

112TH CONGRESS
1ST SESSION

H. R. 946

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 2011

Mr. HASTINGS of Washington (for himself, Mr. DICKS, Mr. WALDEN, and Ms. HERRERA BEUTLER) 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 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 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 300,000.

19 (7) In recent years, over 1,000 California sea
20 lions have been entering the lower 205 miles of the
21 Columbia River up to Miller Island during the peak
22 spring salmonid run before returning to the Cali-
23 fornia 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) Some of these California sea lions have not
8 been responsive to extensive hazing methods em-
9 ployed near Bonneville dam to discourage this be-
10 havior.

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

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

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

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

3 **SEC. 3. TAKING OF CALIFORNIA SEA LIONS ON THE COLUM-**
4 **BIA RIVER OR ITS TRIBUTARIES TO PROTECT**
5 **ENDANGERED AND THREATENED SPECIES OF**
6 **SALMON.**

7 (a) AMENDMENT TO MARINE MAMMAL PROTECTION
8 ACT OF 1972.—Section 120 of the Marine Mammal Pro-
9 tection Act of 1972 (16 U.S.C. 1389) is amended by add-
10 ing at the end the following:

11 “(k) TEMPORARY MARINE MAMMAL REMOVAL AU-
12 THORITY ON THE WATERS OF THE COLUMBIA RIVER OR
13 ITS TRIBUTARIES.—

14 “(1) DETERMINATION OF ALTERNATIVE MEAS-
15 URES.—

16 “(A) IN GENERAL.—The Secretary shall
17 determine whether alternative measures to re-
18 duce sea lion predation of salmonid stocks in
19 the waters of the Columbia River or its tribu-
20 taries listed as threatened species or endan-
21 gered species under the Endangered Species
22 Act of 1973 (16 U.S.C. 1531 et seq.) ade-
23 quately protect the salmonid stocks from Cali-
24 fornia sea lion predation.

1 “(B) DEADLINE.—The Secretary shall
2 make such determination not later than 90 days
3 after the date of the enactment of this sub-
4 section.

5 “(C) PUBLIC COMMENT.—The Secretary
6 shall, within such 90-day period, provide up to
7 30 days for the submission of public comments
8 on the determination.

9 “(D) FEDERAL REGISTER.—The Secretary
10 shall publish the determination in the Federal
11 Register.

12 “(2) REMOVAL AUTHORITY.—In addition to
13 other authority under this section, and notwith-
14 standing any other provision of this title, the Sec-
15 retary may issue a permit to an eligible entity au-
16 thorizing the intentional lethal taking on the waters
17 of the Columbia River or its tributaries California
18 sea lions if the Secretary determines under para-
19 graph (1) that alternative measures to reduce sea
20 lion predation on salmonid stocks in such waters
21 listed as threatened species or endangered species
22 under the Endangered Species Act of 1973 (16
23 U.S.C. 1531 et seq.) do not adequately protect the
24 salmonid stocks from California sea lion predation.

25 “(3) PERMIT PROCESS.—

1 “(A) IN GENERAL.—An eligible entity may
2 apply to the Secretary of Commerce for a per-
3 mit under paragraph (2) authorizing the lethal
4 taking of California sea lions.

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

10 “(C) AUTHORITY TO ISSUE MULTIPLE
11 PERMITS.—The Secretary may issue more than
12 one permit under this subsection to an eligible
13 entity. No more than one permit may be uti-
14 lized in any 14-day period by the same eligible
15 entity.

16 “(D) DURATION OF PERMITS.—A permit
17 under this subsection shall be effective for no
18 more than one year after the date it is issued.

19 “(E) CONSULTATION.—In issuing a permit
20 to an eligible entity, the Secretary shall—

21 “(i) consult with other eligible entities
22 and other such entities as the Secretary
23 considers appropriate, including the Corps
24 of Engineers; and

1 “(ii) consider the number of other
2 permits issued to other eligible entities in
3 the same time period.

