

# Committee on Natural Resources

Rob Bishop, Chairman  
Markup Memorandum

September 19, 2016

To: All Natural Resources Committee Members

From: Majority Committee Staff  
Subcommittee on Water, Power and Oceans (x5-8331)

Mark-Up: H.R. 564 (Rep. Jamie Herrera Beutler, R-WA), To amend the Marine Mammal Protection Act of 1972 to reduce predation on endangered Columbia River salmon and other nonlisted species, and for other purposes.  
**September 21-22, 2016, 1334 Longworth House Office Building**

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**H.R. 564 (Rep. Jamie Herrera Beutler, R-WA), “Endangered Salmon and Fisheries Predation Prevention Act of 2015”**

**Bill Summary:**

To assist the recovery of Endangered Species Act (ESA) listed salmon in the Columbia River watershed and to protect tribal ceremonial, subsistence and commercial fisheries, H.R. 564 authorizes the U.S. Secretary of Commerce to issue expedited permits authorizing states and tribes to lethally take California sea lions and non-ESA listed Steller sea lions (hereinafter referred to as “sea lions”) under certain conditions. The bill is identical to a bill passed by the House Natural Resources Committee in the last Congress.<sup>1</sup>

**Cosponsors:**

Reps. Kurt Schrader (D-OR), Dan Newhouse (R-WA), Cathy McMorris Rodgers (R-WA), and Michael Simpson (R-ID).

**Background:**

The Lower Columbia River is home to multiple species of salmon listed by the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NOAA) under the ESA, including the Lower Columbia River chinook, steelhead, coho, and chum salmon.<sup>2</sup> A 2013 ESA recovery plan for these species released by the NOAA cited marine mammal predation, specifically by sea lions, as a factor in the initial species listings and a hurdle to their recovery.<sup>3</sup> Testimony submitted by a NOAA official before the Committee on Natural Resources during the

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<sup>1</sup><http://thomas.loc.gov/cgi-bin/bdquery/D?d113:1::temp/~bdpIqn:@@L&summ2=m&/home/LegislativeData.php?n=BSS:c=113>

<sup>2</sup> [National Oceanic and Atmospheric Administration – Lower Columbia River Salmon and Steelhead ESA Recovery Plan Executive Summary, June 2013.](#)

<sup>3</sup> [Id.](#)

113<sup>th</sup> Congress stated: “[S]ea lion species continue to prey on fish stocks in the Columbia River basin including ESA protected salmon...”<sup>4</sup>

Mr. Guy Norman, former regional director of the Washington Department of Fish and Wildlife, testified in the same hearing that: “The U.S. Army Corps of Engineers estimates that over 42,000 salmon and steelhead have been consumed by sea lions within one quarter mile of the (Bonneville) dam in the past twelve years.”<sup>5</sup> Testimony from the Columbia River Inter-Tribal Fish Commission (CRITFC) affirmed that slightly over 30% of spring salmon passing through Bonneville Dam’s fish ladder have suffered some form of injury caused by marine mammals.<sup>6</sup> At a 2015 rally in Oregon in support of the legislation, former CRITFC Chairman Carlos Smith stated: “We know from experience that unchecked sea lion predation can wipe out an entire run of fish as they did to Lake Washington winter steelhead. We simply can’t allow that to happen in the Columbia Basin. This problem can be addressed, but we need the right tools.”<sup>7</sup>

The Marine Mammal Protection Act (MMPA), enacted in 1972, prohibits, with certain exceptions, the lethal take of any marine mammal in United States waters and by United States citizens on the high seas.<sup>8</sup> NOAA, the agency that implements and enforces MMPA, defines a “marine mammal” as any species of dolphin, porpoises, whales, seals, and sea lions.<sup>9</sup> Mr. Norman discussed how the MMPA increased sea lion populations and the effects of the population increases:

*“The effects of certain natural predators of salmon in the [Lower Columbia River] basin has increased dramatically from historic levels...due to increased numbers of predators due to various protection measures, including the Marine Mammal Protection Act...The U.S. California sea lion population has rebounded since the MMPA was enacted and is now estimated at nearly 310,000 animals.... Male California sea lions have learned a new behavior, with many of the animals swimming 145 miles up the Columbia River in the winter and spring to prey on threatened adult salmon...”<sup>10</sup>*

