

H.R. 946, ENDANGERED SALMON PREDATION PREVENTION ACT

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON FISHERIES, WILDLIFE,
OCEANS AND INSULAR AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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**LEGISLATIVE HEARING ON H.R. 946, TO
AMEND THE MARINE MAMMAL PROTEC-
TION ACT OF 1972 TO REDUCE PREDATION
ON ENDANGERED COLUMBIA RIVER
SALMON, AND FOR OTHER PURPOSES.
"ENDANGERED SALMON PREDATION PRE-
VENTION ACT."**

**Tuesday, June 14, 2011
U.S. House of Representatives
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
Committee on Natural Resources
Washington, D.C.**

The Subcommittee met, pursuant to call, at 10:01 a.m. in Room 1324, Longworth House Office Building, Hon. John Fleming [Chairman of the Subcommittee] presiding.

Present: Representatives Fleming, Southerland, Hastings, [ex officio] and Bordallo.

**STATEMENT OF HON. JOHN FLEMING, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF LOUISIANA**

Dr. FLEMING. The Subcommittee will come to order. The Chairman notes the presence of a quorum. Good morning. Today, the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs, will conduct a legislative hearing on H.R. 946, the "Endangered Salmon Predation Prevention Act".

Under Committee Rule 4[f], opening statements are limited to the Chairman and Ranking Member of the Subcommittee so that we can hear from our witnesses more quickly. However, I ask unanimous consent to include any other Members' opening statements in the hearing record if submitted to the Clerk by the close of business today. Hearing no objection, so ordered.

Marine mammals were given Federal protection in 1972 with the enactment of the Marine Mammal Protection Act. Congress enacted the law in part to address the decline of many marine mammal populations from various human activities.

The Act has been very successful in protecting and restoring marine mammal species to abundant levels. The California sea lion population is an example of the Act's success.

However, the high number of sea lions is having an adverse impact on salmon and steelhead species listed under the Endangered Species Act. In 1994, the Marine Mammal Protection Act was amended to authorize the use of deterrence methods to reduce sea lion predation on the listed fish species.

However, the nonlethal removal measures have not been successful. H.R. 946 would require the Secretary of Commerce to make a determination that nonlethal deterrence measures are not working to protect listed salmon species.

The Secretary would then be authorized to use a temporary expedited permit process to allow the States to lethally remove a limited number of sea lions to protect threatened and endangered salmon migrating up the Columbia River to spawn.

I look forward to hearing from our distinguished witnesses, and now recognize our Acting Ranking Member, Ms. Bordallo, for any statement that she would like to make.

[The prepared statement of Dr. Fleming follows:]

**Statement of The Honorable John Fleming, Chairman,
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs**

Good morning, we are here today to discuss H.R. 946, the Salmon Predation Prevention Act, a bill sponsored by our Full Committee Chairman, Doc Hastings.

Marine Mammals were given federal protection in 1972, with the enactment of the Marine Mammal Protection Act. Congress enacted the law in part to address the decline of many marine mammal populations from various human activities. The Act has been very successful in protecting and restoring marine mammal populations to abundant levels—the California sea lion population is an example of the Act's success. However, the high sea lion population is having an adverse impact on salmon and steelhead stocks which are listed under the Endangered Species Act.

**STATEMENT OF HON. MADELEINE Z. BORDALLO, A DELEGATE
IN CONGRESS FROM THE TERRITORY OF GUAM**

Ms. BORDALLO. Thank you very much, Mr. Chairman, and good morning to all the witnesses. This morning's hearing on H.R. 946, The Endangered Salmon Predation Prevention Act, focuses on an issue important to Members in the Pacific Northwest.

H.R. 946 would authorize the Secretary of Commerce to issue permits enabling the States of Washington and Oregon, and tribes that are members of the Columbia River Intertribal Fish Commission, to take lethal measures against sea lions preying on endangered salmon throughout the Columbia River.

The bill would also waive the application of the National Environmental Policy Act to the permit process. This would eliminate the requirement that the Secretary consider the environmental impacts and alternatives, as well as the public input, to take lethal action against the sea lions.

There already is a provision in the Marine Mammal Protection Act that was included in 1994 to address salmon predation by sea lions. Section 120 authorizes the Secretary to permit the intentional lethal taking of sea lions and, to date, 37 California sea lions have been removed from the Bonneville Dam area.

H.R. 946 focuses on the impact of predation by California sea lions on endangered salmon. According to the Army Corps of Engineers, California sea lions have only consumed 1.4 percent of this year's salmon run, which is the lowest percentage since 2003.

Meanwhile, salmon populations battle a variety of other threats, including hydropower development, habitat loss, fishing pressure, interactions with hatchery fish, pesticide exposure, and climate change.

So it is critical that we support efforts to restore and maintain healthy salmon populations in the Pacific Northwest by addressing all of these significant threats to salmon. And with that, I look forward to hearing from our witnesses today and learning more about this issue. I thank you.

[The prepared statement of Ms. Bordallo follows:]

**Statement of The Honorable Madeleine Z. Bordallo, Ranking Member,
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs**

Thank you, Mr. Chairman. This morning's hearing on H.R. 946, the Endangered Salmon Predation Prevention Act, focuses on an issue important to Members in the Pacific Northwest. H.R. 946 would authorize the Secretary of Commerce to issue permits enabling the states of Washington and Oregon, and tribes that are members of the Columbia River Inter-Tribal Fish Commission, to take lethal measures against sea lions preying on endangered salmon throughout the Columbia River. The bill would also waive the application of the National Environmental Policy Act to the permit process. This would eliminate the requirement that the Secretary consider the environmental impacts and alternatives, as well as public input, to lethal action against the sea lions.

There already is a provision in the Marine Mammal Protection Act that was included in 1994 to address salmon predation by sea lions. Section 120 authorizes the Secretary to permit the intentional lethal taking of sea lions and to date, 37 California sea lions have been removed from the Bonneville Dam area.

H.R. 946 focuses on the impact of predation by California sea lions on endangered salmon. According to the Army Corps of Engineers, California sea lions have only consumed 1.4 percent of this year's salmon run, which is the lowest percentage since 2003.

Meanwhile salmon populations battle a variety of other threats, including hydro-power development, habitat loss, fishing pressure, interactions with hatchery fish, pesticide exposure, and climate change.

It is critical that we support efforts to restore and maintain healthy salmon populations in the Pacific Northwest, by addressing all of these significant threats to salmon.

With that, I look forward to hearing from our witnesses today and learning more about this issue, and I thank you.

Dr. FLEMING. I thank the gentlelady, the Ranking Member. I now recognize Chairman Doc Hastings for any opening statement that he may have on this bill.

**STATEMENT OF HON. DOC HASTINGS, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF WASHINGTON**

Mr. HASTINGS. Thank you, Mr. Chairman, for holding this hearing on this bill that is important to my area in the Northwest, and before I begin, I would ask unanimous consent that the statement of my colleague from Oregon, Mr. Walden, appear in the record. He is a cosponsor of the bill.

Dr. FLEMING. If there is no objection, it is so ordered.

[The prepared statement of Mr. Walden follows:]

**Statement submitted for the record by The Honorable Greg Walden, a
Representative in Congress from the State of Oregon**

Dear Chairman Fleming and Ranking Member Sablan:

I write in support of H.R. 946, the Endangered Salmon Predation Prevention Act, and in appreciation of your commitment to moving this bill through the Committee on Natural Resources. This is an important step in ongoing efforts to reduce the predation of salmon listed on the Endangered Species Act (ESA) in the Columbia River system.

As you know, the Endangered Salmon Predation Prevention Act would authorize the states of Oregon and Washington and four Columbia River treaty tribes, including the Confederated Tribes of Warm Springs Reservation and the Confederated Tribes of the Umatilla Indian Reservation in Oregon, to obtain permits for the lethal removal of California sea lions caught eating salmon and steelhead in the Columbia River near Bonneville Dam. The bill would accomplish this by amending the Marine Mammal Protection Act of 1972 (MMPA) to allow the Secretary of Commerce—more specifically, the National Marine Fisheries Service (NMFS)—to issue permits to the eligible entities. Before utilizing a lethal take permit, the permit holder must first

determine that the sea lions have preyed upon ESA-listed salmon and then exhaust all nonlethal alternatives to deter predation. According to the Oregon Department of Fish and Wildlife, the MMPA has helped the population of California sea lions increase from 10,000 in the 1950s to 300,000, a level that is near the highest sustainable level.

In 2005 and 2006, I joined Congressmen Brian Baird (D-WA) and Norm Dicks (D-WA) in holding bipartisan regional forums, including one in Pendleton, Ore., to explore ways to improve the survival of adult salmon and steelhead in the Columbia River system. At the Pendleton forum, the U.S. Army Corps of Engineers testified that the consumption of fish by sea lions in the vicinity of Bonneville Dam had been on a steady increase and that the sea lions had even figured out how to enter the fish ladders at Bonneville Dam to gorge themselves on endangered salmon and steelhead.

Since then, efforts to enact legislation to allow the lethal take of sea lions found to be eating endangered salmon at the mouth of these fish ladders have not been successful. As an original cosponsor of H.R. 946 and having a keen interest in improving the survival of this important fish species, I welcome today's legislative hearing and look forward to working with you to ensure that this bill is signed into law. With Pacific Northwest ratepayers contributing nearly \$1 billion each year to protect salmon, this common-sense solution cannot wait.

Mr. HASTINGS. Since 1992, NOAA has listed 28 populations of salmon, including 12 in the Columbia and Snake Rivers, as either threatened or endangered under the Endangered Species Act.

Northwest citizens have invested billions of dollars to fund significant Federal, State, tribal, and local salmon activities. These efforts include a plan now before a Federal Judge, supported by the Administration, States, and several upper and lower Columbia River tribes, that would ensure the continued operation of several major Federal hydropower dams on the Snake and Columbia Rivers.

Great progress has been made to recover salmon, as witnessed by several consecutive years of near-record runs. Yet, growing numbers of aggressive sea lions are consuming endangered salmon.

The Army Corps of Engineers reported late last year that the average number of sea lions observed at Bonneville Dam over the past three years has increased by nearly 50 percent, from 83 to 123 per year.

Despite extensive efforts by Federal, State, and tribal officials to discourage predation through aggressive nonlethal hazing, the Corps recently estimated that sea lions consume over 6,000 salmon alone.

In 1994, Congress added Section 120 to the Marine Mammal Protection Act to allow lethal removal of sea lions that were eating salmon at the Ballard Locks in Seattle. However, extensive studies and attempts by States have demonstrated that this authority as written has proven inadequate and cumbersome.

Last year, a NOAA 18-member task force, comprised of Federal, State, and tribal scientists, concluded that current efforts authorized under Section 120 had been ineffective at controlling sea lions from preying on salmon.

Earlier this year, I applauded NOAA for defending its approval to States to use lethal removal to control sea lions that are eating alarming numbers of salmon on the Columbia River.

Unfortunately, last month, yet another lawsuit blocked this approval at a time when tens of thousands of salmon are returning through Bonneville Dam. H.R. 946 and this hearing today are designed to find a common-sense path forward to protect our substan-

tial investment in salmon recovery and provide Federal, State, and tribal fish managers the tools necessary to control sea lions.

This bipartisan legislation, similar to that which has been introduced in prior Congresses, would provide temporary expedited authorities for States and tribes to manage sea lion problems while States obtain longer-term authority through the Marine Mammal Protection Act.

The bill recognizes the four lower Columbia River tribes, as well as the States of Oregon and Washington, that should be eligible to obtain permits to control these predatory sea lions.

In addition, the proposal would require the Commerce Secretary to report to Congress on possible amendments to the Marine Mammal Protection Act to address conflicts between marine mammals and fish species listed under ESA.

So again I want to thank the Subcommittee for this hearing, and I look forward to hearing the testimony from our witnesses, and with that, Mr. Chairman, thank you again for the courtesy, and I yield back my time.

[The prepared statement of Mr. Hastings follows:]

**Statement of The Honorable Doc Hastings, Chairman,
Committee on Natural Resources**

Thank you, Chairman Fleming for holding this hearing on H.R. 946, the Endangered Salmon Predation Prevention Act.

Since 1992, the National Oceanic and Atmospheric Administration (NOAA) has listed 28 populations of salmon—including 12 in the Columbia and Snake Rivers—as either threatened or endangered under the Endangered Species Act.

Northwest citizens have invested billions of dollars to fund significant federal, state, tribal and local salmon activities.

These efforts include a plan now before a federal judge, supported by the Administration, states and several upper and lower Columbia River tribes—that would ensure the continued operation of several major federal hydropower dams on the Columbia and Snake Rivers.

Great progress has been made to recover salmon, as witnessed by several consecutive years of record or near-record runs. Yet, growing numbers of aggressive sea lions are consuming endangered salmon.

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Despite extensive efforts by federal, state, and tribal officials to discourage predation through aggressive nonlethal hazing, the Corps' recently estimated that sea lions consumed over 6,000 salmon last year, alone.

In 1994, Congress added Section 120 to the MMPA to allow lethal removal of sea lions that were eating salmon at the Ballard Locks of Seattle. However, extensive studies and attempts by states have demonstrated that this authority as written has proven inadequate and cumbersome.

Last December, a NOAA 18-member task force, comprised of federal, state and tribal scientists, concluded that current efforts authorized under Section 120 have been ineffective at controlling sea lions from preying on salmon.

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The bill recognizes that four lower Columbia River tribes, as well as the states of Oregon and Washington, should be eligible to obtain permits to control predatory sea lions.

In addition, the proposal would require the Commerce Secretary to report to Congress on possible amendments to the Marine Mammal Protection Act to address conflicts between marine mammals and fish species listed under the ESA.

I again thank the Subcommittee for holding this hearing, and I look forward to hearing from the states and tribes represented here today on how this bipartisan bill might be further improved as it moves through the legislative process.

Dr. FLEMING. I thank the Chairman. The Chairman yields his time back. We will now hear from our witnesses. Like all witnesses, your written testimony will appear in full in the hearing record.

So I ask that you keep your oral statements to five minutes as outlined in our invitation letter to you, and under Committee Rule 4[a]. Our microphones are not automatic, and so please press the button when you are ready to begin.

I also want to explain how the timing lights work. When you begin to speak, our Clerk will start the timer and the green light will appear. After four minutes a yellow light will appear, and at that time, you should begin to conclude your statement, and at five minutes the red light will come on.

So obviously you get four minutes with a green light, and one minute with a yellow, and then red, which means that you need to write it up in a hurry.

So I will begin to welcome our witnesses today. First, we have Mr. Eric Schwaab, Assistant Administrator for the National Marine Fisheries Service, National Oceanic and Atmospheric Administration.

[Pause.]

Dr. FLEMING. OK. I am sorry. I had to get updated information. Mr. James Lecky. Am I saying that right, sir?

Mr. LECKY. Yes.

Dr. FLEMING. And I am not sure exactly what your position is, but I assume that you are with the same organization, the National Marine Fisheries Services, National Oceanic and Atmospheric Administration.

Then Mr. Guy Norman, Southwest Regional Director, Washington Department of Fish and Wildlife; Mr. Robin Brown, Program Leader, Marine Mammal Research, Oregon Department of Fish and Wildlife; Mr. Virgil Lewis, Tribal Council Member, Yakama Nation. Am I saying that right, Yakama?

Mr. LEWIS. Yakama.

Dr. FLEMING. Yakama. OK. I knew that it didn't sound quite right. Ms. Sharon B. Young, Marine Issues Field Director, The Humane Society of the United States. OK. Mr. Lecky, you are now recognized for five minutes, sir.

STATEMENT OF JAMES LECKY, DIRECTOR, OFFICE OF PROTECTED RESOURCES, NATIONAL MARINE FISHERIES SERVICE

Mr. LECKY. Thank you. Good morning, Chairman Hastings, and Chairman Fleming, and Members of the Subcommittee. I am Jim Lecky, and I am the Director of the Office of Protected Resources

for NOAA's National Marine Fisheries Service. Thank you for the opportunity to testify today on H.R. 946, and the issues of increasing pinniped predation on threatened and endangered salmon in the Columbia River.

