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U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

Opening Statement By
The Honorable John Fleming
Chairman

Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
At the Legislative Hearing on H. R. 4043
1334 Longworth House Office Building
April 19, 2012 9:30 a.m.

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Good morning. Today, the Subcommittee will hold a legislative hearing on H.R. 4043, the *Military Readiness and Southern Sea Otter Conservation Act*. Congressman Elton Gallegly introduced the bill on February 15, 2012.

The California southern sea otter population was listed as threatened under the Endangered Species Act in 1977. In 1980, the United States Fish and Wildlife Service (Service) established a sea otter recovery team which helped the Service develop a southern sea otter recovery plan. The recovery plan recommended establishing translocation and management zones to increase the overall sea otter population through the use of an experimental population while allowing commercial fisheries and military training activities to continue. The plan was approved on February 3, 1982.

However, there were limitations in moving forward with the plan. As a marine mammal, the sea otter is also covered under the Marine Mammal Protection Act and, while section 10(j) of the Endangered Species Act allowed the Service to create an experimental sea otter population, the Marine Mammal Protection Act did not. Legislation was needed to move forward with the recovery plan.

Congress passed Public Law 99-625 in 1986 to allow the Service to establish and implement a translocation program to increase the size of the southern sea otter population off the California coast. For roughly 5 years, the Service moved animals to the experimental population and kept animals out of the management zone. Then, in January 2001, the Service issued a policy statement that it would not continue the capture and removal of sea otters in the management zone due to concerns about the survival of the transferred animals.

A 2003 revised recovery plan shifted recovery efforts away from the translocation program and recommended the Service issue a failure declaration on the program. In 2005, a draft Supplemental Environmental Impact Statement was released but not finalized. The Service was sued in 2009 and, as part of the settlement agreement, released a proposed rule in October 2011 where the preferred alternative is to declare the translocation program a failure and remove the regulations which implemented the translocation plan.

If the proposed rule is finalized, it would mean the end of the translocation program and the sea otters in the previously designated management and translocation zones would remain and be listed as threatened species, not as candidate species. Activities, including military training, in these areas that interact with sea otters would need to obtain incidental take authorizations.

H.R. 4043 was introduced to allow military training activities to retain the status quo management system. The purpose of this measure would be to enhance conservation of the southern sea otter while allowing reasonable assurances for military readiness activities off the coast of California.

The bill would create three different military readiness areas. Within these military readiness areas, the southern sea otter would be treated as a candidate species under the Endangered Species Act and the requirement for incidental take permits would not apply to military activities within the designated areas.

Measures are included in H.R. 4043 to allow the continued growth of southern sea otter population while allowing military activities to occur. H.R. 4043 would also require the Navy to monitor the military readiness areas to measure the growth or decline of the sea otter population.

An interesting aspect to the history of public law 99-625 and the underlying translocation and management plan is that the plan is the product of coordination and cooperation of the various groups – federal and state governments, commercial users, military and conservationists - to get the original agreement to increase the population of southern sea otters through the use of an experimental population.

As the ranking member has pointed out with regard to the Marinas Trench Marine National Monument visitor center, agreements or promises were made when the Marine National Monument was developed. It's a similar situation for the creation of the experimental southern sea otter population. User groups agreed to the creation of the experimental population based on assurances that a management zone would be created to assist the continuation of their activities.

It would appear that the Service's actions over the last decade moved away from this cooperative approach and is now being directed by a law suit. This is unfortunate. Cooperative approaches to management actions provide the most beneficial results for all concerned since everyone feels committed to the approach and the results.

I am now pleased to recognize the Ranking Member of the Subcommittee, Mr. Sablan, for any statement he would like to make at this time.