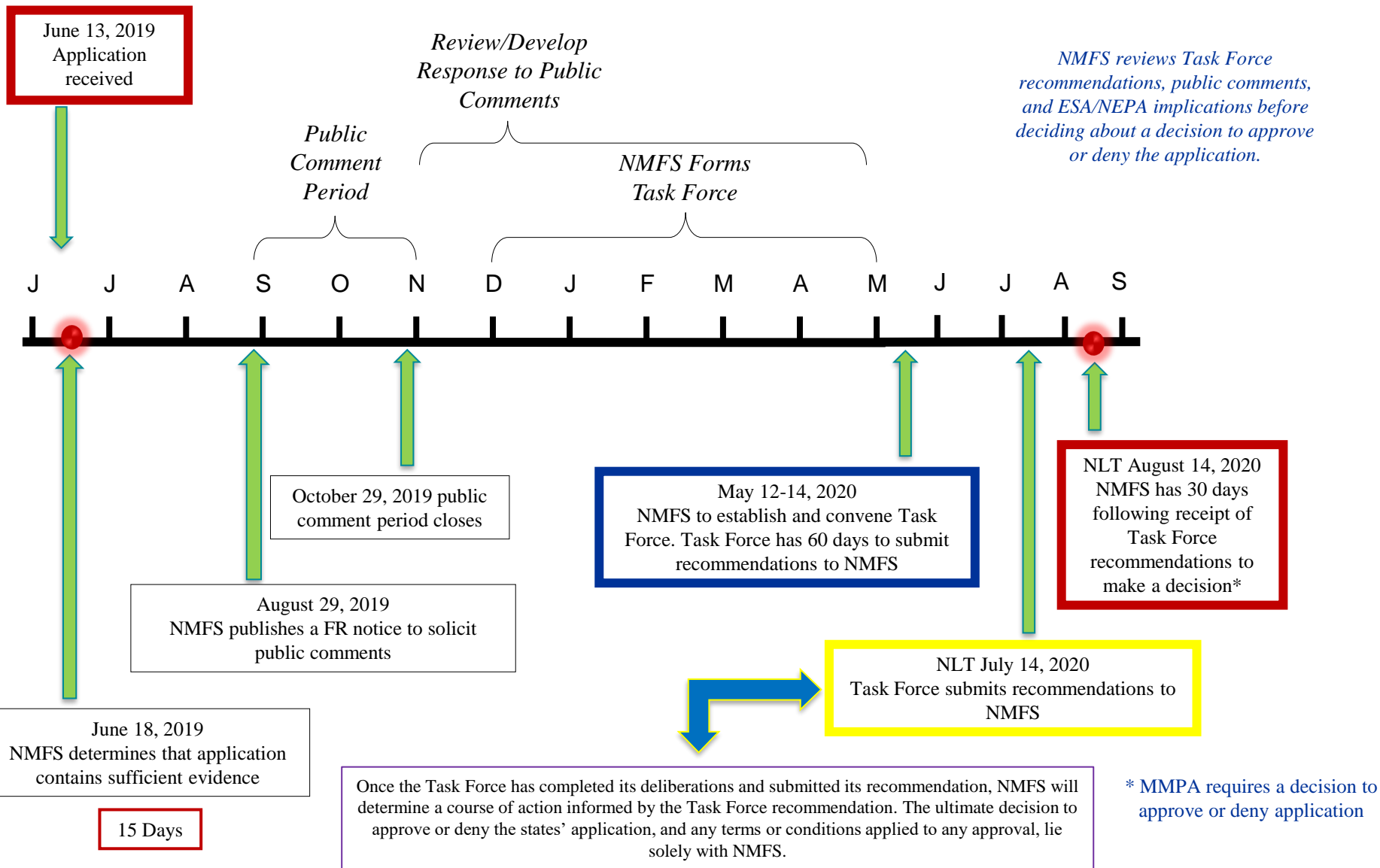
In considering the eligible entities' application, NMFS expects the Task Force to work together during the meeting to develop and document the points of consensus reached by the group, as well as the alternate points of view when consensus is not reached.

The Task Force discussions should reflect the full range of opinions of the group. NMFS expects the Task Force to acknowledge differences of opinion and include minority views with its recommendation and actions.

