

## **Section 120 Bonneville Pinniped-Fishery Interaction Task Force Instructions**

### **Task Force Meeting**

**May 31, 2016**

#### **Purpose of Convening the Task Force**

NMFS is convening the Bonneville Pinniped-Fishery Interaction Task Force (Task Force) to provide NMFS with a recommendation to either approve or deny the States' January 27, 2016, application for a 5-year extension to the existing Letter of Authorization (LOA) —the States' are not requesting any modifications to the existing LOA. In formulating its recommendation, NMFS asks the Task Force to follow the process and address the questions identified below in the section titled "The Role of the Task Force and NMFS' Expectations of the Task Force."

Furthermore, in the March 2, 2012—Report on Consideration of Statutory Factors under Section 120 of the Marine Mammal Protection Act (MMPA), NMFS stated that, following the expiration of the 2012 LOA, we intended to reconvene the Task Force to evaluate the effectiveness of the 2012-2016 program and recommend whether it has or has not been effective in eliminating the problem interaction. To prepare for this step, NMFS is also asking the Task Force to provide the agency with what applicable information/data/analyses the Task Force needs to evaluate the effectiveness of the 2012-2016 program, recommend whether the program has or has not been effective in eliminating the problem interaction and, if not effective, what changes does the Task Force recommend to improve the program in the future?

#### **Background - History of the Pinniped-Fishery Interaction at Bonneville Dam**

In December 2006, NMFS received an application co-signed by the directors of the Washington Department of Fish and Wildlife, the Oregon Department of Fish and Wildlife, and the Idaho Department of Fish and Game, on the States' behalf, requesting authorization under section 120 of the MMPA to intentionally take, by lethal methods, individually identifiable predatory California sea lions in the Columbia River, which were then having a significant negative impact on the recovery of threatened and endangered Pacific salmon and steelhead. NMFS partially approved the State's 2006 request in 2008, issuing its Letter of Authorization (LOA) on March 18, 2008.

Shortly after NMFS issued the LOA, the Humane Society of the United States (HSUS) filed a lawsuit in the U.S. District Court in Oregon, alleging that NMFS' LOA violated section 120 of the MMPA and the National Environmental Policy Act (NEPA). In November 2008, the District Court issued an order upholding NMFS' approval of the lethal removal program and its evaluation of impacts under NEPA. Plaintiffs appealed to the Ninth Circuit Court of Appeals, which declined to halt the removal program while the appeal was pending. On the merits the Ninth Circuit vacated and remanded the LOA in November 2010.

In response to the court's 2010 decision, the States submitted a new request for lethal removal authorization on December 7, 2010. NMFS considered the request and new information available since its prior authorization, including the Bonneville Pinniped-Fishery Interaction Task Force's

recommendations. NMFS again authorized lethal take, under similar conditions to the 2008 authorization (albeit with modifications), issuing a new LOA on May 13, 2011. HSUS again filed suit this time in federal court for the District of Columbia, alleging, among other things, that NMFS had not followed procedural requirements under MMPA section 120 prior to issuing the new authorization (including public notice and comment on the States' application). In coordination with the States, NMFS revoked the May 13 authorization on July 22, 2011, and HSUS voluntarily withdrew their lawsuit.

On August 18, 2011, the States submitted a new request for lethal removal of California sea lions at Bonneville Dam under essentially the same conditions as the prior authorizations. NMFS reconvened the Bonneville Task Force in October 2011 to evaluate the States' application and public comments and to recommend whether NMFS should approve or deny the proposed intentional lethal taking program. The Bonneville Pinniped-Fishery Interaction Task Force's final report and recommendations were provided to NMFS on November 14, 2011. On March 15, 2012, NMFS issued the current LOA to the States. Unless modified, extended, or suspended, the current LOA remains in effect through June 30, 2016.

The States have now conducted removal activities during part or all of five seasons of salmonid migration (2012-2016) since issuance of the 2012 LOA. During these activities, the States and the Columbia River Intertribal Fish Commission (CRITFC) have conducted non-lethal on-water hazing of sea lions, and the U.S. Army Corps of Engineers (USACE) has modified the fish passage facilities at the dam to exclude sea lions and conducted active hazing from the dam and shoreline. The USACE has also continued to monitor predation and fish passage at Bonneville Dam.

The States have permanently removed (transferred to public display, euthanized, or accidental mortalities) a total of 161 (as of May 12, 2016) individually identifiable predatory California sea lions. NMFS routinely updates the list of identified predatory sea lions authorized for removal, to include animals that have met the criteria since the authorization was first issued. NMFS has provided the Task Force with periodic updates of these activities, including updates on salmonid predation and passage, as well as predatory sea lion removal reports and updated lists of predatory sea lions.

### **The Role of the Task Force and NMFS' Expectations of the Task Force**

In evaluating the States' application for a 5-year extension, 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.

At the meeting the States, USACE, and CRITFC will present information on implementation of lethal removals and non-lethal alternatives, sea lion presence at the dam, predation on salmonids, and fish passage at the dam.

### **Evaluating the States' Application for a 5-year Extension**

For the evaluation, NMFS requests that the Task Force: review the States' application; the public comments; the available information regarding the problem interaction; and the Task Force's prior recommendations and the terms and conditions of the current LOA. In considering whether the States' application for a 5-year extension should be approved or denied, **NMFS requests that the Task Force consider the following questions:**

(1) Is pinniped predation on at-risk salmon and steelhead still a problem?

In answering this question, and consistent with Section 120(d) of the MMPA, the Task Force, in considering whether the States' application should be approved or denied, shall consider—

- (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.

(2) Taking into consideration the States' application, the public comments, the available information regarding the problem interaction, prior recommendations, terms and conditions of the current LOA, the four MMPA section 120(d) considerations, and the available information regarding the problem interaction, **does the Task Force recommend that NMFS approve or deny the States' application to continue the program through June 30, 2021?**

### **Task Force Evaluation of the Effectiveness of the 2012-2016 Program**

(1) What applicable information/data/analyses does the Task Force need to evaluate the effectiveness of the 2012-2016 program, recommend whether the program has or has not been effective in eliminating the problem interaction and, if not effective, what changes does the Task Force recommend to improve the program in the future?

### **Public Participation**

As required by the MMPA, Task Force meetings will be open to the public and the date, time and location of evaluation meetings have been posted for the public on the NOAA Fisheries West Coast Region website and will be announced through NOAA press releases. 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 meetings to allow the public to provide or identify new or relevant information that may assist the Task Force in its deliberations.

### **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.

### **Other Applicable Laws**

Besides the MMPA process described above, in considering the States' application, NMFS must also comply with the National Environmental Protection Act, the Endangered Species Act and other relevant statutes.