

ENDANGERED SALMON AND FISHERIES PREDATION  
PREVENTION ACT

NOVEMBER 17, 2016.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 564]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 564) 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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Endangered Salmon and Fisheries Predation Prevention Act”.

**SEC. 2. FINDINGS.**

The Congress finds the following:

(1) There are 13 groups of salmon and steelhead that are listed as threatened species or endangered species under the Endangered Species Act of 1973 that migrate through the lower Columbia River.

(2) The people of the Northwest United States are united in their desire to restore healthy salmon and steelhead runs, as they are integral to the region’s culture and economy.

(3) The Columbia River treaty tribes retain important rights with respect to salmon and steelhead.

(4) Federal, State, and tribal governments have spent billions of dollars to assist the recovery of Columbia River salmon and steelhead populations.

(5) One of the factors impacting salmonid populations is increased predation by marine mammals, including California sea lions.

(6) The population of California sea lions has increased 6-fold over the last 3 decades, and is currently greater than 250,000 animals.

(7) In recent years, more than 1,000 California sea lions have been foraging in the lower 145 miles of the Columbia River up to Bonneville Dam during the peak spring salmonid run before returning to the California coast to mate.

(8) The percentage of the spring salmonid run that has been eaten or killed by California sea lions at Bonneville Dam has increased 7-fold since 2002.

(9) In recent years, California sea lions have with greater frequency congregated near Bonneville Dam and have entered the fish ladders.

(10) These California sea lions have not been responsive to extensive hazing methods employed near Bonneville Dam to discourage this behavior.

(11) The process established under the 1994 amendment to the Marine Mammal Protection Act of 1972 to address aggressive sea lion behavior is protracted and will not work in a timely enough manner to protect threatened and endangered salmonids in the near term.

(12) In the interest of protecting Columbia River threatened and endangered salmonids, a temporary expedited procedure is urgently needed to allow removal of the minimum number of California sea lions as is necessary to protect the passage of threatened and endangered salmonids in the Columbia River and its tributaries.

(13) On December 21, 2010, the independent Pinniped-Fishery Interaction Task Force recommended lethally removing more of the California sea lions in 2011.

(14) On August 18, 2011, the States of Washington, Oregon, and Idaho applied to the National Marine Fisheries Service, under section 120(b)(1)(A) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1389(b)(1)(A)), for the lethal removal of sea lions that the States determined are having a “significant negative impact” on the recovery of Columbia River and Snake River salmon and steelhead.

(15) On September 12, 2011, the National Marine Fisheries Service announced it was accepting the States’ application for lethal removal of sea lions and that it would reconvene the Pinniped-Fishery Interaction Task Force to consider the States’ application. This Act will ensure the necessary authority for permits under the Marine Mammal Protection Act of 1972 to be issued in a timely fashion.

(16) During a June 14, 2011, hearing, the Committee on Natural Resources of the House of Representatives received testimony from State and tribal witnesses expressing concern that significant pinniped predation of important Northwest fish resources other than salmonids is severely impacting fish stocks determined by both Federal and State fishery management agencies to be at low levels of abundance, and that this cannot be addressed by section 120 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1389), which as in effect before the enactment of this Act restricted control of predatory pinnipeds’ impact only with respect to endangered salmonids.

**SEC. 3. TAKING OF SEA LIONS ON THE COLUMBIA RIVER AND ITS TRIBUTARIES TO PROTECT ENDANGERED AND THREATENED SPECIES OF SALMON AND OTHER NONLISTED FISH SPECIES.**

Section 120 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1389) is amended by striking subsection (f) and inserting the following:

“(f) TEMPORARY MARINE MAMMAL REMOVAL AUTHORITY ON THE WATERS OF THE COLUMBIA RIVER OR ITS TRIBUTARIES.—

“(1) REMOVAL AUTHORITY.—Notwithstanding any other provision of this Act, the Secretary may issue a permit to an eligible entity authorizing the intentional lethal taking on the waters of the Columbia River and its tributaries of sea lions that are part of a population that is not categorized as depleted under this Act or listed as an endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), to protect endangered and threatened species of salmon and other nonlisted fish species.