## Task Force Decision-Making Process

- 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.
- 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.
- Consensus means the willingness to go along with the recommendation either in active support of it or in not opposing it.
  - 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.
  - If no consensus is reached on an issue, the Task Force report will characterize and describe the various recommendations on the issue.
- The facilitators will draft a “Report to the Secretary of Commerce” that details the issues discussed, the areas in which there is consensus, any areas where consensus is not reached, and highlights comments from the Task Force as well as recommended actions from the Task Force. 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.
- NMFS will be responsible for making the final decision about how to proceed with regards to the eligible entities’ application.

# MMPA Section 120/120(f) – Decision-Making Process and Prospective Timeframes





# Questions?



# MMPA §120(f) Application



June 13, 2019

Mr. Barry Thom  
West Coast Regional Administrator  
NOAA Fisheries  
7600 Sand Point Way NE  
Seattle, WA 09115

Dr. Scott Rumsey  
West Coast Deputy Regional Administrator  
NOAA Fisheries  
7600 Sand Point Way NE  
Seattle, WA 09115

Dear Mr. Thom and Dr. Rumsey:

The Oregon Department of Fish and Wildlife (ODFW), Washington Department of Fish and Wildlife (WDFW), and Idaho Department of Fish and Game (IDFG), on behalf of their respective states ("the States") and the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWSR), the Confederated Tribes and Bands of the Yakama Nation (CTBYN), and the 3.6D Committee submit this application to the National Marine Fisheries Service (NMFS) under subsection 120(f) of the Marine Mammal Protection Act of 1972 (MMPA; 16 U.S.C. §1389 et seq.; section 120 of the MMPA) for the intentional lethal removal of individually identifiable California sea lions (CSL) and Steller sea lions (SSL) that are located in the mainstem of the Columbia River between river mile 112 and McNary Dam, or in any tributary to the Columbia River that includes spawning habitat of salmon or steelhead that are listed as threatened or endangered under the Endangered Species Act of 1973 (ESA; 17 U.S.C. §1531 et seq.). For the purposes of this application, we propose that a California or Steller sea lion present within this geographic area is deemed to be individually identifiable and to be having a significant negative impact within the meaning of Section 120(b)(1) as defined by Section 120(f)(7) & (8) (MMPA; 16 U.S.C. 1389(f)(7) and (8)).

# MMPA § 120(f) Application

## Proposed Action

On June 13, 2019, the Oregon Department of Fish and Wildlife, the Washington Department of Fish and Wildlife, the Idaho Department of Fish and Game; the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakama Nation; and the Willamette Committee\* (hereafter called – “eligible entities”) submitted an application pursuant to section 120(f) of the Marine Mammal Protection Act to the National Marine Fisheries Service requesting authorization to intentionally take, by lethal methods, California sea lions and Steller sea lions that are located in the main stem of the Columbia River between river mile 112 (I-205 Bridge) and river mile 292 (McNary Dam), or in any tributary to the Columbia River that includes spawning habitat of threatened or endangered salmon or steelhead.

\*MMPA §120(f)(6)(D) Committee.

