

Calendar No. 702

115TH CONGRESS
2D SESSION

S. 3119

[Report No. 115–400]

To allow for the taking of sea lions on the Columbia River and its tributaries to protect endangered and threatened species of salmon and other non-listed fish species.

IN THE SENATE OF THE UNITED STATES

JUNE 21, 2018

Mr. RISCH (for himself and Ms. CANTWELL) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

NOVEMBER 29, 2018

Reported by Mr. THUNE, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To allow for the taking of sea lions on the Columbia River and its tributaries to protect endangered and threatened species of salmon and other nonlisted fish species.

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

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. SENSE OF CONGRESS.**

5 It is the sense of the Congress that—

6 (1) preventing predation by sea lions, recovery
7 of listed salmonid stocks, and preventing future list-
8 ings of fish stocks in the Columbia River under the
9 Endangered Species Act of 1973 (16 U.S.C. 1531 et
10 seq.) is a vital priority; and

11 (2) the Federal Government should continue to
12 fund lethal and nonlethal removal, and deterrence,
13 measures for preventing such predation.

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

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

21 “(f) TEMPORARY MARINE MAMMAL REMOVAL AU-
22 THORITY ON THE WATERS OF THE COLUMBIA RIVER OR
23 ITS TRIBUTARIES.—

24 “(1) REMOVAL AUTHORITY.—Notwithstanding
25 any other provision of this Act, the Secretary may
26 issue a permit to an eligible entity to authorize the

1 intentional lethal taking on the waters of the Colum-
 2 bia River and its tributaries of individually identifi-
 3 able sea lions that are part of a population or stock
 4 that is not categorized under this Act as depleted or
 5 strategic for the purpose of protecting—

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

11 “(B) species of lamprey or sturgeon that
 12 are not so listed as endangered or threatened
 13 but are listed as a species of concern.

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) TIMELINES AND PROCEDURES OF AP-
 19 PPLICATION.—The timelines and procedures de-
 20 scribed in subsection (c) shall apply to applica-
 21 tions for permits under this subsection in the
 22 same manner such timelines apply to applica-
 23 tions under subsection (b).

24 “(C) COORDINATION.—The Secretary shall
 25 establish procedures to coordinate issuance of

permits under this subsection, including application procedures and timelines, issuance to eligible entities, geographic and species-specific considerations, 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.

“(E) COORDINATION WITH OTHER TRIBES.—To the extent practicable, and prior to issuing a permit under this section, the Secretary shall consult with all Indian tribes with legal or historic interests in the protection of salmonid species in the area of the Columbia River and its tributaries described in paragraph (8).

“(3) LIMITATIONS ON ANNUAL TAKINGS.—The Secretary shall apply the process for determining limitations on annual take of sea lions under subsection (c) to determinations on limitations under this subsection, and the cumulative number of sea lions 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 sea lions.

1 ~~“(4) QUALIFIED INDIVIDUALS.—Intentional le-~~
 2 ~~thal takings under this subsection shall be humane~~
 3 ~~within the meaning of such term under section 3(4),~~
 4 ~~and shall be implemented by agencies or qualified in-~~
 5 ~~dividuals described in subsection (c)(4), or by indi-~~
 6 ~~viduals employed by the eligible entities described in~~
 7 ~~subsection (6).~~

8 ~~“(5) SUSPENSION OF PERMITTING AUTHOR-~~
 9 ~~ITY.—If, 5 years after the date of the enactment of~~
 10 ~~the Endangered Salmon Predation Prevention Act,~~
 11 ~~the Secretary, after consulting with State and tribal~~
 12 ~~fishery managers, determines that lethal removal au-~~
 13 ~~thority is no longer necessary to protect salmonid~~
 14 ~~and other fish species from sea lion predation, the~~
 15 ~~Secretary shall suspend the issuance of permits~~
 16 ~~under this subsection.~~

17 ~~“(6) ELIGIBLE ENTITY DEFINED.—~~

18 ~~“(A) IN GENERAL.—~~

19 ~~“(i) DEFINITION.—In this subsection,~~
 20 ~~the term ‘eligible entity’ means—~~

