WRITTEN TESTIMONY OF

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LEGISLATIVE HEARING ON H.R. 946

BEFORE THE
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON FISHERIES, WILDLIFE, OCEANS AND INSULAR AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

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## Introduction

I am Robin Brown, Program Leader for Marine Mammal Research and Management with the Oregon Department of Fish and Wildlife. I have been working as a professional biologist in the area of seal and sea lion population biology for 35 years and have extensive experience in the area of seal and sea lion (pinnipeds) food habits and the interactions of these animals with fish resources, and with sport and commercial fisheries.

I thank the chair and the members of this committee for their interest in addressing the conflicts that often arise between healthy and robust pinniped populations and important, at-risk fish resources currently at low abundance levels. We appreciate the opportunity to provide these written comments on H.R. 946 and to present oral comments at the hearing on June 14, 2011.

I also thank the NOAA Fisheries Service for working closely with the state fish and wildlife management agencies to evaluate and address these resource conflicts. We have all come to recognize the contradictions that sometimes arise between efforts to protect and recover salmonid species listed under the Endangered Species Act (ESA), and the management of robust and healthy pinniped populations protected under the Marine Mammal Protection Act (MMPA). Resolving these issues is a critical effort that will contribute to the recovery of ESA-listed salmonids and other valuable fish resources in the Pacific Northwest. All contributions to fish population recovery are important, no matter how small, in order to achieve success.

In 2008, under Section 120 of the MMPA, NOAA Fisheries granted authority to the States of Oregon and Washington to lethally remove predatory California sea lions that are having significant negative impacts on threatened and endangered salmonid populations in the Columbia River Basin. Over the past four years, during the application of the Section 120 authority, we have encountered a number of problems and roadblocks

that have seriously limited our ability to successfully implement this management tool. I will focus the comments in my testimony before this committee on those problems.

**Background: California Sea Lions in the Columbia River**

Contrary to the statements of many, California sea lions are not endemic to the Columbia River. Archeological and anthropological evidence demonstrates that California sea lions were not historically found in the lower Columbia River. Observations of this species foraging in the Columbia River have been common only over the past 40 years as a result of population growth following implementation of the MMPA in 1972. Therefore, the argument that California sea lions have always occurred in the Columbia River and are only exhibiting the historic use of traditional foraging areas is a false statement. These animals are quick to learn and highly adaptable. As such they have found new areas to feed in recent years and the Columbia River below Bonneville Dam is one of those relatively new feeding areas. Only over the past ten years have more than just two or three California sea lions been observed feeding below Bonneville Dam, 145 miles up the Columbia River from the Pacific Ocean.

**MMPA Section 120 Authority for Lethal Removal of Predatory Pinnipeds**

We believe that the addition of Sec 120 to the MMPA in 1994 was the first attempt by Congress to provide the States with a new management option for reducing pinniped predation on ESA-listed salmonid populations, and that the intent of Congress was to favor at-risk salmonid stocks over abundant pinniped populations. This point was made clear in the Preamble and in the Title and Findings stated by Congress when developing the Section 120 language in 1994.

However, in attempting to implement the congressional intent of managing in favor of the species at greatest risk, the States and NOAA Fisheries Service have encountered significant roadblocks to the successful use of Section 120. We need the help of Congress to amend the MMPA to resolve the problems encountered by state and federal resource management agencies while attempting to use Section 120 to successfully manage the problems of abundant, non-listed pinnipeds preying on populations of threatened and endangered salmonid populations.

We recognize that the effort of Representative Hastings and this committee in drafting HR 946 is in response to the limitations of Sec 120 as currently written, and that HR 946 is intended to provide a more functional and effective option for management agencies that are attempting to deal with these resource conflicts. We certainly appreciate your work in this area.

While, under the current Section 120 authority, we have made important initial progress at reducing the abundance of habitual predatory California sea lions taking salmon and steelhead at Bonneville Dam, a number of problems have arisen that have limited our success. The major issues we have encountered are described below.

The repeated legal challenges of the Section 120 authority issued by NOAA Fisheries to the States has restricted our ability to remove predatory California sea lions in a timely manner. During this past 2011 spring field season, we missed the opportunity to remove an additional 15-20 sea lions. This was particularly troublesome since the number of habitual predators had been noticeably reduced by removals made during the previous three years, and California sea lion numbers at Bonneville Dam this year were consistently below recent averages. We lost the ability to continue that downward trend in predators by not having the ability to remove predators this year.

**The Term "Significant" in the Current Section 120 Language**

A major problem with Section 120, as currently written, involves the vague definition of what is "significant" in terms of loses of ESA-listed salmonids to predatory pinnipeds. At present, resources managers are not permitted to take proactive measures to prevent smaller, manageable problems from growing into major ones. Section 120 requires managers to wait until the problem of predation is very large and nearly unmanageable before a Section 120 removal authority can be issued. This is a classic "Catch-22" situation. The problem can not be addressed until it is "significant", and once it has reached that level, it is very difficult to resolve. Had the States been able to act in 2002 by removing just a few predatory California sea lions each year as they began feeding below Bonneville Dam, far more ESA-listed salmonids would have been saved and far fewer sea lions would have had to be removed, something all of us would prefer. The costs involved with the protracted management process currently required under Section 120, including responding to legal challenges, are immense and could be greatly reduced with appropriate modifications to the current law.