NOAA protects seals and sea lions along the West Coast under the Marine Mammal Protection Act, and promotes recovery of threatened and endangered salmon and steelhead under the Endangered Species Act.

NMFS has experienced challenges in reconciling these duties and welcomes guidance on how to address the effects of predation by a robust population of sea lions on the conservation of threatened and endangered populations of salmon and steelhead.

This morning I will describe these challenges, and our experience in addressing the conflict, using existing authorities, and provide NMFS's view on H.R. 946. Under the Marine Mammal Protection Act, most seal and sea lion populations on the West Coast have recovered to healthy levels.

Currently, California sea lion numbers exceed 238,000 individuals, and the population is believed to be at or near carrying capacity. At the same time many West Coast salmon populations have undergone substantial declines as a result of habitat loss and degradation from the development of land and water resources, overfishing, and unsustainable hatchery practices.

Out of 52 population groups of salmon spawning in California, Idaho, and Washington, 28 are listed as threatened under the Endangered Species Act, threatened or endangered under the Endangered Species Act.

NOAA has worked with its partners for nearly 20 years at considerable cost to address the factors that have contributed to the decline of these important resources. We have also worked with States and others to explore not only nonlethal methods of deterring pinnipeds from stealing catch, damaging fishing gear, damaging private and public property, and preying on listed salmon, and for the most part these efforts have yielded limited success.

In November of 2006, Oregon, Washington, and Idaho applied for authority pursuant to Section 120 of the Marine Mammal Protection Act to lethally remove California sea lions at Bonneville Dam to protect the Columbia River's salmonids.

In response, NMFS convened a pinniped fishing interaction task force, which recommended approval of the application and NMFS completed the authorization process in time for the 2008 Spring Chinook salmon run under that authority.

Under that authority, 37 individually identified California sea lions have been removed to permanent captivity or humanely killed. In 2008, the Humane Society filed a complaint contending that in issuing the authorization that NMFS violated the Marine Mammal Protection Act, the National Environmental Policy Act, and the Administrative Procedures Act, and the decision authorizing lethal removal was vacated and remanded to NMFS for further explanation of its finding that sea lion predation was having a significant negative impact on the recovery of salmonids in the Columbia River.

On May 12 of this year, NMFS reissued its lethal removal authorizations to the States, and on May 19, the Humane Society

again filed a complaint. In addition to the litigation challenges, some of the provisions of Section 120 make NMFS and its ability to use that authority difficult.

For example, the requirements to identify individual sea lions foraging on salmon prior to taking action is extremely difficult given the enormity of the Columbia River. We understand the behavior of sea lions well enough to know that when they are in the vicinity of Bonneville Dam, they are there to take advantage of the salmon resource.

With respect to H.R. 946, we are pleased that it recognizes the limitation of nonlethal methods to protect salmonids from sea lion predation, and that it acknowledges the enormous investment that many agencies, organizations, and the public have made to the recovery of Columbia River salmonids, and it recognizes the role for the Columbia River Intertribal Fish Commission and its tribes.

However, NMFS is troubled by some of the provisions in the bill. For example, the bill requiring NMFS to make determinations that nonlethal measures are ineffective, and then require each permit holder to duplicate that determination for each sea lion prior to removal. It is not clear why such duplication is necessary.

And we think that NEPA can add value to the process and suggest that time be added to the process for NEPA analysis. Also, coordinating the activity of permit holders would be challenging, in that multiple permits may be issued to six different eligible entities, but each entity may use only one permit during any particular two week period. Tracking such a system would be difficult to implement.

In conclusion, NMFS believes that specifically and narrowly tailored changes to the Marine Mammal Protection Act that reflects sound principles of wildlife management, and allow for both marine mammal conservation and salmonid recovery.

NMFS recommends that the Subcommittee consider a comprehensive approach to the use of lethal measures to manage pinnipeds, just as they are allowed for many high profile species of terrestrial animals.

Thank you again for the opportunity to testify, and we would be pleased to work with the Committee and staff to refine a bill for further consideration, and I would be happy to answer any of your questions.

[The prepared statement of Mr. Lecky follows:]

Statement of James Lecky, Director, Office of Protected Resources, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce

Introduction

Good morning, Chairmen Hastings and Fleming and members of the Subcommittee. I am Jim Lecky, Director of the Office of Protected Resources in the National Oceanic and Atmospheric Administration's (NOAA) National Marine Fisheries Service (NMFS). Thank you for the opportunity to present NOAA's views on California sea lion predation on at-risk, threatened, or endangered salmon and steelhead and H.R. 946, which would establish a temporary permitting procedure for allowing the removal of California sea lions to protect salmonids in the Columbia River. While I have been in my present position since 2004, I spent nearly 30 years working for NOAA on marine mammal and endangered species issues in our Southwest Region and am very familiar with problems associated with increasing seal and sea lion populations, including the ongoing predation of threatened and endangered salmonids in the Columbia River and its tributaries.

NOAA is responsible for protecting most marine mammal populations along the west coast under the Marine Mammal Protection Act (MMPA) and for promoting the recovery of threatened and endangered species under the Endangered Species Act (ESA), including listed salmon and steelhead trout, collectively called salmonids. The MMPA and ESA are strong conservation laws, but the MMPA does not provide flexible tools for dealing with species whose populations have reached healthy levels and that are creating conflicts with, among other things, conservation efforts for ESA protected species. Therefore, NOAA appreciates the Chairs' acknowledgment of the seriousness of this issue and the opportunity to explore development of additional tools for efficient and effective resolution of such conflicts.

In my remarks today, I will describe the ecological and management context that currently exists, NOAA's previous experience in addressing the conflict with increasing populations of pinnipeds under existing authorities, and NOAA's comments on H.R. 946.

Ecological and Management Context

I am pleased to report that the MMPA has been successful at recovering most stocks of seals and sea lions along the west coast to optimum sustainable levels. California sea lion numbers have increased from the few thousands in the 1920s to more than 238,000 today. An analysis of pup counts in California through 2005 suggests the population likely achieved its maximum net productivity level in 1997 and may currently be at or near its carrying capacity. Populations of harbor seals and elephant seals are healthy and, in the Pacific Northwest, while the Eastern stock of Steller sea lions is listed as threatened under the Endangered Species Act, we have seen steady improvements in it.

After breeding in southern California rookeries, male California sea lions migrate north in search of food. Some of these animals feed along the California coast while others disperse as far north as Alaska. During winter and spring, more than 1,000 California sea lions may be found near the mouth of the Columbia River. Some of these animals make their way up the Columbia River to Bonneville Dam (nearly 150 miles upriver) feeding on spring smelt and salmonid runs. Some feed on listed salmonids at Willamette Falls where there have been aggressive interactions with recreational fishers targeting hatchery fish.

In contrast to robust west coast seal and sea lion populations, many west coast salmonid populations have declined from historic levels. Of 52 recognized population groups of salmonids spawning in California, Oregon, Idaho, and Washington, 28 are listed as threatened or endangered under the Endangered Species Act, 13 of which spawn in the Columbia River or its tributaries. These salmonid populations are at risk because of multiple threats: habitat loss and degradation, harmful hatchery practices, predation and competition, and harvest. All threats must be addressed to recover listed salmonids in the Columbia Basin. Our recovery approach has been to seek reductions in mortality from all sources, with the goal of reducing overall mortality to the point that each species can survive and recover.

Over the years, NOAA has worked diligently with states and others to explore nonlethal methods for deterring pinnipeds from preying on listed salmonids. Unfortunately, these efforts have yielded limited success. Congress recognized the limits of nonlethal deterrence in passing the MMPA amendments of 1994. These amendments included MMPA section 120, which allows states to apply for authority to lethally remove California sea lions or Pacific harbor seals to protect at-risk salmonid populations. These amendments also required NMFS to prepare a report to Congress describing the impacts of pinniped predation on the recovery of threatened and endangered salmonids and more broadly on coastal ecosystems of Washington, Oregon, and California. NMFS completed the scientific investigation and submitted its report to Congress in February 1999.

The report to Congress described the potential for pinniped impacts on the decline or recovery of at-risk fish stocks in Washington, Oregon, Idaho, and California and the expanding pinniped conflict with human economic and recreational activity in the affected areas. As a result of these findings, NMFS recommended that Congress amend the MMPA to include a site-specific management regime including the use of lethal and nonlethal removal of California sea lions and harbor seals. It also suggested further investigation of nonlethal deterrence methods and the collection of information needed to allow more informed decision-making for appropriate conservation of pinnipeds and other living marine resources.

NMFS has testified before this Subcommittee three times in support of the recommendations of the 1999 report. Joe Scordino (retired, Deputy Regional Administrator, NMFS/NWR) represented NMFS at a hearing in Washington, D.C., in October 2001, and I represented NMFS at a field hearing in San Diego, CA, in August

2003. In addition D. Robert Lohn testified to this Subcommittee in 2007 on H.R. 1769, a bill similar to H.R. 946 being discussed today.

Reducing Sea Lion Predation on Salmonids: History to Present

In addition to the 1994 Amendments allowing lethal removal of pinnipeds (Section 120), the MMPA includes two potential alternatives for authorizing lethal taking of marine mammals in response to marine resource management challenges such as those I have described. Section 101 provides authority for the Secretary to waive the take moratorium and adopt suitable regulations to permit taking by lethal methods, through a formal rule-making process. Section 109 provides Secretarial authority to transfer management authority to a state on its request. A state receiving management authority for marine mammals from the Secretary must have adopted a management plan that could include lethal taking, approved by the Secretary prior to the transfer of management. Congress adopted Section 120 as a more streamlined approach to dealing with circumstances such as the one at Bonneville Dam.

Under section 120, NMFS has received two applications from states to lethally remove California sea lions to protect at-risk salmonids. In 1994, the State of Washington requested authority to remove selected sea lions to protect a small winter-run steelhead population that migrated into the Lake Washington drainage at the Ballard Locks in Seattle, WA. NMFS and the States attempted to protect the steelhead run using nonlethal deterrence and conducted predation monitoring activities for nearly a decade prior to the 1994 amendments. The States submitted an application under the new section and NMFS convened a Pinniped-Fishery Interaction Task Force to consider the application. Following Task Force recommendations, NMFS and the States continued a number of nonlethal deterrence actions such as acoustic barriers, flow modification, trap and hold, and trap and haul before March of 1996 when NMFS approved the States' request for lethal removal of five specific animals. None of those animals was lethally removed but three were relocated to Sea World of Orlando, FL, for permanent captivity and public display. California sea lion predation events on steelhead returning to Lake Washington subsided following the 1996 steelhead return due to the removal of the worst offending animals, continued implementation of a nonlethal deterrence strategy, and the collapse of the steelhead run, which has not yet recovered. Over the past several years, NMFS has received anecdotal reports of sea lion predation on Chinook salmon at the Ballard Locks but there have been insufficient resources available to implement systematic monitoring to quantify the extent of the impacts to this ESA listed run.

In November 2006, the states of Oregon, Washington, and Idaho applied to NMFS for authority to lethally remove California sea lions at Bonneville Dam to protect threatened or endangered salmonids in the Columbia River. The states' application noted that sea lion predation on salmonids at the dam is a relatively recent phenomenon with only occasional sightings of sea lions at or near the dam prior to 2000. In 2000, predation events began to increase and have been documented since 2002 when 30 California sea lions were identified feeding at the dam. Between 2002 and 2006 the estimated California sea lion predation on salmonids at the dam increased annually from just over 1000 to about 3000 fish.

In addition to reviewing the pinniped salmon conflict, the states' application also described many other efforts, for which hundreds of millions of dollars have been spent, to provide a comprehensive recovery strategy for salmonids in the Columbia River basin. These efforts include harvest reduction, hydroelectric system modification and mitigation, habitat improvement, predator controls, and hatchery reform.

After receiving the states' 2006 application, NMFS, as required by section 120, provided notice of the states' application, convened a Pinniped-Fishery Interaction Task Force, and complied with other applicable laws (e.g., National Environmental Policy Act (NEPA) and Endangered Species Act (ESA)). Due to the seasonal commitments of potential Task Force members, various procedural requirements and requisite environmental analyses, NMFS was not able to complete the section 120 process in time for the 2007 spring Chinook salmon run. In the fall of 2007, the Task Force recommended approval of the lethal removal application, with a minority dissenting vote, and NMFS completed the authorization process prior to the start of the 2008 spring Chinook salmon run.

Since then, the number of California sea lions at the dam has averaged about 75 animals per year and they have been observed eating an ever-increasing number of salmon below the dam, with an estimated high of 5,000 salmon taken by California sea lions in 2010 (total estimated predation by all pinnipeds at Bonneville Dam in 2010 was over 6,000 salmon). Although the percentage of the runs consumed annually varies with run size, the estimated number of individual fish taken has generally increased each year since 2005. I note that this estimate of predation is based

on documented predation events observed from the dam structure. Thus, the 2010 mortality estimate attributable to California sea lions at the dam is not an estimate of the total predation, but observed predation, on salmonids by California sea lions in the Columbia River. California sea lions have been reported feeding on salmonids along the entire main stem of the Columbia River and in several tributaries from its mouth to the Dalles Dam, 191 miles from the ocean. However, predation rates have not been quantified except in the area visible from Bonneville Dam and the estimate only represents the observed area. Systematic observations of predation elsewhere in lower Columbia River to identify the animals involved or to quantify the impacts of predation have not been done. The lower Columbia River up to the Dalles Dam is a huge area and systematic observation of the entire area would be an extremely difficult and costly venture.

NMFS, the U.S. Army Corps of Engineers (which operates Bonneville Dam), the states, and the Columbia River Intertribal Fish Commission and their member Tribes have aggressively employed nonlethal deterrence methods to protect salmonids near the dam since 2006. From March 2008 when the section 120 removal authorization was issued to the states through 2010, 37 individually identified California sea lions were removed to permanent captivity or humanely killed. Nevertheless, predation continued to increase.

After the close of the 2010 season, NMFS reconvened the Task Force to evaluate the effectiveness of the removal program and consider information accumulated since the program's initiation. Following its review, the Task Force concluded that the program had not been sufficiently successful at reducing pinniped predation on salmonids and made several recommendations to improve the effectiveness of the removal program.

The section 120 process has proven litigious. After the issuance of the removal authorization in 2008, the Humane Society of the United States filed a complaint in the U.S. District Court in Oregon. Plaintiffs contended that NMFS violated the MMPA, NEPA, and the Administrative Procedure Act (APA) when it authorized the lethal removal of individually identifiable California sea lions. In particular, plaintiffs argued NMFS' decision was factually indefensible and inconsistent with other agency decisions under NEPA and the ESA involving salmon (specifically fishery harvest and hydropower operations), and that NMFS failed to provide an adequate explanation under the APA as to why sea lion predation was significant as defined under the MMPA, whereas take by fisheries and hydropower operations was insignificant as defined under other applicable laws (e.g., NEPA).

In November 2008, the district court upheld NMFS' lethal removal authorization and NEPA analysis. Plaintiffs appealed and on November 23, 2010, the Ninth Circuit issued a partially favorable decision to plaintiffs. The Ninth Circuit held, for purposes of the MMPA authorization, that NMFS failed to provide a satisfactory explanation concerning two main points: (1) the seemingly inconsistent findings that sea lion predation is significant for purposes of the MMPA, but similar or greater levels of take of the same salmonid populations by other activities—such as fishery harvests in the Columbia River—are not significant under NEPA; and (2) the agency's failure to explain adequately what the court viewed as the agency's implicit finding that a California sea lion predation rate of greater than 1% results in a significant negative impact on the decline or recovery of salmonid populations. Despite the adverse MMPA decision, the Ninth Circuit upheld the NEPA analysis. The Ninth Circuit directed the district court to vacate the decision authorizing lethal removal and remanded it to NMFS "...to afford the agency the opportunity either to articulate a reasoned explanation for its action or to adopt a different action with a reasoned explanation." *HSUS v. Locke*, 626 F.3d 1040, 1053 (9th Cir. 2010).

On May 12, 2011, NMFS, having considered the available information accumulated since 2008 and its previous effects analysis under NEPA and the ESA, and following the appellate court's instruction, reissued its lethal removal authorization. The terms and conditions of the current authorization are virtually the same as those in the 2008 authorization.

