

**TESTIMONY OF KEN McDERMOND U.S. FISH AND WILDLIFE SERVICE,
DEPARTMENT OF THE INTERIOR, BEFORE THE HOUSE COMMITTEE ON
NATURAL RESOURCES SUBCOMMITTEE ON FISHERIES, WILDLIFE AND
OCEANS ON RECOVERY OF THE SOUTHERN SEA OTTER AND H.R. 3639,
THE SOUTHERN SEA OTTER RECOVERY AND RESEARCH ACT**

APRIL 24, 2008

Madame Chairwoman, I am Ken McDermond, Deputy Regional Director of the California and Nevada Regional Office of the U.S. Fish and Wildlife Service (Service). I am pleased to be here today to testify on the Administration's efforts related to the recovery of southern sea otters, the threats currently affecting southern sea otters. The Administration appreciates the recovery purpose of H.R. 3639, the Southern Sea Otter Recovery and Research Act; however, the Administration does not support passage of this legislation because it is duplicative of current authorities and efforts, creates a new grant program that is also duplicative of existing grant programs, and disrupts Service priority setting and funding processes.

Background

The southern (California) sea otter was listed as threatened in 1977 under the Endangered Species Act (ESA). Reduced range and population size, vulnerability to oil spills, and the oil spill risk from coastal tanker traffic were the primary reasons for the listing of the southern sea otter as a threatened species. As a consequence of its threatened status, it is also recognized as a depleted stock pursuant to the Marine Mammal Protection Act (MMPA). The southern sea otter population contains about 3,000 individuals and ranges from San Mateo County south to Santa Barbara County, California. Approximately 40 sea otters, including pups, exist at San Nicolas Island as a result of translocation efforts to establish an experimental population there.

Southern sea otters are among the smallest of marine mammals and may live for 15-20 years in the wild. Most adult female sea otters give birth to one pup each year. Sea otters depend on clean, water-resistant fur, up to 650,000 hairs per square inch, for insulation against cold ocean water. Due to their small body size and lack of blubber, sea otters have to produce a high level of internal heat to stay warm. To satisfy their high energy requirements, sea otters spend much of their time foraging for food and eat an average of 25 percent of their body weight each day.

Historically, sea otters ranged along the North Pacific rim from the northern Japanese islands to mid-Baja California, Mexico. Southern sea otters occupied the southern portion of this range, but the historical northern range limit of the subspecies is somewhat in question. Authors have placed it in northern California or Oregon or as far north as Prince William Sound in Alaska. 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 luxurious pelts, and by the early 1900s, the species was believed to be extinct in California. Southern sea otters are descended from a small

colony that survived along the Big Sur coast and became generally known to the public in 1938. The sea otter population has grown slowly since that time, but it has exhibited high levels of mortality in recent years.

Southern Sea Otter Recovery Efforts

In 1982, the Southern Sea Otter Recovery Team created the first Southern Sea Otter Recovery Plan, which identified the risk of oil spill as the major threat to the population. The recovery plan recommended the establishment of a second colony of otters at San Nicolas Island, California, in order to minimize the possibility that a single natural or human-caused catastrophe would adversely affect a significant portion of the population.

In 1986, a law was passed to authorize the establishment of this experimental population and the creation of a large no-otter “management zone,” which would be kept free of otters by capturing and removing any entering the zone. Between 1987 and 1990, the Service moved 140 sea otters to the island. Most of these animals returned to the mainland range, entered the management zone, or died, leaving a minimum population of only 13 animals. It was quickly apparent that the translocation program was not meeting the primary recovery goal of establishing a viable population of southern sea otters at San Nicolas Island; a population that could then serve as the source of sea otters for future translocations in the event that catastrophic mortality affected some portion of the mainland range.

In 2000, due to the observed decline in abundance and shift in distribution of the southern sea otter population, the recovery team recommended in a draft revised recovery plan that the experimental translocation of southern sea otters to San Nicolas Island be declared a failure and that maintenance of the management zone discontinued. In 2001, the Department published a policy advising the public that southern sea otters would not be captured and removed from the management zone until a reevaluation of the translocation program had been completed. The final revised recovery plan, which was released in 2003, supports this policy. It also outlines actions necessary for the recovery of southern sea otters, such as greatly reducing the possibility of an oil spill; minimizing factors causing stress or disease in southern sea otters; and working with commercial fisheries to document and reduce or eliminate accidental deaths of sea otters from fishing operations.

