



DEPARTMENT OF THE NAVY  
OFFICE OF THE ASSISTANT SECRETARY  
(ENERGY, INSTALLATIONS AND ENVIRONMENT)  
1000 NAVY PENTAGON  
WASHINGTON DC 20350-1000

December 7, 2012

Ms. Rachel Jacobson  
Acting Assistant Secretary for Fish and Wildlife and Parks  
Department of the Interior  
1849 C Street, N.W.  
Washington DC 20240

Dear Ms. Jacobson;

This letter responds to the recently published Final Supplemental Environmental Impact Statement (FSEIS), Translocation of Southern Sea Otters. Our agencies have been in routine communication regarding the Department of the Navy's (Navy's) involvement with the Southern Sea Otter recovery program and the potential impacts should the Fish and Wildlife Service (Service) decide to terminate the program. We are concerned that your FSEIS does not appropriately present the legal status of the sea otters after termination, and has not accurately characterized the No Action Alternative in response to comments. Therefore, the Navy requests that the Record of Decision remedy these errors as explained below.

As indicated by the Navy throughout the development of the EIS, a matter of law, once Southern Sea Otters were translocated to San Nicolas Island pursuant to the translocation program, the otters in the translocation zone were placed under the special status afforded by Public Law 99-625, and remain under that special status unless the law is amended, modified, cancelled or otherwise made inapplicable through Congressional action. Defense-related activities on San Nicholas Island received special attention in Public Law 99-625 because of the Navy's efforts in assisting with the recovery of the species and willingness to provide habitat with the commitment that defense activities would not be impacted by the program. As a result, defense-related activities were protected via the special status afforded by the Public Law to Southern Sea Otters. Termination of the program, or change to the underlying regulation, does not have legal effect on the statutorily enacted status of translocated sea otters. In compliance with Public Law 99-625 and with respect to defense-related activities in the translocation zone, Southern Sea Otters in the translocation zone shall be treated as members of a species that is proposed to be listed. This is so whether the translocation program is terminated or not. Your Record of Decision must make clear that termination of the program will have no impact on the special status of these Southern Sea Otters.

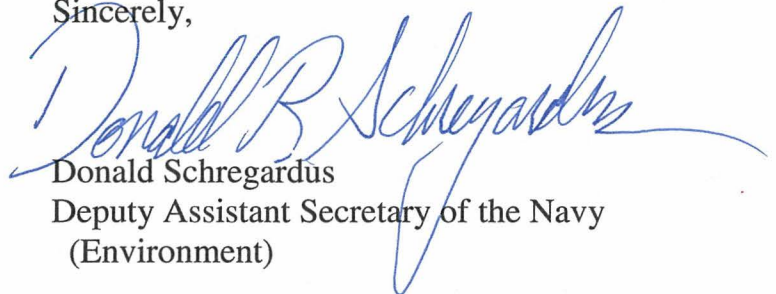
In addition, in response to Navy (and other) comments requesting further consideration of the No Action Alternative, the Service indicated that the No Action

Alternative is not viable, as it would require continued translocation of otters from the mainland to San Nicolas as well as the capture and relocation of sea otters out of the management zone. In contrast, the FSEIS at 3.2.1 states, "Under the No Action Alternative, the translocation program would continue to exist as currently implemented (i.e., we would take no action to supplement the colony at San Nicolas Island or to resume maintenance of the management zone)." The mischaracterization of the No Action Alternative in the response to comments indicates confusion in the Service's understanding of the No Action Alternative. This misunderstanding further supports Navy's original comment that the Service has not adequately considered the No Action Alternative, or adequately assessed or differentiated it from the Preferred Alternative. The No Action Alternative has been the status quo for nearly two decades, and resulted in the expansion of the Sea Otter population along the California coast, including a healthy and growing population at San Nicolas Island.

Maintaining protections for defense-related activities while translocating Southern Sea Otters was the clear purpose of the existing statute. Because species recovery currently coexists with defense-related activities under the status quo, both needs can be met by selecting the No Action Alternative. At a minimum, any Record of Decision must clarify that with respect to defense-related activities in the translocation zone, Southern Sea Otters in the translocation zone shall be treated as members of a species that is proposed to be listed.

I appreciate your consideration of Navy's concerns and recommendations. I look forward to the opportunity to further discuss our comments. My point of contact for this matter is CDR James Landis, (703) 614-3137.

Sincerely,



Donald Schregardus  
Deputy Assistant Secretary of the Navy  
(Environment)

Copy to: Lilian Carswell, Southern Sea Otter Recovery and Marine Conservation  
Coordinator