

## Union Calendar No. 220

112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3069

[Report No. 112-322]

To amend the Marine Mammal Protection Act of 1972 to reduce predation on endangered Columbia River salmon and other nonlisted species, and for other purposes.

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### IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 2011

Mr. HASTINGS of Washington introduced the following bill; which was referred to the Committee on Natural Resources

DECEMBER 8, 2011

Additional sponsors: Mr. DICKS, Mr. SIMPSON, Mr. WALDEN, Ms. HERRERA BEUTLER, and Mr. SCHRADER

DECEMBER 8, 2011

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

# **A BILL**

To amend the Marine Mammal Protection Act of 1972 to reduce predation on endangered Columbia River salmon and other nonlisted species, and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. FINDINGS.**

7        The Congress finds the following:

8            (1) There are 13 groups of salmon and  
9 steelhead that are listed as threatened species or en-  
10 dangered species under the Endangered Species Act  
11 of 1973 that migrate through the lower Columbia  
12 River.

13            (2) The people of the Northwest United States  
14 are united in their desire to restore healthy salmon  
15 and steelhead runs, as they are integral to the re-  
16 gion’s culture and economy.

17            (3) The Columbia River treaty tribes retain im-  
18 portant rights with respect to salmon and steelhead.

19            (4) Federal, State, and tribal governments have  
20 spent billions of dollars to assist the recovery of Co-  
21 lumbia River salmon and steelhead populations.

22            (5) One of the factors impacting salmonid pop-  
23 ulations is increased predation by marine mammals,  
24 including California sea lions.

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

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

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

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

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

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

24           (12) In the interest of protecting Columbia  
25 River threatened and endangered salmonids, a tem-

1       porary expedited procedure is urgently needed to  
2       allow removal of the minimum number of California  
3       sea lions as is necessary to protect the passage of  
4       threatened and endangered salmonids in the Colum-  
5       bia River and its tributaries.

6               (13) On December 21, 2010, the independent  
7       Pinniped-Fishery Interaction Task Force rec-  
8       ommended lethally removing more of the California  
9       sea lions in 2011.

10              (14) On August 18, 2011, the States of Wash-  
11       ington, Oregon, and Idaho applied to the National  
12       Marine Fisheries Service, under section  
13       120(b)(1)(A) of the Marine Mammal Protection Act  
14       of 1972 (16 U.S.C. 1389(b)(1)(A)), for the lethal re-  
15       moval of sea lions that the States determined are  
16       having a “significant negative impact” on the recov-  
17       ery of Columbia River and Snake River salmon and  
18       steelhead.

19              (15) On September 12, 2011, the National Ma-  
20       rine Fisheries Service announced it was accepting  
21       the States’ application for lethal removal of sea lions  
22       and that it would reconvene the Pinniped-Fishery  
23       Interaction Task Force to consider the States’ appli-  
24       cation. This Act will ensure the necessary authority

1 for permits under the Marine Mammal Protection  
2 Act of 1972 to be issued in a timely fashion.

3 (16) During a June 14, 2011, hearing, the  
4 Committee on Natural Resources of the House of  
5 Representatives received testimony from State and  
6 tribal witnesses expressing concern that significant  
7 pinniped predation of important Northwest fish re-  
8 sources other than salmonids is severely impacting  
9 fish stocks determined by both Federal and State  
10 fishery management agencies to be at low levels of  
11 abundance, and that this cannot be addressed by  
12 section 120 of the Marine Mammal Protection Act  
13 of 1972 (16 U.S.C. 1389), which as in effect before  
14 the enactment of this Act restricted control of preda-  
15 tory pinnipeds' impact only with respect to endan-  
16 gered salmonids.