The Service began preparation of a draft supplemental Environmental Impact Statement (EIS) in 2000 to evaluate options for the southern sea otter translocation program. The draft supplemental EIS was made available for public comment on October 7, 2005, and the Service held public meetings in Santa Barbara and Monterey on November 1 and 3, 2005. During the five-month comment period, the Service received approximately 20,000 comments from interested individuals and organizations. The proposed action identified in the EIS would terminate the translocation program, and eliminate the management and translocation zones. Sea otters would be allowed to remain at San Nicolas Island and no effort would be made to remove sea otters from the management zone. Instead, sea otters would be allowed to recolonize their historic range throughout the Southern California Bight.

Evaluation of the translocation program has demonstrated that recovery of the species has not been achieved through this program. Recent investigations have shown that the growth rate of southern sea otters along the mainland coast of California is highest in the southern portion of their range, which now includes a portion of the management zone. Recovery of the southern sea otter under the ESA and achievement of its optimum sustainable population level under the MMPA may depend on allowing its movement back into the southern portion of its historical range.

In 2004, the Service convened the Southern Sea Otter Recovery Implementation Team. Over the years, the team has provided annual updates on the status of recovery actions and produced a plan to guide priority research and monitoring for recovery. However, in recognition by the Service and the team members that a new approach was necessary to address current and emerging research and conservation issues, the Service recently announced the disbanding of the team. We will continue to support research and monitoring efforts recommended in the recovery plan and consider implementation actions on a case-by-case basis as appropriate. The Service is now focusing its efforts on the completion of the final EIS which examines the continuation, revision, or termination of the southern sea otter translocation program. The final EIS is scheduled to be published by the end of FY 2008.

Southern Sea Otter Mortality

The sea otter population along the mainland coast of California is increasing, 5-6 percent a year, but much more slowly, than other sea otter populations, which have grown at rates of up to 17-20 percent annually. Following a decline in the late 1990s, the mainland population has resumed growth at a rate of about 5 percent annually, with most of the increase occurring at the southern end of the range.

High mortality appears to be responsible for the slow overall growth and periods of decline in southern sea otters. Of particular concern are the deaths of prime-age animals. For the past several years, the number of recovered carcasses has been about 10 percent of the overall spring count. Analyses of beach-cast carcasses indicate that the two causes of death most important for limiting population growth are white shark attacks and infectious disease, such as encephalitis caused by protozoal parasites. Other sources of disease affecting southern sea otters include acanthocephalan worms, bacterial and viral infections, domoic acid toxicity, and cardiac lesions. Food limitation, nutritional deficiencies, and exposure to chemical contaminants may also be influencing patterns of mortality. These emerging problems are considered primary threats to the recovery of the species. As a result, recovery efforts are being directed toward determining what factors are depressing southern sea otter population numbers and the mechanisms and pathways by which sea otters are being affected. An additional, but not yet fully understood, concern is the potential impacts of climate change on southern sea otters and the California coastal ecosystem.

Research is a critical component of the Service's efforts to better understand current and future threats to southern sea otters and to ascertain the probable causes of recent declines

and the factors preventing the recovery of the species. Baseline data are particularly important in tracking impacts over time. It is imperative that the Service have access to high quality data resulting from consistent monitoring of southern sea otter numbers, distributions, trends and studies aimed at understanding the drivers of sea otter mortality.

H.R. 3639, the Southern Sea Otter Recovery and Research Act

The Service greatly appreciates the interest of Congressman Farr, the cosponsors of H.R. 3639, and the Subcommittee in sea otter recovery. The Service supports the general intent of H.R. 3639 to recover the southern sea otter. However, the Administration does not support enactment of this legislation because existing authorities provided by the MMPA and the ESA are sufficient to pursue all the provisions of H.R. 3639. Additionally, as detailed below, the Service and our partners already carry out many of the activities authorized in H.R. 3639 and will continue those activities in the future.

Section 3 of the H.R. 3639 directs the Service to carry out a recovery program for the southern sea otter. Under the authority of the ESA and MMPA, some of the activities called for in the bill are already being implemented. Further, requiring the service to carryout these activities specifically disrupts the Secretary's ability to set and fund priority activities across the Recovery program and other Service programs.

Section 3(a) reiterates activities already identified in the southern sea otter recovery plan, which was revised in 2003, under the ESA. Under this plan, the Service and our partners in sea otter recovery are:

- monitoring and analyzing sea otter population demographics and life history parameters, including a biannual population census;
- protecting the southern sea otter population;
- reducing or eliminating threats due to human activities; and
- implementing education and outreach efforts that focus on sea otters and their survival.