4 “(F) REPORTS.—Not later than January
5 31 following the end of each year in which a le-
6 thal taking occurs under a permit under this
7 subsection, the Secretary shall publish a brief
8 report describing the implementation of this
9 subsection and the effect of all such takings in
10 such year on Columbia River salmonid stocks
11 and on the California sea lion population in the
12 area where each taking occurs.

13 “(4) LIMITATIONS.—

14 “(A) LIMITATION ON PERMIT AUTHOR-
15 ITY.—A permit issued under this subsection
16 shall not authorize the lethal taking of more
17 than 10 California sea lions.

18 “(B) LIMITATION ON ANNUAL TAKINGS.—
19 The cumulative number of California sea lions
20 authorized to be taken each year under all per-
21 mits in effect under this subsection shall not ex-
22 ceed one percent of the annual potential biologi-
23 cal removal level of California sea lions.

24 “(C) LIMITATION ON ANIMAL AUTHORIZED
25 TO BE TAKEN.—

1 “(i) DETERMINATION REQUIRED.—A
2 California sea lion may not be taken under
3 a permit under this subsection unless the
4 permit holder has determined that—

5 “(I) such sea lion has preyed
6 upon salmonid stocks in the Columbia
7 River; and

8 “(II) with respect to such sea
9 lion, nonlethal alternative measures to
10 prevent preying on salmonid stocks
11 have in general not been effective.

12 “(ii) CONSULTATION.—In making
13 such determination, the permit holder shall
14 consult with the National Marine Fisheries
15 Service, and may consult with any other
16 Federal agency or eligible entity as appro-
17 priate.

18 “(5) DELEGATION OF PERMIT AUTHORITY.—
19 The State of Washington and the State of Oregon
20 may each designate the Pacific States Marine Fish-
21 eries Commission to administer its permit authority
22 under this subsection. Any other eligible entity may
23 designate the Columbia River Inter-Tribal Fish
24 Commission to administer its permit authority under
25 this subsection.

1 “(6) NEPA.—Section 102(2)(C) of the Na-
2 tional Environmental Policy Act of 1969 (42 U.S.C.
3 4332(2)(C)) shall not apply with respect to this sub-
4 section and the issuance of any permit under this
5 subsection during the 3-year period beginning on the
6 date of the enactment of this Act.

7 “(7) TERMINATION OF PERMITTING AUTHOR-
8 ITY.—The Secretary may not issue any permit under
9 this subsection after the earlier of—

10 “(A) the end of the 5-year period begin-
11 ning on the date of the enactment of this sub-
12 section; or

13 “(B) the date the Secretary determines
14 that lethal removal authority is no longer nec-
15 essary to protect salmonid stocks from Cali-
16 fornia sea lion predation.

17 “(8) ELIGIBLE ENTITY DEFINED.—In this sub-
18 section, the term ‘eligible entity’ means each of the
19 State of Washington, the State of Oregon, the Nez
20 Perce Tribe, the Confederated Tribes of the
21 Umatilla Indian Reservation, the Confederated
22 Tribes of the Warm Springs Reservation of Oregon,
23 and the Confederated Tribes and Bands of the
24 Yakama Nation.”.

1 (b) RECOMMENDED LEGISLATION.—Not later than
2 two years after the date of the enactment of this Act, the
3 Secretary of Commerce shall submit to the Congress a re-
4 port on the need for additional legislation to amend the
5 Marine Mammal Protection Act of 1972 to address the
6 general issue of predation by marine mammals on fish spe-
7 cies listed as threatened species or endangered species
8 under the Endangered Species Act of 1973 (16 U.S.C.
9 1531 et seq.).

10 **SEC. 4. SENSE OF CONGRESS.**

11 It is the sense of the Congress that—

12 (1) nonlethal means of preventing predation of
13 listed salmonid stocks in the Columbia River by
14 California sea lions is preferable to lethal means;

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

18 (3) the Federal Government should continue to
19 fund, research, and support effective nonlethal alter-
20 native measures for preventing such predation.

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