“(2) PERMIT PROCESS.—

“(A) IN GENERAL.—An eligible entity may apply to the Secretary for a permit under this subsection.

“(B) DEADLINE FOR CONSIDERATION OF APPLICATION.—The Secretary shall approve or deny an application for a permit under this subsection by not later than 30 days after receiving the application.

“(C) DURATION OF PERMIT.—A permit under this subsection shall be effective for no more than one year after the date it is issued, but may be renewed by the Secretary.

“(3) LIMITATIONS.—

“(A) LIMITATION ON PERMIT AUTHORITY.—Subject to subparagraph (B), a permit issued under this subsection shall not authorize the lethal taking of more than 10 sea lions during the duration of the permit.

“(B) LIMITATION ON ANNUAL TAKINGS.—The cumulative number of sea lions authorized to be taken each year under all permits in effect under this section shall not exceed one percent of the annual potential biological removal level.

“(4) DELEGATION OF PERMIT AUTHORITY.—Any eligible entity may delegate to any other eligible entity the authority to administer its permit authority under this subsection.

“(5) NEPA.—Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) shall not apply with respect to this subsection and the issuance of any permit under this subsection during the 5-year period beginning on the date of the enactment of this subsection.

“(6) SUSPENSION OF PERMITTING AUTHORITY.—If, 5 years after enactment, the Secretary, after consulting with State and tribal fishery managers, determines that lethal removal authority is no longer necessary to protect salmonid and other fish species from sea lion predation, may suspend the issuance of permits under this subsection.

“(7) ELIGIBLE ENTITY DEFINED.—In this subsection, the term ‘eligible entity’ means each of the State of Washington, the State of Oregon, the State of Idaho, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated 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.

“(8) TRAINING IN WILDLIFE MANAGEMENT.—Permit holders exercising lethal removal authority pursuant to this Act shall be trained in wildlife management.”.

**SEC. 4. SENSE OF CONGRESS.**

It is the sense of the Congress that—

- (1) preventing predation by sea lions, recovery of listed salmonid stocks, and preventing future listings of fish stocks in the Columbia River is a vital priority; and
- (2) the Federal Government should continue to fund lethal and nonlethal removal measures for preventing such predation.

**SEC. 5. TREATY RIGHTS OF FEDERALLY RECOGNIZED INDIAN TRIBES.**

Nothing in this Act or the amendment made by this Act shall be construed to affect or modify any treaty or other right of any federally recognized Indian tribe.

**PURPOSE OF THE BILL**

The purpose of H.R. 564 is to amend the Marine Mammal Protection Act of 1972 to reduce predation on endangered Columbia River salmon and other nonlisted species.

**BACKGROUND AND NEED FOR LEGISLATION**

To assist in the recovery of Endangered Species Act<sup>1</sup> (ESA)-listed salmon in the Columbia River watershed and to protect tribal ceremonial, subsistence and commercial fisheries, H.R. 564, as amended, 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.

According to the National Oceanic and Atmospheric Administration (NOAA), the Lower Columbia River in the Pacific Northwest is home to multiple species of salmon listed under the ESA. This list includes the Lower Columbia River chinook, steelhead, coho and chum salmon. A 2013 ESA recovery plan for these species released by NOAA cited marine mammal predation, specifically by

<sup>1</sup> Endangered Species Act of 1973, 16 U.S.C. 1531 et seq.

sea lions, as a factor in the initial species listings and a hurdle to their recovery.

State and tribal officials agree with this assessment. Mr. Guy Norman, former regional director of the Washington Department of Fish and Wildlife, testified during a June 13, 2013, Committee on Natural Resources 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.” 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. At a 2015 event 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.”

According to NOAA, the Marine Mammal Protection Act<sup>2</sup> (MMPA), prohibits, with certain exceptions, the lethal take of any marine mammal in United States waters and by United States citizens on the high seas. NOAA, the agency that implements and enforces MMPA, defines a “marine mammal” as any species of dolphin, porpoises, whales, seals, and sea lions. During the 2013 hearing, Mr. Norman discussed how MMPA increased sea lion populations and impacts on fish:

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. . . .

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. NOAA authorized the States of Oregon, Washington and Idaho to permanently remove some sea lions in 2008. While 73 sea lions have been removed under this authority, some—including Oregon, Washington, Idaho and the Columbia River tribes—believe that the current federal application process needs an update to be more effective.

