

**FINAL REGULATORY FLEXIBILITY ANALYSIS FOR TERMINATION OF THE
SOUTHERN SEA OTTER TRANSLOCATION PROGRAM**

**U.S. FISH AND WILDLIFE SERVICE
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Regulatory Flexibility Analysis for Termination of the Southern Sea Otter Translocation Program

Background

The Regulatory Flexibility Act of 1980 (Public Law 96-354) (RFA) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions.

Section 604 of the RFA requires agencies to prepare a final regulatory flexibility analysis (FRFA) describing the impact of final rules on small entities. Section 604(a) of the RFA specifies the content of a FRFA. Each FRFA must contain:

- A statement of the need for, and objectives of, the final rule.
- A statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis (IRFA), a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.
- The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments.
- A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.
- A description of the projected reporting, record keeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be the subject to the requirement and the type of professional skills necessary for preparation of the report or record.
- A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency was rejected.

Case law has clarified that the RFA applies only to direct effects on small entities that are subject to the proposed or final rule and not to indirect effects that may result from the proposed or final rule (SBA 2012). However, the Small Business Administration Office of Advocacy has stated that, although the RFA does not require it, “it is good public policy for the agency to perform a regulatory flexibility analysis even when the impacts of its regulation are indirect” (SBA 2012).

The final rule that is the subject of this FRFA will not directly affect any small entities. The rule imposes no reporting or other requirements on small entities. Because there are no direct effects on small entities, we, the U.S. Fish and Wildlife Service (Service), certify in the final rulemaking that a regulatory flexibility analysis is not required under the RFA. However, in accordance with the recommendations of the Small Business Administration Office of Advocacy and as a matter

of good public policy, we have prepared an IRFA and FRFA in order to disclose fully any indirect effects that may result from the rule.

Section 605 of the RFA allows agencies to perform the analyses required by sections 602, 603, and 604 of the RFA in conjunction with or as a part of any analysis required by any other law in order to avoid duplicative or unnecessary analyses, so long as the other analysis satisfies the provisions of these sections. We released a revised draft Supplemental Environmental Impact Statement (SEIS) in 2011 (USFWS 2011) and completed a final SEIS in 2012 (USFWS 2012) in compliance with the National Environmental Policy Act (42 United States Code (U.S.C.) §4321 et seq.). The analysis presented in the final SEIS serves as the basis for the information summarized in this FRFA. For the complete analysis, please refer to the final SEIS.

1. A statement of the need for, and objectives of, the final rule.

The Service is terminating the southern sea otter translocation program to allow all sea otters to remain in southern California waters because we have determined, in an evaluation of the program, that it has failed to fulfill its primary purpose as a recovery action and that our recovery and management goals for the species under the Endangered Species Act of 1973, as amended (16 U.S.C 1531 *et seq.*) (ESA) and Marine Mammal Protection Act of 1972, as amended (MMPA) cannot be met by continuing the program.

The objective of the rule is to improve the prospects for recovery of the southern sea otter under the ESA and attainment of its Optimum Sustainable Population level under the MMPA. The Service has management authority for the southern sea otter (which is listed as “threatened” under the ESA and is considered “depleted” under the MMPA) and is authorized by regulations (50 C.F.R. 17.84(d)(8)(vii)) implementing the translocation program under P.L. 99-625 to promulgate a rule to terminate the translocation program if we determine the program has failed. In addition, the Service was sued by two environmental groups in The Otter Project v. Salazar, No. C 09-4610 JW (N.D. Cal., filed 9/30/09) for our failure to issue a timely failure determination. The court determined we are required to issue a failure determination, and by court order approving settlement of the litigation, we agreed to issue a failure determination and, if the determination concluded the program has failed, a final rule terminating the program by December 7, 2012. That date was extended by one week to December 14, 2012.

2. A statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

We announced the availability of the revised draft SEIS, a proposed rule to implement the preferred alternative, and the IRFA on August 26, 2011 (76 FR 53381). The comment period was originally scheduled to end on October 24, 2011 (76 FR 53381). On November 4, 2011, we announced a reopening of the comment period until November 21, 2011 (76 FR 68393). During the 78-day comment period, we received 6,843 comment letters, postcards, and emails from interested individuals and organizations. Among the comment letters were 5 petitions with 12,514 signatories. Appendix G to the final SEIS includes a list of commenters and summaries of comments received on the revised draft SEIS, as well as our responses to those comments.

