



Southern sea otter SEIS Background and Questions and Answers

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Background:

Q. What are southern sea otters?

Southern sea otters (*Enhydra lutris nereis*) currently inhabit the nearshore waters of California from San Mateo County in the north to Santa Barbara County in the south. They are the smallest species of marine mammal in North America, with males averaging 65 pounds and 4.5 feet in length and females averaging 45 pounds and 4 feet in length. Members of the weasel family, sea otters lack the insulating fat layer characteristic of most marine mammals and rely instead on their pelage — the densest fur of any mammal — as their primary thermoregulatory organ. Contamination of the fur by oily substances can destroy its insulating properties and lead to hypothermia and death. The high metabolism of sea otters, fueled by consumption of the equivalent of one quarter of their body weight each day, also helps to keep them warm. They eat crabs, clams, snails, and a variety of other bottom-dwelling marine invertebrates, sometimes using rocks as hammers or anvils to break open their hard-shelled prey.

The southern sea otter once ranged from Oregon to Baja California, Mexico. During the 18th and 19th centuries, sea otters were hunted for their luxurious pelts; by the early 1900s the species was nearly extinct, with only a small remnant colony surviving off the Big Sur coast. This “keystone species” of the California marine ecosystem was listed as threatened in 1977 under the Endangered Species Act (ESA) and is considered a depleted species under the Marine Mammal Protection Act (MMPA). Today, there are about 2,700 southern sea otters.

Q. What does the proposed rule and Revised Draft Supplemental Environmental Impact Statement (Revised Draft SEIS) recommend?

The U.S. Fish and Wildlife (Service) is proposing to end the sea otter translocation program and to allow otters in the former translocation zone and “no-otter” or management zone to remain there. The Revised Draft SEIS updates and responds to comments received on a 2005 Draft SEIS and analyzes a range of alternatives for the sea otter translocation program.

Q. Why is the Service proposing to end the southern sea otter translocation program?

Contrary to expectations, an independent population of sea otters has failed to become established at San Nicolas Island, due largely to the fact that large numbers of translocated sea otters left the island. The management zone has also come into conflict with natural range expansion of the mainland population. The Service found that some sea otters that were removed from the no-otter area subsequently died, and many that were moved to San Nicolas Island left the island to return to their parent population along California’s central coast. In part because of experience gained from implementation of the program, the recovery strategy has fundamentally changed. In the final

revised southern sea otter recovery plan (2003), the recovery team recommends allowing natural range expansion of sea otters to occur.

Q. What does ending the translocation program mean?

In addition to eliminating the “experimental population” status of sea otters at San Nicolas Island, the proposed rule will put an end to the translocation and management zones. Sea otters will continue to naturally expand into their historic range in southern California without human assistance or interference. Legal provisions of Public Law 99-625, which authorized the translocation program, would no longer apply. As a result, sea otters residing in southern California, including those that were translocated, would receive the same protection that sea otters throughout the rest of the species’ range receive under the ESA, the MMPA and the state of California’s Fully Protected Species statute.

Federal agencies planning activities that may affect southern sea otters in southern California would be required to consult with the Service under the ESA if their activities would affect sea otters.

Q. What will happen to southern sea otters at San Nicolas Island if the program is abolished?

The Service is proposing that sea otters now resident at San Nicolas Island will remain there. These animals will no longer be considered part of an experimental population and will be protected as a threatened species, along with any other sea otters found south of Point Conception, as are all other sea otters in California’s coastal waters.

Q. What was the purpose of the translocation program?

The purpose of the translocation program was to improve recovery of the southern sea otter. The goal was to establish a colony of southern sea otters outside their then-existing range to protect against the possibility that a natural or human-caused event — such as an oil spill — would devastate the species. To meet this goal, the colony at San Nicolas Island would have to be large enough to be self-sustaining even if up to 25 sea otters per year for up to three consecutive years were removed to repopulate a portion of the mainland range. However, the colony still numbers only about 50 sea otters, and it has become clear that much larger numbers of sea otters than originally anticipated would likely be required to repopulate a portion of the mainland range.