The history of repetitive litigation challenges by certain groups surrounding issuance of these permits and the permit requirement are some reasons cited for H.R. 564’s introduction. As Mr. Norman further indicated in his testimony, “[T]he conditions associated with the current requirements of section 120 of the Marine Mam-

<sup>2</sup>Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 et seq.

mal Protection Act are challenging and expensive to implement, limited in scope, and legal challenges have slowed the progress in reducing impacts to salmon.” In addition, tribal requests to be eligible entities under section 120 of the MMPA are further reasons for the bill.

H.R. 564, as amended, 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 in the Lower Columbia River. The legislation includes a National Environmental Policy Act<sup>3</sup> (NEPA) exemption. However, a CRITFC witness testified in a 2011 hearing on a nearly identical bill 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.”

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 River Partners, a coalition of farmers, electric utility customers, ports and other businesses, are among the bill’s supporters.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

This section states the short title of the bill as the “Endangered Salmon and Fisheries Predation Prevention Act.”

##### *Section 2. Findings*

This section lists a series of findings related to protected species predation in the Lower Columbia River.

##### *Section 3. Taking of sea lions on the Columbia River and its tributaries to protect endangered and threatened species of salmon and other non-listed fish species*

This section 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 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, and the Columbia River Inter-Tribal Fish Commission. Required permit holders exercising lethal removal authority must be trained in wildlife management.

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, as amended, ensures that any sea lions taken under this specialized, temporary permit authority count toward the overall number of sea lions allowed to be taken under all MMPA section 120 permits.

<sup>3</sup>National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq.

This 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 authority created by the Act can expire five years after enactment if the Secretary determines that lethal removal authority is no longer necessary.

*Section 4. Sense of Congress*

This section states that it is the sense of the Congress that preventing predation by sea lions on ESA-listed species of fish is a priority and that federal funding for lethal and nonlethal means of predator removal should continue.

*Section 5. Treaty rights of federally recognized Indian tribes*

This section states that the Act will not affect or modify treaty rights of any federally recognized tribe.

COMMITTEE ACTION

H.R. 564 was introduced on January 27, 2015, by Congresswoman Jaime Herrera Beutler (R-WA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Power and Oceans. On July 23, 2015, the Subcommittee on Water, Power and Oceans held a hearing on the bill. On September 21, 2016, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Congressman Dan Newhouse (R-WA) offered an amendment designated #1; it was adopted by voice vote. Congressman Jared Huffman (D-CA) offered an amendment designated 047; it was not adopted by a roll call vote of 12 ayes to 18 nays, as follows:

## Committee on Natural Resources

U.S. House of Representatives

114th Congress

Date: 09.22.16

Recorded Vote: #8

FC Mark Up on 5 bills: **Huffman\_047 Amendment to H.R. 564 (Rep. Jamie Herrera Beutler)**, 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. "*Endangered Salmon and Fisheries Predation Prevention Act*"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
<b>Mr. Bishop, UT, Chairman</b>		X		<b>Mr. LaMalfa, CA</b>		X	
<i>Mr. Grijalva, AZ, Ranking Member</i>	X			<i>Mr. Gallego, AZ</i>	X		
<b>Mr. Young, AK</b>		X		<b>Mr. Denham, CA</b>		X	
<i>Mrs. Napolitano, CA</i>	X			<i>Mrs. Capps, CA</i>			
<b>Mr. Gohmert, TX</b>		X		<b>Mr. Cook, CA</b>		X	
<i>Mrs. Bordallo, Guam</i>				<i>Mr. Polis, CO</i>			
<b>Mr. Lamborn, CO</b>		X		<b>Mr. Westerman, AR</b>		X	
<i>Mr. Costa, CA</i>				<i>Mr. Clay, MO</i>	X		
<b>Mr. Wittman, VA</b>				<b>Mr. Graves, LA</b>			
<i>Mr. Sablan, CNMI</i>				<b>Mr. Newhouse, WA</b>		X	
<b>Mr. Fleming, LA</b>		X		<b>Mr. Zinke, MT</b>			
<i>Mrs. Tsongas, MA</i>	X			<b>Mr. Hice, GA</b>		X	
<b>Mr. McClintock, CA</b>		X		<b>Mrs. Radewagen, AS</b>		X	
<i>Mr. Pierluisi, Puerto Rico</i>	X			<b>Mr. MacArthur, NJ</b>		X	
<b>Mr. Thompson, PA</b>		X		<b>Mr. Mooney, WV</b>		X	
<i>Mr. Huffman, CA</i>	X			<b>Mr. Hardy, NV</b>			
<b>Mrs. Lummis, WY</b>		X		<b>Mr. LaHood, IL</b>			
<i>Mr. Ruiz, CA</i>	X						
<b>Mr. Benishek, MI</b>							
<i>Mr. Lowenthal, CA</i>	X						
<b>Mr. Duncan, SC</b>							
<i>Mr. Beyer, VA</i>	X						
<b>Mr. Gosar, AZ</b>		X					
<i>Mrs. Torres, CA</i>	X						
<b>Mr. Labrador, ID</b>							
<i>Mrs. Dingell, MI</i>	X			<b>TOTALS</b>	12	18	