During the comment period, we received numerous comments that referred to aspects of the analysis presented in the revised draft SEIS. We refer the reader to Appendix G to the final SEIS for our responses to those comments. Those comments did not result in revisions to the analysis in the final SEIS that are relevant to the analysis of effects on small businesses, small organizations, and small governmental jurisdictions presented in this FRFA. We received few comments that referred specifically to the IRFA. We address these comments below.

One commenter objected to qualifying statements we made in the IRFA that the economic impacts may be overestimated because we assume that fishers would not choose to fish elsewhere or with alternate gear and because ex-vessel values fail to account for the savings in boat fuel and labor that could be re-employed elsewhere if commercial fishing activity in affected areas were reduced. The commenter stated that because the relevant fisheries are limited entry, a displaced fisher cannot necessarily choose to fish elsewhere, and that there are no savings in fuel if a fisher has to travel further to fish. We have removed these qualifying statements from the FRFA.

One commenter stated that the IRFA failed adequately to assess impacts (continued degradation of kelp forests and the ecosystem services they provide) if southward range expansion is prevented. We have not made changes to the FRFA in response to this comment. Natural range expansion is currently occurring under baseline conditions, and under the final rule, it will be allowed to continue. No change is proposed that will result in changes in the nearshore ecosystem. Although for comparison purposes with the effects of the final rule, the IRFA presents an analysis of the indirect effects on small entities that would occur if southern sea otters were excluded from the management zone through a resumption of zonal management (full implementation of the translocation program) as detailed in the final SEIS under Alternative 1, we do not present a similar comparative analysis of effects on kelp forests and the ecosystem services they provide in this FRFA because the purpose of the RFA is to evaluate effects on small businesses, small organizations, and small governmental jurisdictions. Although effects on the ecosystem may ultimately result in effects on small businesses, these effects are delayed in time, speculative, not quantifiable, and beyond the scope of our analysis.

3. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments.

No comments were filed by the Chief Counsel for Advocacy of the Small Business Administration.

4. A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

The final rule will not directly affect any small entities. The rule imposes no reporting or other requirements on small entities. We describe the indirect effects on small entities below.

The final rule will terminate the southern sea otter translocation program, allow all sea otters in

southern California waters to remain where they are, and remove the experimental population designation from the sea otters at San Nicolas Island. This action will allow southern sea otters to recolonize their historic range throughout southern California. We define the baseline (status quo) as the current physical and regulatory environment (*i.e.*, the biological and socioeconomic environment resulting from management practices that have been in place since 1993). These practices include the suspension of containment activities in the management zone. Using the current physical and regulatory environment (rather than the environment as it might be today if containment activities had not been suspended) as the baseline is essential to an accurate characterization of present conditions and to predictions of how conditions will change under the final rule as considered in the final SEIS. Under baseline conditions, southern sea otter movement throughout the species' range is not restricted or contained. Under the final rule, southern sea otters will have the ability to continue to expand their range along the mainland coastline southeast of Point Conception into southern California waters and to increase in number at San Nicolas Island. Accordingly, the economic effects of both the baseline and the final rule are the same (in that in both cases sea otters are allowed to naturally expand their range) except in the case of potential indirect economic effects on gill and trammel net fisheries stemming from regulatory changes. This statement should not be interpreted to mean that economic changes are not expected to occur as a result of natural range expansion. An expanding sea otter population will have numerous effects, including effects on certain commercial and recreational fisheries and the industries that depend on them.

Entities discussed in this FRFA include: (1) sea urchin vessels, (2) spiny lobster vessels, (3) crab vessels, (4) sea cucumber vessels, (5) halibut vessels, and (6) white seabass vessels. Potential indirect economic impacts to small businesses are summarized below. For more information pertaining to the economic impacts, please refer to the final SEIS.

