112TH CONGRESS
1ST SESSION

H. R. 946

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 2011

Mr. HASTINGS of Washington (for himself, Mr. DICKS, Mr. WALDEN, and Ms. HERRERA BEUTLER) introduced the following bill; which was referred to the Committee on Natural Resources

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS.

The Congress finds the following:

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

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

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

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

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

(6) The population of California sea lions has increased 6-fold over the last 3 decades, and is currently greater than 300,000.

(7) In recent years, over 1,000 California sea lions have been entering the lower 205 miles of the Columbia River up to Miller Island during the peak spring salmonid run before returning to the California coast to mate.
(8) The percentage of the spring salmonid run that has been eaten or killed by California sea lions at Bonneville dam has increased 7-fold since 2002.

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

(10) Some of these California sea lions have not been responsive to extensive hazing methods employed near Bonneville dam to discourage this behavior.

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

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

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

SEC. 3. TAKING OF CALIFORNIA SEA LIONS ON THE COLUM-
BIA RIVER OR ITS TRIBUTARIES TO PROTECT
ENDangered AND THreatened SPECIES OF
SALMON.

(a) Amendment to Marine Mammal Protection
Act of 1972.—Section 120 of the Marine Mammal Pro-
tection Act of 1972 (16 U.S.C. 1389) is amended by add-
ing at the end the following:

“(k) Temporary Marine Mammal Removal Au-
thority on the Waters of the Columbia River or
Its Tributaries.—

“(1) Determination of alternative meas-
ures.—

“(A) In general.—The Secretary shall
determine whether alternative measures to re-
duce sea lion predation of salmonid stocks in
the waters of the Columbia River or its tribu-
taries listed as threatened species or endan-
gered species under the Endangered Species
Act of 1973 (16 U.S.C. 1531 et seq.) ade-
quately protect the salmonid stocks from Cali-
ifornia sea lion predation.
"(B) DEADLINE.—The Secretary shall make such determination not later than 90 days after the date of the enactment of this subsection.

"(C) PUBLIC COMMENT.—The Secretary shall, within such 90-day period, provide up to 30 days for the submission of public comments on the determination.

"(D) FEDERAL REGISTER.—The Secretary shall publish the determination in the Federal Register.

"(2) REMOVAL AUTHORITY.—In addition to other authority under this section, and notwithstanding any other provision of this title, the Secretary may issue a permit to an eligible entity authorizing the intentional lethal taking on the waters of the Columbia River or its tributaries California sea lions if the Secretary determines under paragraph (1) that alternative measures to reduce sea lion predation on salmonid stocks in such waters listed as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) do not adequately protect the salmonid stocks from California sea lion predation.

"(3) PERMIT PROCESS.—
“(A) IN GENERAL.—An eligible entity may apply to the Secretary of Commerce for a permit under paragraph (2) authorizing the lethal taking of California sea lions.

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

“(C) AUTHORITY TO ISSUE MULTIPLE PERMITS.—The Secretary may issue more than one permit under this subsection to an eligible entity. No more than one permit may be utilized in any 14-day period by the same eligible entity.

“(D) DURATION OF PERMITS.—A permit under this subsection shall be effective for no more than one year after the date it is issued.

“(E) CONSULTATION.—In issuing a permit to an eligible entity, the Secretary shall—

“(i) consult with other eligible entities and other such entities as the Secretary considers appropriate, including the Corps of Engineers; and
“(ii) consider the number of other permits issued to other eligible entities in the same time period.

“(F) REPORTS.—Not later than January 31 following the end of each year in which a lethal taking occurs under a permit under this subsection, the Secretary shall publish a brief report describing the implementation of this subsection and the effect of all such takings in such year on Columbia River salmonid stocks and on the California sea lion population in the area where each taking occurs.

“(4) LIMITATIONS.—

“(A) LIMITATION ON PERMIT AUTHORITY.—A permit issued under this subsection shall not authorize the lethal taking of more than 10 California sea lions.

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

“(C) LIMITATION ON ANIMAL AUTHORIZED TO BE TAKEN.—
“(i) Determination Required.—A California sea lion may not be taken under a permit under this subsection unless the permit holder has determined that—

“(I) such sea lion has preyed upon salmonid stocks in the Columbia River; and

“(II) with respect to such sea lion, nonlethal alternative measures to prevent preying on salmonid stocks have in general not been effective.

“(ii) Consultation.—In making such determination, the permit holder shall consult with the National Marine Fisheries Service, and may consult with any other Federal agency or eligible entity as appropriate.

“(5) Delegation of Permit Authority.—The State of Washington and the State of Oregon may each designate the Pacific States Marine Fisheries Commission to administer its permit authority under this subsection. Any other eligible entity may designate the Columbia River Inter-Tribal Fish Commission to administer its permit authority under this subsection.
“(6) NEPA.—Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) shall not apply with respect to this subsection and the issuance of any permit under this subsection during the 3-year period beginning on the date of the enactment of this Act.

“(7) TERMINATION OF PERMITTING AUTHORITY.—The Secretary may not issue any permit under this subsection after the earlier of—

“(A) the end of the 5-year period beginning on the date of the enactment of this subsection; or

“(B) the date the Secretary determines that lethal removal authority is no longer necessary to protect salmonid stocks from California sea lion predation.

“(8) ELIGIBLE ENTITY DEFINED.—In this subsection, the term ‘eligible entity’ means each of the State of Washington, the State of Oregon, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes and Bands of the Yakama Nation.”
(b) RECOMMENDED LEGISLATION.—Not later than two years after the date of the enactment of this Act, the Secretary of Commerce shall submit to the Congress a report on the need for additional legislation to amend the Marine Mammal Protection Act of 1972 to address the general issue of predation by marine mammals on fish species listed as threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 4. SENSE OF CONGRESS.

It is the sense of the Congress that—

(1) nonlethal means of preventing predation of listed salmonid stocks in the Columbia River by California sea lions is preferable to lethal means;

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

(3) the Federal Government should continue to fund, research, and support effective nonlethal alternative measures for preventing such predation.