21 ~~“(I) with respect to removal in~~
 22 ~~the mainstem of the Columbia River~~
 23 ~~and its tributaries, the State of Wash-~~
 24 ~~ington, the State of Oregon, and the~~
 25 ~~State of Idaho; and~~

1 “(H) with respect to removal in
 2 the mainstem Columbia River and its
 3 tributaries, the Nez Perce Tribe, the
 4 Confederated Tribes of the Umatilla
 5 Indian Reservation, the Confederated
 6 Tribes of the Warm Springs Reserva-
 7 tion of Oregon, the Confederated
 8 Tribes and Bands of the Yakama Na-
 9 tion, and the Columbia River Inter-
 10 tribal Fish Commission.

11 “(ii) DELEGATION AUTHORITY.—The
 12 Secretary may allow an eligible entity de-
 13 scribed in clause (i)(I) to delegate its au-
 14 thority under a permit under this sub-
 15 section to any entity described in clause
 16 (i)(II).

17 “(B) ADDITIONAL ELIGIBILITY.—

18 “(i) IN GENERAL.—Subject to the ap-
 19 proval of the Secretary, the Indian tribes
 20 described in subclauses (I) and (II) of
 21 clause (ii) may remove sea lions pursuant
 22 to a memorandum of understanding de-
 23 scribed in clause (ii).

1 “(ii) MEMORANDA OF UNDER-
 2 STANDING.—A memorandum of under-
 3 standing described in this clause is—

4 “(I) between the State of Wash-
 5 ington and the Cowlitz Indian Tribe
 6 for deterrence and removal of sea
 7 lions on the Cowlitz River; or

8 “(II) between the State of Or-
 9 egon and the Confederated Tribes of
 10 the Grand Ronde Community of Or-
 11 egon or the Confederated Tribes of
 12 Siletz Indians of Oregon for deter-
 13 rence and removal of sea lions on the
 14 Willamette River.

15 “(iii) CONSIDERATIONS.—In deter-
 16 mining whether to approve a memorandum
 17 of understanding under clause (i), the Sec-
 18 retary shall consider each affected Indian
 19 tribe’s wildlife management capacity to
 20 meet the requirements of this Act.

21 “(7) INDIVIDUAL EXCEPTION.—For purposes of
 22 this section, any sea lion located upstream of river
 23 mile 112, or in any tributary to the Columbia River
 24 that includes spawning habitat of threatened or en-

1 dangered salmon or steelhead is deemed to be indi-
2 vidually identifiable.

3 ~~“(8) SIGNIFICANT NEGATIVE IMPACT EXCEP-~~
4 ~~TION.—~~For purposes of this section, any sea lion lo-
5 cated in the mainstem of the Columbia River up-
6 stream of river mile 112, or in any tributary to the
7 Columbia River that includes spawning habitat of
8 threatened or endangered salmon or steelhead is
9 deemed to be having a significant negative impact,
10 within the meaning of subsection (b)(1).

11 ~~“(9) DEFINITION.—~~In this subsection, the term
12 ‘Indian tribe’ has the meaning given such term in
13 section 4 of the Indian Self-Determination and Edu-
14 cation Assistance Act (25 U.S.C. 5304).”.

15 **SEC. 4. TREATY RIGHTS OF FEDERALLY RECOGNIZED IN-**
16 **DIAN TRIBES.**

17 Nothing in this Act or the amendments made by this
18 Act shall be construed to affect or modify any treaty or
19 other right of an Indian tribe (as defined in section 4 of
20 the Indian Self-Determination and Education Assistance
21 Act (25 U.S.C. 5304)).