The spring Chinook salmon run past Bonneville Dam began several weeks late in 2011, but increased rapidly beginning April 25. California sea lions also arrived at the dam later and in smaller numbers than in recent years. Non-lethal deterrence measures were implemented through most of the 2011 season. Predation numbers were lower than the previous year for the first time since 2005. On May 18, 2011, following receipt of the re-issued authorization the States successfully captured one of the individually identifiable California sea lions that was authorized for removal and it was humanely killed. NMFS' and the States' efforts to control California sea lion predation at Bonneville Dam has once again been challenged by the Humane Society of the United States. A lawsuit was filed on May 19, 2011, in the U.S. District Court for the District of Columbia. Similar to the previous litiga-

tion, the Humane Society asserts that NMFS, in issuing the section 120 authorization, violated the MMPA, NEPA, and APA.

H.R. 946

Representative Hastings and his colleagues introduced H.R. 946 in March 2011. This bill is a modified version of Representative Baird's H.R. 1769 introduced in the 110th Congress and to H.R. 6241, introduced in the 109th Congress. Several aspects of H.R. 946 are consistent with our 1999 Report to Congress. The bill identifies and aims to address the complicated and controversial wildlife management conflict we face on the Columbia River today. It correctly recognizes: the limitations of nonlethal methods to protect salmonids from sea lion predation; the enormous investment that many agencies, organizations, and the public have made to conserve and recover at-risk salmon and steelhead populations in the Columbia River basin; and that the Columbia River Intertribal Fish Commission and their member Tribes should be included in addressing this conflict.

We appreciate the bill's attempts to streamline procedures necessary to take action. Our goal is a delicate 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 lethally remove California sea lions to protect listed salmonids. From experience, however, we note that we have faced numerous challenges with the requirement regarding individual identification of sea lions foraging on salmon. This requirement is extremely difficult given the enormity of the Columbia River basin and encumbers the ability to remove the animals and provide efficient and effective protection for salmon. This requirement would also be extremely difficult to meet if it is determined that broader action is needed elsewhere in the Columbia River basin. We also do not support the exemption from NEPA. We found the environmental review process valuable when reaching our determination at Bonneville Dam and would support legislative solutions that allow adequate time to complete an environmental review. We would be happy to further discuss this and potential solutions with the Committee at your convenience.

The bill would also require NMFS to make a determination that nonlethal measures are ineffective—following a public review and comment period—and then require each permit holder to duplicate that determination for each sea lion prior to removal. It is not clear why the permit holder determination is necessary when NMFS would have already made such a determination. Indeed, NMFS has already made such a determination in its 2008 section 120 decision documents regarding California sea lions at Bonneville Dam.

The bill also requires NMFS to prepare a report to Congress on the need for additional legislation. This requirement should be made precatory, to respect the President's prerogatives under the Recommendations Clause. As previously described, NMFS prepared such a report in 1999. California sea lion predation on salmonids at Bonneville Dam has become a significant problem since the report was completed.

Besides the streamlining concerns noted above, there are a few operational challenges in the bill and some provisions are confusing. Coordinating the activity of permit holders also seems difficult in that multiple permits may be issued to six different "eligible entities" but each entity may use only one permit during any 2-week period. Tracking such a system would be difficult.

Conclusion

The MMPA has provided strong protections for all marine mammals, regardless of their population status, for more than 30 years. The Administration believes that in some cases lethal removal may be necessary to manage pinniped-fishery conflicts, and that such management is not inconsistent with the purposes and policies of the Act. We appreciate this bill's recognition of that need and stand ready to work with the Committee to address our concerns with the bill.

Dr. FLEMING. Thank you, Mr. Lecky, and that was perfect timing. Next is Mr. Brown, Program Leader for Marine Mammal Research, Oregon Department of Fish and Wildlife. You have five minutes, sir.

STATEMENT OF ROBIN BROWN, PROGRAM LEADER, MARINE MAMMAL RESEARCH, OREGON DEPARTMENT OF FISH AND WILDLIFE

Mr. BROWN. Thank you, Mr. Chairman, and Members of the Subcommittee. My name is Robin Brown. I am the Program Leader for Marine Mammal Research and Management with the State of Oregon Department of Fish and Wildlife. I have been working in the area of seal and sea lion population biology, food habits, and interaction with fisheries and fish resources for 35 years.

We thank you for your interest in this issue, and we also thank the NOAA Fisheries Service for working closely with the States to evaluate and address the resource conflicts that arise between at-risk salmon and steelhead populations, and abundant seal and sea lion populations.

Over the past four years, we have encountered a number of problems and roadblocks with implementation of our Section 120 authority, the tool that was created by Congress in 1994, and we recognize the efforts of Representative Hastings and this Subcommittee in drafting H.R. 946 in response to the current limitations of Section 120.

Hopefully the comments that I can provide for you here and in my written testimony will help you understand the problems that we have experienced. First, a little background on California sea lions. As has been stated the population is extremely healthy and is at or near historic population levels.

There is absolutely no risk that the removal of small numbers of sea lions from the population will have any negative effect on the robust status of the population as a whole.

Archeological and anthropological evidence demonstrates that the California sea lions were not historically found in the Columbia River. Therefore, the argument that the California sea lions have always occurred in this area, and are only exhibiting historical use of traditional foraging areas is not true.

Only over the past 10 years have more than just two or three California sea lions been observed feeding below the Bonneville Dam, 145 miles from the Pacific Ocean. We believe that the intent of Congress in adding Section 120 to the MMPA, Marine Mammal Protection Act, was to favor at-risk salmon and steelhead stocks over abundant pinniped populations.

This point was made in the original preamble, title, and findings of Section 120. We have made important initial progress at reducing the abundance of habitual predatory California sea lions, taking salmon and steelhead at Bonneville Dam.

However, during this past 2011 field season, we lost the opportunity to continue that downward trend of predatory sea lion numbers in the Columbia River. A major constraint with Section 120 involves the vague definition of what is significant in terms of losses of ESA listed salmonids to predatory pinnipeds.

At present, resource managers are not permitted to take proactive measures to prevent smaller manageable problems from growing into major ones. This is a classic Catch 22 situation.

The problem cannot be addressed until it is very large, and once it has reached that level, it is very difficult to resolve. Had we 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 salmon would have been saved, and far fewer sea lions would have had to have been removed, and something that all of us would prefer to see.

The costs involved with the protracted management process currently required under Section 120, including responding to legal challenges at the State and Federal level, are immense, and could be greatly reduced with the appropriate modifications to the current law.

Our esteemed colleague here, Sharon Young, 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 again.

Section 120 as currently written cannot be used when small numbers of predators are involved because in nearly all cases demonstrating a significant negative impact to the salmon and steelhead would not be possible.

Currently, we are seeing similar problems develop in other areas in the Columbia River Basin, including the Willamette River, a major tributary to the Columbia. If we were able to remove small numbers of animals there ahead of time, we could avoid a very large problem in the future.

Another overly restrictive and unnecessary measure in Section 120 is the requirement to know predatory pinnipeds as individuals. We know from decades of research that these animals repeat individual feeding behaviors year after year.

Of the quarter-million in the United States population, our research demonstrates that only about 200 to 300 individual California sea lions, no more than one percent of the entire population, have ever been seen up-river foraging for salmon and steelhead.

Clearly, this is a group of individual animals that are exhibiting a unique feeding behavior. Currently, the option of Section 120 is not geographically limited to the Columbia Basin. This would be an important measure to retain since we have seen problems arising in other areas.

However, Section 120 currently addresses only ESA listed salmon, and we are seeing significant problems with other fish resources and sea lion predation. We feel that the opportunity to use Section 120 should be expanded to other fishery resources that are at risk due to pinniped predation. Thank you very much for the time, and we are grateful for the work of the Subcommittee on this important issue to us.

[The prepared statement of Mr. Brown follows:]

Statement of Mr. Robin F. Brown, Program Leader, Marine Mammal Research and Management, Oregon Department of Fish and Wildlife, State of Oregon

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 losses 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.

Dr. FLEMING. Thank you, Mr. Brown. Next, we have Mr. Norman. You have five minutes, sir.

STATEMENT OF GUY R. NORMAN, SOUTHWEST REGIONAL DIRECTOR, WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

Mr. NORMAN. Thank you, Mr. Chairman, and Members of the Committee, I am Guy Norman, and I am the Regional Director for the Washington State Department of Fish and Wildlife. I appreciate the opportunity to speak with you today regarding the importance of salmon to the people of the Northwest, and the expected consequences to salmon recovery efforts if we are unable to manage increasing sea lion predation of Columbia River salmon.

Now, the decline in wild salmon is not due to any one factor, but a cumulative effect of increased mortality throughout the salmon life cycle. In response, there has been an extraordinary and collaborative effort in the Northwest by the public, local governments, State and Federal agencies, and the tribes to recover salmon by addressing all manageable sources of mortality.

For example, habitat is being improved for salmon through changes in land use, local dam operations, water access, and millions of dollars are being invested in habitat restoration projects.

The Federal dam operators are now investing hundreds of millions of dollars annually through dam operation changes, and other recovery actions to support salmon. Fisheries have been reduced to meet the needs of endangered salmon with significant costs to

Northwest communities and cultural consequences to Columbia River tribes.

Hatchery operators are investing changes to ensure hatchery support recovery while they continue to provide salmon for fisheries. Now, predation by some natural predators has increased dramatically in the Columbia Basin in recent years.

This is partly due to changing habitat, but also due to the success of protection measures, including the Marine Mammal Protection Act with regard to sea lions. In circumstances where the predation is now out of balance and growing, it cannot be ignored in a comprehensive recovery strategy.

Recovery plans list increasing sea lion predation as one of the highest limiting factors in the estuary portion of the salmon's migration route. There are 32 separate wild chinook populations at various levels of extinction risk that are intercepted by these sea lions in the spring in the Columbia River.

In contrast, both sport and commercial fisheries in these same waters are required to keep marked hatchery fish, and release wild salmon unharmed. Tribal fisheries are also limited by their status of wildlife fish, and often reduced to levels below their minimal cultural and subsistence needs.

The region cannot afford to allow sea lion predation to continue to increase, or it would effectively cancel out other costly recovery actions. The idea is to reduce predation, and not eliminate it, which is consistent with the approach in managing other sources of human impact to the salmon.

Now, since we began addressing California sea lion predation a few years ago, a new sea lion problem has emerged even more recently with increasing numbers of stellar sea lions in the Columbia River.

The stellar sea lions are targeting sturgeon before the spring salmon arrive, and biologists are now projecting over 10,000 sturgeon will be consumed by sea lions this year alone in an increasing trend.

There is currently no provision in Section 120 to manage sea lion predation on a fishery resource other than listed salmon and steelhead. Now, the Section 120 requirement that an individual sea lion be identified as causing a significant effect on listed salmon or steelhead creates additional work and expense, limits the area that can be managed, and has been the focus of legal challenges.

However, we do appreciate the current authority under Section 120, and we will assist the National Marine and Fishery Service in defending it. It is important to maintain this authority to provide some level of relief and hopefully prevent the problem from getting worse while legislation is being considered.

We appreciate the work of Natural Resources Committee Chairman Doc Hastings, and Representative Walden, in drafting H.R. 946. I want to thank Chairman Fleming for the opportunity to speak to this Subcommittee today. I look forward to the development of this legislation. Thank you very much.

[The prepared statement of Mr. Norman follows:]

**Statement of Mr. Guy R. Norman, Regional Director,
Washington Department of Fish and Wildlife, State of Washington**

Introduction

I am Guy Norman, Southwest Washington Regional Director for the Washington State Department of Fish and Wildlife (WDFW). I oversee agency policy in Southwest Washington, including management of natural resources in the lower Columbia basin. I have been involved in Columbia River salmon management for over 30 years, including participation in collaborative inter-governmental and public processes focused on recovering Columbia basin fishery resources.

The WDFW appreciates the opportunity to present the following written testimony on H.R. 946 to the Chair and members of this Subcommittee regarding sea lion predation on threatened and endangered salmon and steelhead of the Columbia River. The sea lion predation is a serious and growing concern and the magnitude of the impact to salmon has the potential to void other major investments the region is making to restore these fishery resources.

WDFW serves Washington citizens by protecting, restoring and enhancing fish and wildlife and their habitats, while providing sustainable and wildlife-related recreational and commercial opportunity. We hold this public trust in high esteem and strive to meet these challenges that put our focus on fish and wildlife sustainability to the test. We understand that without abundant populations of fish and wildlife, the quality of life in the Northwest and economies that depend on these natural resources will continue to be seriously compromised.

Columbia Basin Salmon Decline and Recovery Efforts

Northwest states, federal agencies, and tribes have been involved in efforts to restore wild salmon and steelhead populations in the Columbia basin for several decades. Washington has worked cooperatively with Oregon, Idaho, and the Columbia River Treaty Indian tribes for over 40 years to manage fisheries and to rebuild salmon populations through a series of management agreements. However, due to a combination of factors, most Columbia River basin wild salmon and steelhead populations have declined to a level where they are listed under the Endangered Species Act (ESA) as threatened or endangered. This decline is not associated with just one factor, but a cumulative effect of increased mortality throughout the salmon life cycle. From their beginning as juveniles in a stream, to their migration through the Columbia River, to their ocean residence, and return to the stream of origin as adults to spawn, the Columbia River salmon are subjected to various sources of mortality.

In response to the endangered or threatened status of many wild salmon populations, there has been an extraordinary and unprecedented cooperative effort in the Columbia River region to protect and recover salmon and steelhead. ESA-guided recovery plans have been developed and implementation is underway in every watershed; to restore important habitat, improve dam passage survival, re-tool hatchery programs to assist wild populations, and closing or reshaping fisheries to focus on selectively harvesting healthy hatchery fish. These are comprehensive recovery plans that identify and provide an implementation strategy to reduce all sources of mortality throughout the salmon's life cycle.

Examples of salmon recovery commitments include:

1. **Habitat**—Local area watershed recovery boards have been established and funded for every region (or domain) in which ESA-listed salmon and steelhead populations originate. These recovery boards have been charged with developing action plans aimed at recovery of local salmon populations. These board members include representatives of local county and city governments, tribes, state and federal agencies, and local citizens. The recovery boards take inventory of the primary limiting factors and develop a corresponding suite of actions needed to remedy those factors. The action plans cover changes in land use, water access, and restoration of local habitat, local utility dam operations, as well as changes in salmon hatchery practices and restricted or closed fisheries. There is also an established Columbia River Estuary Partnership that consists of state, federal and tribal representatives and includes active involvement of local habitat restoration-focused environmental organizations. Estuary recovery actions address habitat restoration, water flow, and predation in the lower 145 miles of the Columbia River in which all listed populations pass through on the way to and from the ocean. The recovery plans include reduction of excessive bird, fish, and marine mammal predation as a key component of a comprehensive recovery strategy.
2. **Hydropower**—The Federal Columbia River Power System (FCRPS) is operated to benefit the citizens of the Northwest through flood control and gen-

erated clean energy. Operation of the system also includes a legal obligation to operate in a manner that mitigates the effects of the Columbia River federal hydro-system so as to not jeopardize the continued existence of endangered and threatened salmon and steelhead populations. A collaborative process led to the most recent plan for salmon protection and recovery in 2008 that commits the federal power system operators to invest hundreds of millions of dollars to support both operational changes to improve fish passage through the hydro-system as well as funding support for other important actions involving habitat restoration, hatchery reform, fishery management, and reducing predation by fish, birds, and marine mammals. This mitigation commitment provides much of the funding for the actions developed in the local ESA recovery plans.

