Appendix A:

Public Law (P.L.) 99-625 (Fish and Wildlife Programs: Improvement; Section 1. Translocation of California Sea Otters)
November 7, 1986

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PUBLIC LAW 99–625 [H.R. 4531]; November 7, 1986

FISH AND WILDLIFE PROGRAMS: IMPROVEMENT

An Act to improve the operation of certain fish and wildlife programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TRANSLOCATION OF CALIFORNIA SEA OTTERS.

(a) DEFINITIONS.—For purposes of this section—

(1) The term "Act" means the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(2) The term "agency action" has the meaning given that term in section 7(a)(2) of the Act.

(3) The term "experimental population" means the population of sea otters provided for under a plan developed under subsection (b).

(4) The phrase "parent population" means the population of sea otters existing in California on the date on which proposed regulations setting forth a proposed plan under subsection (b) are issued.

(5) The phrase "prospective action" refers to any prospective agency action that—

(A) may affect either the experimental population or the parent population; and

(B) has evolved to the point where meaningful consultation under section 7(a) (2) or (3) of the Act can take place.

(6) The term "Secretary" means the Secretary of the Interior.

(7) The term "Service" means the United States Fish and Wildlife Service.

(b) PLAN SPECIFICATIONS.—The Secretary may develop and implement, in accordance with this section, a plan for the relocation and management of a population of California sea otters from the existing range of the parent population to another location. The plan, which must be developed by regulation and administered by the Service in cooperation with the appropriate State agency, shall include the following:

(1) The number, age, and sex of sea otters proposed to be relocated.

(2) The manner in which the sea otters will be captured, translocated, released, monitored, and protected.

(3) The specification of a zone (hereinafter referred to as the "translocation zone") to which the experimental population will be relocated. The zone must have appropriate characteristics for furthering the conservation of the species.

(4) The specification of a zone (hereinafter referred to as the "management zone") that—

(A) surrounds the translocation zone; and

(B) does not include the existing range of the parent population or adjacent range where expansion is necessary for the recovery of the species.

The purpose of the management zone is to (i) facilitate the management of sea otters and the containment of the experimental population within the translocation zone, and (ii) to prevent, to the maximum extent feasible, conflict with other fishery resources within the management zone by the experimental population. Any sea otter found within the management zone shall be treated as a member of the experimental population. The Service shall use all feasible non-lethal means and measures to capture any sea otter found within the management zone and return it to either the translocation zone or to the range of the parent population.

(5) Measures, including an adequate funding mechanism, to isolate and contain the experimental population.

(6) A description of the relationship of the implementation of the plan to the status of the species under the Act and to determinations of the Secretary under section 7 of the Act.

(c) STATUS OF MEMBERS OF THE EXPERIMENTAL POPULATION.—(1) Any member of the experimental population shall be treated while within the translocation zone as a threatened species for purposes of the Act, except that—

(A) section 7 of the Act shall only apply to agency actions that—

(i) are undertaken within the translocation zone,

(ii) are not defense-related agency actions, and

(iii) are initiated after the date of the enactment of this section; and

(B) with respect to defense-related actions within the translocation zone, members of the experimental population shall be treated as members of a species that is proposed to be listed under section 4 of the Act.

For purposes of this paragraph, the term "defense-related agency action" means an agency action proposed to be carried out directly by a military department.

(2) For purposes of section 7 of the Act, any member of the experimental population shall be treated while within the management zone as a member of a species that is proposed to be listed under section 4 of the Act. Section 9 of the Act applies to members of the experimental population; except that any incidental taking of such a member during the course of an otherwise lawful activity within the management zone, may not be treated as a violation of the Act or the Marine Mammal Protection Act of 1972.

(d) IMPLEMENTATION OF PLAN.—The Secretary shall implement the plan developed under subsection (b)—

(1) after the Secretary provides an opinion under section 7(b) of the Act regarding each prospective action for which consultation was initiated by a Federal agency or requested by a prospective permit or license applicant before April 1, 1986; or

(2) if no consultation under section 7(a)(2) or (3) regarding any prospective action is initiated or requested by April 1, 1986, at any time after that date.

(e) CONSULTATION AND EFFECT OF OPINION.—A Federal agency shall promptly consult with the Secretary, under section 7(a)(3) of the Act, at the request of, and in cooperation with, any permit or license applicant regarding any prospective action. The time limitations applicable to consultations under section 7(a)(2) of the Act apply to consultations under the preceding sentence. In applying section 7(b)(3)(B) with respect to an opinion on a prospective action

that is provided after consultation under section 7(a)(3), that opinion shall be treated as the opinion issued after consultation under section 7(a)(2) unless the Secretary finds, after notice and opportunity for comment in accordance with section 553 of title 5, United States Code, that a significant change has been made with respect to the action or that a significant change has occurred regarding the information used during the initial consultation. The interested party may petition the Secretary to make a finding under the preceding sentence. The Secretary may implement any reasonable and prudent alternatives specified in any opinion referred to in this subsection through appropriate agreements with any such Federal agency, prospective permit or license applicant, or other interested party.

(f) CONSTRUCTION.—For purposes of implementing the plan, no act by the Service, an authorized State agency, or an authorized agent of the Service or such an agency with respect to a sea otter that is necessary to effect the relocation or management of any sea otter under the plan may be treated as a violation of any provision of the Act or the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.).

SEC. 2. ATCHAFALAYA NATIONAL WILDLIFE REFUGE.

Section 303 of the Act entitled "An Act to extend the Wetlands Loan Act", approved October 26, 1984 (16 U.S.C. 668dd note), is amended—

(1) by striking out "minor" in subsection (a)(2); and

(2) by striking out "Public Law 98–396" in subsection (b) and inserting "appropriations Acts".

SEC. 3. DUCK STAMP ACT.

The first sentence of section 2(b) of the Act of March 16, 1934 (16 U.S.C. 718b), commonly known as the Duck Stamp Act, is amended by inserting "available for obligation and" before "attributable to".

SEC. 4. CONVEYANCE OF FISH HATCHERY TO STATE OF NEW HAMPSHIRE.

Notwithstanding any other law, the Secretary of the Interior and the Secretary of Agriculture shall convey, without reimbursement, to the State of New Hampshire no later than December 31, 1986, all of the right, title, and interest including the water rights, of the United States in and to the fish hatchery property located in the northwest corner of Berlin township in the White Mountain National Forest, New Hampshire, and known as the Berlin National Fish Hatchery, consisting of 510 acres, more or less, of land together with any improvements and related personal property thereon. The property conveyed shall be used by the New Hampshire Fish and Game Department as a part of the New Hampshire fishery resources management program and if it is used for any other purpose, title to such property shall revert to the United States.

Approved November 7, 1986.

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