TESTIMONY OF STEVE THOMPSON, ACTING MANAGER, CALIFORNIA/NEVADA OPERATIONS OFFICE, U.S. FISH AND WILDLIFE SERVICE, BEFORE THE HOUSE RESOURCES SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS HEARING ON THE MANAGEMENT AND RECOVERY OF THE CALIFORNIA SEA OTTER.

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Mr. Chairman, thank you for the opportunity to provide testimony on the Administration's efforts to recover the southern sea otter. Recovery of the sea otter will require a sustained effort by the Federal government and our State, local and private partners. The Administration is committed to recovering the otter, and we look forward working with all affected parties to identify the most effective measures to accomplish recovery.

My testimony will describe the history of sea otter management actions, notably the Sea Otter Translocation Program. I will also discuss the challenges we face and how we plan to meet those challenges.

Origins of Southern Sea Otter Translocation Program

On January 14, 1977 (42 FR 2968), the Department of the Interior (Department), through the U.S. Fish and Wildlife Service (Service), listed the southern sea otter (Enhydra lutris nereis) as a threatened species under the Endangered Species Act (ESA). This determination was made on the basis of the species' small population size and greatly reduced range, and the potential risk to the species from oil spills. A southern sea otter recovery team was established in 1980 and a recovery plan for the species was approved on February 3, 1982. Recovery goals included: minimizing risk from potential oil spills; establishing at least one additional breeding colony outside the then-current southern sea otter range; and compiling and evaluating information on historical distribution and abundance, available but unoccupied habitat, and potential fishery conflicts. The approved recovery plan identified the establishment of a second colony of otters by means of translocation of southern sea otters to a remote location, as what was expected to be an effective and reasonable recovery action. The recovery plan acknowledged that a translocated southern sea otter population could impact shellfish fisheries that had developed in areas formerly occupied by southern sea otters.

The purpose of a translocation program was to establish southern sea otters in one or more areas outside the otters' then-current range. It was believed that this action would minimize the possibility of a single natural or human-caused catastrophe from adversely affecting a significant portion of the population. Ultimately, it was anticipated that translocation would result in a larger population size and a more continuous distribution of animals throughout the southern sea otter's former historical range. The Department viewed translocation as important to achieving recovery of the southern sea otter.

Translocation of a listed species to establish experimental populations is specifically authorized under section 10(j) of the ESA. However, the southern sea otter is protected under both the ESA and the Marine Mammal Protection Act (MMPA), and the MMPA contains no similar translocation provisions. For southern sea otters, this dilemma was resolved by the passage of Public Law (P.L.) 99-625 (Fish and Wildlife Programs: Improvement; Section 1. Translocation of California Sea Otters) on November 7, 1986. This law specifically authorized development of a translocation plan for southern sea otters administered in cooperation with the affected State.

A translocation plan developed by the Secretary of the Interior under P.L. 99-625 was required to include: the number, age, and sex of sea otters proposed to be relocated; the manner in which sea otters were to be captured, translocated, released, monitored, and protected; specification of a zone into which the experimental population would be introduced (translocation zone); specification of a zone surrounding the translocation zone that did not include range of the parent population or adjacent range necessary for the recovery of the species (management zone); measures, including an adequate funding mechanism, to isolate and contain the experimental population; and a description of the relationship of the implementation of the plan to the status of the species under the ESA and determinations under section 7 of the ESA. The purposes of the management zone were: to facilitate the management of southern sea otters; to facilitate the containment of the experimental population within the translocation zone; and, to the maximum extent feasible, prevent conflicts between the experimental population and other fishery resources within the management zone. Under a translocation plan, any sea otter found within the management zone was to be treated as a member of the experimental population. The Department must use all feasible non-lethal means to capture sea otters in the management zone and return them to the translocation zone or to the range of the parent population.