Under baseline conditions, we expect that commercial shellfish fisheries would be continue to be affected by natural sea otter range expansion due to competition with an increasing population of sea otters. These effects are indirect and stem from the estimated impacts of sea otter predation on species targeted by commercial or recreational shellfish fisheries. Selected fisheries, both commercial (sea urchin, crab, lobster, and sea cucumber) and recreational (lobster) will likely be eliminated in the mainland coastline areas predicted to be re-occupied by sea otters over the next 10 years: Point Conception to Carpinteria (lower bound) or Oxnard (upper bound). These fisheries are also likely to be affected, to some degree, by a growing sea otter population at San Nicolas Island. These fisheries will likely continue to be affected in the long term if range expansion continues throughout the Southern California Bight. Predation effects along the coastline and at San Nicolas Island are expected to occur under the baseline and to continue under implementation of the final rule. Therefore, there are no impacts to the shellfish fishing industries, relative to the baseline, that will result from the final rule.

The final rule will not result in economic effects beyond those described above for baseline conditions except in the case of potential indirect economic effects stemming from regulatory changes in the status of sea otters, namely the elimination of incidental take exemptions associated with the management zone upon termination of the translocation program. 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). These regulatory changes may indirectly affect portions of the commercial halibut and white seabass fisheries utilizing gill and trammel net gear if the California Department of Fish and Game or the National Marine Fisheries Service impose additional gill and trammel net closures. There are no direct effects on small entities because the Service does not have management authority for gill and trammel net fisheries, and the final rule does not close any area to fishing.

Estimate of Small Businesses

The U.S. Small Business Administration (SBA) defines a “small business” as one with an annual revenue or number of employees that meets or is below an established size standard. The SBA “small business” size standard is \$4 million for “Finfish Fishing” and “Shellfish Fishing” (North American Industry Code (NAICS) 114111 and 114112) and fewer than 500 employees for “Fresh and Frozen Seafood Processing” (NAICS 311712). Employment characteristics for the counties and industries that may be affected indirectly by sea otter range expansion under baseline conditions or indirectly affected by regulatory changes in the final rule are summarized in Table 1. Most of the businesses in the finfish and shellfish fishing industries have fewer than 5 employees, and all of the businesses in the seafood processing industry have fewer than 500 employees. Therefore, all businesses participating in these industries are considered “small businesses.” The numbers of commercial fishing vessels participating in selected southern California fisheries in the area where sea otters are expected to expand their range within 10 years and in southern California as a whole are shown in Table 2. The number of establishments reported by the U.S. Census for the finfish fishing and shellfish fishing industries (Table 1) differs dramatically from the numbers of commercial fishing vessels participating in selected fisheries reported by the California Department of Fish and Game (Table 2). Although some establishments may own more than one vessel, we utilize the vessel estimate provided by California Department of Fish and Game (*i.e.*, we assume that each vessel constitutes a small entity) to ensure a conservative approach to our analysis of numbers of small entities indirectly affected and the degree to which they are indirectly affected.

Table 1. Employment Characteristics of Affected Counties in California, 2008

Area	Finfish Fishing (NAICS 114111)		Shellfish Fishing (NAICS 114112)		Fresh and Frozen Seafood Processing (NAICS 311712)	
	Total	Number with 1-19 emp.	Total	Number with 1-4 emp.	Total	Number with 1-499 emp.
Los Angeles	8	8	4	4	25	25
Orange	2	2	0	0	0	0
San Diego	19	19	5	5	3	3
Santa Barbara	2	2	1	1	1	1
Ventura	6	6	1	1	3	3
TOTAL SOUTHERN CALIFORNIA	37	37	11	11	32	32

Source: U.S. Census County Business Patterns (2008)

Table 2. Number of commercial fishing vessels making at least one landing in selected fisheries south of Point Conception

	Fishery	Number of vessels making at least one landing in southern California (2000-2009 average)	Number of vessels making at least one landing from area expected to be affected within 10 years (2000-2009 average)	Percentage of small businesses indirectly affected within 10 years
Finfish Fishing	Calif. halibut - w/ set and drift gill nets	49	19	39%
	Calif. halibut - all other gears	138	57	41%
	White seabass - w/ set an drift gill nets	45	18	40%
	White seabass - all other gears	42	25	60%
Shellfish Fishing	Sea urchin	131	18-20*	14% - 15%*
	Calif. Lobster	169	23-31*	14% - 18%*
	Crab (all species)	147	34-58*	23% - 39%*
	Sea cucumber	49	13-15*	27% - 31%*

Source: California Department of Fish and Game (2010, 2011)

*Numbers of vessels are presented as a range not because of uncertainty in the number of vessels making at least one landing from a particular statistical block but because of uncertainty regarding the extent of area likely to be recolonized by sea otters within 10 years.

