

# HOUSE BILL REPORT

## SSB 5666

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*As Reported By House Committee on:  
Fisheries & Wildlife*

**Title:** An act relating to protecting salmon and steelhead.

**Brief Description:** Protecting salmon and steelhead resources from nonendangered marine mammals.

**Sponsor(s):** Senate Committee on Environment & Natural Resources (originally sponsored by Senators Rasmussen, Metcalf, Snyder, Hansen, Patterson, Bauer, von Reichbauer, Barr and Thorsness).

**Brief History:**

Reported by House Committee on:  
Fisheries & Wildlife, February 20, 1992, DPA.

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**HOUSE COMMITTEE ON  
FISHERIES & WILDLIFE**

**Majority Report:** *Do pass as amended.* Signed by 11 members: Representatives R. King, Chair; Morris, Vice Chair; Wilson, Ranking Minority Member; Fuhrman, Assistant Ranking Minority Member; Basich; G. Cole; Haugen; Hochstatter; Orr; Padden; and Spanel.

**Staff:** Keitlyn Watson (786-7310).

**Background:**

Marine mammals in Washington include seals, sea lions, whales, dolphins, porpoises, and otters. Other marine mammals, not occurring in Washington, are manatees, walruses, and polar bears. Marine mammals that are increasing in Washington and that interact with Washington's sport and commercial fisheries include the Pacific harbor seal and the California sea lion. Seals and sea lions prey upon both salmon and steelhead, which are managed, respectively, by the departments of Fisheries and Wildlife.

Current Federal Law - The Marine Mammal Protection Act

Marine mammals are protected under the federal Marine Mammal Protection Act (MMPA) of 1972. Any actions taken involving these animals must be covered under a federal permit or have specific authorization in the act. The National Marine

Fisheries Service (NMFS) under the U.S. Department of Commerce, administers whales, dolphins, porpoises, sea lions and seals. The U.S. Fish and Wildlife Service under the Department of the Interior, administers all other marine mammals. No state may enforce any state law or regulation relating to the taking of any species of marine mammal within the state unless the federal government has transferred authority to the state for the conservation and management of that species.

Under current federal law, populations of marine mammals may not be reduced unless the population is at its "optimum sustainable population" level, which is the number at which the population achieves maximum productivity.

Exemptions exist to the moratorium on taking marine mammals through a permit process for scientific research, public display, and taking incidental to commercial fishing. The MMPA also allows federal, state, or local government entities to take a marine mammal if such a taking is for:

- (1) the protection or welfare of the mammal;
- (2) the protection of the public health and welfare; or
- (3) the non-lethal removal of nuisance animals.

"Herschel": California Sea Lions versus Steelhead at Ballard Locks

The recent case of sea lion/steelhead trout interaction at Ballard locks involves predation on wild runs of steelhead trout by the California sea lion which is not native to Washington. The area is located in the Lake Washington ship canal from Lake Washington to the seaward side of the Hiram M. Chittenden or "Ballard" locks facility out into Shilshole Bay. The majority of the area of predation is downstream of the locks.

The winter run of steelhead returning to the Lake Washington system is composed of wild naturally reproducing fish and hatchery origin fish that are stocked in the system as smolts. Hatchery fish return from late November to early February, and wild fish return from early December through mid-May. The Department of Wildlife manages wild steelhead by establishing escapement goals that are sufficient to maintain a healthy self-perpetuating population. An escapement of 1,600 fish in the Lake Washington drainage will meet that objective. Sea lion predation has not allowed the escapement goal to be attained in the last few years. Continued shortfalls in spawning escapement could result in unrecoverable steelhead populations.

To date, non-lethal means have been used to attempt to control the sea lions. A sea lion harassment program was implemented in 1985-1986 by the Department of Wildlife. The National Marine Fisheries Service, the Washington Department of Wildlife (WDW), the Army Corps of Engineers-Seattle District (ACE), and the Muckleshoot and Suquamish Indian Tribes have worked cooperatively for the past four years in an effort to protect this winter run of wild steelhead. Efforts included harassment using underwater firecrackers, chase boats and sonic repulsion devices, capture nets, taste aversion conditioning, experimental barrier nets, the trapping and relocation of sea lions to the outer coast of Washington, and, in 1990, the trapping and relocation of sea lions to their breeding grounds in California. None of these efforts has had long-term success.

***Summary of Amended Bill:***

The findings section describes the efforts by the departments of Fisheries and Wildlife to unsuccessfully control marine mammals that prey on steelhead and salmon.

The Department of Wildlife shall pursue all available options to gain authority from the National Marine Fisheries Service for taking of marine mammals that are preventing the achievement of escapement goals for identified anadromous fish runs, including salmon and steelhead. Taking includes harassing, hunting, capturing, or killing. The Department of Wildlife is to make every effort to control these marine mammals so that escapement goals for anadromous fish can be reached.

The Department of Fisheries is directed to support the Department of Wildlife in its efforts to gain authority to control these marine mammals.

***Amended Bill Compared to Substitute Bill:*** The amended bill removes the requirement that the Department of Fisheries pursue all available options to gain authority from the National Marine Fisheries Service to take marine mammals, and instead requires the Department of Fisheries to support the Department of Wildlife in its efforts to gain authority to take marine mammals. The amended bill replaces the requirement that the Department of Wildlife pursue all available options for lethal removal with a requirement that the department pursue all available options for taking, which includes harassment, hunting, capture, or killing. The amended bill constrains the required actions by the Department of Wildlife to situations in which escapement goals for anadromous fish are not being met due to marine mammal predation.

**Fiscal Note:** Requested February 20, 1992.

**Effective Date of Amended Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The Marine Mammal Protection Act overprotects marine mammals. The seals and sea lions are continuing to increase, and could extinguish fish runs. This is a relatively simple solution, compared to other activities such as dam removal. There should be a separation in marine mammal management between those that are endangered and those that are not endangered. Increasing numbers of marine mammals are upsetting the ecosystem.

**Testimony Against:** The bill would not give the Department of Wildlife the authority that it would need in order to kill marine mammals. The marine mammals are the scapegoat for mistakes that humans have made that have contributed to the decline of fish runs.

**Witnesses:** Senator Slim Rasmussen, prime sponsor (in favor); Senator Jack Metcalf (in favor); Steve Jeffries, Department of Wildlife (opposed); Bill Jones, Wildcat Steelhead Club (in favor); and Catherine Hall (opposed).