Q. What is Public Law 99-625?

Public Law 99-625 was passed in 1986 specifically to authorize a southern sea otter translocation program. Passage of a special law was required because the MMPA did not at that time include provisions to allow the establishment of experimental populations. Although P.L. 99-625 authorized the Service to undertake a translocation program, it did not require the agency to do so. Rather, it specified certain provisions that would apply if the Service chose to implement such a program. These provisions included designation of a translocation zone, into which sea otters would be released, and a surrounding management or “no-otter” zone, from which sea otters would be non-lethally removed.

Q. How did the translocation program become established?

The Service established the southern sea otter translocation program by regulation under the authority of Public Law 99-625 in 1987. The Service's implementing regulations also specified other details of the translocation program, such as the number of sea otters to be translocated, the specific coordinates of the translocation zone and management zone, and criteria to be used to determine if the translocation program had failed. The Service is proposing to remove the regulations that govern the southern sea otter translocation program, including the establishment of an experimental population of southern sea otters, and all associated management actions. Removal of the regulations will end the program.

Q. Did the Service propose to end the program in 2005?

Yes. In 2005, following a draft evaluation of the translocation program and public scoping meetings, the Service proposed ending the program in a draft SEIS, which also evaluated several other alternatives. However, those documents were not finalized. The timing of the release of the proposed rule and Revised Draft SEIS complies with a settlement agreement reached in response to a lawsuit alleging the Service's violation of the Administrative Procedures Act.

Q. What is an experimental population?

An experimental population, authorized under the ESA, is a population established geographically separately from the existing population of a threatened or endangered species. The creation of one or more experimental populations is permitted only if such a measure will further the conservation of the species. An experimental population is exempt from many of the protections that the parent population has under the ESA. However, the "experimental population" of sea otters at San Nicolas Island was established under the authority of Public Law 99-625, not the ESA. The specific provisions associated with the translocation zone and management zone, as long as these zones exist, were specified by Public Law 99-625.

Q. What is the history of the "no-otter" or management zone?

The southern sea otter translocation program included provisions for a sea otter management zone. Sea otters found within the management zone were to be removed using non-lethal means. From 1987 to 1993, the Service removed 24 sea otters from the management zone, but several died and others swam back again. On January 22, 2001, FWS published a notice of policy stating that the removal of sea otters from the management zone would violate the duty of the Service under the ESA to avoid any action that would likely jeopardize the continued existence of the species. The policy concludes that FWS will not capture or remove sea otters from the management zone until completion of the NEPA process and an evaluation of the translocation program.

Q. When was the last sea otter translocated to San Nicolas Island?

The last otter translocated to San Nicolas Island was released at the island on July 19, 1990. Sea otters continued to be captured and removed from the management zone surrounding San Nicolas Island until February 1993. Although the translocation zone and the management zone continue to exist, all capture and transport of sea otters has been suspended since 1993.

Q. How much has the translocation program cost?

From 1987 to 1995, the Service published annual reports for the translocation program that included funding allocations for management and research activities. During this nine year period, approximately \$3.8 million was allocated to the program. Funding of translocation program activities was suspended by the Service in 1995.

Q. What is the current population trend of the southern sea otter?

The 2010 spring survey count of sea otters by the U.S. Geographical Survey showed a three-year average of 2,711 sea otters. The 2009 census showed a three-year running average of 2,813 otters. Whether this downturn is the beginning of a longer-term negative trend is unknown. For southern sea otters to be considered for delisting, the three-year running averages would have to exceed 3,090 for three continuous years, according to the Service's southern sea otter recovery plan. Sea otters are vulnerable to the effects of food-limitation, disease, shark bites, and catastrophic events such as oil spills.

Q. Won't sea otters compete with commercial shellfish fisheries?

Sea otters consume a variety of benthic (bottom-dwelling) invertebrates, including commercially harvested species such as sea urchins, crabs, spiny lobsters, and sea cucumbers. Over the next 10 years, sea otter range is expected to expand along the mainland coastline to Carpinteria (lower bound projection) or Oxnard (upper bound projection). The presence of sea otters will likely reduce the densities of some shellfish species to levels that make commercial harvest inviable along this portion of coastline. When compared to the existing baseline (suspension of southern sea otter translocation and containment), the proposed rule and subsequent actions have no economic effects on commercial fisheries (except possible indirect effects that may occur as a result of regulatory changes). However, if the proposed rule is adopted, commercial shellfish fisheries would not benefit as they would if enforcement of a southern sea otter management zone were resumed.