3. **Harvest**—Fisheries that effect Columbia River salmon populations have been progressively reduced over the past several decades in response to the declining salmon populations. The states and tribes have implemented actions through management agreements to ensure fisheries are operated in a manner that protects the weaker salmon populations while ensuring federal court orders that require salmon harvest to be shared equitably between treaty Indian and non-Indian citizens are upheld. Formal actions include International Agreements through the Pacific Salmon Treaty with Canada as well as *U.S. v. Oregon* court ordered agreements for Columbia River fisheries that include ESA provisions to ensure that Columbia River harvest does not jeopardize wild salmon populations. These harvest actions have greatly reduced fisheries from past levels with significant economic consequences to Northwest communities that rely on fisheries as well as economic and cultural effects on the Columbia River tribes. State managers, with federal assistance, are further developing selective fishery practices to enable better fishery access to hatchery-produced fish while avoiding or minimizing impacts to wild fish.
4. **Hatcheries**—The federal, state, and tribal managers in the Columbia basin have been and continue to develop and implement operational plans for Columbia River salmon hatcheries to ensure that they are operated in a way that supports wild salmon recovery while continuing to provide hatchery fish to support Pacific Ocean and Columbia River fisheries and the economies that depend on these fisheries. A federally supported process included a recent basin-wide inventory by a panel of scientists called the Hatchery Scientific Review Group (HSRG). The HSRG has provided a set of recommendations for operation of each Columbia Basin hatchery consistent with wild fish recovery. The agencies and tribes are cooperatively addressing hatchery management measures in the basin and the federal power system agencies have committed to investing in hatchery reform and monitoring as part of their support of basin-wide salmon recovery efforts.
5. **Predation**—The effects of certain natural predators of salmon in the basin has increased dramatically from historical levels. This is partly due to changing habitat more appealing to certain fish and birds and partly due to increased numbers of predators due to various protection measures, including the Marine Mammal Protection Act (MMPA). Although the predation of salmon by birds, fish, and marine mammals may be natural, there are specific circumstances in the Columbia basin where the predation has grown to a level where it is significantly out of balance with historic levels and cannot be ignored in a comprehensive recovery strategy. Because of this reality, the hydropower operators fund large programs to reduce northern pike minnow fish predation on juvenile salmon by reducing their numbers through a bounty reward program and to re-locate record numbers of Caspian terns to alternative bird colony locations to reduce the impact on migrating salmon juveniles. The states were authorized and funded to remove certain identifiable predatory California sea lions at Bonneville Dam beginning in 2008 and have made some progress to date. However, the conditions associated with the current requirements of Section 120 of the MMPA are difficult to implement and legal challenges have slowed the progress towards reducing impacts to salmon.

The habitat, hydro, harvest, hatchery, and predation recovery actions represent a major monetary and social investment in the region, underscoring the importance of maintaining salmon populations to the citizens and governments of the four states and tribes that reside in the Columbia basin. The people of the Northwest have supported restoration efforts, and are willing to bear the costs, because of the importance of salmon to our heritage, the cultural value to Native Americans, and the economic value of salmon to our communities. State and federal agencies, tribal

and local governments, and the public, have developed these salmon recovery plans through an extraordinary collaborative effort and are committed to rebuild these depleted salmon populations.

Sea Lion Predation and the Future of ESA Listed Salmon Populations

There are thirteen separate Columbia River salmon and steelhead population segments that were listed under the ESA during 1991–2005. There are multiple individual populations within each population segment that are at various levels of extinction risk. The aforementioned recovery plans and associated actions are designed to reduce extinction risk for each individual population and provide the conditions for recovery of each of the thirteen population segments.

In order to ensure the survival and recovery of the listed salmon it is important to have protection and recovery actions that are tailored to the needs of each individual population. To accomplish this, actions are planned and implemented in each watershed where these unique populations reside. Additional survival improvement actions are implemented in places the various populations share as they all migrate downstream through the Columbia River to the ocean as juveniles and back upstream through the Columbia River and into various tributaries to spawn as adults. The efforts to improve survival in the local watersheds can include significant land use changes effecting urban and rural development, logging, agriculture, dam operations, reductions in hatchery fish produced, and closure of local fisheries. These local efforts, and associated costs, cannot alone adequately protect and restore salmon. The local actions must be combined with additional actions outside of the watershed, including predation reduction, to achieve a cumulative increased survival effect. Each incremental survival improvement during the salmon's life experience becomes an essential component of recovery.

The National Marine Fisheries Service (NMFS) has endorsed recovery plans that list predation (including sea lion predation) as one of the highest limiting factors in the estuary portion of the salmon migration route.

There has been a significant change in behavior of an increasing number of male California sea lions during the past nine years. Instead of concentrating forage activity in the ocean or in the lower estuary area of the Columbia River, they began swimming 145 miles up the Columbia River in the winter and spring to prey on threatened and endangered adult salmon while the fish attempt to locate and pass through fish ladders at Bonneville Dam. Having survived various sources of mortality as downstream migrating juveniles and again as returning adults, many of these adult wild salmon still have over 500 miles to travel before completing their journey from the river mouth to their spawning grounds, if they make it past the foraging sea lions. There are 32 separate ESA-listed wild spring Chinook salmon populations, at various levels of extinction risk, that are exposed to this concentrated sea lion predation during the late winter and spring period.

In contrast, both sport and commercial fishing regulations for spring salmon in these same waters require that only marked hatchery fish can be retained, while unmarked wild salmon must be released unharmed. Harvest opportunity on the healthy hatchery salmon is controlled by limits on incidental impacts to wild salmon that are released while fishing for hatchery fish. Tribal fisheries are prosecuted consistent with federal treaty trust responsibility, but are also limited by status of wild fish and often reduced to levels below their minimum cultural and subsistence needs. The harvest impact limits are established in Federal Court agreements that comply with ESA, are reduced significantly from past levels, and represent an increase in survival of wild salmon through this particular source of mortality. The NMFS endorsed comprehensive recovery plans recognize and count on this increase in survival of salmon through the fisheries. Fisheries are closely monitored to ensure the expected salmon recovery contribution is met.

Management Objective

The fundamental objective shared by states, federal agencies, and tribes is to reduce the sea lion predation of salmon so there is an increase in the overall survival of the wild salmon. Additionally, the region cannot afford to allow sea lion predation of wild salmon to continue to increase, or it would effectively cancel out a portion of other more costly recovery actions. The idea is to reduce predation, not eliminate it, which is consistent with the approach taken to manage other sources of impact to the salmon. Sea Lions, birds, and fish should be able to continue to predate on salmon, just as people that benefit from the Columbia River water, power, and fishery resources should not be completely extracted from a manageable level of those benefits. However, if salmon are to continue to exist and rebuild, all sources of mortality must be managed within a balance that makes it possible to achieve recovery.

It is the combined effect of these reductions that will make it possible to meet the goal.

Sea Lion Predation on Columbia River Sturgeon

While managers have focused on California sea lion predation of salmon, a new management problem has arisen with Steller sea lion predation of Columbia River sturgeon. Since 2008, the number of Steller sea lions present in the Columbia River as far as 145 miles inland to Bonneville Dam has increased significantly. The Steller sea lions are arriving in the Columbia River in the fall and concentrating on sturgeon as a primary food source before the salmon begin to return to the Columbia River in the spring. The Steller sea lion consumption of listed salmon is also increasing, but the most dramatic increase has occurred with sturgeon. Washington and Oregon biologists have projected that sea lion consumption of sturgeon will increase to over 10,000 fish in 2011. The Columbia River sturgeon population below Bonneville Dam rebounded from depressed levels 60 years ago. However, recent years have seen a decline in sturgeon numbers and managers have repeatedly reduced harvest and added protections in an attempt to maintain a healthy sturgeon population. State managers are concerned about the increasing and unregulated impact of Steller sea lions on the future health of the sturgeon population. There is particular concern with increasing predation of large female sturgeon (above five feet in length) that are of mature reproduction size. There is currently no provision in Section 120 to manage sea lion predation of a fishery resource other than ESA-listed salmon and steelhead.

Need for a Reasonable Resource Management Tool

It is important that state and tribal natural resource managers have the necessary tools to restore a balance between abundant and healthy sea lion populations and the endangered and threatened salmon and steelhead populations in the Columbia River, and in other areas where sea lion predation develops into an additional new threat to ESA-listed salmon recovery efforts. It is also important that managers have the tools to address other developing resource management challenges such as increasing threats to sturgeon in the Columbia River.

The benefit of a law that enables efficient and timely permanent removal of California sea lions that travel far inland to feed on wild salmon is to reduce a recent and significant source of mortality and avoid compromising the ongoing federal, state and tribal efforts to recover ESA-listed salmon and steelhead populations in the Columbia River basin. It is not our contention that California sea lion predation is more significant than other sources of mortality to Columbia River ESA-listed salmon, but simply that it is significant and that resource managers must have the ability to deal with sea lions predation in a timely and reasonable manner as we do with other resource management issues.

The current Section 120 provisions require that an individual and identifiable sea lion is causing a significant impact to the decline or recovery of ESA-listed salmon or steelhead stocks before it is eligible for removal by the states. These provisions require a significant amount of added work by state and federal biologists to meet the requirements of removal authority under section 120. These requirements have increased costs, reduced the numbers of sea lions removed, limited the geographic area in which the problem can be managed, and slowed progress towards reducing the impact to salmon.

We appreciate the current authority that has been granted by NMFS through Section 120 and will work directly with NMFS to defend that authority as we address the most recent legal challenge. We believe it is important to maintain this authority to provide some level of relief and hopefully prevent the California sea lion predation level from increasing further while we await additional legislation.

We appreciate the work of the Natural Resource Committee Chairman, Representative Doc Hastings, and representatives Norm Dicks, Jaime Herrera-Beutler, and Greg Walden in drafting H.R. 946 in an effort to provide the states and tribes a more effective and efficient means to protect Northwest salmon and steelhead resources. We are thankful that our Northwest Congressional representatives understand the enormous investment that the region is making to recover salmon and are prepared to assist us in effectively managing for those recovery goals.

NMFS convened a Pinniped Task Force in 2010 to review the progress of the states Section 120 authority in the Columbia River. The majority of the Task Force members recommended increasing the level of removal of California sea lions that occurred in the first three years. A more efficient and effective legal tool through H.R. 946 would provide the opportunity for state and tribes to more adequately manage the sea lion predation.

I want to thank the Subcommittee Chairman, Representative John Fleming, M.D., for the opportunity to provide this written testimony and to speak to the members of this Subcommittee regarding our concerns for recovery of salmon in the Northwest. We look forward to development of this legislation to enable appropriate management of predatory sea lions that threaten Northwest salmon and other fishery resources.

Dr. FLEMING. Thank you, Mr. Norman. Next is Mr. Virgil Lewis.

**STATEMENT OF VIRGIL LEWIS, SR.,
TRIBAL COUNCIL MEMBER, YAKAMA NATION**

Mr. LEWIS. Chairman Fleming and Committee Members, thank you for the opportunity to testify today. I have submitted a detailed statement, including video footage, photographs, and written testimony from the Confederated Tribes of the Umatilla Reservation.

I am Saluscum, and my English name is Virgil Lewis, Senior. I am an elected Member of the Tribal Council for the Umatilla Nation, where I also serve on the tribe's Fish and Wildlife Committee. I am also a Commissioner of the Columbia River Intertribal Fish Commission.

In addition to the Yakama Nation, the three members of the CRITFC are the Confederated Tribes of the Warm Springs Reservation, the Nez Perce Tribe, and the Confederated Tribes of the Umatilla Reservation.

I am accompanied today by Charles Hudson of our commission staff, along with George Waters, who works for my tribe. They are here to help answer questions that you might have. We strongly support H.R. 946, the Endangered Salmon Predation Prevention Act sponsored by Chairman Hastings, and cosponsored by Representatives Dicks, Walden, Simpson, and Herrera Beutler, and we appreciate it that these elected officials have the foresight to understand that this problem must be dealt with.

We are fully supporting of H.R. 946 for the following reasons. Recently litigation makes it clear that the Marine Mammal Protection Act, Section 120, needs clarification from Congress.

H.R. 946 provides management access to our tribes and CRITFC, a weakness of the original Act. H.R. 946 requires a comprehensive review of the Marine Mammal Protection Act, and recommendations for amendment.

Columbia Basin salmon recovery cannot afford a setback as we witnessed in the Puget Sound's Ballard Locks, where winter steel had become functionally extinct due to sea lion predation, exacerbated by prolonged litigation. Tribal ceremonial subsistence and commercial fisheries experienced unique and unmitigated damage from growing sea lion predation.

We believe that H.R. 946 can be improved with tribal treaty-saving language. Our written testimony offers such recommended language. In 1905 in the case of the *United States v. Winans*, the Supreme Court stated to the Yakima Indian people the right of taking salmon in the Columbia River Basin was not much less necessary to the existence of the Indians than the atmosphere that they breathe.

We have come before the Congress and the highest courts in the land to protect the sacred salmon, and we will never back down from this duty. We are pleased that the highest courts in the land

have repeatedly affirmed our treaty fishing rights, and obligation of the respective governments to protect that resource.

Sea lions are damaging salmon runs, particularly the prior spring chinook salmon. There is also no question that sea lions are at historically high abundance since Congress enacted the Marine Mammal Protection Act.

I was amazed to learn that the sea lion population is now over 300,000. This is a six-fold increase since the enactment of the Marine Mammal Protection Act. They are growing at a rate of 5 to 6 percent a year.

I wish the same thing could be said for runs of salmon in the Columbia River Basin. There are now 13 salmon and steelhead populations in the Columbia Basin listed under the Endangered Species Act.

We are concerned that they will soon be joined by the Pacific Lamprey, White Sturgeon, and Smelt. Tribal people acknowledge that a place for sea lions in the Columbia in fact made traditional use of their skins and oils. Another aspect of that relationship included lethal removal by tribal people when they harmed fish runs.

Two things have changed the historical balance. As the legislation points out, there have been a seven-fold increase in the number of salmon killed by sea lions since 2002. There are approximately 100 sea lions in the area below Bonneville Dam.

If they ate only two salmon a day, which is a conservative estimate, over the 88 days that they have been staying in this area, they would destroy over 17,000 salmon, a significant percentage, between 15 to 17 percent of the entire run.

The lower percentage figures that you will hear are simply the number of salmon seen by humans above the surface of the water with the salmon in their mouths as the percentage of the salmon run. That is hardly a scientific way of determining the extent of the sea lion take.

This is no longer just nature taking its course. Man's involvement has tilted the scales away from the salmon, and we must intervene to help counter-balance the impact. The Marine Mammal Protection Act has taken away cultural and managerial tools.

This 35 year old rigid statute, while benefiting sea lions, is too inflexible to take into account the damage being done to salmon, and therefore to the Indian people who are dependent on the salmon for so many aspects of our lives.

Mr. Chairman, tribal crews have been involved in a comprehensive effort with the State and Federal agencies to nonlethally remove sea lions, and we have increased hazing to seven days a week when the sea lions are in the vicinity of the Bonneville Dam.

H.R. 946 contains a very responsible approach that will allow for animal lethal takes of the most problematic sea lions, and it contains numerous safeguards. We greatly appreciate the inclusion of our tribes in this legislation. Thank you, Mr. Chairman.

[The prepared statement of Mr. Lewis follows:]

Statement of The Honorable Virgil Lewis, Sr., Confederated Tribes and Bands of the Yakama Nation, and Commissioner, Columbia River Inter-Tribal Fish Commission

Chairman Fleming, Ranking Member Sablan and distinguished Members of the Fisheries, Wildlife, Oceans and Insular Affairs Subcommittee, on behalf of the

Yakama Nation and the Columbia River Inter-Tribal Fish Commission (CRITFC), thank you for inviting me to testify in favor of the *Endangered Salmon Predation Prevention Act*. I also want to extend our great appreciation to Representatives Hastings, Dicks, Herrera, Schrader, Simpson, and Walden for having introducing and co-sponsoring this needed legislation.

We **strongly support H.R. 946**:

- The Marine Mammal Protection Act's (MMPA) Section 120 needs clarification from Congress.
- H.R. 946 provides management access to our tribes and CRITFC, an unfortunate oversight of the original Act.
- H.R. 946 requires a comprehensive review of MMPA and recommendations for amendment. The MMPA is overdue for a comprehensive review.
- Columbia Basin salmon recovery can't afford a setback as we witnessed in Puget Sound's Ballard Locks where winter Steelhead became functionally extinct due to sea lion predation.
- Tribal ceremonial, subsistence and commercial fisheries experience unique and unmitigated damage from growing sea lion predation.

We believe H.R. 946 can be improved with tribal treaty savings language and offer such later in this testimony.