Development of Translocation Plan

On March 6, 1987, the Department completed an intra-Service biological opinion that evaluated a proposed translocation of southern sea otters to San Nicolas Island, our preferred translocation site. The biological opinion analyzed effects on the parent population caused by removal of southern sea otters from the population for translocation. The opinion also analyzed the effects on the species of containment of otters through their removal from the management zone. The proposed translocation plan was found to be a well-designed recovery action that maximized the opportunity for success while minimizing negative impacts on the parent population. The Department concluded that the southern sea otter translocation plan would not likely jeopardize the continued existence of the species.

In May 1987, the Department finalized an Environmental Impact Statement (EIS) that analyzed the impacts of establishing a program to translocate southern sea otters from their then-current range along the central coast of California to areas of northern California, southern Oregon, or San Nicolas Island off the coast of southern California. San Nicolas Island was identified as the preferred alternative. A detailed translocation plan meeting the requirements of P.L. 99-625 was included as an appendix to the final EIS.

Regulations to implement P.L. 99-625 were finalized August 11, 1987, and are found at 50 CFR 17.84(d). They provide details of the translocation plan, including criteria for determining whether the translocation program would be considered a failure. Waters surrounding San Nicolas Island were designated as the translocation zone, and all waters south of Point Conception, California, with the exception of waters surrounding San Nicolas Island, were designated as the management zone.

On August 19, 1987, as part of our cooperative actions with the State of California, the Department signed a Memorandum of Understanding with the California Department of Fish and Game (CDFG) providing for cooperative research and management efforts to promote recovery of the southern sea otter population in California. The agreement also included provisions to minimize conflicts between southern sea otters, existing shellfish fisheries, and other users of marine resources through containment of sea otters that might enter the management zone.

Implementation of the Translocation Plan

On August 24, 1987, the Department began implementation of the translocation plan by starting to move groups of southern sea otters from the parent population at the coast of central California to San Nicolas Island. In December 1987, in coordination with the CDFG, the Department began capturing and moving sea otters that entered the designated management zone in an effort to minimize conflicts between sea otters and fisheries within the management zone and to facilitate the management of sea otters at San Nicolas Island.

The Department released 140 southern sea otters at San Nicolas Island between August 1987 and March 1990. As of March 1991, approximately 14 sea otters (10 percent) were thought to remain at the island. Some sea otters died as a result of translocation; many swam back to the parent population, some moved into the management zone; and the fate of more than half the sea otters taken to San Nicolas is unknown. In 1991, due to low retention and survival, the translocation of sea otters to San Nicolas Island stopped. However, the Department continued monitoring the sea otters remaining in the translocation zone. Sea otter surveys at San Nicolas Island are now conducted by the Biological Resources Division of the U.S. Geological Survey on a bimonthly basis.

Sea otters were captured and removed from the management zone until February 1993. At that time, two sea otters that had been recently captured in the management zone were found dead shortly after their release in the range of the parent population. A total of four sea otters were known or suspected to have died within 2 weeks of being moved from the management zone. The Department suspended all sea otter capture activities in the management zone to evaluate sea otter capture and transport methods. Results of the evaluation were inconclusive, but the Department remained concerned that capture and transport of sea otters found in the management zone could result in the death of some animals. Between December 1987 and February 1993, 24 sea otters were captured and removed from the management zone and returned to the parent range. Of these, two sea otters were captured twice in the management zone after being moved to the northern end of the parent range, suggesting that capture and relocation were ineffective. Containment efforts were discontinued after 1993 in response, in part, to our concerns about the unexpected mortalities of otters experienced during or shortly following their removal from the management zone. The Department also recognized that techniques at the time, which proved to be less effective than originally predicted and were labor intensive, were not a feasible means of containing otters. In 1997, CDFG announced that they also would no longer be able to assist with sea otter captures in the management zone.

Assessment of the Translocation Plan

A group of approximately 100 southern sea otters moved from the parent range into the northern end of the management zone in 1998. At the same time, range-wide counts of the southern sea otter population indicated a decline of approximately 10 percent since 1995. Given the decline in the southern sea otter population, the Department asked the Southern Sea Otter Recovery Team, a team of biologists with special expertise in sea otter ecology, for a recommendation regarding the capture and removal of sea otters in the management zone. The recovery team recommended that sea otters not be moved from the management zone to the parent population because moving large groups of sea otters and releasing them within the parent range would be disruptive to the social structure of the parent population.