Q: Will elimination of the management zone and translocation zone conflict with military defense activities of the Navy?

To date, the Service has not seen any evidence that defense-related activities at San Nicolas Island are adversely affecting southern sea otters. However, ending the translocation program and removing the regulations governing the program will eliminate certain regulatory exemptions associated with the translocation zone and management zone under Public Law 99-625. If adopted, the proposed rule will:

- Abolish the translocation and management zones, thereby eliminating the exemptions under Public Law 99-625 from the duty to consult under Section 7 of the ESA for defense-related activities within the former translocation zone and for all federal activities within the former management zone;
- Remove the exemption from the incidental take prohibitions of the ESA and the MMPA for non-federal activities within the former management zone.

Federal agencies proposing actions (including the permitting or funding of actions proposed by non-Federal entities) that may affect southern sea otters anywhere in southern California waters would be required to consult with the Service under section 7 of the ESA, as they do now within the remainder of the species' range. This includes all actions planned within the former management zone and defense-related actions in the former translocation zone.

Q. How will the change in regulations affect fisheries?

Incidental take exemptions associated with the management zone will end once the translocation program has ended. Incidental take of southern sea otters in commercial fisheries cannot be authorized under the MMPA. Therefore, incidental take of southern sea otters in commercial fisheries throughout southern California would be prohibited, as it is currently prohibited in the remainder of the range of the species (north of Point Conception, California).

Gill and trammel nets are known to be lethal to sea otters. Therefore, the regulatory changes associated with this proposed rule may indirectly affect portions of the commercial halibut and white seabass fisheries utilizing gill and trammel net gear. The use of gill and trammel nets is already banned throughout much of California. With respect to southern California, the Marine Resources Protection Act of 1990 (California Constitution Article 10B) prohibits the use of gill and trammel nets in waters less than 70 fathoms or within 1 mile of the Channel Islands, whichever is less, and generally within 3 nautical miles offshore of the mainland coast from Point Arguello to the Mexican border. However, some areas within southern California waters are characterized by a relatively shallow shelf that extends beyond the area currently closed to gill and trammel net fishing.

The primary fisheries using gill and trammel net gear in these areas target halibut and white seabass. Effects on these fisheries would occur if the State acted, in response to regulatory changes associated with this rule, to extend the existing gill and trammel net closure in southern California waters to depths that would be fully protective of sea otters. These effects would occur only in areas where sea otters are not already fully protected, and likely only in areas that sea otters were expected to recolonize in the near future (a closure to protect sea otters would not likely be imposed in areas where sea otters did not occur and were not expected to occur in the near future).

Q. Will the public have the opportunity to comment on the Service's proposed action?

Yes. The Service's recommendation to end the translocation program is contained in a proposed rule. Comments may be submitted on the proposed rule, associated Initial Regulatory Flexibility Analysis (IRFA), or Revised Draft SEIS by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. [FWS-R8-FHC-2011-0046].
- U.S. mail or hand-delivery: Public Comments Processing, Attn: Docket No. [FWS-R8-FHC-2011-0046]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.
- Verbally by attending one of the formal public hearings. Written comments may also be submitted at the public hearings.

Comments must be received within 60 days after date of publication in the *Federal Register*. The Service will post all comments on <http://www.regulations.gov>. This generally means the agency will post any personal information provided through the process. The Service is not able to accept email or faxes.

The Service has scheduled public meetings at the following locations:

October 4, 2011

Fleischmann Auditorium
Santa Barbara Museum of Natural History
2559 Puesta Del Sol
Santa Barbara, CA 93105
805-682-4711

Public information session 5:00-6:00 p.m. PDT
Public hearing 6:00-8:00 p.m. PDT

October 6, 2011

La Feliz Room
Seymour Marine Discovery Center, Long Marine Laboratory
100 Shaffer Road, Santa Cruz, CA
831-459-3800

Public information session 5:00-6:00 p.m. PDT
Public hearing 6:00-8:00 p.m. PDT

The public hearings provide a formal, structured opportunity for interested parties to verbally express comments or to submit written comments on the proposed rule, associated IRFA, or the Revised Draft SEIS.

Q: Where can more information can found?

For more information about the southern sea otter and to view the proposed rule, associated IRFA, or Revised Draft SEIS, please visit
http://www.fws.gov/ventura/species_information/so_sea_otter/index.html.