17 **SEC. 3. TAKING OF SEA LIONS ON THE COLUMBIA RIVER**  
18 **AND ITS TRIBUTARIES TO PROTECT ENDAN-**  
19 **GERED AND THREATENED SPECIES OF SALM-**  
20 **ON AND OTHER NONLISTED FISH SPECIES.**

21 Section 120 of the Marine Mammal Protection Act  
22 of 1972 (16 U.S.C. 1389) is amended by striking sub-  
23 section (f) and inserting the following:

1       “(f) TEMPORARY MARINE MAMMAL REMOVAL AU-  
2 THORITY ON THE WATERS OF THE COLUMBIA RIVER OR  
3 ITS TRIBUTARIES.—

4           “(1) REMOVAL AUTHORITY.—Notwithstanding  
5 any other provision of this Act, the Secretary may  
6 issue a permit to an eligible entity authorizing the  
7 intentional lethal taking on the waters of the Colum-  
8 bia River and its tributaries of sea lions that are  
9 part of a healthy population that is not listed as an  
10 endangered species or threatened species under the  
11 Endangered Species Act of 1973 (16 U.S.C. 1531 et  
12 seq.), to protect endangered and threatened species  
13 of salmon and other nonlisted fish species.

14           “(2) PERMIT PROCESS.—

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

18           “(B) DEADLINE FOR CONSIDERATION OF  
19 APPLICATION.—The Secretary shall approve or  
20 deny an application for a permit under this sub-  
21 section by not later than 30 days after receiving  
22 the application.

23           “(C) DURATION OF PERMIT.—A permit  
24 under this subsection shall be effective for no

1 more than one year after the date it is issued,  
2 but may be renewed by the Secretary.

3 “(3) LIMITATIONS.—

4 “(A) LIMITATION ON PERMIT AUTHOR-  
5 ITY.—Subject to subparagraph (B), a permit  
6 issued under this subsection shall not authorize  
7 the lethal taking of more than 10 sea lions dur-  
8 ing the duration of the permit.

9 “(B) LIMITATION ON ANNUAL TAKINGS.—

10 The cumulative number of sea lions authorized  
11 to be taken each year under all permits in ef-  
12 fect under this subsection shall not exceed one  
13 percent of the annual potential biological re-  
14 moval level.

15 “(4) DELEGATION OF PERMIT AUTHORITY.—

16 Any eligible entity may delegate to any other eligible  
17 entity the authority to administer its permit author-  
18 ity under this subsection.

19 “(5) NEPA.—Section 102(2)(C) of the Na-  
20 tional Environmental Policy Act of 1969 (42 U.S.C.  
21 4332(2)(C)) shall not apply with respect to this sub-  
22 section and the issuance of any permit under this  
23 subsection during the 5-year period beginning on the  
24 date of the enactment of this subsection.



1           “(6) SUSPENSION OF PERMITTING AUTHOR-  
2           ITY.—

3           “If, 5 years after enactment, the Sec-  
4           retary, after consulting with State and tribal  
5           fishery managers, determines that lethal re-  
6           moval authority is no longer necessary to pro-  
7           tect salmonid and other fish species from sea  
8           lion predation, may suspend the issuance of  
9           permits under this subsection.

10          “(7) ELIGIBLE ENTITY DEFINED.—In this sub-  
11          section, the term ‘eligible entity’ means each of the  
12          State of Washington, the State of Oregon, the State  
13          of Idaho, the Nez Perce Tribe, the Confederated  
14          Tribes of the Umatilla Indian Reservation, the Con-  
15          federated Tribes of the Warm Springs Reservation  
16          of Oregon, the Confederated Tribes and Bands of  
17          the Yakama Nation, and the Columbia River Inter-  
18          Tribal Fish Commission”.

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

20          It is the sense of the Congress that—

21                 (1) preventing predation by sea lions, recovery  
22                 of listed salmonid stocks, and preventing future list-  
23                 ings of fish stocks in the Columbia River is a vital  
24                 priority;

1           (2) permit holders exercising lethal removal au-  
2           thority pursuant to the amendment made by this  
3           Act should be trained in wildlife management; and

4           (3) the Federal Government should continue to  
5           fund lethal and nonlethal removal measures for pre-  
6           venting such predation.

7   **SEC. 5. TREATY RIGHTS OF FEDERALLY RECOGNIZED IN-**  
8                           **DIAN TRIBES.**

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



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