Congressman Alan S. Lowenthal (D-CA) offered an amendment designated 001; it was not adopted by a roll call vote of 13 ayes to 18 nays, as follows:



**Committee on Natural Resources**  
U.S. House of Representatives  
114th Congress

Date: 09.22.16

Recorded Vote: #9

FC Mark Up on 5 bills: **Lowenthal 001 Amendment to H.R. 564 (Rep. Jamie Herrera Beutler)**, 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. "*Endangered Salmon and Fisheries Predation Prevention Act*"

MEMBERS			Yes	No	Pres	MEMBERS			Yes	No	Pres
<b>Mr. Bishop, UT, Chairman</b>				X		<b>Mr. LaMalfa, CA</b>				X	
<i>Mr. Grijalva, AZ, Ranking Member</i>	X					<i>Mr. Gallego, AZ</i>	X				
<b>Mr. Young, AK</b>			X			<b>Mr. Denham, CA</b>			X		
<i>Mrs. Napolitano, CA</i>	X					<i>Mrs. Capps, CA</i>					
<b>Mr. Gohmert, TX</b>			X			<b>Mr. Cook, CA</b>			X		
<i>Mrs. Bordallo, Guam</i>						<i>Mr. Polis, CO</i>	X				
<b>Mr. Lamborn, CO</b>			X			<b>Mr. Westerman, AR</b>			X		
<i>Mr. Costa, CA</i>						<i>Mr. Clay, MO</i>	X				
<b>Mr. Wittman, VA</b>						<b>Mr. Graves, LA</b>					
<i>Mr. Sablan, CNMI</i>						<b>Mr. Newhouse, WA</b>				X	
<b>Mr. Fleming, LA</b>			X			<b>Mr. Zinke, MT</b>					
<i>Mrs. Tsongas, MA</i>	X					<b>Mr. Hice, GA</b>				X	
<b>Mr. McClintock, CA</b>			X			<b>Mrs. Radewagen, AS</b>				X	
<i>Mr. Pierluisi, Puerto Rico</i>	X					<b>Mr. MacArthur, NJ</b>				X	
<b>Mr. Thompson, PA</b>			X			<b>Mr. Mooney, WV</b>				X	
<i>Mr. Huffman, CA</i>	X					<b>Mr. Hardy, NV</b>					
<b>Mrs. Lummis, WY</b>			X			<b>Mr. LaHood, IL</b>					
<i>Mr. Ruiz, CA</i>	X										
<b>Mr. Benishek, MI</b>											
<i>Mr. Lowenthal, CA</i>	X										
<b>Mr. Duncan, SC</b>											
<i>Mr. Beyer, VA</i>	X										
<b>Mr. Gosar, AZ</b>			X								
<i>Mrs. Torres, CA</i>	X										
<b>Mr. Labrador, ID</b>											
<i>Mrs. Dingell, MI</i>	X					<b>TOTALS</b>	13	18			

No additional amendments were offered and the bill, as amended, was ordered favorably reported to the House of Representatives by a roll call vote of 17 ayes to 13 nays on September 22, 2016, as follows:

## Committee on Natural Resources

U.S. House of Representatives

114th Congress

Date: 09.22.16

Recorded Vote: #10

FC Mark Up on 5 bills: **On Favorably Reporting, as amended, H.R. 564 (Rep. Jamie Herrera Beutler)**, 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. "*Endangered Salmon and Fisheries Predation Prevention Act*"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
<b>Mr. Bishop, UT, Chairman</b>	X			<b>Mr. LaMalfa, CA</b>	X		
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mr. Gallego, AZ</i>		X	
<b>Mr. Young, AK</b>	X			<b>Mr. Denham, CA</b>	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mrs. Capps, CA</i>			
<b>Mr. Gohmert, TX</b>	X			<b>Mr. Cook, CA</b>	X		
<i>Mrs. Bordallo, Guam</i>				<i>Mr. Polis, CO</i>		X	
<b>Mr. Lamborn, CO</b>	X			<b>Mr. Westerman, AR</b>	X		
<i>Mr. Costa, CA</i>				<i>Mr. Clay, MO</i>		X	
<b>Mr. Wittman, VA</b>				<b>Mr. Graves, LA</b>			
<i>Mr. Sablan, CNMI</i>				<b>Mr. Newhouse, WA</b>	X		
<b>Mr. Fleming, LA</b>	X			<b>Mr. Zinke, MT</b>			
<i>Mrs. Tsongas, MA</i>		X		<b>Mr. Hice, GA</b>	X		
<b>Mr. McClintock, CA</b>	X			<b>Mrs. Radewagen, AS</b>	X		
<i>Mr. Pierluisi, Puerto Rico</i>		X		<b>Mr. MacArthur, NJ</b>			
<b>Mr. Thompson, PA</b>	X			<b>Mr. Mooney, WV</b>	X		
<i>Mr. Huffman, CA</i>		X		<b>Mr. Hardy, NV</b>			
<b>Mrs. Lummis, WY</b>	X			<b>Mr. LaHood, IL</b>			
<i>Mr. Ruiz, CA</i>		X					
<b>Mr. Benishek, MI</b>							
<i>Mr. Lowenthal, CA</i>		X					
<b>Mr. Duncan, SC</b>							
<i>Mr. Beyer, VA</i>		X					
<b>Mr. Gosar, AZ</b>	X						
<i>Mrs. Torres, CA</i>		X					
<b>Mr. Labrador, ID</b>							
<i>Mrs. Dingell, MI</i>		X		<b>TOTALS</b>	17	13	

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

## COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation and the Congressional Budget Act of 1974. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, October 14, 2016.*

Hon. ROB BISHOP,  
*Chairman, Committee on Natural Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 564, the Endangered Salmon and Fisheries Predation Prevention Act.

If you wish further details on this estimate, we will be pleased to provide them. The CEO staff contact is Robert Reese.

Sincerely,

KEITH HALL.

Enclosure.

*H.R. 564—Endangered Salmon and Fisheries Predation Prevention Act*

H.R. 564 would amend the Marine Mammal Protection Act of 1972 to authorize the National Oceanic and Atmospheric Administration (NOAA) to issue permits that would allow states and tribal entities in the Northwest United States to kill sea lions in the Columbia River and its tributaries under certain circumstances. Each permit would allow up to 10 sea lions a year to be removed from populations that threaten species of salmon and other fish listed as endangered or threatened under the Endangered Species Act. Under the bill, individuals granted permits to kill sea lions would need to be trained in wildlife management.

Under current law, NOAA has the authority to issue permits to kill certain marine mammals that threaten other species. Based on information from the agency, CBO estimates that giving NOAA the authority to issue such permits would have a negligible effect on the federal budget. Enacting H.R. 564 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting that legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 546 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. The bill

would authorize the states of Washington, Oregon, and Idaho, along with several tribal governments, to use lethal force against sea lion predation of important Northwest fish resources.