Currently, Section 120 of MMPA allows States to apply to the Secretary of Commerce for intentional lethal taking of specific “individually identifiable” predator seals and sea lions that are having a significant negative impact on ESA listed salmon stocks.<sup>11</sup> NOAA authorized the

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<sup>4</sup> [Submitted testimony of Rear Admiral Gerd Glang, Director of Office and Coast Survey for the National Oceanic and Atmospheric Administration, to the House Committee on Natural Resources, 113<sup>th</sup> Cong. Legislative Hearing on H.R. 1308, June 13, 2013.](#)

<sup>5</sup> [Submitted testimony of Mr. Guy Norman, Regional Director - Washington Department of Fish and Wildlife, to the House Committee on Natural Resources, 113<sup>th</sup> Cong. Legislative Hearing on H.R. 1308, June 13, 2013.](#)

<sup>6</sup> [Testimony of The Honorable Virgil Lewis, Sr. on behalf of the Yakama Nation and CRITFC to the House Committee on Natural Resources on H.R. 946, June 14, 2011.](#)

<sup>7</sup> <http://www.hoodrivernews.com/news/2015/jun/03/rally-looks-sea-lion-predation/>

<sup>8</sup> <http://www.nmfs.noaa.gov/pr/laws/mmpa/>

<sup>9</sup> <http://www.nmfs.noaa.gov/pr/species/mammals/>

<sup>10</sup> [Submitted testimony of Mr. Guy Norman, Regional Director - Washington Department of Fish and Wildlife, to the House Committee on Natural Resources, 113<sup>th</sup> Cong. Legislative Hearing on H.R. 1308, June 13, 2013.](#)

<sup>11</sup> [16 U.S.C. 1389](#)

States of Oregon, Washington and Idaho to permanently remove sea lions in 2008.<sup>12</sup> While 73 sea lions have been removed under this authority since last year,<sup>13</sup> predation rates of adult salmon still run in the thousands and it is too early to assess the long-term effectiveness of those efforts.<sup>14</sup> However, some – including the States and Columbia River tribes -- believe that the current federal application process needs an update.

The history of seemingly endless litigation challenges by certain groups surrounding issuance of these permits<sup>15</sup> and the permit requirement are some reasons cited for H.R. 564's introduction. As Mr. Norman indicated: “[T]he conditions associated with the current requirements of Section 120 of the Marine Mammal Protection Act (MMPA) are challenging and expensive to implement, limited in scope, and legal challenges have slowed the progress in reducing impacts to salmon.”<sup>16</sup> In addition, tribal requests to be eligible entities under Section 120 of the MMPA are further reasons for the bill.<sup>17</sup>

H.R. 564 clarifies the authority and streamlines the process afforded to the Secretary of Commerce under Section 120 of the MMPA to allow for lethal take of sea lion populations that are decimating ESA-listed salmon, steelhead and other non-listed species, such as white sturgeon, in the Lower Columbia River. The goal of the bipartisan legislation is to provide ESA-listed salmon in the Lower Columbia River a habitat where they can recover while controlling the stocks of sea lions on a limited basis. Some have criticized the National Environmental Policy Act (NEPA) exemption;<sup>18</sup> however, a CRITFC witness testified that “the [NEPA] exemption is necessary to give the fishery managers the ability to respond swiftly to avoid extraordinary delay that puts the species, our investments, and our livelihood at risk.”<sup>19</sup>

CRITFC, the Coastal Conservation Association of Oregon, the Washington State Department of Fish and Wildlife, the Oregon State Department of Fish and Wildlife, the Idaho Department of Fish and Game, and the Northwest RiverPartners, a coalition of farmers, electric utility customers, ports and other businesses, are among the bill's supporters.