Commission History and Legal Authorities

The Columbia River Inter-Tribal Fish Commission was formed in 1977 by resolutions from the four Columbia River treaty tribes: Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Warm Springs Reservation of Oregon, Confederated Tribes and Bands of the Yakama Nation, and Nez Perce Tribe. CRITFC's mission is to ensure a unified voice in the overall management of the fishery resource and to assist in protecting reserved treaty rights through the exercise of the inherent sovereign powers of the tribes. CRITFC provides coordination and technical assistance to the tribes in regional, national and international efforts to ensure that outstanding treaty fishing rights issues are resolved in a way that guarantees the continuation and restoration of our tribal fisheries into perpetuity.

The combined ancestral homelands of our four tribes cover roughly one-third of the entire Columbia River Basin in Washington, Oregon and Idaho. Our existence on the Columbia River stretches beyond 10,000 years to time immemorial. Salmon has always been a unifying figure and we rely on its abundance for physical and cultural sustenance. Collectively, we gathered at places like Celilo Falls to share in the harvest, forging alliances that exist today. Our fishing practices were disciplined and designed to ensure that the salmon resource was protected, and even worshipped, so it would always flourish.

Salmon was so fundamental to our society that in 1855 when our four sovereign tribes¹ and the United States collaborated and negotiated treaties, our tribal leaders explicitly reserved—and the U.S. agreed to assure—our right to fish in perpetuity within our ancestral homelands as well as to “take fish at all usual and accustomed places”. We kept our word by ceding about 40 million acres of our homelands to the U.S. and the U.S. pledged to honor our ancestral rights. It was the expectation of our treaty negotiators then that we would always have access to abundant runs of salmon; it is our expectation now that the U.S. government will honor that commitment and take the steps necessary to protect our treaty resources. The treaties of 1855 were all ratified by the Senate of the United States. The Supremacy Clause of the Constitution applies to all such treaties.

The importance of fish, especially salmon, to our tribes cannot be overstated. In *U.S. v. Winans*, the U.S. Supreme Court stated that fishing was “not much less necessary to the existence of the Indians than the atmosphere they breathed.” The salmon are an integral part of our cultural, economic and spiritual well-being. They are a major food source and our consumption is nearly ten times higher than the national average. Salmon is fundamental to a healthy tribal diet and it plays a significant role in combating the risks of heart disease and diabetes in our communities.

Our livelihood evolved over thousands of years and our physical and cultural survival was intimately tied to the salmon. Ceremony became essential to insure the continued survival of the salmon, our traditions, and thus ourselves. Without salmon and without ceremony, we would cease being Indian people. We are longhouse people and these ceremonies have gone on without interruption for thousands of

¹Treaty with the Yakama Tribe, June 9, 1855, 12 Stat. 951; Treaty with the Tribes of Middle Oregon, June 25, 1855, 12 Stat. 963; Treaty with the Umatilla Tribe, June 9, 1855, 12 Stat. 945; Treaty with the Nez Perce Tribe, June 11, 1855, 12 Stat. 957.

years. It is essential for all parties involved to understand how important these fish are to our people. This is why we are alarmed over the increasing impact by sea lions during low salmon returns.

A Brief History of Salmon Decline

The Columbia Basin and its tributaries began seeing major changes in the 1800's as agricultural lands were developed and dams harnessed the natural flows to build a western economy with low cost electrical power, navigation, and irrigation. Commercial fishing lacked restraint decimating salmon runs without regard for future generations. Logging, mining and agriculture bit into the earth, fouling clean waters, and degrading riparian habitat crucial to salmon survival. Nature's bounties were exploited to build bigger cities with bigger economies, and the energy and infrastructure to support them was siphoned from the river. As more lands were flooded more promises flowed. Tribal leaders were told the dams would actually make life easier on salmon as the roaring pace of the river was reduced. We were also told that if any impacts occurred they would be mitigated.

The mitigation and recovery of our treaty fishing resources has been rather slow. Thirteen salmon and steelhead populations in the Columbia Basin are listed under the Endangered Species Act (ESA). Pacific lamprey and white sturgeon populations are also depressed and resources to rebuild them are slim, making us worry if they too will be listed under ESA. On the other hand, California sea lions, protected by the Marine Mammal Protection Act (MMPA) are at historically robust population levels. Unfortunately, the success of the MMPA is exacting a toll on the recovery of ESA listed species and other natural stocks in the Columbia Basin.

Regional Recovery Efforts

We have been doing our best to bring the salmon back. In cooperation with States, Federal Agencies, and our neighbors in the Columbia Basin we are making huge financial and social investments in recovery efforts. The Tribes have long shouldered a heavy conservation burden through voluntary harvest reductions on our fishery. Our treaty rights extend below Bonneville Dam; however harvest agreements allow non-tribal sport and commercial fisheries to enjoy harvests.

In 2008 CRITFC and its member tribes successfully concluded lengthy negotiations resulting in three landmark agreements: 1) the Columbia Basin Fish Accords² with federal action agencies overseeing the federal hydro system in the Columbia Basin, 2) a Ten-Year Fisheries Management Plan with federal, tribal and state parties under *U.S. v OR*, and 3) a new Chinook Chapter of the Pacific Salmon Treaty.³ These agreements establish regional and international commitments on harvest and fish production efforts, commitments to critical investments in habitat restoration, and resolving contentious issues by seeking balance of the many demands within the Columbia River basin.

Impacts of California Sea Lions on Tribal families

Salmon fishing has long been a traditional way of providing the necessary means to safeguard our families economically. Even the settlers who descended upon our ancestral homelands capitalized on the abundant salmon runs to secure an economic foothold in the region. In the middle the 1900's, spring salmon runs dwindled and we had to forgo a tribal commercial harvest. However, when runs rebounded slightly from 2000 to the present we were able to open limited commercial tribal harvests. Unfortunately, the strong runs also brought the sea lions upstream in larger numbers.

A commercial tribal fishery diversifies economic opportunities in what are traditionally hard hit rural economies. We have made considerable investments to rebuild our salmon economy and increase the commercial value of tribally caught salmon. Not long ago, the tribal commercial fishermen were receiving 30 to 40% less than market value. Today we have overcome this disparity. It has taken several years to build a brand identity for tribally caught salmon. Soon we hope to open a fish processing facility near White Salmon, WA to provide an even better product and return on value. The public is embracing the benefits of buying the products of our tribal fishery and demand is outstripping supply.

While the sea lion problem occurs year round in the lower Columbia River, the mainstay of our salmon economy is the spring Chinook where the sea lion predation is greatest. Some fish buyers won't purchase damaged fish and the value can drop as much as 50%. The growing level of sea lion predation can devastate the hard earned value of the tribal commercial fishery. Also submitted accompanying this tes-

²The Nez Perce Tribe is not a Columbia Basin Fish Accord signatory

³See "Salmon Win A Triple Crown" at http://www.critfc.org/text/wana_w09.pdf

timony are photographs of Columbia River Spring Chinook showing damage from sea lions.

Marine Mammals—a growing management problem

California sea lions and other marine mammals have always existed in the river as has a respectful relationship between them and tribal people. Tribal members harvested them for their skins and oils. Tribal members also killed marine mammals that were disruptive to fishing activities. Though well intentioned, the MMPA has made the river more hospitable to opportunistic sea lions and less hospitable to salmon, lamprey and sturgeon survival by limiting traditional and modern management methods. The sea lions have learned to profit from the abnormal situation by preying on salmon and other treaty protected resources particularly at vulnerable areas like Bonneville Dam. They are cunning as proven by their ability to outmaneuver the exclusion devices placed in the fish ladders and their ability to ride the shipping barges through the dam's locks. While we admit that the Creator intended a place for them, it doesn't lessen the problem they are causing by exploiting an unnatural environment.

There was a time when a portion of a state fishing license fee was used to manage the sea lion population to reduce their predation. Historically, when sea lions made it up to those parts of the river where the dams now sit, they would be shot and they would be bled out in the river. Sea lions are shrewd enough to then understand that this was an area they needed to avoid. Things have changed for the worse now because man has changed the nature of the river. Now returning salmon must pass artificial dams and must go up man made cement fish ladders to get upstream. They are trapped by sea lions who understand the salmon must go right by them if they hang out close to the ladders. We ask our friends in the animal rights community to understand that we are dealing with basic nature when the ability of endangered salmon to defend themselves has been so compromised.

Some people claim that placing blame on the sea lions is a ruse to divert attention away from the dams' impact on salmon survival. If they understood our dilemma they would clearly recognize that attention is actually being drawn to Bonneville Dam where a growing number of sea lions have learned to exploit an artificial situation to disproportionately impact depressed salmon runs. Increasing numbers of sea lions have been documented returning year after year. In the last five years, over a hundred animals have learned to prey on threatened and endangered spring Chinook as they converge on the entrances to the dam's fish ladder.

Significant predation at the dam is rising, evidenced by the number of salmonids eaten by sea lions. As the size of the natural salmon runs dwindle in numbers the impact of predation on wild fish is greater. The states and NOAA estimate 18,000 to 25,000 adult salmonids are lost to sea lions annually between Bonneville Dam and the mouth of the river. In addition, impacts by sea lions are disproportionately distributed during the early portion of the run. For the period of March and April there are many days when the take by sea lions exceeds the fish count in the ladders. We are concerned that these early returning fish may be from stocks that are most at risk of extinction.

Every year a few sea lions pass through the Bonneville Dam lock. These animals damage fishing gear and steal salmon from our fishers. In 2009, a California sea lion spent the entire summer upstream of the dam impacting fishers and feeding on fish as they exited the fish ladders. Studies show that the farther upstream the sea lions travel, the higher percentage of salmon and steelhead in their diet. Additional studies indicate that salmon comprise 10–30% of their diet. The latest available sampling data beginning in 2001 shows that each year slightly over 30% of the spring salmon passing through Bonneville's fish ladder have suffered some form of injury caused by marine mammals. Those salmon that escape with harsh wounds are less likely to survive their upstream journey and unlikely to successfully spawn. Tribal and non-tribal fishermen who harvest these injured fish cannot fully utilize them for their subsistence, sport and commercial value.

Hazing—Necessary but Insufficient

Since 2005, CRITFC along with Washington and Oregon, have tried dispersing sea lions from the dam through daytime hazing from boats. Our actions have been limited to the area just downstream from the dam and not the entire 150 river miles from the dam to the Pacific Ocean. Nonlethal hazing appears to have been slightly more successful this year based upon evidence from the USACE observers, however after the crew is done for the day the sea lions move back into the prime feeding positions. Hazing is difficult and risky due to daylight-only limitations and frequent hazardous water conditions. Even under ideal conditions hazing alone is inadequate to remedy the predation problem.

We do recognize that some animals respond to hazing better than others and that it will remain a component of any future robust management package. CRITFC and tribal crews wish to continue implementing hazing functions as well as telemetry tracking and monitoring of pinnipeds. Initially CRITFC diverted a portion of our Bureau of Indian Affairs funding to pay for our hazing efforts, however the Bonneville Power Administration has funded our hazing efforts since 2007.

Justification of Support for H.R. 946

The California sea lion problem exists in multiple waters along the Pacific coast but it is perhaps nowhere more alarming than what is occurring in the Columbia River. That is why we support *The Endangered Salmon Predation Prevention Act* and we applaud its introduction. This legislation will help us employ new alternatives to provide us with a means to help us deal with only those select animals responsible for the greatest impact. This legislation can ease the depredation occurring on our treaty protected resources as well as help curb predation on ESA listed species over the next five critical years. We should not be forced to stand back as sea lions cause other species, such as sturgeon and lamprey, to become listed under ESA.

We do not take the National Environmental Protection Act exemption lightly. However, this is a short term, three year exemption focused exclusively on managing the most aggressive individual California sea lions whose predation severely impacts an entire wild salmon population. The legislation is also limited solely to the Columbia River and its tributaries. It relies on the taking of California sea lions within biological limits spread over the total California sea lion population. The 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.

We support the legislation's provision which provides the public an opportunity to submit comments. The language calls for consultation in order to issue a permit and establishes accountability through an annual reporting requirement concerning the implementation of any taking of California sea lions.

We are grateful that the authors of this legislation are including each of our four member tribes as eligible entities for applying for a permit, and identifying the Columbia River Inter-Tribal Fish Commission as an eligible entity to delegate permit authority. We are very capable, professional fishery managers with the necessary skills to administer and implement the provisions of a permit.

There are provisions for de-listing species under the ESA—something we all aspire to achieve with salmon. The same consideration should be given to marine mammals who have achieved their optimum sustainable populations as provided under the MMPA. We agree with the legislative language calling for the Secretary of Commerce to issue Congress a report on the issue of marine mammal predation on ESA listed species. MMPA is overdue for reauthorization and we urge Congress and the administration to take this matter up and reconcile the disparity over one species being caught in the middle when two environmental protection laws clash.

The states of Washington, Idaho and Oregon have applied for management tools under Section 120 of the MMPA. Each of our four tribes and CRITFC committed representatives to each of the two convenings of the Pinniped Interaction Task Force. In each case the Task Force developed sound and effective recommendations to NOAA for proceeding with the real challenge which is NOAA's ability to shepherd any decision through the NEPA process. If the consideration of new sea lion management alternatives is bogged down, as shown in Seattle's Ballard Locks experience, considerable predation will continue during future spring runs.

Healthy spring Chinook returns in recent years lead to more sea lion and human conflict. If we return to using the same failed tactics we use today, then it will be difficult to answer to the region, the region's fishermen, and the taxpayers who have invested in salmon restoration across the Columbia Basin.

A recommendation for amendment—Treaty Savings language

H.R. 946 would successfully amend the Marine Mammal Protection Act allowing it to stand alongside as a visionary and effective law in the Columbia Basin like the Northwest Power Act. To clarify that this amendment does not affect or impact tribal treaties we recommend Treaty Savings language such as that included in the Northwest Power Act, 16 U.S.C. 839g (e).

"Nothing in this chapter shall be construed to affect or modify any treaty or other right of an Indian tribe."

In conclusion, the United States made many promises beginning in 1855 with our treaties and subsequently when the dams were constructed. The treaty rights are meant to preserve our physical, cultural and economic livelihood—the U.S. com-

mitted to protecting these rights. We were further promised that any harm done to our fisheries attributed to the dams would be taken care of—Bonneville Dam has created an artificial situation the sea lions have learned to exploit. We have run out of options and any new technology will not be available in the near future to deal with the current dilemma.

We need more options to deal with the growing sea lion depredation and we need timely solutions to protect our ceremonial, subsistence and commercial harvests for salmon, lamprey and sturgeon.

Again, thank you for this opportunity to share our concerns and to express our support for this legislation.

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Dr. FLEMING. Thank you, Mr. Lewis. Last, Ms. Young, you have five minutes, Ma'am.

STATEMENT OF SHARON B. YOUNG, MARINE ISSUES FIELD DIRECTOR, THE HUMANE SOCIETY OF THE UNITED STATES

Ms. YOUNG. Mr. Chairman and Members of the Subcommittee, my name is Sharon Young, and I am the Marine Issues Field Director for The Humane Society of the United States.

I am a member of the Bonneville Dam Pinniped Task Force that has met pursuant to Section 120 of the MMPA. As such, I am familiar with the data on the interactions between salmon and sea lions in the Columbia River.

I am grateful for the opportunity to present our views on H.R. 946, the Endangered Salmon Predation Prevention Act. We are concerned that not only will this bill not prevent predation, but that it may seriously undermine other key legislation.

The issue of predation in the Columbia is not as it has been portrayed. This is not an issue of charismatic sea lions versus endangered salmon. It is an issue of whether killing sea lions is necessary, or even effective, in promoting salmon recovery.

Sea lions do eat salmon in the Columbia, but the predation is not an imminent threat as suggested. The National Marine Fishery Service has stated that the spring salmon runs are stable or increasing, and they have been at near-record levels in recent years.

They are not in imminent danger of collapse. Monitoring by the Army Corps of Engineers at the Bonneville Dam provide some facts about what is happening. Since the States first applied to kill sea lions at the dam in 2007, the Army Corps reports tell us that observed predation as a percentage of runs has declined every year for the last four, even when killing was not authorized.

