

# Northwest Region

May 13, 2011



## **Questions & Answers on NOAA Fisheries' Authorization for the States of Oregon and Washington to Lethally Remove California Sea Lions under Section 120 of the Marine Mammal Protection Act**

### **Q: What did NOAA Fisheries announce today?**

**A:** Our authorization for the states of Washington and Oregon to "lethally remove" specific California sea lions that congregate below the Columbia River's Bonneville Dam. The states believe sea lions are having a significant negative impact on recovery of Endangered Species Act-listed salmon and steelhead. We agree. Non-lethal efforts alone to deter them from feasting on salmon at Bonneville Dam have not been effective. This authorization reflects our concern about the impact of some California sea lions on ESA-listed fish, which is why it's so important that we continue to address this problem.

### **Q: I thought NOAA Fisheries already made this decision in 2008. Why have you provided new authorizations to the states?**

**A:** We initially gave the states authorization in 2008 to permanently remove problem California sea lions, including relocating them to zoos or trapping and euthanizing them. The Humane Society sued NOAA over the removal program, but the program continued until a finding by an appeals court in November 2010 sent the decision back to NOAA to better explain its rationale for protecting salmon by removing offending sea lions.

### **Q: What is your justification for the new removal authorizations to the states?**

**A:** We've addressed all concerns in the 9<sup>th</sup> Circuit Court of Appeals decision, which provided us flexibility to remedy the flaws cited by the court. We've done a thorough analysis of all aspects of this issue, and believe that this is the best and most appropriate approach to balance competing wildlife management responsibilities. We believe our new determination is in compliance with the court's November 2010 opinion and with federal legislation, including the Marine Mammal Protection Act, National Environmental Policy Act and Endangered Species Act.

### **Q: Can you provide specific details on your legal justification?**

**A:** Yes. The 9<sup>th</sup> Circuit identified two issues with the previous authorization that NOAA had not adequately explained:

1. The finding that sea lions are having a significant negative impact on the decline or recovery of listed salmonid populations, given earlier findings by NOAA that fisheries that cause similar or greater mortality among these populations are not having significant negative impacts.
  - Section 120 of the MMPA focuses specifically on the narrow issue of pinniped predation on at-risk salmon and steelhead. It addresses an interspecies conflict where, as in this case, one species is healthy, robust and stable, and the other is ESA-listed. All factors that limit salmon recovery must be addressed cumulatively, making even incremental improvement across all limiting factors crucial. The MMPA does not require that predation by itself will jeopardize the continued existence of a salmon species. The salmon death rate caused by sea lions is comparable to death rates from other sources that have led to corrective action. In contrast to harvest impacts, pinniped predation has higher impacts during years with lower fish run sizes,

which can have extreme effects on population survival. We identified sea lion predation as a new, unchecked, unmitigated and uncontrolled source of salmon deaths. Based on these considerations, and not on a simple metric of the range of mortality rates, we concluded that sea lions are having a significant negative impact on the recovery of at-risk salmon and steelhead.

2. Why a California sea lion predation rate of 1% would have a significant negative impact on the decline or recovery of these salmonid populations.
  - The 1% salmonid predation limit is unnecessary. Salmon predation expressed as a percentage of adult returns fluctuates widely with the strength of the run. There is no reason to expect that stopping sea lion removals when predation reaches 1% of fish passage would eliminate harmful pinniped-fishery interactions. There are many factors that affect salmon, and many salmon populations are affected by sea lions eating them. A single threshold will not cover the wide range of impacts that those factors have on how salmon and steelhead are affected by pinnipeds preying on them.

**Q: Your previous authorization included Idaho. Why is that state not included now?**

**A:** Idaho recently withdrew from the program, but requested that ODFW and WDFW continue to represent its interests on this issue.

**Q: Is NOAA Fisheries allowing more removals in this new authorization than in 2008?**

**A:** No. The list of California sea lions in the new letter of authorization is the same as the last list from the 2008 authorization. The criteria for sea lions being put on the list is nearly identical. As additional animals qualify for removal they will be added to the list, just as before. The removal list now includes 78 California sea lions.

