

115TH CONGRESS  
1ST SESSION

# S. 1702

To amend the Marine Mammal Protection Act of 1972 to reduce predation by sea lions on endangered Columbia River salmon and other species not listed under the Endangered Species Act of 1973, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2017

Mr. RISCH introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To amend the Marine Mammal Protection Act of 1972 to reduce predation by sea lions on endangered Columbia River salmon and other species not listed under the Endangered Species Act of 1973, 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 Congress finds the following:

1           (1) There are 13 groups of salmon and  
2 steelhead that are listed as threatened species or en-  
3 dangered species under the Endangered Species Act  
4 of 1973 (16 U.S.C. 1531 et seq.) that migrate  
5 through the lower Columbia River. All lower Colum-  
6 bia River tributaries contain listed species, including  
7 Chinook, Chum, and Coho salmon and winter-run  
8 steelhead.

9           (2) The people of the Northwest of the United  
10 States are united in their desire to restore healthy  
11 salmon and steelhead runs because the fish are inte-  
12 gral to the culture and economy of the region.

13           (3) The Columbia River Treaty tribes retain  
14 important rights with respect to salmon and steel-  
15 head.

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

20           (5) One of the factors that negatively impacts  
21 salmonid populations is increased predation by ma-  
22 rine mammals, including California sea lions.

23           (6) As of June 2017, the population of Cali-  
24 fornia sea lions has increased 10-fold during the last  
25 30 years, and is approximately 300,000 animals.

1           (7) Biologists estimate that in recent years,  
2           during the peak spring salmonid run, as many as  
3           3,000 California sea lions have been foraging in the  
4           lower 145 miles of the Columbia River to the Bonne-  
5           ville Dam.

6           (8) Historically, California sea lions, the habitat  
7           of which is fundamentally salt water, did not venture  
8           very far up into the Columbia River.

9           (9) The percentage of the spring salmonid run  
10          that has been eaten or killed by California sea lions  
11          at the Bonneville Dam has increased 7-fold since  
12          2002.

13          (10) The Columbia River spring chinook and  
14          the Willamette River steelhead are salmonid species  
15          that are listed under the Endangered Species Act of  
16          1973 (16 U.S.C. 1531 et seq.) as an endangered  
17          species and a threatened species, respectively.

18          (11) Federal, State and tribal estimates indi-  
19          cate that sea lions are consuming at least 20 percent  
20          of the Columbia River spring chinook run and 15  
21          percent of Willamette River steelhead run.

22          (12) In recent years, California sea lions have  
23          congregated with greater frequency near Willamette  
24          Falls and the Bonneville Dam on the Columbia  
25          River and have entered the fish ladders that salmon

1 use to return to the historical and biological spawn-  
2 ing grounds of the salmon.

3 (13) These California sea lions have not been  
4 responsive to extensive hazing methods used to dis-  
5 courage predation.

6 (14) The process established under the Marine  
7 Mammal Protection Act Amendments of 1994 (Pub-  
8 lic Law 103–238; 108 Stat. 532) to address preda-  
9 tory sea lion behavior that negatively impacts threat-  
10 ened or endangered salmon runs is protracted and  
11 has not been successful.

12 (15) The National Oceanic and Atmospheric  
13 Administration has observed that—

14 (A) management efforts to reduce pinniped  
15 predation of endangered and threatened salmon  
16 and steelhead in the area around the Bonneville  
17 Dam has been insufficient to reduce the sever-  
18 ity of the threat; and

19 (B) efforts need to focus more on the lower  
20 Columbia River and the area around Willamette  
21 Falls.

22 (16) In the interest of protecting threatened  
23 and endangered salmonids in the Columbia River, a  
24 temporary expedited procedure is urgently needed to  
25 allow removal of the minimum number of California

1        sea lions as is necessary to protect the passage of  
 2        the threatened and endangered salmonids in the Co-  
 3        lumbia River and its tributaries.

4    **SEC. 3. SENSE OF CONGRESS.**

5        It is the sense of Congress that—

6            (1) the prevention of predation by sea lions on  
 7        salmonids in the Columbia River, the recovery of  
 8        salmonid species listed as threatened species or en-  
 9        dangered species under the Endangered Species Act  
 10       of 1973 (16 U.S.C. 1531 et seq.), and the preven-  
 11       tion of future listings of fish species in the Columbia  
 12       River under that Act are vital priorities; and

13           (2) the Federal Government should continue to  
 14       fund lethal and nonlethal removal measures to pre-  
 15       vent such predation.