The CBO staff contact for this estimate is Robert Reese (for federal costs) and Jon Sperl (for intergovernmental mandates). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Marine Mammal Protection Act of 1972 to reduce predation on endangered Columbia River salmon and other nonlisted species.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**MARINE MAMMAL PROTECTION ACT OF 1972**

\* \* \* \* \*

TITLE I—CONSERVATION AND PROTECTION OF MARINE MAMMALS

\* \* \* \* \*

**SEC. 120. PACIFIC COAST TASK FORCE; GULF OF MAINE.**

(a) PINNIPED REMOVAL AUTHORITY.—Notwithstanding any other provision of this title, the Secretary may permit the intentional lethal taking of pinnipeds in accordance with this section.

(b) APPLICATION.—(1) A State may apply to the Secretary to authorize the intentional lethal taking of individually identifiable pinnipeds which are having a significant negative impact on the decline or recovery of salmonid fishery stocks which—

(A) have been listed as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(B) the Secretary finds are approaching threatened species or endangered species status (as those terms are defined in that Act); or

te through the Ballard Locks at Seattle, Washington.

(2) Any such application shall include a means of identifying the individual pinniped or pinnipeds, and shall include a detailed description of the problem interaction and expected benefits of the taking.

(c) ACTIONS IN RESPONSE TO APPLICATION.—(1) Within 15 days of receiving an application, the Secretary shall determine whether the application has produced sufficient evidence to warrant establishing a Pinniped-Fishery Interaction Task Force to address the situation described in the application. If the Secretary determines sufficient evidence has been provided, the Secretary shall establish a Pinniped-Fishery Interaction Task Force and publish a notice in the Federal Register requesting public comment on the application.

(2) A Pinniped-Fishery Interaction Task Force established under paragraph (1) shall consist of designated employees of the Department of Commerce, scientists who are knowledgeable about the pinniped interaction that the application addresses, representatives of affected conservation and fishing community organizations, Indian Treaty tribes, the States, and such other organizations as the Secretary deems appropriate.

(3) Within 60 days after establishment, and after reviewing public comments in response to the Federal Register notice under paragraph (1), the Pinniped-Fishery Interaction Task Force shall—

(A) recommend to the Secretary whether to approve or deny the proposed intentional lethal taking of the pinniped or pinnipeds, including along with the recommendation a description of the specific pinniped individual or individuals, the proposed location, time, and method of such taking, criteria for evaluating the success of the action, and the duration of the intentional lethal taking authority; and

(B) suggest nonlethal alternatives, if available and practicable, including a recommended course of action.

(4) Within 30 days after receipt of recommendations from the Pinniped-Fishery Interaction Task Force, the Secretary shall either approve or deny the application. If such application is approved, the Secretary shall immediately take steps to implement the intentional lethal taking, which shall be performed by Federal or State agencies, or qualified individuals under contract to such agencies.

(5) After implementation of an approved application, the Pinniped-Fishery Interaction Task Force shall evaluate the effectiveness of the permitted intentional lethal taking or alternative

actions implemented. If implementation was ineffective in eliminating the problem interaction, the Task Force shall recommend additional actions. If the implementation was effective, the Task Force shall so advise the Secretary, and the Secretary shall disband the Task Force.

(d) CONSIDERATIONS.—In considering whether an application should be approved or denied, the Pinniped-Fishery Interaction Task Force and the Secretary shall consider—

(1) population trends, feeding habits, the location of the pinniped interaction, how and when the interaction occurs, and how many individual pinnipeds are involved;

(2) 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;

(3) 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

(4) the extent to which such pinnipeds are exhibiting behavior that presents an ongoing threat to public safety.

(e) LIMITATION.—The Secretary shall not approve the intentional lethal taking of any pinniped from a species or stock that is—

(1) listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.);

(2) depleted under this Act; or

(3) a strategic stock.

[(f) CALIFORNIA SEA LIONS AND PACIFIC HARBOR SEALS; INVESTIGATION AND REPORT.—

[(1) The Secretary shall engage in a scientific investigation to determine whether California sea lions and Pacific harbor seals—

[(A) are having a significant negative impact on the recovery of salmonid fishery stocks which have been listed as endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), or which the Secretary finds are approaching such endangered species or threatened species status; or

[(B) are having broader impacts on the coastal ecosystems of Washington, Oregon, and California.

The Secretary shall conclude this investigation and prepare a report on its results no later than October 1, 1995.