## MMPA § 120(f) Application

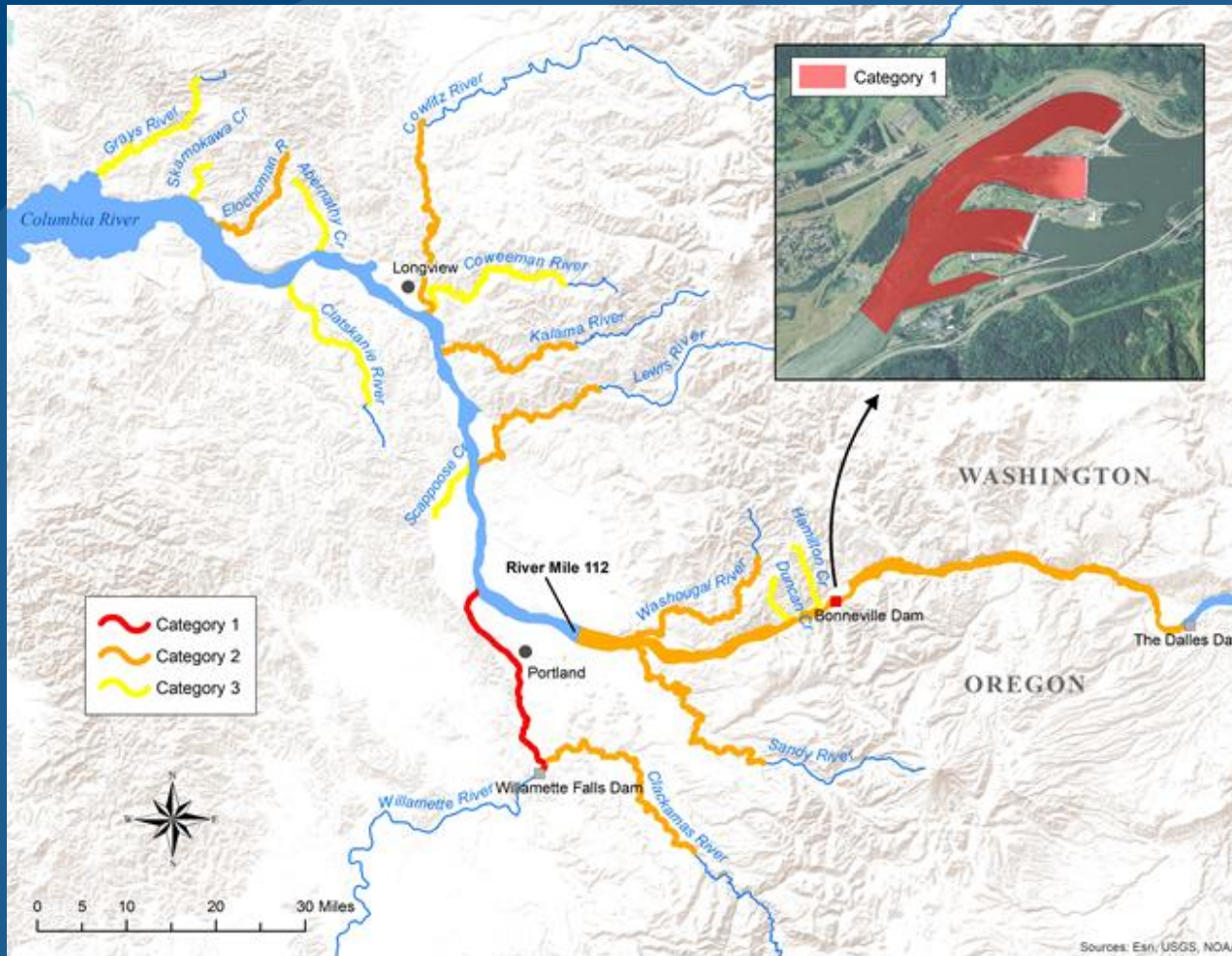
### Proposed Action

The eligible entities are requesting approval for intentional lethal taking of CSL and SSL in the MMPA section 120(f) geographic area to:

- Reduce or eliminate sea lion predation on at-risk fishes.
- Improve the efficiency of the currently authorized removal programs at Bonneville Dam and Willamette Falls (areas identified as Category 1).
- Prevent naïve sea lions from becoming habituated predators in the 120(f) geographic area.

# MMPA § 120(f) Application

## Proposed Action



**Category 1** includes areas that currently have high numbers of CSL and/or SSL (e.g., >20) that are often present for the majority of the year. This high occupancy constitutes an immediate and ongoing conservation risk for fish stocks.

**Category 2** includes areas that currently have low to moderate numbers of CSL and/or SSL (e.g., <10) that are present only periodically. This level of occupancy constitutes a conservation concern for fish stocks if left unmanaged.

**Category 3** includes areas where CSL or SSL have not been officially documented but contain spawning habitat for ESA listed salmonids, or have documented presence that managers are monitoring but do not deem a conservation risk at present.

## MMPA § 120(f) Application

### Proposed Action

#### Estimated Abundance of CSL and SSL in the Action Area

The number of animals [sea lions] within the geographic scope of the application that are not accounted for at Bonneville Dam and Willamette Falls is likely less than 50 (application, page 8). Thus, we [eligible entities] estimate that there may currently be at least 144-286 CSL and 105-130 SSL within the geographical scope of the application (application, page 8).

In the proposed management scenario (application, pages 36-39), we [eligible entities] assumed that the program would remove 75% of CSL, or 108-215 CSL, and 50% of SSL, or 53-65 SSL, respectively, over a period of 5 years.

## MMPA § 120(f) Application

### Public Comments

NMFS published a Federal Register notice (84 FR 45730) on August 29, 2019.

During the 60-day public comment period, we received 22,225 public comments.