In August 1998, two public meetings were held to provide information on the status of the translocation program, describe actions we intended to initiate, and solicit general comments and recommendations. At these meetings, the Department announced that it would reinitiate consultation under Section 7 of the ESA for the containment program, and begin the process of evaluating the program under the failure criteria established for the translocation plan. The technical consultant group for the Southern Sea Otter Recovery Team, composed of representatives from the fishery and environmental communities as well as State and

Federal agencies, was also expanded to assist with evaluating the translocation program. The Department provided updates on the translocation program and status of the southern sea otter population to the California Coastal Commission, Marine Mammal Commission, and California Fish and Game Commission in 1998 and 1999.

In March 1999, the Department distributed its draft evaluation of the translocation program to interested parties. The draft document included the recommendation that the translocation program be declared a failure because fewer than 25 sea otters remained in the translocation zone and reasons for the translocated otters' emigration or mortality could not be identified and/or remedied. The Department received substantive comments from agencies and the public following release of the draft for review.

In accordance with our re-initiation of consultation under Section 7 of the ESA, the Department prepared a draft biological opinion evaluating southern sea otter containment. The draft opinion was distributed to interested parties for comment on March 19, 1999, and a final opinion was completed on July 19, 2000. The re-initiation of consultation was prompted by the receipt of substantial new information on the population status, behavior, and ecology of the southern sea otter that revealed effects of containment that were not previously considered. Specifically, the biological opinion noted that in 1998 and 1999 southern sea otters moved into the management zone in much greater numbers than had occurred in prior years; analysis of carcasses indicated that southern sea otters were being exposed to environmental contaminants and diseases which could be affecting the health of the population; range-wide counts of southern sea otters found numbers were declining; recent information, in particular the implications of the effects of the Exxon Valdez oil spill, indicated that sea otters at San Nicolas Island would not be isolated from the potential effects of a single large oil spill; and the capture and release of large groups of sea otters was likely to result in substantial adverse effects on the parent population. The Service concluded that reversal of the southern sea otter population decline, and expansion of the southern sea otter's population distribution are essential to its survival and recovery. The Service further concluded that continuation of the containment program, while restricting the southern sea otter to the area north of Point Conception, will likely exacerbate recent sea otter population declines and increase vulnerability to catastrophic man-made or natural events, and therefore, likely jeopardize the continued existence of the species.

On February 8, 2000, a draft revised recovery plan for the southern sea otter was released for public review and comment (65 FR 6221). Based on the observed decline in abundance and shift in distribution of the southern sea otter population, the recovery team recommended in the draft revised recovery plan that it would be in the best interest of the southern sea otter to declare the experimental translocation of southern sea otters to San Nicolas Island a failure and discontinue maintenance of the management zone. The recovery team's recommendation will be fully evaluated through the Department's ongoing process on the translocation action under the National Environmental Policy Act (NEPA).

Current Status of Southern Sea Otter

Based on three year running averages of Spring survey data, the sea otter population in California declined from 1995 to 1998. Recent counts indicate that the population is stable but still below the number believed necessary for recovery of the species. In spite of more than 140 sea otters having been translocated and evidence of reproduction, the population of sea otters at San Nicolas Island currently comprises only approximately 20 adults.

Current Status of the Translocation Program

To date, the southern sea otter translocation program has not met the primary goal of establishing a viable population of southern sea otters at San Nicolas Island. In the translocation plan, the Department determined that a self-sustaining colony size of 150 southern sea otters would be necessary to consider the population at San Nicolas Island viable. Based on trends since the translocation program began and current circumstances, a population of this size may not be attainable.

