
Environment & Energy Committee

HB 1824

Brief Description: Addressing the impacts of pinnipeds on populations of threatened southern resident orca prey.

Sponsors: Representatives Young, Kloba, MacEwen, Vick, Irwin, Chambers, Lovick, Tarleton, Doglio and Springer.

Brief Summary of Bill

- Directs the Department of Fish and Wildlife (WDFW) to propose an action to file for a permit under the federal Marine Mammal Protection Act for the maximum lethal take of sea lions.
- Exempts the WDFW's permit filing from environmental review requirements under the State Environmental Policy Act.

Hearing Date: 2/14/19

Staff: Jacob Lipson (786-7196).

Background:

Marine Mammal Management.

Since 1972, the federal Marine Mammal Protection Act (MMPA) has prohibited, with certain exceptions, the taking of marine mammals in United States waters and by United States citizens on the high seas, and the importation of marine mammals and marine mammal products into the United States. Marine mammals covered by the MMPA include seals, sea lions, and southern resident killer whales. Three federal agencies share responsibility for implementing the MMPA, including the National Oceanic and Atmospheric Administration (NOAA) Fisheries, which is responsible for the protection of whales, seals, and sea lions, among other marine mammals. Permits and exemptions are given for incidental takes, scientific research, and for first-time import or capture of wild marine animals for public display.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under the MMPA, a state may apply to NOAA Fisheries for the lethal taking of individually identifiable sea lions and seals (pinnipeds) that are having a negative impact on salmonid fishery stocks which are listed under the federal Endangered Species Act (ESA), are approaching federal ESA threatened or endangered status, or that migrate through the Ballard Locks in Seattle. An application must include a description of the problem interaction, expected benefits of the taking, and the means by which the state will identify individual pinnipeds for removal. NOAA fisheries may not approve removal of pinnipeds from species or stock that are listed as threatened or endangered under the ESA, depleted, or identified as a strategic stock.

If NOAA Fisheries determines that there is sufficient evidence for the application to move forward, the secretary must establish a Pinniped-Fishery Interaction Task Force (task force). The task force must analyze and recommend whether to approve or deny the application, suggest nonlethal alternatives if applicable and a recommended course of action, and (if the application is approved) evaluate the effectiveness of the permitted lethal taking or alternative actions taken. Since 2008, Washington, Oregon, and California have received federal approval to remove California Sea Lions in the vicinity of the Bonneville Dam on the Columbia River under this authority. This permit allows for a 1 percent potential biological removal level (PBR), which under the MMPA is the maximum number of animals that may be removed from a marine mammal stock while still allowing the stock to reach optimum sustainable population, and does not include natural mortalities.

In December 2018 the United States Congress amended the MMPA to create a separate process to authorize legal takings of individually identifiable sea lions in the Columbia River and its tributaries; however the same timelines and application procedure apply as from the pre-2018 MMPA pinniped take process. This new take authority under the MMPA:

- may address any sea lion, rather than just California Sea Lions. The lethal taking of other pinnipeds, such as seals, is not changed;
- expands the area in which sea lion take is permitted to locations in the main stem of the Columbia River upstream of river mile 112 and downstream of McNary Dam, or in any tributary with spawning habitat of endangered salmon or steelhead;
- makes the Nez Perce, Umatilla, Warm Springs, and Yakama Indian Tribes and the states of Washington, Oregon, and Idaho eligible to apply for take authorization; and
- establishes a maximum take is 10 percent of the PBR.

State Environmental Policy Act.

The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or the adoption of land use plans. The SEPA environmental review process involves a project proponent or the lead agency completing an environmental checklist to identify and evaluate probable environmental impacts. If an initial review of the checklist and supporting documents results in a determination that the government decision has a probable significant adverse environmental impact (threshold determination), the proposal must undergo a more comprehensive environmental analysis in the form of an environmental impact statement (EIS).

Under SEPA, a government agency is designated as the lead agency, and in that role is assigned responsibility for complying with SEPA's procedural requirements, including making a threshold determination and preparing the EIS when one is required.

Summary of Bill:

The Washington Department of Fish and Wildlife (WDFW) must propose an action to file for a permit for the maximum lethal take of sea lions allowed under the federal Marine Mammal Protection Act (MMPA). In proposing the action, the WDFW must solicit input from affected parties, including federally recognized Indian Tribes with reservations in counties that border Puget Sound, the outer coast, and the Columbia River, commercial and recreational fishers, and conservation organizations.

The filing of an MMPA take permit for sea lions by the WDFW is exempt from the provisions of State Environmental Policy Act (SEPA), and is specifically not subject to requirements under SEPA that mandate the completion of an Environmental Impact Statement.

Appropriation: None.

Fiscal Note: Requested on February 5, 2019.

Effective Date: The bill contains an emergency clause and takes effect immediately.