TESTIMONY OF ALEXANDRA PITTS, DEPUTY REGIONAL DIRECTOR, PACIFIC SOUTHWEST REGION, U.S. FISH AND WILDLIFE SERVICE DEPARTMENT OF THE INTERIOR ON H.R. 4043, THE MILITARY READINESS AND SOUTHERN SEA OTTER CONSERVATION ACT BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES SUBCOMMITTEE ON FISHERIES, WILDLIFE, OCEANS AND INSULAR AFFAIRS

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Good morning Chairman Fleming, Ranking Member Sablan and members of the Subcommittee. I am Alexandra Pitts, Deputy Regional Director of the Pacific Southwest Regional Office of the U.S. Fish and Wildlife Service (Service) within the Department of the Interior (Department).

Mr. Chairman, I appreciate the opportunity to be here today to discuss H.R. 4043, the Military Readiness and Southern Sea Otter Conservation Act. The Administration appreciates the partnership between the U.S. Navy and the Service to conserve the southern sea otter, with the Navy agreeing to allow sea otters to be translocated to San Nicolas Island and facilitating research and monitoring efforts for the sea otter colony there.

The Service and the Department of Defense have a long and successful track record of working cooperatively to accomplish our respective missions. The Service therefore appreciates the intent of the legislation to ensure flexibility in meeting both the Navy and the Service's joint responsibilities under the various natural resource laws without impacting the military's ability to train its personnel. We have long worked together to strike a balance between our legal responsibilities and the Armed Forces' duty to be both protectors of our National Security and stewards of our natural heritage. However, the Department has significant concerns regarding several provisions in H.R. 4043 and opposes the legislation as introduced. Specifically, we oppose Section 2283(g) pertaining to the development of the described "Ecosystem Management Plan." Our concerns with this and other provisions are described below.

We would like to work with the Committee, the Navy, the National Oceanic and Atmospheric Administration, and other stakeholders to develop statutory language that will meet both Navy's needs to protect military readiness and the need to improve sea otter recovery.

Background

Sea otters historically ranged along the North Pacific rim from the northern Japanese islands to mid-Baja California, Mexico. The California population, prior to exploitation, is thought to have numbered about 16,000 animals. During the 18th and 19th centuries, sea otters were hunted for their fur, and by the early 1900s, the species was so reduced in number and range that it was mistakenly believed to be extinct in California. From approximately 1850 on, sea otters were absent from most of their historic range in California.

Today's southern (California) sea otters descended from a small colony that survived along the Big Sur coast and became generally known to the public in 1938. The subspecies was listed as threatened in 1977 under the Endangered Species Act. Reduced range and population size, vulnerability to oil spills, and oil spill risk from coastal tanker traffic were the primary threats that led to the listing. As a consequence of its threatened status, the southern sea otter is also recognized as a depleted stock pursuant to the Marine Mammal Protection Act (MMPA). The population currently contains about 2,700 individuals and ranges from San Mateo County, California, in the north to Santa Barbara County, California, in the south. Approximately 50 sea otters exist at San Nicolas Island as a result of translocation efforts to establish an experimental population there.

While the southern sea otter population has increased since its rediscovery in 1938, the maximum growth rates seen in southern sea otters (5-6 percent per year) are much lower than those seen in other recovering sea otter populations (up to 17-20 percent per year). In recent years however, the population appears to have entered a period of decline. High mortality, rather than reduced reproduction, is believed to be responsible for slow overall growth and for periods of decline in the southern sea otter population, and a particular concern is the death of prime-age animals. Stressors that influence these mortality patterns include: food limitation (particularly in long-occupied areas at the center of the range), disease, harmful algal blooms, and injuries from shark attacks. The combinations of these stressors seem to increase their effects. For example, lower availability of food leads to poorer body condition and greater reliance on sub-optimal prey, and those circumstances increase the sea otter's exposure and susceptibility to disease. This susceptibility may be worsened by chronic exposure to contaminants or to toxins, such as the domoic acid that can be produced during harmful algal blooms. An additional concern is the impact that climate change may have on southern sea otters and the California coastal ecosystem. Full understanding of these stressors and how they contribute to mortality is critical to the development of effective management actions.

Recovery of the southern sea otter presents many challenges. The recovery strategy is outlined in the Final Revised Recovery Plan for the Southern Sea Otter, published by the Service in 2003. One high-priority action identified in the plan is to evaluate the southern sea otter translocation program and to determine whether one or more criteria have been met that would indicate that the program has failed. We are completing this evaluation now and have made a draft determination that this program has, in fact, failed.

The purpose of the translocation program was to help facilitate the recovery of the southern sea otter. The program sought to establish a second self-sustaining population of sea otters at San Nicolas Island in California (outside their then-existing range) that could produce sufficient numbers of sea otters to repopulate the mainland range in the event of catastrophic mortality. However, the translocation program has not achieved this primary recovery goal. The translocation of 140 sea otters to the island from 1987 to 1991 was characterized by very high rates of dispersal and resulted in a colony that numbered just 12 sea otters in 1993, shortly after the completion of translocation efforts. Currently, the colony contains approximately 50 sea otters. The initial high rate of dispersal of translocated sea otters from San Nicolas Island, many back to their original location of capture, is the primary reason for the small number of otters at the island. This high rate of dispersal of translocated sea otters suggests it is unlikely that the

colony could ever be large enough to supply the numbers of sea otters necessary to perform a successful translocation and re-establishment of populations in the mainland range if the parent population were reduced or eliminated by a catastrophic event.