On July 27, 2000, the Department published in the Federal Register a notice of intent to prepare a supplemental EIS on the southern sea otter translocation program (65 FR 46172). The need for a supplemental EIS is based on changed circumstances and new information since the original EIS on translocation of southern sea otters was prepared in 1987. Public scoping meetings were held on August 15 and 17, 2000, with the purpose of soliciting information to be used in defining the overall scope of the supplemental EIS, identifying significant issues to be addressed, and identifying alternatives to be considered. The technical consultants to the Southern Sea Otter Recovery Team met to discuss the supplemental EIS on September 26, 2000. A scoping report for the supplemental EIS was distributed to the public and interested parties in April 2001. The Department plans to complete a draft supplemental EIS to be released for public comment. A final document will subsequently be published. The draft evaluation of the translocation program released in March 1999 will be finalized following further opportunity for public participation in the decision-making process and completion of the EIS.

On January 22, 2001, the Department published a notice of policy regarding capture and removal of southern sea otters from a designated management zone (66 FR 6649). The notice advises the public that the Department has determined that it will not capture and remove southern sea otters from the southern California sea otter management zone pending completion the ongoing reevaluation of the southern sea otter translocation program, including the preparation of a supplemental EIS and release of a final evaluation of the translocation program.

As explained in the notice, the Department currently faces a conflict between the obligation to isolate and contain California sea otters pursuant to Public Law 99-625 and the statutory mandate to avoid carrying out activities that are likely to jeopardize the continued existence of those otters. We believe that the ongoing decision-making process, which will fully involve all affected stakeholders, will help to frame the legal and scientific debate so that this legal and scientific conflict can be resolved to advance the conservation of sea otters in a manner that is both fair and equitable for all affected interests.

Working with the State and Stakeholders

The Department has become increasingly active in our efforts to identify actions which will promote the recovery of the southern sea otter, address sea otter/fishery conflicts, and build partnerships. For example, in 1999 the Department created a forum to identify, prioritize, coordinate, and implement research needs for California sea otters. The Monterey Bay Aquarium now hosts this research symposium annually, bringing together scientists, resource agencies, and others working in the field of southern sea otter research and conservation to discuss goals and objectives in a creative and productive setting.

Through our endangered species landowner incentives program, we secured funding to help fishermen convert fishing gear that may trap and drown sea otters. Metal rings that will prevent otters from entering traps have been purchased and are now in the process of being distributed to fishermen. The California Fish and Game Commission has responded to concerns for sea otters by requiring these rings to be placed in live fish traps along the central California coast where most sea otters reside.

A separate, community-based dialog on sea otter issues was initiated by environmental and fishery groups in 1999. In 2000, the dialog ceased. However, renewed efforts to reconvene the group have begun, and a meeting is likely to occur in the near future. The Administration supports this involvement by the community and hope to be invited to participate in a way that will promote a better understanding and resolution of sea otter issues.

As interest in sea otter/fishery interactions has increased, the Department has increased its efforts to keep key partners informed and up to date. It has provided frequent updates to the California Department of Fish and Game, the California Fish and Game Commission, the California Coastal Commission, and the Marine Mammal Commission, and it will continue to keep these agencies informed and involved in decisions it makes with respect to sea otters.

Conclusion

Mr. Chairman, from the outset, our efforts to recover the southern sea otter have been carried out under a unique set of circumstances. The fact that this species is listed under the ESA, and designated as a depleted species under the MMPA, required passage of a special law to authorize the translocation program. This allowed the Department to employ the experimental population recovery tool that has proved highly successful for many other imperiled species. Clearly the Department's expectations for the southern sea otter translocation have yet to be achieved, and we intend to examine these circumstances in significant detail through the ongoing NEPA process.

The NEPA process that is now underway will engage all stakeholders in helping the Department examine all available alternatives to address the current biological status of California sea otters, the problems posed to sea otters that remain within the translocation zone, the legal and scientific conflicts posed by the containment obligation, and the possible need for greater management flexibility. No decisions have been made by the Department at this time, nor will any decisions be made until the current collaborative process of working with all stakeholders through the NEPA process is completed.

Mr. Chairman, this concludes my prepared testimony. I would be happy to answer any questions.