We received 181 letters supporting the proposed action.

We received 21,756 letters opposing the proposed action.

We received 288 comment letters that stated no clear preference supporting or opposing the eligible entities' application.

# Questions?





## MMPA §120 Case Studies



Hershel, Grant Haller, Post-Intelligencer

## MMPA §120 Case Studies

Ballard Locks, Seattle, Washington

Bonneville Dam, Columbia River, Washington and Oregon

Willamette Falls, Oregon

# MMPA §120 Case Studies

## Ballard Locks, Seattle, Washington



Run year	Run Estimate		Steelhead escapement	Escapement goal	Percent of goal	Steelhead consumed	Percent of escapement
	Pre-season	Post-season					
1982-83			2,575	1,600	161		
1983-84		2,166	1,250	1,600	78		
1984-85		2,527	474	1,600	30	(1500)	59*
1985-86		2,261	1,816	1,600	114	329	15
1986-87	2,965	2,997	1,172	1,600	73	1,254	42
1987-88	2,635	2,274	858	1,600	54	1,178	52
1988-89	1,655	1,973	686	1,600	43	1,287	65
1989-90	2,093	1,806	714	1,600	45	1,065	59
1990-91	2,355	1,520	621	1,600	39	899	59
1991-92	1,442		599	1,600	37		
1992-93	1,611		184	1,600	12		
1993-94	1,159	76	70	1,600	4	6	8
1994-95	60371	137	126	1,600	8	11	8

Lake Washington Winter Steelhead Escapement and Consumption by CSL (NMFS 1995).

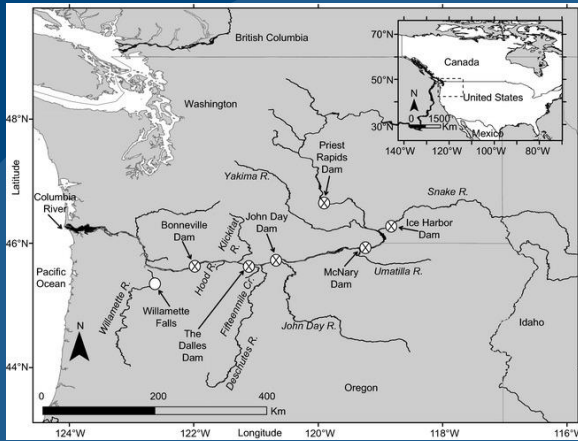
Authorizations: 1995, 1996, 1997, 2001

In 1996, 4 CSL were trapped and sent via FedEx to Sea World in Orlando, Florida. In 1999, 6 CSL were trapped and trucked to California. Despite lethal removal authority, the Washington Department of Fish and Wildlife did not euthanize any CSL.

The Lake Washington winter steelhead run is now considered functionally extinct.

