



## **APPEAL FILED IN NINTH CIRCUIT ON LETHAL SEA LION REMOVAL IN LOWER COLUMBIA; BRIEFING SCHEDULE SET**

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A notice of appeal filed Tuesday aims to start once again legal arguments over Northwest states' right to remove California sea lions that prey on salmon and steelhead that head up the Columbia River each spring.

The appeal to the U.S. Court of Appeals for the Ninth Circuit would challenge a recent U.S. District Court order and opinion that upheld a federal government decision granting Idaho, Oregon and Washington lethal removal authority through the spring 2016 season. The removal program targets specific sea lions that are known to prey on protected salmon in the waters below the lower Columbia's Bonneville Dam.

The notice was filed by attorneys for the Humane Society of the United States, Wild Fish Conservancy, Bethanie O'Driscoll and Andrea Kozil, plaintiffs in the lawsuit who hope to have the decision rescinded.

"We still maintain that this is a needless program," according to the HSUS' Sharon Young.

The animal rights group has said in the past that NOAA Fisheries in granting the authority has misinterpreted provisions of the Marine Mammal Protection Act. It allows in certain cases removals of marine mammals that are having a "significant" impact on fish stocks protected under the Endangered Species Act.

The HSUS has held that the sea lion impacts are insignificant in comparison to other sources of salmon mortality, such as through federally approved harvests.

The Idaho, Oregon and Washington fish and game agencies say that the predation on salmon sets back expensive salmon recovery efforts by the states, Columbia basin tribes, federal agencies and others and that the California sea lions' lethal removal will do no harm to the health of that species' growing population.

The Ninth Circuit responded Wednesday by setting a briefing schedule. The Humane Society of the United States and Wild Fish Conservancy are now scheduled to file an opening brief in the appeal by June 20. The federal defendants and states are then scheduled by file answering briefs by July 22 with an appellant's optional reply brief is due 14 days after service of the answering brief. Oral arguments potentially could be scheduled. An appellate decision would end the process.

"I think we might try to get it expedited," Young said of Ninth Circuit consideration of the issue. The California sea lions have in recent years dipped into the Columbia in the early spring and left the river system by the end of May. Goodly numbers of the male marine mammals have made it up 146 miles of river to Bonneville and taken advantage of meandering fish in search of a passage route.

The briefing schedule as it now exists would not be completed until long after the 2013 trapping

season, when the states plan to trap and remove repeat offenders.

That battle is the most recent in a legal war that has been waged since early in 2008. NOAA Fisheries in March 26 first issued a decision authorizing removals. It was based on a 2006 application from the states and a consideration of the issues by an assembled panel of experts.

That initial authorization was immediately challenged in U.S. District Court, which upheld NOAA Fisheries' decision. That court opinion, however, was appealed by HSUS, and the authorization was vacated by the Ninth Circuit in November 2010.

Another application was submitted, and a second authorization was issued in May 2011. Later that month HSUS filed suit again.

The authorization was then withdrawn but then reissued in March 2012.

Yet another lawsuit was filed. It ended in dismissal Feb. 15 by order of U.S. District Court Judge Michael H. Simon. He said "..., the Court concludes that NMFS did not act arbitrarily or capriciously when it issued the lethal removal authorizations to the States."

Most of the legal arguments last year focused on whether or not NOAA addressed the Ninth's concerns properly in its 2012 authorization.

Simon's order said NOAA Fisheries had indeed addressed issues of concern expressed in the earlier Ninth Circuit's opinion.

(See CBB, Feb. 22, 2013, "Judge Upholds Lethal Sea Lion Removal, Says 'Significant Negative Impact' Can Be Less Than 'Jeopardy'" <http://www.cbbulletin.com/425156.aspx>)

A total of 12 California sea lions were removed during April and May 2012. Eleven were euthanized via lethal injection and one was shipped to a Midwest aquarium. Another California sea lion designated for removal was captured later in the season near the river mouth at Astoria.

Because of the litigation the program has been on-again-off-again since the states first received removal authority. A total of 40 California sea lions were removed in 2008-2010 with 10 going to zoos aquariums and the rest being euthanized.

