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MARINE MAMMAL PROTECTION ACT OF 1972

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TITLE I—CONSERVATION AND PROTECTION OF MARINE MAMMALS

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

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

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

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

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

te through the Ballard Locks at Seattle, Washington.

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

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

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

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

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

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

(4) Within 30 days after receipt of recommendations from the Pinniped-Fishery Interaction Task Force, the Secretary shall either approve or deny the application. If such application is ap-

proved, the Secretary shall immediately take steps to implement the intentional lethal taking, which shall be performed by Federal or State agencies, or qualified individuals under contract to such agencies.

(5) After implementation of an approved application, the Pinniped-Fishery Interaction Task Force shall evaluate the effectiveness of the permitted intentional lethal taking or alternative actions implemented. If implementation was ineffective in eliminating the problem interaction, the Task Force shall recommend additional actions. If the implementation was effective, the Task Force shall so advise the Secretary, and the Secretary shall disband the Task Force.

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

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

(2) past efforts to nonlethally deter such pinnipeds, and whether the applicant has demonstrated that no feasible and prudent alternatives exist and that the applicant has taken all reasonable nonlethal steps without success;

(3) the extent to which such pinnipeds are causing undue injury or impact to, or imbalance with, other species in the ecosystem, including fish populations; and

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

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

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

(2) depleted under this Act; or

(3) a strategic stock.

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

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

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

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

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

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

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

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

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

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

(1) **REMOVAL AUTHORITY.**—*Notwithstanding any other provision of this Act, the Secretary may issue a permit to an eligible entity to authorize the intentional lethal taking on the waters of the Columbia River and its tributaries of individually identifiable pinnipeds that are part of a population or stock that is not categorized under this Act as depleted or strategic for the purpose of protecting—*

(A) *species of salmon, steelhead, or eulachon that are listed as endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and*

(B) *species of lamprey or sturgeon that are not listed as endangered or threatened but are listed as a species of concern.*

(2) *PERMIT PROCESS.—*

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

(B) *DEADLINE FOR CONSIDERATION OF APPLICATION.—The timelines and procedures described in subsection (c) shall apply to applications for permits under this subsection in the same manner such timelines apply to applications under subsection (b).*

(C) *COORDINATION.—The Secretary shall establish procedures for coordination among eligible entities, including application procedures and timelines, geographic and species-specific considerations, and monitoring and periodic review.*

(D) *DURATION OF PERMIT.—A permit under this subsection shall be effective for not more than 5 years and may be renewed by the Secretary.*

(3) *LIMITATIONS ON ANNUAL TAKINGS.—The process for determining limitations on annual take of pinnipeds will follow the process established in subsection (c) and the cumulative number of pinnipeds authorized to be taken each year under all permits in effect under this subsection shall not exceed 10 percent of the annual potential biological removal level for pinnipeds.*

(4) *QUALIFIED INDIVIDUALS.—Intentional lethal takings under this subsection shall be humane and shall be implemented by agencies or qualified individuals described in subsection (c)(4), or by individuals employed by the eligible entities described in paragraph (6).*

(5) *SUSPENSION OF PERMITTING AUTHORITY.—If, 5 years after the date of the enactment of the Endangered Salmon and Fisheries Predation Prevention Act, the Secretary, after consulting with State and tribal fishery managers, determines that lethal removal authority is no longer necessary to protect salmonid and other fish species from pinniped predation, the Secretary shall suspend the issuance of permits under this subsection.*

(6) *ELIGIBLE ENTITY DEFINED.—*

(A) *IN GENERAL.—*

(i) *DEFINITION.—In this subsection, subject to subparagraph (B), the term “eligible entity” means—*

(I) *with respect to removal in the mainstem of the Columbia River and its tributaries, the State of Washington, the State of Oregon, and the State of Idaho;*

(II) *with respect to removal in the mainstem of the Columbia River and its tributaries, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakama Nation, and the Columbia River Intertribal Fish Commission; and*

(ii) *DELEGATION AUTHORITY.—The Secretary may allow an eligible entity described in clause (i)(I) to delegate its authority under a permit under this subsection to any entity described in clause (i)(II).*

(B) *ADDITIONAL ELIGIBILITY.—*

(i) *IN GENERAL.—Subject to the approval of the Secretary and in consultation with the Indian Tribes in subparagraph (A)(i)(II)—*

(I) *the State of Washington may enter into a memorandum of understanding with the Cowlitz Indian Tribe for deterrence and removal of sea lions on the Cowlitz River.*

(II) *the State of Oregon may enter into a memorandum of understanding with the Confederated Tribes of the Grand Ronde Community of Oregon and the Confederated Tribes of Siletz Indians of Oregon for deterrence and removal of sea lions on the Willamette River.*

(ii) *CONSIDERATIONS.—In determining eligibility under this subparagraph, the Secretary shall consider the capacity of each Indian tribe to manage wildlife to meet the requirements of this Act.*

(7) *INDIVIDUAL EXCEPTION.—For purposes of this section, any pinniped located upstream of Columbia River river mile 112, or in any tributary to the Columbia River that includes spawning habitat of threatened or endangered salmon or steelhead is deemed to be individually identifiable.*

(8) *SIGNIFICANT NEGATIVE IMPACT EXCEPTION.*—For purposes of this section, any pinniped located in the mainstem of the Columbia River upstream of river mile 112, or in any tributary to the Columbia River that includes spawning habitat of threatened or endangered salmon or steelhead is deemed to be having a significant negative impact on the decline or recovery of salmonid fishery stocks described in subsection (b)(1).

(9) *DEFINITION.*—In this subsection, the term “Indian tribe” has the meaning given such term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

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

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

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

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

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

(D) other issues the Secretary considers relevant.

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

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

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

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

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

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

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

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

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

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