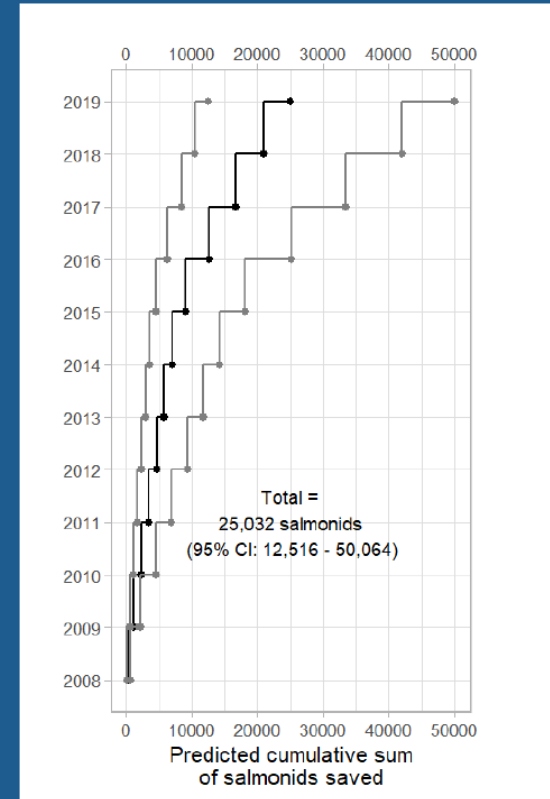
# MMPA §120 Case Studies

## Bonneville Dam, Columbia River, Washington and Oregon



Authorizations: 2008, 2011, 2012, 2016

Program Summary: 238 CLS Removed 2008-2019



Steingass et al. 2019

# MMPA §120 Case Studies

## Bonneville Dam, Columbia River, Washington and Oregon

Year	California Sea Lions			Steller Sea Lions		All pinnipeds	
	Bonneville Dam Salmonid Passage	Adjusted Salmonid Consumption Estimates	% Run	Adjusted Salmonid Consumption Estimates	% Run	Adjusted Salmonid Consumption Estimates	% Run
2002	284,732	1,010	0.4%	0	0.0%	1,010	0.4%
2003	217,934	2,329	1.1%	0	0.0%	2,329	1.1%
2004	186,771	3,516	1.9%	7	0.0%	3,533	1.9%
2005	81,252	2,904	3.5%	16	0.0%	2,920	3.4%
2006	105,063	3,312	3.1%	85	0.1%	3,401	3.1%
2007	88,474	4,340	4.7%	15	0.0%	4,355	4.7%
2008	147,558	4,735	3.1%	192	0.1%	4,927	3.2%
2009	186,056	4,353	2.3%	607	0.3%	4,960	2.7%
2010	267,167	5,296	1.9%	1,025	0.4%	6,321	2.4%
2011	223,380	2,689	1.2%	1,282	0.6%	3,970	1.8%
2012	171,665	1,067	0.6%	1,293	0.7%	2,360	1.4%
2013	120,619	1,497	1.2%	1,431	1.2%	2,928	2.4%
2014	219,929	2,747	1.2%	1,874	0.8%	4,621	2.1%
2015	239,326	8,324	3.3%	2,535	1.0%	10,859	4.3%
2016	154,074	6,676	4.1%	2,849	1.7%	9,525	5.8%
2017	109,040	2,142	1.9%	3,242	2.8%	5,384	4.7%
2018	100,887	746	0.7%	2,368	2.3%	3,112	3.0%
2019	63,591	176	0.3%	2,022	3.1%	2,201	3.3%

Estimated consumption of adult salmonids (including adults and jacks) by CSL and SSL at Bonneville Dam during the Jan-Jun sampling period from 2002 to 2019 (Tidwell et al. 2020)