Table 3 shows the average annual ex-vessel revenues and average per-vessel yield for the selected shellfish fisheries and finfish fisheries. Average annual ex-vessel revenues for the commercial sea urchin fishery in southern California from 2000-2009 were \$7,346,637. During this time, an average of 131 vessels participated in the sea urchin fishery, resulting in an average per-vessel yield of \$56,081. We assume that all participants in this fishery meet the SBA “small business” size standard. Average annual ex-vessel revenues for the commercial lobster fishery in southern California from 2000-2009 were \$6,783,254. During this time, an average of 169 vessels participated in the lobster fishery, resulting in an average per-vessel yield of \$40,138. Average annual ex-vessel revenues for the commercial crab fishery in southern California from 2000-2009 were \$1,588,473. During this time, an average of 147 vessels participated in the crab fishery, resulting in an average per-vessel yield of \$10,806. Average annual ex-vessel revenues for the commercial sea cucumber fishery in southern California from 2000-2009 were \$783,185. During this time, an average of 49 vessels participated in the sea cucumber fishery, resulting in an average per-vessel yield of \$15,983. Clearly, all participants in these four fisheries meet the SBA “small business” size standard. The numbers of vessels making at least one landing from the area where sea otters are expected to expand their range within 10 years are 18-20, 23-31, 34-58, and 13-15 for the sea urchin, lobster, crab, and sea cucumber fisheries, respectively (Table 2). Effects on these fisheries under the final rule are the same as effects under baseline conditions.

Entities participating in selected finfish fisheries may be indirectly affected by the rule. Average annual ex-vessel revenues for the portion of the southern California halibut fishery using gill and trammel net gear from 2000-2009 were \$677,168. During this time, an average of 49 vessels participated in the southern California halibut fishery using gill and trammel net gear, resulting in an average per-vessel yield of \$13,820. Average annual ex-vessel revenues for the portion of the southern California white seabass fishery using gill and trammel net gear from 2000-2009 were \$653,011. During this time, an average of 45 vessels participated in the southern California white seabass fishery using gill and trammel net gear, resulting in an average per-vessel yield of \$14,511. Clearly, all participants in gill and trammel net gear portion of the halibut and seabass fisheries meet the SBA “small business” size standard. The numbers of vessels utilizing gill and trammel net gear and making at least one landing from the area where additional gill and trammel net closures may be imposed by the California Department of Fish and Game or the National Marine Fisheries Service within 10 years are 19 and 18 for halibut and white seabass, respectively (Table 2). To the extent that the same vessels participate in both the halibut and white seabass fisheries, these numbers are duplicative.

Table 3. Average Annual Ex-Vessel Revenue in Southern California (2000-2009)

Fishery	Industry Average Ex-Vessel Revenue	Average Revenue Per Vessel
Sea Urchin Fishery	\$7,346,637	\$56,081
Spiny Lobster Fishery	\$6,783,254	\$40,138
Crab Fishery	\$1,588,473	\$10,806
Sea Cucumber Fishery	\$783,185	\$15,983
Halibut Fishery (with set and drift gill nets)	\$677,168	\$13,820
Seabass Fishery (with set and drift gill nets)	\$653,011	\$14,511

Source: California Department of Fish and Game

Impacts on Small Businesses due to the Final Rule

The final rule will not directly affect any small entities. The rule imposes no reporting or other requirements on small entities.

The final rule will not result in any indirect effects on small entities, relative to the baseline, except potential indirect economic impacts stemming from regulatory changes. Thus, the sea urchin, lobster, crab, and sea cucumber industries will not be affected by the final rule. However, an additional gill and trammel net closure, if imposed by the California Department of Fish and Game or the National Marine Fisheries Service in response to the elimination of incidental take exemptions associated with the management zone, would affect portions of the halibut and white seabass fisheries utilizing gill and trammel net gear in Santa Barbara County and Ventura County within the next 10 years. Industries in Los Angeles, Orange, San Diego, Santa Barbara, and Ventura counties (hereafter referred to collectively as “southern California”) are included in the analysis because of their proximity to the affected area.