[(2) Upon completion of the scientific investigation required under paragraph (1), the Secretary shall enter into discussions with the Pacific States Marine Fisheries Commission, on behalf of the States of Washington, Oregon, and California, for the purpose of addressing any issues or problems identified as a result of the scientific investigation, and to develop recommendations to address such issues or problems. Any recommendations resulting from such discussions shall be submitted, along with the report, to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

【(3) The Secretary shall make the report and the recommendations submitted under paragraph (2) available to the public for review and comment for a period of 90 days.

【(4) There are authorized to be appropriated to the Secretary such sums as are necessary to carry out the provisions of this subsection.

【(5) The amounts appropriated under section 308(c) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(c)) and allocated to the Pacific States Marine Fisheries Commission may be used by the Commission to participate in discussions with the Secretary under paragraph (2).】

*(f) TEMPORARY MARINE MAMMAL REMOVAL AUTHORITY ON THE WATERS OF THE COLUMBIA RIVER OR ITS TRIBUTARIES.—*

*(1) REMOVAL AUTHORITY.—Notwithstanding any other provision of this Act, the Secretary may issue a permit to an eligible entity authorizing the intentional lethal taking on the waters of the Columbia River and its tributaries of sea lions that are part of a population that is not categorized as depleted under this Act or listed as an endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), to protect endangered and threatened species of salmon and other nonlisted fish species.*

*(2) PERMIT PROCESS.—*

*(A) IN GENERAL.—An eligible entity may apply to the Secretary for a permit under this subsection.*

*(B) DEADLINE FOR CONSIDERATION OF APPLICATION.—The Secretary shall approve or deny an application for a permit under this subsection by not later than 30 days after receiving the application.*

*(C) DURATION OF PERMIT.—A permit under this subsection shall be effective for no more than one year after the date it is issued, but may be renewed by the Secretary.*

*(3) LIMITATIONS.—*

*(A) LIMITATION ON PERMIT AUTHORITY.—Subject to subparagraph (B), a permit issued under this subsection shall not authorize the lethal taking of more than 10 sea lions during the duration of the permit.*

*(B) LIMITATION ON ANNUAL TAKINGS.—The cumulative number of sea lions authorized to be taken each year under all permits in effect under this section shall not exceed one percent of the annual potential biological removal level.*

*(4) DELEGATION OF PERMIT AUTHORITY.—Any eligible entity may delegate to any other eligible entity the authority to administer its permit authority under this subsection.*

*(5) NEPA.—Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) shall not apply with respect to this subsection and the issuance of any permit under this subsection during the 5-year period beginning on the date of the enactment of this subsection.*

*(6) SUSPENSION OF PERMITTING AUTHORITY.—If, 5 years after enactment, the Secretary, after consulting with State and tribal fishery managers, determines that lethal removal authority is no longer necessary to protect salmonid and other fish species from sea lion predation, may suspend the issuance of permits under this subsection.*



(7) *ELIGIBLE ENTITY DEFINED.*—*In this subsection, the term “eligible entity” means each of the State of Washington, the State of Oregon, the State of Idaho, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated 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.*

(8) *TRAINING IN WILDLIFE MANAGEMENT.*—*Permit holders exercising lethal removal authority pursuant to this Act shall be trained in wildlife management.*

(g) *REGIONWIDE PINNIPED-FISHERY INTERACTION STUDY.*—

(1) The Secretary may conduct a study, of not less than three high predation areas in anadromous fish migration corridors within the Northwest Region of the National Marine Fisheries Service, on the interaction between fish and pinnipeds. In conducting the study, the Secretary shall consult with other State and Federal agencies with expertise in pinniped-fishery interaction. The study shall evaluate—

(A) fish behavior in the presence of predators generally;

(B) holding times and passage rates of anadromous fish stocks in areas where such fish are vulnerable to predation;

(C) whether additional facilities exist, or could be reasonably developed, that could improve escapement for anadromous fish; and

(D) other issues the Secretary considers relevant.

(2) Subject to the availability of appropriations, the Secretary may, not later than 18 months after the commencement of the study under this subsection, transmit a report on the results of the study to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives.

(3) The study conducted under this subsection may not be used by the Secretary as a reason for delaying or deferring a determination or consideration under subsection (c) or (d).

