

**WRITTEN TESTIMONY OF
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NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE**

**LEGISLATIVE HEARING BEFORE THE
SUBCOMMITTEE ON WATER, POWER AND OCEANS
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES**

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Introduction

Good morning Chairman Fleming, Ranking Member Huffman, and Members of the Subcommittee. My name is Barry Thom, and I am the Deputy Regional Administrator for the West Coast Region of the National Marine Fisheries Service (NMFS) at the National Oceanic and Atmospheric Administration (NOAA), within the U.S. Department of Commerce. Thank you for inviting NOAA to testify before you today on two pieces of legislation pending before the Committee.

The West Coast Region of NMFS is responsible for the stewardship of our nation's living marine resources and their habitats off the coasts and in the watersheds of Washington, Oregon, California, and Idaho. These responsibilities cover 317,690 square miles of the eastern Pacific Ocean's California Current Ecosystem, and over 7,000 miles of tidal coastline, as well as the ecological functions within the states' vast rivers and estuaries. Along the West Coast, we manage commercial and recreational fisheries for over 100 species of salmon, groundfish, coastal pelagics such as anchovy and sardine, and highly migratory species such as billfish, sharks, and tunas, in harmony with our responsibility to recover and conserve threatened and endangered anadromous and marine species and manage and conserve marine mammals. We also work to enable domestic aquaculture production within the context of these stewardship responsibilities.

H.R. 564 – the Endangered Salmon and Fisheries Predation Prevention Act

Under the Marine Mammal Protection Act (MMPA), NMFS, as delegated by the Secretary of Commerce, is responsible for protecting certain marine mammals, namely cetaceans and pinnipeds, excluding walrus. We must protect all such cetaceans and pinnipeds, regardless of their population status. The MMPA mandates that by 2001, death of, and serious injury to, marine mammals incidental to commercial fishing operations must be reduced to insignificant levels approaching a zero rate. The MMPA establishes a long-range regime to govern interactions between marine mammals and commercial fisheries which includes the requirement to assess all stocks in U.S. waters, continue the categorization of fisheries and registration of fishers based on their interaction with marine mammals, and implement take reduction plans as needed to achieve the zero mortality requirement.

I am pleased to report that the MMPA has been a highly successful tool in the recovery of many stocks of seals and sea lions along the West Coast. The eastern stock of Steller sea lions has experienced a successful recovery over the past 30 years, and as such, it was delisted from the Endangered Species Act (ESA) in November 2013. California sea lions have also increased from an abundance of approximately 10,000 animals in the 1950s to approximately 300,000 animals coast-wide today. The rapid growth of the California sea lion population since the 1970s is likely due in large part to the protections afforded the species under the MMPA, specifically the prohibition, with certain exceptions, the "take" of marine mammals in U.S. waters. Currently, this species is believed to be at or near "carrying capacity" – near the highest level of individuals that the environment can sustain – based on the growth curve of the population and what we know about historical numbers.

NMFS is very concerned about the impact robust populations of pinnipeds in the Columbia River and elsewhere in the Pacific Northwest are having on ESA-listed salmon and steelhead stocks. For example, from 2002-2015, California sea lions consumed an estimated 46,000 salmonids within ¼ mile of Bonneville Dam. To add a little perspective, between 2002-2014 passage of spring chinook at the dam was about 2.7 million fish and predation rates of spring chinook over the past six years have generally been less than 2 percent of the run size. This represents only a fraction of the total number of salmonids they consume throughout the 146 river miles below the dam.

With passage of the MMPA amendments of 1994, Congress recognized the limits of non-lethal deterrence of pinnipeds as a means to protect at-risk, threatened, and endangered salmonids along the West Coast. These amendments included MMPA Section 120, which allows states to apply for authority to lethally remove certain pinnipeds, such as California sea lions or Pacific harbor seals, to protect salmonids.

In accordance with the procedures in Section 120 of the MMPA, the National Environmental Policy Act (NEPA), and the ESA, NMFS authorized in 2008 and 2012 the states of Oregon, Washington, and Idaho to remove or kill individual California sea lions that they determined to be having a significant negative impact on five populations of ESA-listed salmon and steelhead in the Columbia River.

Combined, the three States' authorizations allow up to 92 animals to be removed per year. Since receiving removal authority in 2008, the States have permanently removed (to captivity or euthanized) 102 California sea lions. However, the States are currently operating under a Section 120 program authorization issued in 2012 that will expire on June 30, 2016.