16    **SEC. 4. TAKING OF SEA LIONS ON THE COLUMBIA RIVER**  
 17                            **AND ITS TRIBUTARIES TO PROTECT ENDAN-**  
 18                            **GERED SPECIES AND THREATENED SPECIES**  
 19                            **OF SALMON AND OTHER NONLISTED FISH**  
 20                            **SPECIES.**

21        Section 120(f) of the Marine Mammal Protection Act  
 22       of 1972 (16 U.S.C. 1389(f)) is amended to read as fol-  
 23       lows:

1       “(f) TEMPORARY MARINE MAMMAL REMOVAL AU-  
 2 THORITY ON THE COLUMBIA RIVER AND ITS TRIBU-  
 3 TARIES.—

4           “(1) DEFINITIONS.—In this subsection:

5               “(A) ELIGIBLE ENTITY.—The term ‘eligi-  
 6 ble entity’ means—

7                   “(i) the State of Washington;

8                   “(ii) the State of Oregon;

9                   “(iii) the State of Idaho;

10                  “(iv) the Nez Perce Tribe;

11                  “(v) the Confederated Tribes of the  
 12 Umatilla Indian Reservation;

13                  “(vi) the Confederated Tribes of the  
 14 Warm Springs Reservation of Oregon;

15                  “(vii) the Confederated Tribes and  
 16 Bands of the Yakama Nation;

17                  “(viii) the Columbia River Inter-Trib-  
 18 al Fish Commission; and

19                  “(ix) the Cowlitz Indian Tribe.

20               “(B) INDIVIDUALLY IDENTIFIABLE.—With  
 21 respect to a pinniped, the term ‘individually  
 22 identifiable’ means any pinniped located—

23                   “(i) upstream of river mile 112 of the  
 24 Columbia River; or

1 “(ii) in any tributary that contains  
2 spawning habitat of threatened or endan-  
3 gered salmon or steelhead.

4 “(2) REMOVAL AUTHORITY.—Notwithstanding  
5 any other provision of this Act, the Secretary may  
6 issue a permit to an eligible entity to authorize the  
7 intentional lethal taking of individually identifiable  
8 sea lions that are part of a population that is not  
9 depleted, on the Columbia River and its tributaries  
10 for the purpose of protecting species of salmon that  
11 are listed as endangered species or threatened spe-  
12 cies under the Endangered Species Act of 1973 (16  
13 U.S.C. 1531 et seq.) and other fish species that are  
14 not listed as threatened species or endangered spe-  
15 cies under that Act.

16 “(3) PERMIT PROCESS.—

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

20 “(B) DEADLINE FOR CONSIDERATION OF  
21 APPLICATION.—Not later than 30 days after  
22 the Secretary receives an application for a per-  
23 mit under subparagraph (A), the Secretary  
24 shall approve or deny the application for a per-  
25 mit under this subsection.

1           “(C) DURATION OF PERMIT.—A permit  
2           issued under this subsection—

3                   “(i) shall be effective for not more  
4                   than 1 year after the date on which the  
5                   permit is issued; and

6                   “(ii) may be renewed by the Sec-  
7                   retary.

8           “(4) LIMITATIONS.—

9                   “(A) LIMITATION ON PERMIT AUTHOR-  
10                  ITY.—Subject to subparagraph (B), a permit  
11                  issued under this subsection shall not authorize  
12                  the lethal taking of more than 100 sea lions  
13                  during the permit period.

14                  “(B) LIMITATION ON ANNUAL TAKINGS.—  
15                  The cumulative number of sea lions authorized  
16                  to be taken each calendar year under all per-  
17                  mits in effect under this subsection shall not ex-  
18                  ceed 10 percent of the annual potential biologi-  
19                  cal removal level.

20           “(5) TRAINING IN NATURAL RESOURCES MAN-  
21           AGEMENT.—Each permit holder that exercises lethal  
22           removal authority pursuant to this subsection shall  
23           be trained in natural resource management.

24           “(6) DELEGATION OF PERMIT AUTHORITY.—An  
25           eligible entity may delegate to any other eligible enti-

1       ty the authority to administer a permit under this  
2       subsection.

3           “(7) NEPA.—Section 102(2)(C) of the Na-  
4       tional Environmental Policy Act of 1969 (42 U.S.C.  
5       4332(2)(C)) shall not apply with respect to this sub-  
6       section and the issuance of any permit under this  
7       subsection during the 5-year period beginning on the  
8       date of the enactment of the Endangered Salmon  
9       and Fisheries Predation Prevention Act.

10          “(8) SUSPENSION OF PERMITTING AUTHOR-  
11       ITY.—The Secretary may suspend the issuance of  
12       permits under this subsection if, within 5 years after  
13       the date of the enactment of the Endangered Salm-  
14       on and Fisheries Predation Prevention Act, after  
15       consultation with State and tribal fishery managers,  
16       the Secretary determines that lethal removal author-  
17       ity is no longer necessary to protect salmonid and  
18       other fish species from sea lion predation.”.

19   **SEC. 5. TREATY RIGHTS OF INDIAN TRIBES.**

20       Nothing in this Act or the amendment made by this  
21   Act affects or modifies any treaty or any other right of  
22   any Indian tribe (as defined in section 4 of the Indian  
23   Self-Determination and Education Assistance Act (25  
24   U.S.C. 5304)).

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