(h) *GULF OF MAINE TASK FORCE.*—*The Secretary shall establish a Pinniped-Fishery Interaction Task Force to advise the Secretary on issues or problems regarding pinnipeds interacting in a dangerous or damaging manner with aquaculture resources in the Gulf of Maine. No later than 2 years from the date of enactment of this section, the Secretary shall after notice and opportunity for public comment submit to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing recommended available alternatives to mitigate such interactions.*

(i) *REQUIREMENTS APPLICABLE TO TASK FORCES.*—(1) Any task force established under this section—

(A) shall to the maximum extent practicable, consist of an equitable balance among representatives of resource user interests and nonuser interests; and

(B) shall not be subject to the Federal Advisory Committee Act (5 App. U.S.C.).

(2) Meetings of any task force established under this section shall be open to the public, and prior notice of those meetings shall be given to the public by the task force in a timely fashion.

(j) GULF OF MAINE HARBOR PORPOISE.—(1) Nothing in section 117 shall prevent the Secretary from publishing a stock assessment for Gulf of Maine harbor porpoise in an expedited fashion.

(2) In developing and implementing a take reduction plan under section 118 for Gulf of Maine harbor porpoise, the Secretary shall consider all actions already taken to reduce incidental mortality and serious injury of such stock, and may, based on the recommendations of the take reduction team for such stock, modify the time period required for compliance with section 118(f)(5)(A), but in no case may such modification extend the date of compliance beyond April 1, 1997.

\* \* \* \* \*

## DISSENTING VIEWS

H.R. 564, the Endangered Salmon and Fisheries Predation Prevention Act, would amend the Marine Mammal Protection Act (MMPA) to authorize the Secretary of Commerce to issue annual permits to Washington, Oregon, Idaho, five tribal groups (Nez Perce, Umatilla, Warm Springs, Yakama), and the Columbia River Inter-Tribal Fish Commission to kill sea lions. The bill's stated intent is to reduce the effect of predation by sea lions on salmon listed under the Endangered Species Act (ESA), as well as any non-listed fish, including non-native species.

H.R. 564 targets the threat that fish face from predation by marine mammals, specifically sea lions, but does not address far more significant factors which impact endangered salmon or non-listed fish. Other threats to ESA-listed salmon and non-listed fish in the Columbia River include hydropower development and habitat loss, fishing pressure, interactions with hatchery fish, climate change, pesticides, and predation by fish and wildlife other than sea lions. In reality, sea lion predation represents a very small proportion of total salmon mortality, and the current lethal take authorization permitted under the MMPA is sufficient.

Under H.R. 564, as many as 92 sea lions could be taken in a year, but take would not be limited to the 'bottleneck' area immediately below the Bonneville Dam as it is now. H.R. 564 also waives Section 102(2)(c) of the National Environmental Policy Act (NEPA) which would eliminate the requirement that the Secretary consider the environmental impacts associated with the permit and alternatives to the permitted action.

By not limiting the bill's scope to threatened and endangered salmon and steelhead runs, the Majority opens up the possibility that sea lions could be killed for eating invasive species such as smallmouth, largemouth and striped bass, walleye, and northern pike, all of which NOAA recognizes as *threats* to Columbia River salmon. While such action might garner the support of recreational anglers who target those species, it certainly would not benefit salmon.

Water, Power, and Oceans Subcommittee Ranking Member Huffman offered an amendment to place reasonable limits on the authority contained in the bill, and Energy and Mineral Resources Subcommittee Ranking Member Lowenthal offered an amendment requiring that, before any new lethal take permits may be issued, the Secretary must publish a determination that adequate fish passage exist at all dams in the Columbia River Basin. Republicans defeated both amendments.

H.R. 564, if enacted, would not address the real threats faced by endangered salmon and non-listed species, but would needlessly target sea lions, which are a native and critical part of the Colum-

bia River ecosystem. For these reasons, we oppose H.R. 564 as reported.

RAÚL M. GRIJALVA,  
*Ranking Member, Committee  
on Natural Resources.*  
GRACE F. NAPOLITANO.  
JARED HUFFMAN.  
JARED POLIS.  
ALAN LOWENTHAL.

○