Preliminary data suggest that the Section 120 program has been successful overall in reducing the predation rate on salmonids in the immediate vicinity of Bonneville Dam; however, even despite that reduction, the number of California sea lions (and predation rates on salmonids) have steadily increased in the past three years. Preliminary research in the lower Columbia River suggests that 10 to 45 percent of returning salmonids are lost during the 146 mile migration between the Columbia River estuary and Bonneville Dam. These losses are due to multiple sources, including foraging California sea lions.

Pinniped predation has also expanded to the Willamette River, where in 2014, a minimum of 27 individual California sea lions consumed an estimated 3,690 salmonids below Willamette falls. It is

estimated that this represents approximately thirteen percent and eight percent of the potential escapement above Willamette Falls of ESA-listed winter run steelhead and spring run Chinook, respectively.

Effective implementation of Section 120 of the MMPA has been challenging at times, and it could benefit from minor targeted improvements. For example, current statute requires that individual pinnipeds must be identified as having “a significant negative impact on the decline or recovery of salmonid fishery stocks.”¹ This process requires a significant investment in resources to capture and brand each pinniped in the Columbia River in order to track their movements. This system also requires states to collect years of data to establish that predation by an individual animal is having a “significant” impact on salmonids. NMFS agrees with the principle of only removing the minimum number of individuals necessary to provide adequate protection of at-risk fish populations, which currently is accomplished by targeting those animals with a history of eating salmonids in the vicinity of the dam (or a likelihood of doing so by their repeated presence within close proximity of the dam) in the vicinity of the dam. The States and the U.S. Army Corps of Engineers have been collecting pinniped predation data at Bonneville Dam since 2002, at considerable expense, and we are looking for alternatives to reduce those costs. NMFS believes a modification to the significant negative impact determination should be considered.

H.R. 564 is identical to H.R.1308, introduced in the 113th Congress, and H.R. 3069, introduced in the 112th Congress; and the bill is similar to H.R. 946, also introduced in the 112th Congress. NMFS has provided testimony on numerous iterations of this bill, including testimony provided on June 14, 2011 by Mr. James Lecky, former Director of the Office of Protected Resources for NMFS, on H.R. 946.

Several aspects of H.R. 564 are consistent with our 1999 Report to Congress titled *Impacts of California Sea Lions and Pacific Harbor Seals on Salmonids and West Coast Ecosystems*. The bill identifies and aims to address the complicated and controversial wildlife management conflict we face on the Columbia River today. It correctly recognizes that: non-lethal methods alone may not be enough to protect salmonids from sea lion predation; many agencies, organizations, and the public have made enormous investments to conserve and recover at-risk salmonid populations in the Columbia River basin; Steller sea lion predation on non-salmonids (e.g., sturgeon) is a growing problem; and federally-recognized tribes should be included in addressing this conflict.

We recognize that H.R. 564 was introduced to address some of the same regulatory streamlining concerns mentioned above, but the bill, as currently drafted, would not meaningfully expedite or improve management options for addressing the increased predation on salmonids by pinnipeds in the Columbia River.

As currently drafted, the bill dictates a temporary suspension of the National Environmental Policy Act (NEPA). While we appreciate the bill’s attempt to streamline procedures necessary to take action, our goal throughout this management conflict has been to achieve a balance between protecting marine mammals under the MMPA and recovering ESA-listed salmonids. With that in mind, we are careful in how and when we take action to authorize lethal removal of California sea lions to protect listed salmonids. Our experience exercising the current Section 120 authorization benefitted from the environmental review process under NEPA. We would support legislative solutions to streamlining

¹ Section 120(b)(1) of the MMPA (16 U.S.C. 1362(1)(A))

procedures that would also allow adequate time to complete NEPA reviews. We would be happy to further discuss this and potential solutions with the Committee.

There are also a few operational challenges presented by the bill as drafted. Coordinating the activity of multiple permit holders to ensure that they stay under the one percent annual potential biological removal level could be challenging. This could be especially difficult to track if multiple permits are issued to different “eligible entities” who, in turn, further delegate their authority to additional entities. It is also the opinion of both NOAA and of state fish and wildlife managers that relatively few sea lions in the Columbia are responsible for the majority of the predation on salmon, steelhead, and other fish species. If this bill moves forward, we suggest consideration of criteria that could be used to help identify those sea lions for which removal might make sense (e.g., distance upriver).