### **Major Provisions/Analysis of H.R. 564:**

*Section 3* of H.R. 564 amends Section 120 of the MMPA (16 U.S.C. 1389) to authorize the Secretary of Commerce to issue permits to eligible entities authorizing the intentional lethal take

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<sup>12</sup> [Submitted testimony of Rear Admiral Gerd Glang, Director of Office and Coast Survey for the National Oceanic and Atmospheric Administration, to the House Committee on Natural Resources, 113th Cong. Legislative Hearing on H.R. 1308, June 13, 2013., at 2.](#)

<sup>13</sup> <http://www.dfw.state.or.us/fish/SeaLion/>

<sup>14</sup> [Id.](#)

<sup>15</sup> [http://www.humanesociety.org/news/press\\_releases/2012/03/HSUS\\_file\\_suit\\_sea\\_lion\\_031912.html](http://www.humanesociety.org/news/press_releases/2012/03/HSUS_file_suit_sea_lion_031912.html)

<sup>16</sup> [Submitted testimony of Mr. Guy Norman, Regional Director - Washington Department of Fish and Wildlife, to the House Committee on Natural Resources, 113<sup>th</sup> Cong. Legislative Hearing on H.R. 1308, June 13, 2013.](#)

<sup>17</sup> [Testimony of The Honorable Virgil Lewis, Sr. on behalf of the Yakama Nation and CRITFC to the House Committee on Natural Resources on H.R. 946, June 14, 2011.](#)

<sup>18</sup> [Dissenting views on H.R. 1308;](#)

[http://thomas.loc.gov/cgi-bin/cpquery/?&dbname=cp113&sid=cp113b23IJ&refer=&r\\_n=hr330.113&item=&&sel=TOC\\_20726&](http://thomas.loc.gov/cgi-bin/cpquery/?&dbname=cp113&sid=cp113b23IJ&refer=&r_n=hr330.113&item=&&sel=TOC_20726&)

<sup>19</sup> [Testimony of The Honorable Virgil Lewis, Sr. on behalf of the Yakama Nation and CRITFC to the House Committee on Natural Resources on H.R. 946, June 14, 2011.](#)

of sea lions on the waters of the Columbia River and its tributaries as long as the sea lions are part of a non- listed ESA population. This section defines “eligible entities” as the States of Washington, Oregon, and Idaho, as well as the four Columbia River tribes (the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederate Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakama Nation), and the Columbia River Inter-Tribal Fish Commission. Each permit issued is active for one year from the date of issuance and authorizes the take of up to ten sea lions. Permits may be renewed for an additional year at the discretion of the Secretary. This section also sets an annual cumulative limit for lethal takes of sea lions to “one percent of the annual potential biological removal level.”

It also directs the Secretary to approve or deny an application for a permit not later than 30 days after receiving the application. The section also states that NEPA does not apply with respect to the issuance of any permit under the authority of the bill during the five year period beginning on the date of the enactment. Permitting can expire five years after enactment if the Secretary determines that lethal removal authority is no longer necessary to protect salmonid and other fish species from sea lion predation.

#### **Cost:**

The Congressional Budget Office (CBO) has not completed a cost estimate of H.R. 564. However, in the 113<sup>th</sup> Congress, CBO indicated that an identical bill (H.R. 1308) “would have a negligible impact on the federal budget. ...”<sup>20</sup>

#### **Administration Position:**

Unknown. However, in testimony submitted to the Natural Resources Committee at the July 23, 2015 legislative hearing, the Administration did not support or oppose the legislation. The testimony stated that “several aspects of H.R. 564 are consistent with our (NOAA) 1999 Report to Congress entitled ‘Impacts of California Sea Lions and Pacific Harbor Seals on Salmonids and West Coast Ecosystems,’” while voicing concern over the NEPA provision.<sup>21</sup>

#### **Effect on Current Law (Ramseyer)**

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<sup>20</sup> [Congressional Budget Office cost estimate of H.R. 1308, November 22, 2013.](#)

<sup>21</sup> [Submitted testimony of Mr. Barry Thom, Deputy Regional Administrator for the West Coast Region, National Marine Fisheries Service, to the House Committee on Natural Resources, 114<sup>th</sup> Congress, Legislative Hearing on H.R. 564, July 23, 2015.](#)