Along with the draft translocation program failure determination, we have also published a proposed rule that would terminate the program upon finalizing the failure determination. Should the program be terminated, so too would end the translocation program's provisions related to a sea otter management zone. As originally envisioned, sea otters found within the management zone were to be removed using non-lethal means. However, the management zone has been difficult and expensive to enforce and has not promoted sea otter conservation. In fact, containment is not currently occurring because we have determined that it would likely jeopardize the continued existence of the southern sea otter.

Based in part on data gained from implementation of the translocation program, the recovery strategy has fundamentally changed. The revised recovery plan recommends against additional translocations and instead advocates allowing natural range expansion. The connection between range expansion and recovery has been highlighted in recent research. Sea otters in at least a portion of the mainland range are food-limited, and expansion of the sea otter population into areas with greater prey abundance, such as southern California, will likely be necessary to support the population growth needed for recovery.

H.R. 4043, the Military Readiness and Southern Sea Otter Conservation Act

The Service appreciates the stated purpose of H.R. 4043 to enhance conservation of the southern sea otter while allowing reasonable assurances for military readiness activities. However, H.R. 4043 includes provisions beyond the scope of the Service's authority and provisions that would complicate the efficiency and effectiveness of decision-making and monitoring for sea otter recovery.

The Service opposes Section 2283(g), "Ecosystem Management." This section would require the Service to continue to implement the translocation program and maintain an otter-free management zone until we, in cooperation with the National Marine Fisheries Service (NMFS) and the Marine Mammal Commission, develop a plan that "ensures" southern sea otter recovery, black and white abalone recovery, and the maintenance of commercial shellfish harvest at levels approximating current harvests. We recommend this section be eliminated based on the following reasons.

First, none of the agencies described in Section 2283(g)(1) are in a position to "ensure" a species' recovery. Multiple factors affecting a species' ability to recover are beyond the control of these agencies. No single federal agency or group of federal agencies is able to ensure or predetermine that the factors that caused the listing of a species (as identified under Section 4(a)(1) of the Endangered Species Act) will be ameliorated to the extent that full recovery and delisting of a species could occur. While each of the above federal agencies has an important role in full recovery of the referenced species, there are many factors that cannot be addressed within our agency's authorities. Nevertheless, we are working closely with NMFS to facilitate recovery.

H.R. 4043 would not only reach beyond the ability of agencies to ensure a species' recovery, but it would also duplicate the agencies' existing authorities or unduly restrict the means by which we are pursuing cooperative efforts for recovery of sea otters and white and black abalone. Recovery plans already exist for southern sea otters and for white abalone, and NMFS is currently assembling a team that will develop a recovery plan for black abalone. The recovery plans recognize the reality of interactions between these species. Ecological interactions, such as those between predators and prey, are a fundamental aspect of the environment in which these species exist. The provision in H.R. 4043 requiring the development of one plan ensuring concurrent recovery of the three species would duplicate completed or ongoing efforts of these agencies to cooperatively work toward recovery of sea otters and white and black abalone.

Second, the legislation also requires that this same plan ensure the continued commercial harvest of shellfish at levels approximating current harvests. Many factors affecting shellfish harvest levels are unrelated to the ability to actively manage an ecosystem. These factors include cold and warm water regime oscillations (such as El Nino and the Pacific Decadal oscillation), climate change, and ecological interactions. Human influences, such as overharvesting, changes in market value that influence harvest effort, or changes in fishing regulations intended to prevent overharvesting, may also directly affect shellfish harvest levels. Furthermore, these fisheries are managed by the State of California and not by a federal agency. The authorities of the stated agencies do not extend to all the factors affecting and controlling shellfish populations, and thus it is not clear how such a plan could be developed. In addition, areas potentially re-occupied by sea otters in the future would likely be unable to support commercial and recreational shellfish fisheries at their current levels, however, the magnitude and timing of such potential changes is unknown. Thus, one cannot "ensure" that current shellfish harvest levels will be maintained in areas where natural range expansion of sea otters is occurring. Nonetheless, the Service remains committed to exploring ways to minimize impacts to local shellfish fishers while providing for the continuing recovery of the southern sea otter.

Finally, Section 2283(g)(3) states that "the Service shall continue implementing the relocation and management plan for southern sea otters as authorized by Public Law 99-625 until the date the ecosystem management plan is completed." As previously mentioned, containment is not occurring because the Service has determined that it would likely jeopardize the continued existence of the southern sea otter. The Service has also concluded, after 25 years of partnered effort with the state and others, and in light of new information about the recovery needs of sea otters, continued implementation of the relocation and management plan would be detrimental to sea otter recovery.

The Service also has concerns with language in two other sections of H.R. 4043.

Section 2283(d) would allow for the Secretary of the Interior to revise or terminate the application of subsection (b) if the Secretary, in consultation with and with the concurrence of the Secretary of the Navy, determines that authorized military activities are substantially impeding southern sea otter conservation. Because of our longstanding positive relationship with the Navy, we believe that consultation with, rather than concurrence of, the Secretary of the Navy is sufficient to allow the Secretary of the Interior to determine if military activities are impeding southern sea otter conservation.

Section 2283(e) requires that the Navy monitor Southern Sea Otter Military Readiness Areas not less than every three years. Because of the Service's expertise in the biology and conservation of listed species, we believe that the Navy should not alone be responsible for designing and implementing this monitoring. Monitoring and research parameters and methods to understand the potential effects of military readiness activities on the growth or decline of the sea otter population and on the near-shore ecosystem should be determined in consultation with the Secretary of the Interior, acting through the Service.

Thank you for the opportunity to speak today on H.R. 4043. We look forward to working with you as we continue our efforts to work cooperatively with the Navy to conserve the southern sea otter. I would be pleased to answer any questions that you or the Subcommittee may have.