22 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. SENSE OF CONGRESS.**

2 *It is the sense of the Congress that—*

3 *(1) preventing predation by sea lions, recovery of*
 4 *listed salmonid stocks, and preventing future listings*
 5 *of fish stocks in the Columbia River under the En-*
 6 *dangered Species Act of 1973 (16 U.S.C. 1531 et seq.)*
 7 *is a vital priority; and*

8 *(2) the Federal Government should continue to*
 9 *fund lethal and nonlethal removal, and deterrence,*
 10 *measures for preventing such predation.*

11 **SEC. 3. TAKING OF SEA LIONS ON THE COLUMBIA RIVER**
 12 **AND ITS TRIBUTARIES TO PROTECT ENDAN-**
 13 **GERED AND THREATENED SPECIES OF SALM-**
 14 **ON AND OTHER NONLISTED FISH SPECIES.**

15 *Section 120(f) of the Marine Mammal Protection Act*
 16 *of 1972 (16 U.S.C. 1389(f)) is amended to read as follows:*

17 *“(f) TEMPORARY MARINE MAMMAL REMOVAL AU-*
 18 *THORITY ON THE WATERS OF THE COLUMBIA RIVER OR*
 19 *ITS TRIBUTARIES.—*

20 *“(1) REMOVAL AUTHORITY.—Notwithstanding*
 21 *any other provision of this Act, the Secretary may*
 22 *issue a permit to an eligible entity to authorize the*
 23 *intentional lethal taking on the waters of the Colum-*
 24 *bia River and its tributaries of individually identifi-*
 25 *able sea lions that are part of a population or stock*

1 *that is not categorized under this Act as depleted or*
 2 *strategic for the purpose of protecting—*

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

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

10 “(2) *PERMIT PROCESS.—*

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

14 “(B) *TIMELINES AND PROCEDURES OF AP-*
 15 *PLICATION.—The timelines and procedures de-*
 16 *scribed in subsection (c) shall apply to applica-*
 17 *tions for permits under this subsection in the*
 18 *same manner such timelines apply to applica-*
 19 *tions under subsection (b).*

20 “(C) *COORDINATION.—The Secretary shall*
 21 *establish procedures to coordinate issuance of*
 22 *permits under this subsection, including applica-*
 23 *tion procedures and timelines, delegation and*
 24 *revocation of permits to and between eligible en-*
 25 *tities, monitoring, periodic review, and geo-*

1 *graphic, seasonal take, and species-specific con-*
 2 *siderations.*

3 “(D) *DURATION OF PERMIT.*—A permit
 4 *under this subsection shall be effective for a pe-*
 5 *riod of not more than 5 years, and may be re-*
 6 *newed by the Secretary.*

7 “(E) *COORDINATION WITH OTHER*
 8 *TRIBES.*—To the extent practicable, and prior to
 9 *issuing a permit under this section, the Sec-*
 10 *retary shall consult with all Indian tribes with*
 11 *legal or historic interests in the protection of*
 12 *salmonid species in the area of the Columbia*
 13 *River and its tributaries described in paragraph*
 14 *(8).*

15 “(3) *LIMITATIONS ON ANNUAL TAKINGS.*—The
 16 *Secretary shall apply the process for determining lim-*
 17 *itations on annual take of sea lions under subsection*
 18 *(c) to determinations on limitations under this sub-*
 19 *section, and the cumulative number of sea lions au-*
 20 *thorized to be taken each year under all permits in*
 21 *effect under this subsection shall not exceed 10 percent*
 22 *of the annual potential biological removal level for sea*
 23 *lions.*

24 “(4) *QUALIFIED INDIVIDUALS.*—Intentional le-
 25 *thal takings under this subsection shall—*

1 “(A) be humane within the meaning of such
2 term under section 3(4);

3 “(B) require that capture, husbandry,
4 transportation, and euthanasia protocols are
5 based on standards propagated by an Institu-
6 tional Animal Care and Use Committee and that
7 primary euthanasia be limited to humane chem-
8 ical methods; and

9 “(C) be implemented by agencies or quali-
10 fied individuals described in subsection (c)(4), or
11 by individuals employed by the eligible entities
12 described in paragraph (6).