Predation is estimated at 1.4 percent of the 2011 run. At the same time, fisheries take these same ESA listed fish at a rate that regularly exceeds annual quotas, and the take was 17 percent of the total run of spring chinook in 2010 when sea lion predation was observed at three percent.

Most importantly the number of sea lions at the dam this year was lower than any year since 2002, even though no sea lions were killed. Their residency time at the dam is shorter.

Sea lions continually go in and out of the river. In any given year, 30 to 70 percent of the sea lions at the dam have not been previously identified. As the findings section of the bill acknowledges, there are up to a thousand sea lions in and around the Columbia River.

Telemetry data and I.D. at the dam confirm that sea lions regularly come and go. This is not a situation, such as Ballard Locks, where a handful of resident animals might be removed and thus end predation.

Even NMFS projected in their 2007 environmental assessment that because of this replacement, no reliable estimate of reduction in sea lion predation could be made as a result of lethal take.

As sea lions are killed or otherwise removed others simply take their place. Killing sea lions distracts attention from the number of key problems that are going on unaddressed, and that could make a significant difference in the trajectory of salmon recovery.

A 2009 Congressionally established science panel strongly criticized the operation of harvest and hatchery programs, stating that they posed a barrier to recovery. Yet, its recommendations remain largely unaddressed.

Deliberate stocking of non-native sport fish, such as bass and walleye, has resulted in an estimated three million juvenile salmon being eaten each year, and poses a threat that NMFS scientists have deemed greater than habitat impacts.

Although increased survival of juvenile salmon is one of the primary recommendations in the salmon recovery plans, this, too, remains largely unaddressed. But we are also concerned that this bill has less apparent dangers inherent in its language.

By broadening the field of those who can kill sea lions to include non-uniform, non-government personnel, and by loosening the conditions under which killing takes place, members of the public may mistake shooters along the river as providing tacit permission for them to kill sea lions as well.

More dangerously, in exempting killing sea lions from both the narrow scriptures of the MMPA, and the public review of impacts under the National Environmental Policy Act, the bill would sacrifice transparency and deliberation in the name of expediency.

Contrary to the stated intent of the 1994 predecessor of this Committee, H.R. 946 would casually lift protections for marine mammals, while dramatically limiting public involvement and obviating a deliberative approach.

It sets the dangerous precedent of exempting a controversial wildlife management program from NEPA analysis. Expediting the approval of killing sea lions will not speed salmon recovery. We believe that it will simply waste time that salmon can ill afford, and waste the lives of sea lions, while major threats to recovering salmon remain unaddressed.

Some of my fellow panelists wish that this bill would include killing sea lions for eating non-listed fish, such as sturgeon, and to broaden the bill's application to other situations even beyond the Columbia, or to selectively admit coverage under the MMPA for

certain species deemed troublesome. This is something that we would adamantly oppose.

The result of this bill we fear may be a form of vigilante response to sea lions not seen since the passage of the Marine Mammal Protection Act in 1972. Thank you.

[The prepared statement of Ms. Young follows:]

**Statement of Sharon B. Young, Marine Issues Field Director,
The Humane Society of the United States**

Mr. Chairman and members of the Subcommittee, my name is Sharon Young and I am the Marine Issues Field Director for the Humane Society of the United States (HSUS). On behalf of the HSUS and its more than 11 million members and constituents, I am grateful for the opportunity to present our views on H.R. 946, the Endangered Salmon Predation Prevention Act.

I am an appointed member of the Bonneville Dam Pinniped Task Force that has met pursuant to Section 120 of the Marine Mammal Protection Act (MMPA). As such, I am very familiar with the interactions between salmon and sea lions in the Columbia River and with the data and science surrounding salmon management and recovery.

Salmon stocks along the west coast struggle to recover from habitat loss and degradation and decades of poor management. Although sea lions and other marine mammals eat salmon, their impact pales in comparison to that of other unaddressed and ongoing impacts. These ongoing threats include competition with hatchery fish and with non-native introduced fish. Not only is predation a lesser impact than that of fisheries that incidentally kill the very same salmon stocks, but killing sea lions will not prevent their predation, as this bill's title contends. Expediting the approval of killing sea lions will not speed recovery. We fear, instead, that it will simply undermine important environmental legislation and lead to a form of vigilante response not seen since the passage of the Marine Mammal Protection Act in 1972.

Background on Predation in the Columbia River

No one disputes that sea lions eat salmon. For millennia sea lions have eaten salmon. Lewis and Clark documented their presence in their exploration of the Columbia River valley. Sea lions journeyed from the sea up to Celilo Falls, which was the first great hurdle for salmon prior to construction of any dams. It was at Celilo Falls that they, and the tribes, gathered to take advantage of the seasonal salmon runs. Celilo Falls was subsumed with the construction of Bonneville Dam, which is now the place where salmon queue as they move further inland to spawning grounds. Far from being an invasive species that is out of habitat, sea lions are merely returning to an area that was part of their original hunting ground.

Populations of a number of seals and sea lions were decimated in the wake of heavy hunting and overharvest. Only with the passage of the Marine Mammal Protection Act in 1972 did they begin to recover and gradually return to historic foraging areas. It may be that there are more sea lions off the coasts of Washington and Oregon now as their southern distribution shrinks in response to changes in oceanic temperatures and habitat suitability wrought by human-caused climate change; but they are not strangers to the Pacific Northwest.

The National Marine Fisheries Service (NMFS), the states of Oregon and Washington, and the Army Corps of Engineers (Army Corps) started documenting sea lion predation at Bonneville Dam almost 10 years ago. Since that time, the picture of predation is more varied than is implied in the findings of H.R. 946.

In a 2011 supplemental report that accompanied a renewed lethal taking authorization, the NMFS stated that the "overall abundance of Chinook and steelhead potentially impacted by pinniped predation [has] increased or stayed the same since the last status review was conducted prior to 2005." The spring run is not declining, as some have alleged. In fact, in each of the past three years, the run sizes have been near record. As of its final report for the season on May 27th 2011, the Army Corps concluded that this year's run was on track to be the third largest since 2002. Approximately 30 percent of that run is comprised of salmon listed as threatened or endangered under the Endangered Species Act (ESA); the remaining 70 percent of fish in the run is not ESA-listed.

In 2007, when the states first requested authorization to kill sea lions at the Dam, predation ranged from 0.4 to 4.2 percent of the spring salmon run. The Army Corps' observed predation rate at the Dam (which is an expanded estimate that attempts to account for some unseen predation) has steadily declined from 4.2 percent in 2007 when the states first applied to kill sea lions. This decline has occurred independ-

ently of lethal removal of sea lions. According to the Army Corps reports from Bonneville Dam, in 2008, the predation rate was 2.9 percent of the run; in 2009 it was 2.4 percent of the run; and in 2010 it was only 2.2 percent of the run. The Army Corps' May 27th preliminary wrap-up report for 2011 that summarized predation, states that an estimated 1.4 percent of the run was consumed. We point out that the government initially stated that the goal was to reduce predation to 1 percent of the run and that is indeed what it was this year—and this was a year in which no killing of sea lions took place.

Although the “findings” section of the bill avers that the percentage of salmon eaten has increased seven fold since 2000, in fact, although raw numbers consumed have increased, the percentage of the run consumed is the lowest since 2002.

The Real Problem Still Facing Salmon Recovery

Although sea lions eat them, predation by sea lions is among the least of the problems facing the fish in the Columbia and thus should be among the lowest priorities when taking action to assist recovery.

The causes of the decline of salmon are directly attributable to impacts resulting from what are often called the “Four H’s”: habitat, hatcheries, harvest and hydro-electric. As the findings in the bill point out, the government has likely spent a billion dollars or more to address some of these issues including habitat restoration and the deaths of countless salmon smolt and adults as they were attempting passage through the Dams.

But it would be incorrect to assume that the impacts of the “Four H’s” that are the major factors retarding recovery are being adequately addressed. I will focus on impacts from hatcheries and harvest as two examples of significant threats to recovery that remain inadequately addressed.

Competition between wild run salmon and hatchery raised fish is well known. Research has documented competition for spawning habitat and food. It has also shown that hatchery-raised fish do not spawn as effectively as their native relatives. Nonetheless, most of these adverse impacts from the hatchery programs remain unaddressed. Since 2000, the U.S. Congress appropriated funds through the U.S. Fish and Wildlife Service to address hatchery reform. In doing so, Congress recognized that the system was in need of comprehensive reform because fish were being produced for harvest rather than for conservation of at-risk populations. Further, hatchery programs were not taking into account the effects of hatchery-spawned fish on naturally spawning populations. In fact, hatchery programs as currently operated constitute a barrier to recovery of the wild runs. In 2009 The Congressionally-established Hatchery Scientific Review Group, issued its Report to Congress on Columbia River Basin Hatchery Reform. It determined that both hatchery and harvest reforms were needed. They found that traditional hatchery practices are “not consistent with today’s conservation principles and scientific knowledge.” The Scientific Group recommended changes in current practices that would:

- Manage hatchery broodstocks to achieve proper genetic integration with, or segregation from, natural populations;
- Promote local adaptation of natural and hatchery populations
- Minimize adverse ecological interactions between hatchery- and natural-origin fish;
- Minimize effects of hatchery facilities on the ecosystem in which they operate; and
- Maximize the survival of hatchery fish.

Yet the vast majority of these recommendations remain unaddressed. Current hatchery practices continue to hamper optimal recovery of the salmon.

The Scientific Review Group also criticized the management of harvest. The Group pointed to problems with non-selective harvest of listed Columbia River Chinook both in the in-river fisheries and in ocean harvests from Alaska through Oregon. While harvest management has been touted by the NMFS and the states as a controllable impact on the ESA-listed fish, the Science Group criticized harvest practices. The NMFS’ own reports acknowledge that in-river fisheries regularly exceed their quota for incidental killing of ESA-listed fish.

The Court-approved Joint Columbia River Management Report for Oregon and Washington stipulates flexible incidental harvest quotas for the listed fish in the spring run. Depending on the size of the run, this percentage of incidental harvest ranges from 5 percent of the run to 17 percent of the run. In its Supplemental Information report accompanying the 2011 authorization for lethal removal of sea lions, the NMFS acknowledged that in 2008, the in-river fisheries incidentally killed 16 percent of the listed fish in the spring run despite an allowance of incidental kill of 11 percent. In 2009, the in-river fisheries stayed within the allocation (taking 10.2 percent of the ESA listed run. In 2010, the fisheries were allocated 13% of the run

in a mid-season adjustment, yet they killed 17 percent—substantially over the quota. At the same time in 2008, 2009 and 2010, the NMFS’ estimate of the sea lion predation rates was less than 3 percent each year. Fisheries not only exceeded their allocations, but they took up to eight times as many ESA-listed fish as sea lions ate and yet this level of fishery impact was deemed by the states to be a “negligible” impact.

In addition to the unaddressed issues of harvest and hatchery reform, other unaddressed issues plague the recovery of salmon.

A 2010 report by NMFS scientists documented the threat posed by the continued stocking of non-native sport fish in the Columbia. These fish would be deemed a harmful, invasive species but for the fact that they are being deliberately introduced into the Columbia for the benefit of sport fishermen. The 2010 report by NMFS scientists found that non-native walleye alone eat up to three *million* juvenile salmon each year. The NMFS itself has recognized that this predation poses a serious threat to the salmon, likely exceeding the habitat impacts, and yet NMFS acknowledges that nothing is being done about it at this time.

The impact of sea lion predation on the spring run salmon pales in comparison to the significant impacts of these unaddressed human-related impacts that need to be remedied. Since they were first granted authorization to kill sea lions at Bonneville Dam, the states have increased the amount of salmon that fishermen are allowed to take each year as run sizes have increased, and the fishery quotas are far larger than the impact of observed predation. Prior to the authorization to kill sea lions, the incidental harvest quota for in-river fisheries was 9 percent and had risen to 13 percent by 2010. Moreover, fishermen in the river regularly exceed these incidental harvest quotas, with 17 percent of the run incidentally killed in fisheries in 2010, despite a quota of 13 percent. Poorly conceived, and repeatedly criticized, hatchery programs are interfering with recovery of wild run fish. The introduction of non-native fish such as bass and walleye continues to pose a serious threat to the survival of juvenile salmon even though increasing juvenile salmon survival rates is one of the top goals in the salmon recovery plan. Killing sea lions merely distracts from the fact that these more significant problems remain unaddressed.

Consequences of this Bill on the Marine Mammal Protection Act and the National Environmental Policy Act

Prior to 1972, it was open season on sea lions. The state of Oregon even paid a shooter to kill seals and sea lions in the Columbia. With the passage of the MMPA, intentional killing stopped. The moratorium on killing remained in place until 1994 when a narrow exception to its strictures was put in place. I was part of a Congressionally-sanctioned multi-stakeholder negotiating group that met from 1992–1994 to advise on amendments to the MMPA to address fishery interactions. Our group devised the framework for what became Section 120 of the MMPA that permitted pinnipeds to be killed in narrow circumstances.

Far from sanctioning a “cull” of sea lions, Section 120 required that a limited number of identifiable individuals be having a “significant negative impact” on the decline or recovery of listed salmonids. The issue of predation at the Ballard Locks in Washington was also incorporated because, even though not ESA-listed, the steelhead run had declined to only one hundred or so fish and a small handful of sea lions had developed a unique strategy to eat the fish. These steelhead were not harvested by fishermen and the proximal threat to the fish appeared to be the sea lion predation. In stark contrast to the situation at Ballard locks, the majority of fish that run in the Columbia River are not ESA-listed and even the listed runs number in the tens of thousands of fish and are generally increasing in size. Fishing that results in the death of the listed fish is still permitted and the proximal threat is not predation.

When Congress put Section 120 in place, the predecessor of this sub-committee stated that it “recognize[d] that a variety of factors may be contributing to the declines of these stocks” and made it clear that “the current levels of protection afforded to seals and sea lions under the Act should not be lifted without first giving careful consideration to the other reasons for the decline.” H.R. Rep. No. 103–439 (1994).

Section 120 was crafted to assure that any killing that might result would have a meaningful impact on the recovery of fish. It requires that pinniped predation be having a “significant negative impact” on recovery and that there be measurable criteria for judging success. Consistent with this narrow limitation on the take of marine mammals, Section 120 sets a forth specific procedure and a series of determinations the Secretary must make, before permitting the lethal take of pinnipeds to ensure the limited exception is adequately justified. In establishing these procedures, Congress made it clear that public input was an important and required part of the

decision making process. The legislative history affirmed that “there are numerous opportunities for public comment and safeguards in this provision to ensure a careful and thoughtful deliberation of the request to remove a nuisance animal.” 140 Cong. Rec.S.3288, S3300.

In contrast to the transparent and deliberative process that was put in place in 1994, HR 946 seeks to prevent public comment in all but a narrow window of time when the Secretary is considering whether or not nonlethal measures have been successful. Further, it would exempt killing sea lions from review under the National Environmental Policy Act (NEPA).

NEPA is America’s “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a). NEPA has a critical purpose in “insur[ing] that environmental information is available to public officials and citizens before decisions are made and actions are taken,” and “help[ing] public officials make decisions that are based on understanding of environmental consequences. *Id.* § 1500.1(b)-(c). “Public scrutiny [is] essential to implementing NEPA.” *Id.* § 1500.1(b). NEPA not only requires that there be alternatives presented for consideration and that environmental consequences be considered, 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.14, but that “[a]gencies shall ensure professional integrity, including scientific integrity, of the discussion and analyses in environmental statements.” 40 C.F.R. § 1502.24.

In place of a process designed to be transparent and to encourage public involvement, this bill would allow decisions made with little or no public scrutiny and no consideration of either alternatives or consequences. However, it is just this type of action—a controversial wildlife management program with controversial environmental impacts—for which NEPA’s implementing regulations mandate comprehensive environmental analysis. *Id.* § 1508.27(b)(4). The bill’s simple assertion that Section 120 is “protracted and will not work” in a timely manner is hardly a sufficient reason to exempt the killing of otherwise federally protected marine mammals from the careful, deliberative procedures of NEPA and the MMPA. The deliberative process that should accompany such a dramatic change in how we manage and conserve marine mammals would be swept aside in the interest of speed. Are we to exempt projects, one after the other, from NEPA simply because a sponsor considers environmental protection cumbersome? Are we to deny the public a right to involve itself in the management of a public trust resource comprised of some of the more beloved creatures in the marine world simply because involving them would slow the juggernaut?

