

**MMPA 120(f) Pinniped-Fishery Interaction Task Force  
Task Force Overview and 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 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.

Public Law 115-329, the Endangered Salmon Predation Prevention Act of 2018, amended Public Law 103-238, the MMPA Amendments of 1994, by replacing section 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 so 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.

Public Law 115-329 required the Secretary, and by delegation, the NMFS to establish procedures to coordinate issuance of authorizations under section 120(f)(2)(C) of the MMPA. On June 4, 2019, the West Coast RA 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 section 120(f)(2)(C) of the MMPA.

The section 120(f) process begins with an application from one or more eligible entities<sup>1</sup>. 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

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<sup>1</sup> 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 section 120(f)(6)(D) Committee (hereafter called – “the Willamette Committee”). The 120(f)(6)(D) Committee fulfills the requirements for an eligible entity under section 120(f)(6)(A)(iii) of the MMPA. Pursuant to this section of the statute, the Committee members include the Oregon Department of Fish and Wildlife, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes of the Grand Ronde Community, and the Confederated Tribes of the Siletz Indians of Oregon.

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)(1), NMFS is convening this Task Force to provide NMFS with a recommendation to either approve or deny the eligible entities June 13, 2019, application. The eligible entities' application requests authorization for the intentional lethal taking of California sea lions (CSL) and Steller sea lions (SSL) that are having a significant negative impact on at-risk species listed as threatened or endangered under the ESA in the Columbia River basin. 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."

### **Eligible Entities' Application**

On June 13, 2019, NMFS received an application from the above-mentioned eligible entities requesting authorization under section 120(f) of the MMPA to take by lethal means sea lions in the Columbia River by lethal methods.

The eligible entities' application described 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 sea lions from areas where sea lions have posed a significant risk to at-risk fish stocks.

NMFS reviewed the eligible entities' application and determined that it provided sufficient evidence to warrant establishing a Task Force and published the required *Federal Register* notice on August 29, 2019. In the notice, NMFS solicited public comment on the eligible entities' application and requested additional information that the Task Force should consider 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, we received 22,225 public comments, most of which were generic letters supporting (181) or opposing (21,756) the permanent removal of CSL and SSL in the Columbia River basin. Two hundred eighty-eight (288) comment letters stated no clear preference supporting or opposing the eligible entities' application.

### **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 eligible entities' request. If the Task Force recommends approval, it also includes a description of the proposed location, time, and method of taking, criteria for evaluating the success of the action, and the

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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 eligible entities' 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 eligible entities' application to permit the intentional lethal taking of sea lions that are having a significant negative impact on the decline or recovery of at-risk fish stocks listed under the ESA.

**NMFS' Expectations of the Task Force**

In evaluating the eligible entities' 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 sea lion populations, the number of individual sea lions and feeding habits at the locations of the interaction, and past efforts to non-lethally deter pinnipeds involved in the interaction. Information on the status and trends of the at-risk fish stocks involved in the interaction and impact of predation are also included.

In addition to the above-mentioned considerations, NMFS requests that the Task Force deliberate the following questions when preparing its recommendations:

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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<sup>1</sup> 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?

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<sup>1</sup> Category 3 includes areas where sea lions have not been officially documented but contain spawning habitat for salmon and steelhead, or have documented presence that managers are monitoring but do not deem a conservation risk at present.

## 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 Pinnipeds or Pinniped-Fishery Interactions**

Tim Ragen (Former Executive Director of the Marine Mammal Commission)

Doug DeMaster (Former Director of the Alaska Fisheries Science Center, NOAA)

William Hurley IV, International Marine Animals Trainers Association

### **Conservation Organizations**

Sharon Young, Humane Society of the United States

Charles (CT) Harry, International Fund for Animal Welfare

Jeff Laake, the Wildlife Society

Traci Belting, Seattle Aquarium

Amy Cutting, Oregon Zoo

### **Fishing Organizations**

Liz Hamilton, NW Sport Fishing Industry Association

Bob Rees, NW Guides and Anglers Association

### **Indian Treaty Tribes**

Olney "JP" Patt, 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

Jack Yearout, Nez Perce Indian Tribe

### **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

### **States**

Kesinna Lee, Washington Dept. of Fish and Wildlife

Shaun Clements, Oregon Dept. of Fish and Wildlife

Joe Dupont, Idaho Dept. of Fish and Game

### **Other**

Doug Hatch, Columbia River Inter-Tribal Fish Commission

Sean Tackley, U.S. Army Corps of Engineers, NWD

- 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

Diana Dishman, NOAA

Bryan Wright, ODFW

Sheanna Steingass, ODFW

Steve Jeffries, WDFW

- 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.

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- 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 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 recommendations 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.
- E. NMFS will be responsible for making the final decision about how to proceed with regards to the eligible entities’ application.

### **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. Kearns and West 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, facilitating meetings, 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 details the issues discussed and highlights comments from the Task Force throughout this process, as well as recommendation from the Task Force. 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. In addition to the MMPA process described above, NMFS must also comply with the National Environmental Policy Act, the Endangered Species Act, and other relevant statutes in considering the eligible entities' application.

**Background Materials (provided via email)**

Section 120(f) Application Cover Letter

Section 120(f) Application

Federal Register Notice 84 FR 45730

Public Comments

Marine Mammal Protection Act

Marine Mammal Protection Act section 120(f)(2)(C) - Coordination Procedures

Marine Mammal Protection Act section 120(f)(6)(D) - Willamette Committee

Species status summaries on salmon, steelhead, eulachon, California sea lions, and Steller sea lions