**Q: Is there still a limit on the total number of sea lions that can be removed and the methods and locations of those removals?**

**A:** Yes. It's the same as in the 2008 authorization. The states may lethally remove only individual sea lions that are highly identifiable through natural markings or man-made ones such as branding, and that are observed eating salmon after non-lethal deterrence methods are unsuccessful. The authorization allows as many as 85 sea lions to be lethally removed annually, though based on our experience removing animals in 2008-2010 the actual number would be closer to 30 a year.

**Q: How many sea lions have been removed under this program so far?**

**A:** Thirty-seven animals have been removed. Ten were placed with public display facilities, one died during a health exam, and 26 were euthanized by a veterinarian.

**Q: Does NOAA Fisheries believe that the sea lions already removed have benefited Endangered Species Act-listed salmon and steelhead?**

**A:** Yes. Every California sea lion removed from the list improves the chances of survival of at-risk salmon and steelhead passing Bonneville Dam.

**Q: Does NOAA Fisheries believe that it has a balanced approach to salmon and steelhead recovery?**

**A:** Yes. We recognize that there are many causes for the decline of Pacific salmon and steelhead, and realize that we must address all of them. We cannot ignore any of the limiting factors on our quest for recovery. We take our wildlife management responsibilities very seriously, and this action is an element of that mandate. It's vital to resolving the conflict between a robust population of California sea lions and ESA-listed salmon and steelhead. We remain committed to our mission to conserve and recover all marine species. This action is under a specific part of the Marine Mammal Protection Act (MMPA) where Congress placed the agency in the role of "balancing the management of and conflict between two species."

**Q: Did NOAA Fisheries take the findings of the 2010 Pinniped – Fishery Interaction Task Force into consideration before making this new decision?**

**A:** Yes, along with our prior record supporting the 2008 authorization, and the past three years of sea lion removal reports from the states and the U.S. Army Corps of Engineers.

**Q: How many fish have been lost to the sea lions?**

**A:** The estimated number of salmon and steelhead eaten by California sea lions has risen steadily over years, hitting more than 5,000 last year. Biologists say the actual number is higher, because many salmon are taken underwater or downstream of the dam, outside the observation area.

**Q: Why is there so much concern over sea lions' eating salmon when fishing also kills salmon?**

**A:** Human harvest programs are specifically designed to target hatchery fish and minimize take of ESA-listed wild fish. Human harvest rates are adjusted to catch fewer fish when there are fewer salmon returning, and more when fish runs are stronger. Sea lions have been catching more and more fish regardless of run size and they feed indiscriminately, which can have a greater impact on wild fish that are so vital to recovery.

**Q: What's the normal timing of the sea lion removal program?**

**A:** March 1 is when the spring salmon runs usually begin, attracting large numbers of California sea lions to Bonneville Dam. The sea lions leave this area starting in mid-May to go to their breeding grounds in California.

**Q: How many sea lions might have been removed if the authorizations had been in place earlier this spring?**

**A:** When last we asked this question of the states, the answer was at least 12.

**Q: What's the impact of the removal program not being in place most of this season?**

**A:** Fortunately, the spring sea lion predation rates on returning adult salmon and steelhead below Bonneville Dam have been lower this year than in the recent past. That lower rate is likely a combination of a slow start to the adult salmon return this spring (the river's water is cold which makes fish move slowly upstream), and/or the sea lions found other prey sources downstream, such as Columbia River smelt. What is worrisome this year is that sea lion predation likely occurred disproportionately on early arriving spring Chinook, which can lead to significant population effects in coming years.

**Q: Was anything done to keep the sea lions from eating fish while the states were not authorized to remove them?**

**A:** Yes. NOAA Fisheries, in partnership with the U.S. Army Corps of Engineers, the Columbia River Inter-Tribal Fish Commission and their member tribes, and the states of Oregon and Washington, continued to use all legal means available to non-lethally deter problem sea lions.