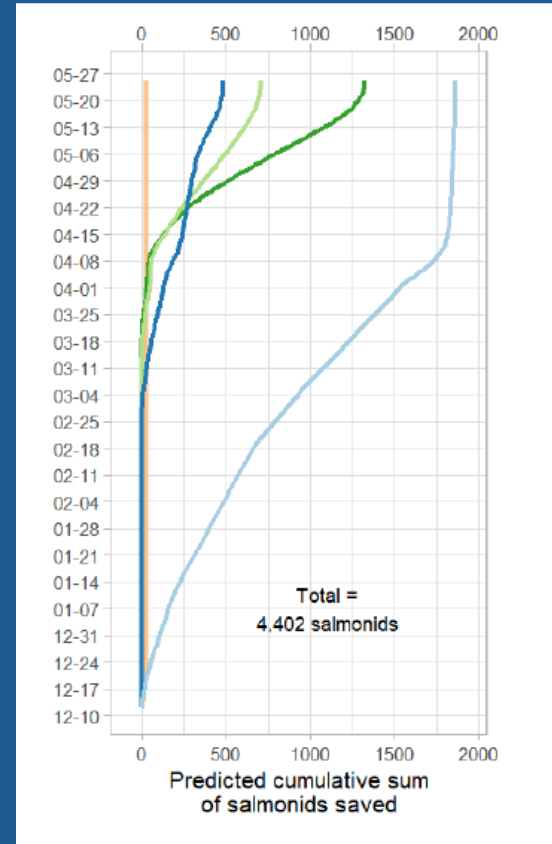
# MMPA §120 Case Studies

## Willamette Falls, Oregon



Authorization: 2018

Program Summary: 33 CSL Removed 2018-2019



Steingass et al. 2019

# MMPA §120 Case Studies

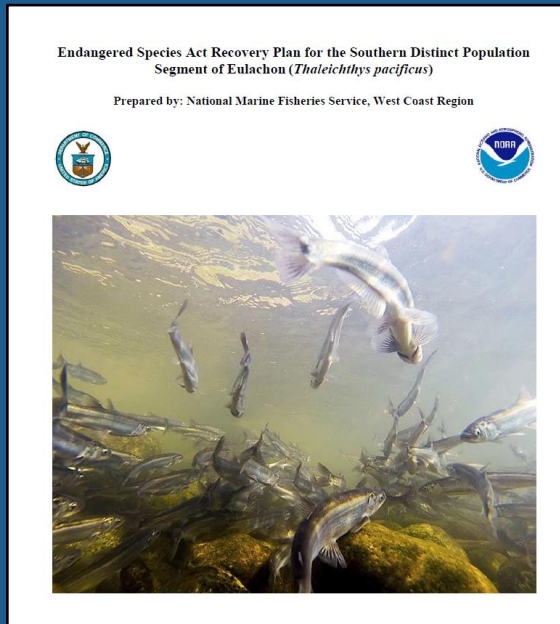
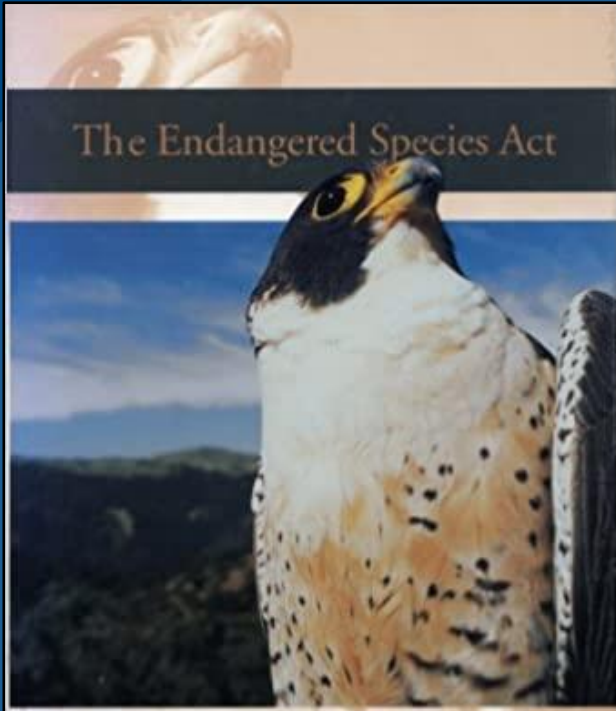
## Willamette Falls, Oregon

Run - Year	Estimated Predation						Percent of Potential Escapement					
	2014	2015	2016	2017	2018	2019	2014	2015	2016	2017	2018	2019
Winter Steelhead	780	557	915	270	503	280	13%	11%	14%	25%	22%	11%
Unmarked Chinook	496	899	650	399	466	253	7%	9%	9%	6%	9%	5%
Summer Steelhead	712	172	768	181	516	109	3%	4%	3%	8%**	6%	3%
Marked Chinook	1,703	4,149	2,252	1,824	1,950	478	7%	9%	9%	6%	9%	5%

Estimated salmonid predation by California sea lions at Willamette Falls, 2014-2019 (Steingass et al. 2019).

Fish Counts at Willamette Falls through May 3, 2020					
Run - Year	2016	2017	2018	2019	2020
Winter Steelhead	5,778	822	1,829	3,202	5,397

# Endangered Species Act Listings and Recovery Efforts





# Summary of ESA Listings and Recovery Efforts in the Columbia River Basin

ESA-Listed Species	Status
Lower Columbia River Chinook salmon	Threatened
Upper Willamette River Chinook salmon	Threatened
Upper Columbia River Spring-Run Chinook salmon	Endangered
Snake River Spring/Summer Run Chinook salmon	Threatened
Snake River Fall-Run Chinook salmon	Threatened
Columbia River Chum salmon	Threatened
Lower Columbia River coho salmon	Threatened
Snake River Sockeye salmon	Endangered
Lower Columbia River steelhead	Threatened
Upper Willamette River steelhead	Threatened
Middle Columbia River steelhead	Threatened
Upper Columbia River steelhead	Threatened
Snake River Basin steelhead	Threatened
Southern DPS of Eulachon	Threatened

## Threats

- Effects related to the hydropower system in the Columbia River
- Degraded freshwater habitat
- Degraded estuarine and nearshore marine habitat
- Hatchery-related effects
- Harvest-related effects
- Predation
- Logging
- Agriculture
- Mining
- Changes in ocean conditions

## Recovery Efforts

Federal and state agencies, tribes, landowners, watershed councils, and private 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.

# Questions?