Estimates of the relative impact on vessels and the number of vessels affected may be overestimates because the data available to us do not allow us to account for vessels participating in multiple fisheries. Additionally, estimates of relative impact are averages (*i.e.*, some vessels will be more affected than others in the same fishery). Finally, ex-vessel values reflect gross rather than net revenues. Ex-vessel revenue and vessel number data are from the California Department of Fish and Game.

Table 4 shows the potential indirect effects if the State of California or the National Marine Fisheries Service extends the existing gill and trammel net closure along the mainland coastline in Santa Barbara and Ventura Counties to deeper waters. Potential indirect effects on the commercial halibut fishery range from \$0 (no additional closure) to \$2.5 million (immediate closure of the affected area) totaled over 10 years, representing a loss to the commercial halibut fishery in southern California of 0-41 percent of landings (gill and trammel net gear only) or 0-21 percent of landings (all gear types) relative to the baseline. Potential indirect effects on the commercial white seabass fishery range from \$0 (no additional closure) to \$2.8 million (immediate closure of the affected area) totaled over 10 years, representing a loss to the commercial white seabass fishery in southern California of 0-44 percent of landings (gill and

trammel net gear only) or 0-42 percent of landings (all gear types) relative to the baseline.

Table 4. Indirect Effects if an Additional Gill and Trammel Net Closure is Imposed: Estimated Maximum Annual Impact on Ex-Vessel Revenue for Selected Fisheries (2009 \$)

	Total Annualized Industry Gross Revenue Loss (2012-2021)	Gross Revenue Annual Impact per Small Business
Halibut Fishery (with set and drift gill nets)	\$250,467	\$13,182
Seabass Fishery (with set and drift gill nets)	\$284,638	\$15,813
Sea Urchin Fishery	no impact	no impact
Spiny Lobster Fishery	no impact	no impact
Crab Fishery	no impact	no impact
Sea Cucumber Fishery	no impact	no impact

5. Description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The final rule does not directly impose any reporting or recordkeeping requirements. There are no direct effects of the final rule on small entities. However, the final rule may result in indirect effects. Through termination of the southern sea otter translocation program, its associated translocation and management zones, and the regulatory exemptions associated with those zones, the final rule alters compliance requirements under the ESA and MMPA for otherwise legal activities that may affect southern sea otters in the Southern California Bight. These regulatory changes are expected to result in negligible reporting, recordkeeping, and other compliance requirements on small entities.

Federal agencies planning activities that may affect sea otters in southern California will be required to consult with the Service under the ESA, and if their activities will result in take of southern sea otters, to seek authorization for incidental take under both the ESA and the MMPA. However, federal agencies are not “small entities.” Therefore, we do not discuss them further here.

If otherwise allowable under applicable state law, non-Federal activities that would result in take of southern sea otters in California will require an incidental take permit from the Service under the ESA and authorization for incidental take of sea otters under the MMPA. The effects of this change are expected to be negligible in light of the fact that few otherwise legal activities result in take of southern sea otters and the expectation that sea otters would not be present in most areas of southern California for decades.

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 will be prohibited, as it is currently prohibited in the remainder of the range

of the species (north of Point Conception, California). Because incidental take of southern sea otters in commercial fisheries cannot be authorized under the MMPA, there are no additional reporting, recordkeeping, or compliance requirements that will otherwise be associated with obtaining such authorizations.

6. A description of the steps the agency has taken to minimize the significant adverse economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

In the final SEIS, we analyzed six alternatives:

- **No Action Alternative:** Maintain the status quo. This alternative serves as the baseline for comparison with all other alternatives;
- **Alternative 1:** Resume implementation of the 1987 southern sea otter translocation plan;
- **Alternative 2:** Implement a modified southern sea otter translocation program with a smaller management zone;
- **Alternative 3A:** Terminate the southern sea otter translocation program based on a failure determination pursuant to 50 CFR §17.84(d) *and* remove all sea otters residing within the translocation and management zones at the time the decision to terminate is made;
- **Alternative 3B:** Terminate the southern sea otter translocation program based on a failure determination pursuant to 50 CFR §17.84(d) *and* remove only sea otters residing within the translocation zone at the time the decision to terminate is made;
- **Alternative 3C (Preferred Alternative):** Terminate the southern sea otter translocation program based on a failure determination pursuant to 50 CFR §17.84(d) *and* do not remove sea otters residing within the translocation or management zones at the time the decision to terminate is made.