Some will argue that Section 120 was meant to be used only in situations involving small numbers of predatory sea lions. But there is the "Catch-22" dilemma. Section 120 as currently written can not be used when small numbers of predators are involved because in nearly all cases, demonstrating a "significant" negative impact to the salmonids would not be possible.

The States feel that Congress added Section 120 to the MMPA to deal with just the type of problem we have at Bonneville Dam, and that is to protect at-risk, ESA-listed salmonids from abundant predatory pinnipeds. Currently, we are seeing similar problems developing in other locations in the Columbia River Basin, including on the Willamette River, a major tributary to the Columbia. At this location we have a small, but growing number of predatory sea lions consuming salmonids, including ESA-listed stocks. If we were able to remove a small number of predators now, we could avoid a very large problem in the future. But again, Section 120 will not let us be proactive, but instead we must wait until the problem is very large and becomes difficult and very costly to manage, resulting in the death of more salmonids and more sea lions than is desired or necessary to resolve the problem.

We feel that waiting to document "a significant negative impact" as required in the current Section 120 language is an inappropriate approach to determining that predatory

pinnipeds will negatively impact ESA-listed salmonid stocks. By now we know from experience that when a small number of California sea lions find a new foraging area and begin consuming salmonids, resource managers should have the option to take proactive measures to avoid the development of a large and unmanageable situation. By doing so we can minimize both the number of salmonids lost to predation and the number of pinnipeds that must be removed to save those fish. In addition, the total cost of such a program would be far less than that required under the current Section 120 process.

**The Identification of "Individual" Predatory Sea Lions**

Another unnecessary restriction in Section 120 at this time is the requirement to know predatory pinnipeds as individual animals. We know from decades of research that individual sea lions learn and repeat specific feeding behaviors at specific locations at specific times of the year. We have documented this through capture and marking programs, through use of satellite-linked telemetry to track foraging individuals, and by many thousands of hours of direct observations of foraging sea lions at many locations. The U.S. California sea lion population is estimated at nearly 250,000 animals. The species is very healthy, in robust condition, and is likely at or above historical population levels. Yet of those 250,000 animals, our marking studies document that only about 3,000 California sea lions have ever occurred in the lower Columbia River estuary within just 10 miles of the ocean. These same studies demonstrate that, of the more than 1300 California sea lions that have been branded in the estuary, less than 10% have ever been observed at upriver areas foraging for salmonids. As a result, there are probably no more than 200-300 individual California sea lions, or no more than 1% of the entire population, that ever travel up the Columbia River in search of salmon and steelhead.

Ten years of direct observations at Bonneville Dam have shown that some 100-200 individual California sea lions have been observed at this location 145 miles from the ocean, and the vast majority of those animals have been seen there consuming salmonids over many years. Clearly this is a group of individual animals that has learned this feeding behavior and repeats it year after year. The remaining 99% of the population, in all likelihood, has never entered the Columbia River and prefers to forage in the near-shore ocean. The sea lions that forage in the Columbia River over 100 miles from the ocean are individual animals exhibiting a specific and repeated foraging behavior. They are individual animals, exhibiting feeding behaviors completely unlike the overwhelming majority of the population.

**Section 120 and Other Important Fish Resources**

Currently the option to apply for Section 120 removal authority for predatory pinnipeds is not geographically limited to the Columbia River Basin. This is an important option to retain in the current law since we have seen the potential for similar predation problems to develop at other locations in the Pacific Northwest. However, Section 120 currently addresses only pinniped predation on ESA-listed salmonids. Recently we have documented significant problems of pinniped predation on important fish resources other than salmonids that have the potential to severely impact fish stocks currently at low levels of abundance. A primary example of this concern is the predation by California

sea lions and, more importantly, Steller sea lions on White Sturgeon in the Columbia River. Over the past ten years many thousands of these fish have been killed by pinnipeds in the lower Columbia River and more are being taken each year. We feel the Section 120 option for lethal removal of predatory pinnipeds should be broadened to include not only ESA-listed fish, but also those fish determined by federal and state resource management agencies to be a great risk due to increasing pinniped predation.

**Closing Comments**

We are grateful for the work NOAA Fisheries has done to issue the current Section 120 authority to the States for removal of predatory California sea lions taking ESA-listed salmonids in the Columbia River. We believe it is important to retain this authority and will work closely with NOAA Fisheries to insure that it remains available as a management tool.

Finally, we greatly appreciate the work of the House Natural Resource Committee and that of our Northwest Congressional representatives aimed at addressing the problems of abundant pinnipeds negatively impacting ESA-listed salmonids and other important cultural and commercial fish resources.