Section 3(b) establishes an annual reporting requirement that duplicates, to an extent, the existing biennial reports to Congress on the status of sea otter populations under the ESA. We note that the annual reporting requirement under the MMPA, that section 3(b) refers to, expired after 2000.

The Service supports the intent of the health assessment plan proposed in Sections 3(c) and 3(d). However, the MMPA and ESA both provide sufficient authority to pursue these goals. In addition, we are currently working with the State of California and other partners to collect and analyze tissue samples from southern sea otters and to promote further studies as funding allows.

Section 3(e) promotes ecosystem sustainability. Again we support the intent of this provision, and acknowledge the strong linkage between the health of the ecosystem and health of sea otters. However, this provision duplicates the existing commitment of the Service and NOAA Fisheries to work jointly to incorporate ecosystem considerations in

ESA actions for recovery as described in the 1994 joint policy for the Ecosystem Approach to the Endangered Species Act (59 Federal Register 34273, July 1, 1994).

Section 4 of the legislation creates a new competitive grant program solely for research and recovery of the southern sea otter. The MMPA, ESA, the State Wildlife Grant programs, however, already provide authority and grants to help recover the sea otter. Section 4 is duplicative of these other grant programs and would prohibit the Secretary from making grants under this legislation without explicit approval from the Recovery Implementation Team. While the team would be appointed by the Secretary, section 4(c)(2) could frustrate Service priority setting and funding efforts designed to recover the species.

Section 5 directs the Service to establish a Southern Sea Otter Recovery Implementation Team. Again, although we agree with the intent of this provision, we note that the ESA already provides authority for the establishment and convening of recovery implementation teams (that are exempt from Federal Advisory Committee Act) for the purposes of facilitating implementation of a recovery program. In addition, the Service believes that our joint policy with NOAA Fisheries on Recovery Plan Participation and Implementation appropriately affords the Service discretion to allow the implementation team the opportunity to hold particularly sensitive discussions in private, and to limit the costs and administrative burdens of such teams (*i.e.*, currently a *Federal Register* notice is not required, although we may choose to publish notices for certain meetings). As previously mentioned, the Service did convene a SSO Recovery Implementation Team. The Service recently announced the disbanding of the team because the team recognizes that a new approach is necessary to address current and emerging research and conservation issues for the southern sea otter. We plan on continuing to support research and monitoring efforts recommended in the recovery plan, considering implementation actions on a case-by-case basis, as appropriate, and devoting the now available manpower to completing the final supplemental EIS on the Southern Sea Otter Translocation Program. Although the Service does not have plans to reconstitute the Recovery Implementation Team at this time, we will likely do so at the appropriate time in the future.

Section 6 establishes a Southern Sea Otter Recovery Scientific Advisory Committee to evaluate and make recommendations to the implementation team on research proposals submitted to the Southern Sea Otter Research Program. The Service greatly values outside expertise to evaluate proposals for sea otter research, and under ESA and MMPA authorization, we are able to establish panels of individuals with expertise in a variety of disciplines for such a purpose. In addition, the Service co-hosts an annual meeting of otter research scientists with the Monterey Aquarium or UC Santa Cruz which provides us with unparalleled access to the otter research community. The establishment of a formal scientific advisory committee, with a specified number of members representing specified interests and having specified academic credentials, would unnecessarily limit the Service's discretion to identify the individuals best qualified to review specific proposals.

Section 7 of H.R. 3639 authorizes appropriations to carry out the Act through 2012. However, as noted previously, the MMPA, ESA, and the State Wildlife Grants already provide sufficient authority and funding to help recover the sea otter.

Conclusion

Madam Chairwoman, thank you for the opportunity to testify before the Subcommittee on this issue. From the beginning, our efforts to recover the southern sea otter have been met with many challenges. We have benefited from a model collaboration with our partners in sea otter recovery, including the U.S. Geological Survey-Biological Resources Division, California Department of Fish and Game, Monterey Bay Aquarium, University of California, Santa Cruz, University of California, Davis, The Marine Mammal Center, Defenders of Wildlife, and others. Nevertheless, our expectations for the recovery of the species have not yet been met. The species has made significant progress toward recovery, but we still need to understand and address the causes of mortality rates. The Administration does not support H.R. 3639 because it duplicates current authorities, activities, and grant programs, and because it undermines the Secretary's prioritization and funding processes. We look forward to working with you as we continue our efforts in this regard.

I would be pleased to answer any questions that you or the Subcommittee may have.