

FINAL
**Summary of Comments Received on the Final Supplemental Environmental Impact
Statement on the Translocation of Southern Sea Otters**

Prepared December 11, 2012

We, the U.S. Fish and Wildlife Service (Service) received 12 comment letters after publication of the final SEIS (during the review period from November 9, 2012 to December 10, 2012).

Letter 1, from an interested member of the public, expressed support for sea otters but seemingly misunderstood the preferred alternative. It raised no substantive issues that were not already addressed in the final SEIS or responses to comments (Appendix G to the final SEIS).

Letter 2, from an interested member of the public, expressed support for adoption of the preferred alternative, Alternative 3C.

Letters 3-8, from interested members of the public, were form letters expressing support for adoption of the preferred alternative, Alternative 3C.

Letter 9 was a more extensive letter from representatives of a coalition of environmental groups: Jim Curland, Advocacy Program Director for Friends of the Sea Otter; Sierra Weaver, Staff Attorney for Defenders of Wildlife; Sharon Young, Marine Issues Field Director for The Humane Society of the United States; Aimee David, Ocean Conservation Policy Director for the Monterey Bay Aquarium; Cindy Lowry, Director of Ocean's Public Trust Initiative, a project of Earth Island Institute's International Marine Mammal Project. This letter expressed support for adoption of the preferred alternative, Alternative 3C, and discussed the failings of the other alternatives analyzed in the final SEIS. The letter stated that although the Service found that the No Action Alternative would not cause many of the adverse effects of the other alternatives considered, the No Action Alternative only appeared positive because of the affirmative steps the Service took to discontinue maintenance of the management zone after it was found to cause jeopardy to the species in 2000. The letter urged the Service to "keep moving in an expeditious manner, not only to avoid jeopardy, but to take the steps that were found essential to recovering this species in the 2003 Revised Recovery Plan." The letter stated that implementation of the preferred alternative will benefit the marine ecosystem and benefit California economically. The letter raised no substantive issues that were not already addressed in the final SEIS or responses to comments.

Letter 10 was a letter from Donald Schregardus, Deputy Assistant Secretary of the Navy (Environment). The letter objected to the Service's characterization of the legal status of sea otters upon termination of the southern sea otter program and stated that we did not accurately characterize the No Action Alternative in our responses to comments in the final SEIS. It requested that we state in our Record of Decision that the legal status of sea otters at San Nicolas Island would not change upon termination of the program. The letter raised no substantive issues that were not already addressed in the final SEIS or responses to comments except the request

that we modify our Record of Decision. Nevertheless, for clarity, we address these points in the table below.

Comment	Response
<p>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.</p>	<p>As we stated in our responses to comments in Appendix G to the final SEIS, Public Law 99-625 authorized but did not require the Secretary of the Interior (Secretary) to develop and implement the translocation plan. The statute further provided that if the Secretary chose to develop and implement such a plan, it must include a translocation zone and a management zone. The translocation and management zones are component parts of the translocation plan implemented by the Secretary and were designated by regulation when the translocation program was put in place (52 FR 29754; August 11, 1987) and codified at 50 CFR 17.84(d). Termination of the program, also by regulation, eliminates the zones to which the provisions defining the status of sea otters found in those zones are attached.</p>
<p>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.</p>	<p>We have stated in a letter to the Navy that we cannot accommodate this request for the reasons outlined in our response to the preceding comment.</p>
<p>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>i.e.</i>, 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</p>	<p>The commenter does not accurately characterize our responses to comments. It is Alternative 1, and <i>not</i> the No Action Alternative, that assumes implementation of the translocation program, including capture and relocation of sea otters from the management zone. The No Action Alternative would, as the final SEIS and our responses to comment state, maintain the status quo—continuation of the translocation program without containment of sea otters.</p> <p>The commenter is correct in that, as stated in our response to comments, we do not consider the No Action Alternative to be a viable alternative. While the environmental consequences of the No Action Alternative are the same as baseline environmental conditions and as such formed an integral part of our analysis, the legal regime reflected in the No Action Alternative (continuation of the translocation program without containment) is not a reasonable path forward. We make these statements because we published a</p>

<p>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.</p>	<p>Notice of Policy on January 22, 2001 (66 FR 6649) notifying the public that we would not implement the containment component of the translocation program pending completion of a supplemental environmental impact statement and a final evaluation of the program. In the notice, we acknowledged the conclusion of our 2000 biological opinion that capture and removal (containment) of southern sea otters from the management zone—a key component of the translocation program—would likely jeopardize the continued existence and impede the recovery of the species. In light of our inability to implement the translocation program as designed and intended, we committed to a full and final evaluation of the program. We have also faced litigation over the translocation program twice during the past 12 years: first, for failing to implement the containment component of the translocation program, and second, for failing to complete our evaluation of whether the translocation program has failed. In resolution of the second lawsuit, we committed to evaluating whether the translocation program has failed under 50 CFR 17.84(d)(8), and if we determined the program has failed, to promulgate a final rulemaking to terminate the program. We have completed that evaluation and determined that the translocation program has failed. Continuing to maintain the status quo, which is reflected in the No Action Alternative, when we cannot implement the translocation program as intended by Congress in Public Law 99-625 and have concluded in our evaluation of the translocation program that the program has failed and does not further recovery of the southern sea otter and is not reasonable or viable. Therefore, our final rulemaking terminates the program.</p>
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Letters 11-12, from interested members of the public, were form letters expressing support for adoption of the preferred alternative, Alternative 3C.