The Section 120 process that Congress put in place in 1994 was transparent and deliberative for a reason that is no less relevant today. The public has a right to be involved. The issues at stake should see the light of day. As the House sub-Committee found in 1994, “the current levels of protection afforded to seals and sea lions under the Act should not be lifted without first giving careful consideration to the other reasons for the decline.” H. Rep. No. 103-439. Indeed, the reasons for the decline or slow recovery of salmon in the Columbia are many and manifold but sea lion predation is one of the least of them.

The Evidence That This Bill Cannot Accomplish Its Objectives

Although HR 946 promises through its title to prevent predation, it cannot succeed. Only if the predation is confined to a few animals will eliminating them provide relief. In this case, as the bill acknowledges in its findings, there are approximately 1,000 sea lions in and around the Columbia River. It is not the case that only a few of them trouble themselves to swim 140 miles up to the Dam to eat fish, rather there is a constant flux of sea lions. The reports from the Army Corps that were provided to the Bonneville Dam task force document that between 30 percent and 70 percent of sea lions seen in any year have not been identified from a previous year. The Army Corps reports that there are 50–80 sea lions seen at the Dam in any given season yet, on average, 20 or fewer are there on any given day. They come and go.

The apparent futility of killing sea lions to halt predation was acknowledged by the National Marine Fisheries Service in their 2008 Environmental Assessment that stated that “it is likely that other sea lions would eventually replace the sea lions that were lethally removed” and went on to acknowledge that this made it difficult to “support a reliable estimate of any decrease in pinniped predation (and corresponding increase in salmonid survival).” [EA at 4–11]. The lethal program that was authorized has substantiated this prediction. As mentioned above, there are new sea lions coming and going constantly whether or not killing is taking place. As recently as 2010, the Army Corps reported up to 70 percent of sea lions seen at the Dam had not been previously identified, even as they were removing some sea lions, others arrived. In 2011, when no removals were taking place, the Army Corps reports that 28 of the 50 sea lions at the Dam (only around half of them)

had been identified in previous years. Killing 85 sea lions will not prevent predation. It will not increase salmonid survival. It will simply kill sea lions to no purpose other than to satisfy the frustration of fishermen who would like to see the sea lion killed that stole what they see as “their” fish.

There are a number of unclaritys in the bill. It does not specify a season in which killing would be confined. It does not confine killing to a previously identified individual. As written, any sea lion seen with a fish in its mouth could be shot by an individual with permission to kill. If killing begins early in the spring, it is highly likely that the entire authorization (85 sea lions) could be killed within a month or so, with no ability to address predation later in the season.

There may be another troubling side effect to this proposed legislation as well. Under the authority that NMFS granted in 2008, sea lions could be shot only from land or dam structures and only by state or Army Corps personnel. As proposed in this bill, shooting is not limited to the vicinity of the Dam. Further, not only could government employees dispatch sea lions, but tribal members from several tribes may be authorized to kill them as can other individuals who are contracted by one of the entities eligible to obtain permits. There is also no stipulation as to the distance from which sea lions can be shot or the platforms from which shooting can take place. It appears they could be shot from boats, a practice that the NMFS declined to authorize as providing too unstable a shooting platform to result in a predictable and humane death.

Further, given the difficulty of differentiating California from Steller sea lions that plagues most members of the public, what assurance is there that ESA-listed Steller sea lions are not also killed? This is particularly difficult to ascertain if carcass recovery is not mandated and personnel are shooting from a distance and not highly experienced in speciation.

This broadening of who may kill sea lions is likely to result in members of the public seeing what appear to be other members of the public in plain clothes shooting sea lions along the river from a river bank or from boats. They may be unaware that these shooters are not just other fishermen or hunters taking revenge on a sea lion that ate a fish, but have a special authorization that is unavailable to members of the general public. At one meeting of the Bonneville Dam task force an employee of an authorized Oregon marine mammal stranding response group stated that incidents of sea lion shootings had spiked since the NMFS authorized the states to kill sea lions. Media reports of dead shot sea lions in Washington and Oregon were more frequent as well in 2009 and 2010. If frustrated fishermen see others shooting sea lions in and along the river, it is highly likely that this will simply encourage more illegal killing. This presents an enforcement nightmare. It also harks back to vigilante days prior to 1972 when sea lions were shot at will and their bodies washed up along shorelines or floated to the sea even as salmon continued to decline from the real threats that remained unaddressed.

In Conclusion

In closing, we believe that this proposed legislation is not only unnecessary but potentially dangerous. It is unnecessary because the number of sea lions at the Dam is down. Their residency time at the Dam is reduced. The percentage of fish in the run that are eaten has declined each year for the past four years even as the percentage of the same fish killed by fishermen has risen. Moreover, other sources of salmon mortality, such as hydropower operations, ocean fisheries and the management of hatchery programs, have not been adequately addressed. In some cases, such as the stocking of non-indigenous fish for recreational purposes, the severe negative impacts to salmon have not been addressed at all. Sea lions come and go throughout the river throughout the season—it is not a situation in which there is only a handful of predators that can easily be eliminated and thus eliminate predation. As the lethal program of the past 3 years has shown, the percentage of predation-related salmon mortality and the size of salmon runs remain independent of sea lions were killed in a given year. Killing sea lions wastes time and money and lives and does little to benefit the salmon. But we are also concerned that this bill has less apparent dangers inherent in its language. It would sacrifice public involvement and transparency in the name of speed. It sets a dangerous precedent of exempting a controversial wildlife management program from NEPA analysis. It also sets the stage for a return to the vigilante action against sea lions that existed prior to the 1972 passage of the MMPA when the states employed professional shooters in the river and members of the public killed seals and sea lions out of frustration or for sport. We oppose H.R. 946 and urge you to vote against it.

Dr. FLEMING. Well, I thank, Ms. Young, for your testimony, and I thank all of our witnesses today for your testimony. I now recognize myself for five minutes for questions. We will begin questions from the panel, and ask for your responses.

Mr. Lecky, are California sea lions at their optimum sustainable population levels as defined in the Marine Mammal Protection Act?

Mr. LECKY. Yes, they are.

Dr. FLEMING. Does reaching this level allow the Agency to take management actions that it couldn't take if the population was below this level?

Mr. LECKY. Yes, it does.

Dr. FLEMING. Would you elaborate on that any?

Mr. LECKY. Well, if a population is below OSP, there are limitations on the amount of take that can be authorized. The provisions for authorizing take incidental to other activities are diminished as a result of a depleted status.

The mechanisms for a directed take are likewise more complicated to get through if they are depleted. The measures of Section 120 also are not available to animals that are in a depleted state.

Dr. FLEMING. OK. Again, back to Mr. Lecky, should Congress amend the Marine Mammal Protection Act to change the safeguards under the law based on the size of the species population?

Mr. LECKY. Well, yes. We believe that there should be some consideration of measures to deal with robust pinniped populations, particularly in situations like this where they are affecting and impeding the recovery of threatened and endangered species.

Dr. FLEMING. OK. Thank you. In the Humane Society's written testimony, Ms. Young raised the concern that any allowances for a lethal take will lead to a, quote, form of vigilante response, to removing sea lions.

Mr. Brown, Mr. Lewis, and Mr. Norman, do State or Tribal management practices allow for such a vigilante removal of the animals?

Mr. BROWN. Mr. Chairman and Members of the Committee, no, both the States of Oregon and Washington have statutes that prohibit harassment, hunting, and killing of animals that is not provided for under State statutes for hunting or harvest, and that is the case with marine mammals. They are protected by State law.

And animals are shot by individuals on occasion and have been for as long as I have been working in this area, and it is not anything particularly new. It is illegal and cases are brought by State and Federal law enforcement officers whenever possible.

Dr. FLEMING. Mr. Norman.

Mr. NORMAN. Mr. Chairman and Members of the Committee, the Washington State statute requires the Department of Fish and Wildlife to protect and sustain healthy fish and wildlife populations. Marine mammals are part of that mandate, and so any activity associated with trying to preserve salmon through managing predation would require that we continue to honor that particular statute.

Dr. FLEMING. Mr. Lewis.

Mr. LEWIS. Thank you, Mr. Chairman. Under the Yakama Nation's law, we do not have a law that prohibits the taking of Cali-

ifornia sea lions, although we abide by the Marine Mammal Protection Act.

We remind our fishermen that you are not to harm the animals in any way. We have our law enforcement, which is also out on the water patrolling, and we make sure and monitor that our fishermen do not harm the sea lions in any way. Thank you, Mr. Chairman.

Dr. FLEMING. OK. Well, then I will turn to Ms. Young given that testimony. Specifically, how would H.R. 946 lead to a vigilante styled removal of marine mammals?

Ms. YOUNG. I think when the task force was meeting, we had a member of the Oregon Stranding Network address us, and one of the things that she talked about was that once lethal taking authority had been given to the States, even though it was being done by trapping, the number of the incidents of shot sea lions jumped dramatically, because the public saw this as somehow a warrant if you will on sea lions eating fish.

And certainly there were a number of highly publicized incidents of multiple animals washing in shot and dead, and I think that right now the States have not exercised the ability to shoot animals, though they were granted that ability.

However, my concern is that if shooting is to begin, and it is being done by more than uniformed State personnel, and it is being done by tribal personnel, and a variety of other folks who may not be readily identifiable by the public as officials, people may see this somehow as, well, gee, that guy saw him take a fish, and shot him, and so here is one coming after my fish, and maybe I have the right to do that, too.

And I think that is a lot more difficult to determine who is and who is not allowed to shoot sea lions when you have a wide variety of people out there who—

Dr. FLEMING. My time is limited, and I hate to interrupt you, but you would say someone who is uniformed, you would have confidence then, and you would feel that it would be OK to use lethal force?

Ms. YOUNG. I am not saying that it is necessarily OK, because I don't believe that you need to kill sea lions to protect salmon, but it is certainly true that it is easier for the public to determine who is or is not allowed to do it.

Dr. FLEMING. OK. Thank you. All right. My time has ended, and I will yield to the Acting Ranking Member for five minutes for questions.

Ms. BORDALLO. Thank you very much, Mr. Chairman. I would like to ask for unanimous consent to enter into the record a statement in opposition to H.R. 946 submitted by the International Fund for Animal Welfare.

Dr. FLEMING. Without objection so ordered.

[The letter from the International Fund for Animals submitted for the record follows:]



International Fund for Animal Welfare

June 13, 2011

The Honorable John C. Fleming, M.D.
United States House of Representatives
416 Cannon HOB
Washington, DC 20515

The Honorable Gregorio Kilili Camacho Sablan
United States House of Representatives
423 Cannon HOB
Washington, DC 20515

Dear Chairman Fleming and Ranking Member Sablan:

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On behalf of the International Fund for Animal Welfare and our over one million members, I urge you to oppose the Endangered Salmon Predation Prevention Act, which would authorize the needless killing of California sea lions. H.R. 946 amends the Marine Mammal Protection Act of 1972 (MMPA) by authorizing a 5-year lethal removal program for California sea lions on the Columbia River or its tributaries. The justification for this measure is to protect salmonid stocks. The bill also waives the National Environmental Policy Act of 1969 (NEPA) and overrides other provisions of the MMPA designed to protect and conserve marine mammals. While IFAW shares the goal of the bill to rebuild and protect important salmon resources on the Columbia River, we strongly oppose the provisions in the bill and the "shooting spree" it authorizes.

Restoration of the Columbia River salmonid stocks is very important not only to the people of the Northwest United States, but also to the marine mammals and wildlife that depend on these fish stocks for food and nutrition. Regrettably H.R. 946 addresses only one source of mortality, California sea lions, while ignoring the major causes of stock declines. California sea lions account for less than 2% of total salmon mortality and it appears that this figure is declining. In its most recent report on pinniped predation at the Bonneville Dam the U.S. Army Corps of Engineers concluded that, "it looks like the expanded estimated predation on salmonids will be around 3,100 (adjusted estimates accounting for unknown fish and night counts will be higher). This will end up being about 1.4% of the January 1 through May 31 salmonid run. Total salmonid catch for CSL is going to be much lower than the last few years."¹ In other words the legislation targets the very smallest part of the problem while ignoring the more serious causes of stock declines such as pesticides, dams, habitat destruction, water abundance and stream flows. Even if every California sea lion on the Columbia River were killed, it wouldn't bring back the salmon or protect the fishery resources from the major sources of mortality.

¹STATUS REPORT - PINNIPED PREDATION AND DETERRENT ACTIVITIES AT BONNEVILLE DAM, 2011
Robert Stensell, Bjorn van der Leeuw, and Karris Gibbons
Fisheries Field Unit, U.S. Army Corps of Engineers Bonneville Lock and Dam Cascade Locks, OR 97014 : May 27, 2011



In addition to the inhumane, cruel and unnecessary killing of healthy California sea lions authorized by the bill, the other major problem with H.R. 946 is the prescribed solution for protecting salmon, shooting sea lions, will not work and has never been demonstrated to work. As far as IFAW is aware, there has been no research, science or examples of where lethal taking of nuisance marine mammals is a feasible and effective solution in protecting fish stocks. We do know, based on past experiments that relocation does not work. The famous sea lion "Hershel" traveled back to the Columbia River after being relocated hundreds of miles away. What evidence is there to suggest that other sea lions will not take the place of those needlessly slaughtered?

Unfortunately, we believe the aim of the bill is to find a "quick fix" to a much more complex problem of restoring and protecting salmon on the Columbia River. Decades of habitat destruction, dam construction and inappropriate agricultural practices including the use of pesticides have significantly and negatively affected the salmon resources of the river. Only by addressing these issues does IFAW believe that the Columbia River and its rich fishery resources be brought back to health.

IFAW urges the Committee to reject this legislation and instead concentrate on developing comprehensive legislation targeted at major causes of salmon decline.

Sincerely,

Jeff Flocken
DC Office Director

Ms. BORDALLO. My first question is to Mr. Lecky, and in the interest of time, if you could please answer yes or no to the following questions. Is the number of California sea lions this year at Bonneville Dam the lowest since 2002?

Mr. LECKY. I believe that is true.

Ms. BORDALLO. So it is a yes?

Mr. LECKY. Yes.

Ms. BORDALLO. Is the present percentage of endangered salmon consumed by California sea lions at Bonneville Dam this year the lowest since 2003?

Mr. LECKY. No, it is not.

Ms. BORDALLO. Well, according to the May 27 status report from the Army Corps of Engineers, California sea lions consumed only 1.4 percent of the run this year, which is the lowest percentage since 2003.

The next question is are there other threats to endangered salmon aside from predation by sea lions?

Mr. LECKY. Yes.

Ms. BORDALLO. Do pesticides such as the ones that were evaluated in NMFS's for 2008, 2009, and 2010, biological opinions jeopardize juvenile salmon?

Mr. LECKY. Yes.

Ms. BORDALLO. Are buffers and limitations on aerial applications during windy conditions reasonable methods to protect salmon and prevent pesticides from getting into our streams?

Mr. LECKY. I will give you a conditional yes. In certain circumstances that is true.

Ms. BORDALLO. And the last one is has the EPA incorporated these methods to protect salmon in their registration of these pesticides?

Mr. LECKY. Not so far.

Ms. BORDALLO. So the answer is no.

Mr. LECKY. Ms. Bordallo, may I qualify that?

Ms. BORDALLO. Yes.

Mr. LECKY. So the EPA does have restrictions on applications of pesticides according to their labels. We have asked them to implement additional restrictions in our biological opinions. Those additional restrictions have yet to be implemented.

Ms. BORDALLO. Thank you. Ms. Young, in 2008, the NMFS authorized the States to kill the lesser of either 85 sea lions per year or the number required to reduce predation to one percent of the salmon run at Bonneville Dam.

This year the Army Corps of Engineers reported that California sea lions only consumed 1.4 percent of the salmon run this year. Has this 2008 goal essentially been obtained?

Ms. YOUNG. If you round 1.4 percent to the lowest or closest whole number that would be one percent, and so it would appear so.