We have selected the alternative adopted in the final rule (Alternative 3C of the final SEIS) because we have determined that the southern sea otter translocation program has failed to fulfill its purpose, as outlined in the southern sea otter translocation plan, and that our recovery and management goals for the species cannot be met by continuing the program. The purpose of the southern sea otter translocation program was to: (1) Implement a primary recovery action for the southern sea otter; and (2) obtain data for assessing southern sea otter translocation and containment techniques, population dynamics, ecological relationships with the nearshore community, and effects on the donor population of removing individual southern sea otters for translocation (52 FR 29754; August 11, 1987). The translocation of southern sea otters was intended to advance southern sea otter recovery, with the ultimate goal of delisting the species under the ESA. Through translocation, we hoped to establish a self-sustaining southern sea otter population (experimental population) that would provide a safeguard in the event that the parent southern sea otter population was adversely affected by a catastrophic event, such as an oil spill. Our conclusion that the southern sea otter translocation program has failed is based, in part, on an evaluation of the program against specific failure criteria established at the program's inception (see Appendix C to the final SEIS). Alternative 3C allows for the continued natural range expansion of sea otters into their historic range in southern California waters. This

alternative reflects the recommendation made in the revised recovery plan, which advises against additional translocations and instead advocates allowing natural range expansion (USFWS 2003). In light of these and other effects on southern sea otters and on our ability to meet our mandates under the ESA and the MMPA, discussed in sections 6.7.3.3 and 6.7.11.1 of the final SEIS, we are selecting Alternative 3C.

The final rule will not directly affect any small entities. Therefore, we have not proposed any measures to minimize direct effects on small entities. The final rule may indirectly affect small entities (gill and trammel net fishers). The Service does not have management authority for the gill and trammel net fisheries that may be affected. However, in order to discourage the implementation of additional gill and trammel net closures that are untimely or unnecessary for the protection of sea otters, we have stated in our responses to comments in the final rule and in the final SEIS that we do not advocate closures in areas where sea otters do not occur.

Alternatives 1 and 2 would entail resumption of implementation of the translocation program, including resumption of its containment component (though with differently configured management zones). Because Alternatives 1 and 2 would retain a management zone with their associated exemptions from the ESA and MMPA, no indirect effects on gill and trammel net fisheries would occur (see sections 6.3.4.5 and 6.4.4.5 of the FSEIS). However, we determined that resumption of containment would jeopardize the southern sea otter and violate Section 7 of the ESA (USFWS 2000). We based this conclusion, in part, on the recognition that reversal of southern sea otter population declines and expansion of the southern sea otter's range is essential to the survival and recovery of the species. In order to resume containment, we would have to reinitiate consultation under the ESA to consider any new information and conclude that continuation of the program would not jeopardize the southern sea otter. Resumption of sea otter containment could result in increased mortality of sea otters and disrupt behavior throughout the range of the species. Additionally, it would artificially restrict the southern sea otter's range, increasing its vulnerability to oil spills, disease, and stochastic events relative to the baseline. In combination, these effects would slow or prevent the recovery of the species. In light of these and other effects on southern sea otters and on our ability to meet our mandates under the ESA and the MMPA, discussed in sections 6.3.3.3, 6.3.11.1, 6.4.3.3, and 6.4.11.1 of the final SEIS, we have not selected Alternatives 1 or 2.

Alternatives 3A and 3B would be less likely to achieve our objectives than Alternative 3C (in that they would require that we remove sea otters from the translocation zone and/or management zone at the time the decision to terminate the program was made), but they would afford small entities no additional relief from the potential indirect effects of the regulatory change under Alternative 3C. Alternatives 3A and 3B would result in changes to the regulatory environment that are identical to those under Alternative 3C. Under Alternatives 3A and 3B, no direct effects on small entities would occur, but each of these alternatives could indirectly affect small entities (gill and trammel net fishers). In light of effects on southern sea otters and on our ability to meet our mandates under the ESA and the MMPA, discussed in sections 6.5.3.3, 6.5.11.1, 6.6.3.3, and 6.6.11.1 of the final SEIS, we have not selected Alternatives 3A or 3B.

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