13 “(5) *SUSPENSION OF PERMITTING AUTHORITY.*—
14 If, 5 years after the date of the enactment of the En-
15 dangered Salmon Predation Prevention Act, the Sec-
16 retary, after consulting with State and tribal fishery
17 managers, determines that lethal removal authority is
18 no longer necessary to protect salmonid and other fish
19 species from sea lion predation, the Secretary shall
20 suspend the issuance of permits under this subsection.

21 “(6) *ELIGIBLE ENTITY DEFINED.*—

22 “(A) *DEFINITION.*—In this subsection, the
23 term ‘eligible entity’ means—

24 “(i) with respect to removal in the
25 mainstem of the Columbia River and its

1 *tributaries, the State of Washington, the*
 2 *State of Oregon, and the State of Idaho;*

3 “(ii) *with respect to removal in the*
 4 *mainstem Columbia River and its tribu-*
 5 *taries, the Nez Perce Tribe, the Confederated*
 6 *Tribes of the Umatilla Indian Reservation,*
 7 *the Confederated Tribes of the Warm*
 8 *Springs Reservation of Oregon, and the*
 9 *Confederated Tribes and Bands of the*
 10 *Yakama Nation; and*

11 “(iii) *with respect to removal in the*
 12 *mainstem Columbia River and its tribu-*
 13 *taries, the Columbia River Intertribal Fish*
 14 *Commission.*

15 “(B) *DELEGATION AUTHORITY.—The Sec-*
 16 *retary may allow an eligible entity described in*
 17 *clause (i) to delegate its authority under a per-*
 18 *mit under this subsection to any entity described*
 19 *in subclause (ii) or (iii).*

20 “(7) *INDIVIDUAL EXCEPTION.—For purposes of*
 21 *this subsection, any sea lion located upstream of river*
 22 *mile 112, or in any tributary to the Columbia River*
 23 *that includes spawning habitat of threatened or en-*
 24 *dangered salmon or steelhead is deemed to be individ-*
 25 *ually identifiable.*

1 “(8) *SIGNIFICANT NEGATIVE IMPACT EXCEP-*
 2 *TION.—For purposes of this subsection, any sea lion*
 3 *located in the mainstem of the Columbia River up-*
 4 *stream of river mile 112, or in any tributary to the*
 5 *Columbia River that includes spawning habitat of*
 6 *threatened or endangered salmon or steelhead is*
 7 *deemed to be having a significant negative impact,*
 8 *within the meaning of subsection (b)(1).*

9 “(9) *DEFINITION.—In this subsection, the term*
 10 *‘Indian tribe’ has the meaning given such term in*
 11 *section 4 of the Indian Self-Determination and Edu-*
 12 *cation Assistance Act (25 U.S.C. 5304).’.*

13 **SEC. 4. TREATY RIGHTS OF FEDERALLY RECOGNIZED IN-**
 14 **DIAN TRIBES.**

15 *Nothing in this Act or the amendments made by this*
 16 *Act shall be construed to affect or modify any treaty or*
 17 *other right of an Indian tribe (as defined in section 4 of*
 18 *the Indian Self-Determination and Education Assistance*
 19 *Act (25 U.S.C. 5304)).*

20 **SEC. 5. REPORT.**

21 *Not later than 3 years after the date of the enactment*
 22 *of this Act, the Secretary of Commerce shall study and re-*
 23 *port to Congress on the effects of deterrence and the lethal*
 24 *taking of sea lions on the recovery of endangered and threat-*
 25 *ened salmon and steelhead stocks in the waters of the Co-*

- 1 *lumbia River and the tributaries of the Columbia River*
- 2 *subject to section 120(f) of the Marine Mammal Protection*
- 3 *Act of 1972 (16 U.S.C. 1389(f)), as amended by this Act.*

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115TH CONGRESS
2^D Session

S. 3119

[Report No. 115-400]

A BILL

To allow for the taking of sea lions on the Columbia River and its tributaries to protect endangered and threatened species of salmon and other nonlisted fish species.

NOVEMBER 29, 2018

Reported with an amendment