Ms. BORDALLO. Has H.R. 946 exempted the killing of sea lions from review under the National Environmental Policy Act, and can you elaborate on your concerns with this exemption?

Ms. YOUNG. Well, as I said, my concern is that that Act is a very important part of sharing public involvement, and the consideration of a variety of alternatives, and exempting it from that really leads to an expedited process that excludes the public.

Ms. BORDALLO. And last year 14 sea lions were euthanized, and about 70 percent of sea lions seen at the Bonneville Dam had not been previously identified. So does killing some sea lions deter other sea lions from consuming salmon at the Bonneville Dam?

Ms. YOUNG. I don't believe so. I think that the Corps reports around 80 sea lions a year at the dam and, on any given day, there are only about 20-something of them. So they come and go, and replace one another.

Ms. BORDALLO. And then my final question is are the provisions in this bill specific enough to reasonably confine sea lion killings to individuals most impacting endangered salmon near the Bonneville Dam?

Ms. YOUNG. I don't believe so.

Ms. BORDALLO. All right. Thank you, Mr. Chairman. I yield back my time.

Dr. FLEMING. I thank the gentle lady. Next, I would call upon the Chairman of The Committee, Mr. Hastings, from Washington.

Mr. HASTINGS. Thank you very much, Mr. Chairman. Mr. Lecky, let me ask you first. I mentioned in my opening statement and acknowledged that NOAA had formed a task force of scientists in December, and in their report they said, and I quote directly, under the current Section 120 as authorized under the Marine Mammal Protection Act, the task force finds that the current program has not been effective in allowing the authorization to be fully implemented, nor reducing predation on listed salmon to less than one percent.

I am assuming that this led to your decision to come to support this bill. Is that a correct assumption?

Mr. LECKY. Yes, sir, that is a contributing factor.

Mr. HASTINGS. As a contributing factor. OK. And other factors would be what?

Mr. LECKY. Well, it has been our experience in implementing Section 120 more broadly.

Mr. HASTINGS. OK. Mr. Norman, I am to understand that you were on that task force; is that correct?

Mr. NORMAN. Yes, I was.

Mr. HASTINGS. And on that task force, my understanding is that the vote was 17-to-1 to endorse what I just read. Is that correct?

Mr. NORMAN. That is correct.

Dr. FLEMING. That is correct? OK. Mr. Lecky, I want to ask you a question. I know that the States of Washington, and Oregon, and Alaska, as well as some Columbia River tribes, have written and petitioned NOAA to delist the Eastern population of the stellar sea lions. Has is that coming?

Mr. LECKY. Well, we did receive those petitions. We formally accepted them in December, and initiated status reviews. Those will be completed in August of this year.

Mr. HASTINGS. In August of this year?

Mr. LECKY. Yes.

Mr. HASTINGS. OK. There has been a reference by several of you to the California sea lions, and as to their activity in the Bonneville Dam. So the focus then is probably on the California sea lion.

Mr. Brown, I think in your testimony, and if others can confirm this, either confirm or correct me, but my understanding is that the California sea lion is not indigenous to the Columbia River. Is that correct?

Mr. BROWN. That is correct. Professor Lee Lyman has done extensive work looking at the archeological and anthropological record in kitchen mittens and remains of tribal usage areas, and there are no bones of California sea lions.

There is clear evidence that harbor seals were in the area and taken, and an occasional stellar sea lion, but not California sea lions. If I might take an extra minute to suggest that this discussion of the percentage of the run taken by sea lions is not a good measure of what the problem is.

Mr. HASTINGS. I will get to that later. I am aware of that.

Mr. BROWN. Thank you.

Mr. HASTINGS. Mr. Norman, would you confirm what Mr. Brown just said as far as the indigenous factor of California sea lions?

Mr. NORMAN. Yes, I would support that.

Mr. HASTINGS. And Mr. Lecky?

Mr. LECKY. Well, I actually am unclear on whether there are records of sea lions—

Mr. HASTINGS. Well, we have testimony that it is, and so regardless of the number then, you are talking about a number of animals that are feasting on endangered salmon that are not indigenous to the area that we are talking about and the focus of what this bill is.

I mean, that seems to me regardless of how you want to measure this. Mr. Brown, you mentioned of course the percentage has gone

down because the runs have gone up, and in that regard, I do want to ask Ms. Young, because in your written statement, you made that observation, that in fact the percentage has gone down, and so therefore it shouldn't be an issue.

Yet, the number that has been documented is 6,000 salmon. So my question to you is how many salmon being eaten in raw numbers, and no pun intended, but in raw numbers, would cause concern to the Humane Society as far as those being eaten by sea lions?

Ms. YOUNG. I don't know that I can answer with a whole number. I do know that—

Mr. HASTINGS. Well, wait. I am asking you directly to answer with a whole number because you were suggesting that it is immaterial when you look at the percentage of runs. Yet, there are 6,000 that are documented.

You must have a position on how many would endanger the whole threatened run, and if you don't, then I think that is pretty significant.

Ms. YOUNG. Since the run size fluctuates the percentage is going to fluctuate, and it is the percentage that is the most important.

Mr. HASTINGS. The percentage is what is the most important?

Ms. YOUNG. Yes.

Mr. HASTINGS. Going back then to, and I think it was Mr. Brown who said earlier, or maybe it was Mr. Norman, if we had handled this issue and addressed this earlier, we would have mitigated the problem in the long term. Who was that, Mr. Brown, or—well, Mr. Brown, would you elaborate on that then, please.

Mr. BROWN. Yes. Unfortunately, it is the Catch-22 form of Section 120 as currently written. You can't do anything until you have a huge problem, and once you have a huge problem, it is very expensive and difficult to deal with.

Had we been able to move in 2002 and take out the first two or three sea lions that showed up, and then three or four the next year, and one or two the following year, and so on for any number of years, we probably would have removed far fewer sea lions and definitely saved many more thousands of salmon.

And I would suggest respectfully that the percentage of the run taken is not important. We are very lucky to have great run sizes over the past few years, but not too long ago, we had a run of only 86,000 fish.

And five or 6,000 out of that run is very significant. The number of salmon taken by these predators has gone up every year since the study began.

Mr. HASTINGS. In raw numbers, thank you. My time is way over and thank you very much.

Dr. FLEMING. I thank The Chairman. Next up, we have Mr. Southerland from Florida. You have five minutes, sir.

Mr. SOUTHERLAND. Thank you, Mr. Chairman. I am from Florida, and so this is—I ask for a little understanding while I try to get my hands around something that we don't have to deal with.

But my questions are to Mr. Norman, Mr. Brown, and Mr. Lewis. Are there any new nonlethal techniques currently being tested that could prove more successful in deterring sea lions predation than existing techniques?

Mr. BROWN. Chairman Fleming and Member Southerland, we have been working with nonlethal deterrence methods on seals and sea lions around fish pens, fishing nets, streams, and things, for the 35 years that I have been working on this issue.

One of the most recent, and if you consider it that, development was the use of acoustic devices that produced a loud sound in the middle of the hearing range of pinnipeds that presumably was going to be irritating.

That system has been around for 20 years or more, and while it disturbs animals initially, they very quickly learn to avoid it. There has been some talk about some other things—electrical barriers—which have proven to have negative impacts on fish, and cannot be used in areas where ESA listed fish occur.

So the short answer is, no, we are not aware of any new nonlethal measurements that have been identified or under development for use. One thing to remember is that these California sea lions are very—they are survivors. They learn very quickly. They are highly adaptable.

And there is really nothing short of removing these animals that we know of today that would prevent them or eliminate the drive that they have to go to these places and consume these fish.

Mr. SOUTHERLAND. Mr. Norman, maybe this is a question for you. What are the numbers? I mean, I know that we are talking about percentages, but what are the numbers that need to be removed in a given year?

And just a ballpark number. It does not have to be specific. I am just trying to get an understanding of how many are we talking about here?

Mr. NORMAN. In terms of removal of sea lions?

Mr. SOUTHERLAND. Yes.

Mr. NORMAN. I think that actually it is not an exact number.

Mr. SOUTHERLAND. I am not asking for exact.

Mr. NORMAN. But certainly enough to reduce or stop the increase, and reduce the problem.

Mr. SOUTHERLAND. Remember that there is not a bad answer here. So I am trying to get an idea of the number. I mean, are we talking 50, or are we talking 500? Are we talking 5,000? I am just trying to understand the issue.

Mr. NORMAN. Well, right now the current authority limits it to 85 per year.

Mr. SOUTHERLAND. OK.

Mr. NORMAN. And I think something less than that would be adequate.

Mr. SOUTHERLAND. OK. So we are not talking thousands or hundreds? I mean, I am just trying to understand.

Mr. NORMAN. Right.

Mr. SOUTHERLAND. Also, and I understand, but give me an idea. These are all majority the male, and these are not female. Am I correct in that?

Mr. NORMAN. Yes, that is correct.

Mr. SOUTHERLAND. OK. I mean, I understand. I am a hunter from the South, and we understand if you want to thin a herd, we have programs where we shoot does. That is understandable. So

that is not obviously a thing that we can do here because you are obviously dealing with males that are coming.

I will say this. It seems like you have done the science on this, OK? One of the things that I have clearly been frustrated with has been—and Mr. Lecky, this is something that you can maybe address, but I have been continually frustrated in the five or six months that I have been here at our ability to find the science that we need to solve the problems that we want to solve, but if there are problems that we don't want to solve, we can't find the science.

And I just have to tell you that I am looking at what you are doing here, and what my people are fighting for regarding the red fish, which are absolutely hammering the crab population in the bays and estuaries where I live, and in little communities that have five, and six, and seven crab houses, are down to one, OK?

And yet we are very interested in talking about the salmon, and yet we are not interested in talking about the crabs. So I would really like to see some consistency in other species, and not pick and choose one over the other.

I am burdened sometimes when we are far more concerned about certain species than we are in these family owned businesses that are four, and five, and six year old generational businesses that are not living extravagantly by any means, OK?

They are holding their boats together with duct tape and baling wire, and so I would really like some consistency. I mean, I can't disagree with your testimony today, but I can sometimes disagree with how we apply these principles to various species around the lands and waters that we oversee. I yield back.

Dr. FLEMING. The gentleman's time has ended, and he has yielded back. Well, I want to compliment our witnesses on some excellent testimony, and responses.

Mr. HASTINGS. Mr. Chairman, I ask unanimous consent that the testimony of Mr. Billy Frank, who is the Chairman of the Northwest Indian Fishing Commission, be entered into the record. He is in support of this legislation, and I forgot to do that at the outset. So I ask unanimous consent that his testimony be part of the record.

Dr. FLEMING. Thank you, sir, and without objection, so ordered.
[The statement of Mr. Frank submitted for the record follows:]

**Statement submitted for the record by Billy Frank, Jr., Chairman,
Northwest Indian Fisheries Commission**

Mr. Chairman and other Honorable Members of the Subcommittee, thank you for the opportunity to provide written testimony regarding H.R. 946. My name is Billy Frank, Jr., Chairman of the Northwest Indian Fisheries Commission (NWIFC). The NWIFC is comprised of the twenty treaty tribes party to the *United States vs. Washington (U.S. vs. Washington)*.

We are pleased that the House Natural Resources Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs is considering this bill that would amend the Marine Mammal Protection Act (MMPA) to reduce predation on endangered Columbia River salmon. Although this bill is focused on the California sea lions preying on Columbia River salmon, we want to ensure that any amendments to the MMPA won't have an adverse affect on the Washington coast and Puget Sound. We generally support H.R. 946. On behalf of our 20 member tribes, I would like to submit the following comments to the bill that are important in meeting the needs of our tribes.

SUMMARY OF COMMENTS TO H.R. 946

- **Support the development of legislation to address the problem of marine mammal predation on ESA-listed fish and other listed species.**
- **Recommend inclusion of a treaty rights savings clause.**
- **Support the testimony being provided by the Columbia River Inter-Tribal Fish Commission.**

TRIBES, TREATY RIGHTS AND TRUST OBLIGATIONS
OF THE FEDERAL GOVERNMENT

Indian tribes have always inhabited the watersheds of western Washington, with cultures based on harvesting fish, wildlife, and other natural resources in the region. In the mid-1850s, a series of treaties were negotiated between the federal government and the tribes in the region. Through the treaties, the tribes ceded most of their land, but in doing so, reserved certain rights to fish, hunt and gather to protect their way of life.

The promises of the treaties were quickly broken in the decades that followed as the tribes were systematically denied their treaty-protected rights by the State of Washington. In 1974, the tribes won a major victory in *U.S. vs. Washington* (also commonly referred as the Boldt Decision), which reaffirmed their treaty-protected fishing rights. The ruling, which has been upheld by the U.S. Supreme Court, recognized the tribes as co-managers of the resource and determined they were entitled to 50 percent of the harvestable number of salmon returning to Washington State waters. More recent federal court rulings and solicitor opinions upholding treaty-reserved rights have further expanded the role and responsibilities of the tribes as natural resource managers. Those rulings, combined with the interconnectedness of all natural resources, mean that tribal participation is essential in nearly all aspects of natural resource management in the region.

The tribes from the Pacific Northwest have stepped forward and have embraced co-management. They developed sophisticated natural resource programs designed to protect and enhance their treaty rights. Tribal programs, based on deep cultural and philosophical underpinnings, have served as the backbone of salmon recovery, providing the technical, policy and legal framework for this incredibly difficult task. Tribes perform complicated harvest, hatchery and habitat management tasks that neither the state nor the federal government can effectively carry out. It is because of the role the tribes play in protecting their rights that they continue to protect and preserve the species to which they have harvestable rights to for future generations.

JUSTIFICATION OF COMMENTS TO H.R. 946

- **Support the development of legislation to address the problem of marine mammal predation on ESA-listed fish and other listed species.**

Western Washington tribes have always successfully and respectfully coexisted with California sea lions, harbor seals, and other marine mammals. Tribal members harvested them for their skins, oil, flesh, and bone. When necessary, tribal members also killed marine mammals that interfered with their fishing. Marine mammals were part of an ecosystem where humans (and orca) were the top predators. Unfortunately, this balance has been undone in a number of ways—most recently by the Marine Mammal Protection Act—with the current result being an ecosystem teeming with California sea lions and harbor seals that consume ESA-listed salmon as part of their diet and directly interfere with the tribes' abilities to exercise their treaty reserved fishing rights. The balance needs to be restored. Consequently, the NWIFC strongly supports the provision in H.R. 946 calling for development of a report on legislation addressing marine mammal predation on ESA-listed fish species.

- **Recommend inclusion of a treaty rights savings clause.**

The tribes' treaties with the federal government were concluded at a time when salmon, tribal members and marine mammals successfully coexisted. These treaties form the foundation of the tribes' culture and incorporate a conservation obligation that supports laws governing the protection and use of resources. The NWIFC strongly recommends inclusion of treaty rights savings language such as that recommended by the Columbia River Inter-Tribal Fish Commission and already included in the Northwest Power Act, 16 U.S.C. 839g (e).

"Nothing in this chapter shall be construed to affect or modify any treaty or other right of an Indian tribe."

CONCLUSION

In conclusion, the treaties reflect the United States' commitments to preserve our physical, cultural and economic livelihood and it is vitally important to the Commission's member tribes that these commitments remain steadfast. Mr. Chairman, and Members of the Subcommittee, we appreciate the time that you provided us to comment on this very important piece of legislation. We also want to acknowledge the Subcommittee in recognizing and providing a forum in our government-to-government relationship in addressing an issue that affects us all. We believe that the management work that we perform to protect our valuable resources benefits the entire region. It is because of this, we also support the recommended changes to the bill that are being proposed by the Columbia River Inter-Tribal Fish Commission.

Thank you again, Mr. Chairman and members of the Subcommittee, for this opportunity to provide written testimony.

Dr. FLEMING. Once again, I thank all our witnesses for a great job today. I would like to thank our witnesses not only for their valuable testimony, but their time today. Other Members of the Subcommittee may have additional questions for the witnesses, and we ask you to respond to these in writing.

The hearing record will be open for 10 days to receive these responses. Finally, I want to thank Members and staff for their contributions to this hearing. If there is no further business, without objection, this Subcommittee stands adjourned.

[Whereupon, at 11:04 p.m., the Subcommittee was adjourned.]