In conclusion, the MMPA has provided strong protections for all marine mammals, regardless of their population status (i.e., whether or not they are depleted), for more than 40 years. The Administration believes that in some cases active wildlife management programs may be necessary to mitigate pinniped-fishery conflicts along with other threats (e.g., the presence of dams, commercial, tribal, and recreation fisheries, water quality, habitat degradation, bird predation, etc.) , and that such management should remain consistent with the purposes and policies of the MMPA. We appreciate this bill’s recognition of that need and stand ready to work with the Committee to address our concerns with the bill.

H.R. 2168 – the West Coast Dungeness Crab Management Act

The Magnuson-Stevens Fishery Conservation and Management Act (MSA), under which fisheries within the 200-mile Exclusive Economic Zone (EEZ) are regulated, places responsibility for fishery management jointly with the Secretary of Commerce (through NMFS) and eight Regional Fishery Management Councils. A number of fisheries based primarily in state waters are managed by Interstate Marine Fisheries Commissions established cooperatively among the relevant states, with support from NMFS. Together, NMFS, the Councils, the states, and the Commissions are responsible for preparing Fishery Management Plans (FMP) for the Nation's fishery resources, which under the MSA (as amended), must contain conservation and management measures which prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery. These measures must be based on the best scientific information available, consider efficiency, minimize costs, avoid unnecessary duplication, minimize bycatch and the mortality of bycatch, and promote the safety of human life at sea. They must also provide for the sustained participation of fishing communities while minimizing adverse economic impacts on them, to the extent practicable and consistent with conservation aims and requirements.

The Dungeness crab is native to the Pacific, and it supports one of the West Coast’s most valuable fisheries, with about ninety-nine percent of the Dungeness crab on the U.S. market coming from domestic sources. Landings of Dungeness crab in the fisheries of California, Oregon, and Washington have maintained a cyclical pattern for nearly fifty seasons. Harvests have ranged from 8 million to 54 million pounds, peaking approximately every ten years.

The fishery is currently managed under the Dungeness Crab Tri-state process, a joint effort of the Pacific States Marine Fisheries Commission (PSMFC) and the states of Washington, Oregon, and California.

Management of this fishery has always occurred under the purview of the states, decades before the MSA was first enacted. After the MSA became law in 1976, there was discussion by the Pacific Fishery Management Council (the Council) and NMFS about managing Dungeness crab through the Council process. However, other species with pressing conservation issues, such as salmon and groundfish, took precedence. Since Washington, Oregon, and California had a decades-long record of managing Dungeness sustainably, there was not an urgent need to take over management of this stock.

Congress affirmed in House Report 105-674 (printed August 4, 1998) that the Dungeness crab fishery has been successfully managed by the three west coast states and the relevant tribal governments for many years. Although the crab population is cyclical, substantial harvests have been sustained for decades. While the substantial increase in the number of vessels and pots used in this fishery in recent years is cause for concern that the fishery is becoming increasingly overcapitalized, there is no evidence to demonstrate that management under State regulation has resulted in conservation problems for the ocean Dungeness crab fishery.

While the NMFS and the Council could develop a fishery management plan under the MSA, such a step would impose a fiscal burden on the taxpayers and could detract from efforts to conserve and manage other species which are under the Council's jurisdiction. Should the Tri-state Dungeness agreement expire and the management authority for the fishery be transferred to NMFS and the Council, numerous additional annual management costs would be incurred to replace the existing Dungeness crab management framework and collect and process fishery data. Additional travel costs would also be incurred to facilitate management-required travel along the west coast, including costs for a vessel and other needs to conduct the annual season-setting cruise. Staff would be needed to replace the 3-5 staff per state that currently work to collect biological data on the stock and fishery landings data to ensure the fishery is managed effectively.

Section 302 of the MSA requires regional fishery management councils to develop fishery management plans for fisheries that require conservation and management. In several cases, including fisheries in Alaska and on the east coast, Congress has explicitly recognized that conservation and management under State authority makes more sense. In this instance, NMFS and the Council agree that that H.R. 2168 follows this pattern in recognizing the special circumstances surrounding a unique fishery which has been successfully conserved and managed under State and tribal authority.

Conclusion

Thank you again for the opportunity to comment on these pieces of legislation pending before the Committee. I appreciate the Subcommittee's time and attention to these important issues and I look forward to working with you further. I would be happy to answer any questions you may have.