

# California Sea Otters

## – A Need for Ecosystem Management and Conflict Resolution

- In August 2005, the U.S. Fish and Wildlife Service (“FWS”) published a Draft Supplemental Environmental Impact Statement (“DSEIS”) effectively charting FWS’ future course for the management and recovery of the threatened California sea otter. The DSEIS was written several years ago. However, when the DSEIS was published, FWS did not update the old data. Thus, the DSEIS is fatally flawed because it fails to use the best and most current information.
- The issues addressed in the DSEIS have their origins in the 1986 enactment of P.L. 99-625 which allowed FWS to establish a new colony of sea otters. FWS had determined that the establishment of a translocated population at San Nicolas Island (“SNI”) was essential for sea otter recovery. Importantly, P.L. 99-625 also required FWS to manage the conflicts with California’s fishing industry which would be caused by an expanding sea otter population.
- The principal alternative to the translocation plan authorized in P.L. 99-625 was the so-called “no action” alternative, let sea otters expand their range wherever they could. FWS rejected that alternative. Now, the DSEIS incorrectly declares the P.L. 99-625 program a failure and proposes to adopt the no action alternative FWS discarded twenty years ago – just let the sea otters expand their range. This no action alternative ignores the needs of the sea otters. It also ignores the conflicts which will arise from range expansion and which need management.
- The no action range expansion alternative also violates the Endangered Species Act (“ESA”). FWS proposes to allow sea otters to expand into the range of the white abalone, a species also protected under the ESA. Sea otters, an apex predator, eat abalone. When sea otters invade abalone habitat, abalone populations plummet. Yet, FWS proposes unrestricted entry of sea otters into abalone habitat, without ever considering the ESA’s requirement that FWS “insure” its actions will not harm protected species. The DSEIS papers over the problem by claiming that sea otters and abalone live at different water depths. However, the DSEIS ignores the most recent California data and FWS’ own Abalone Recovery Plan which both document a significant depth overlap.
- FWS has determined that sea otters can be considered for delisting if the population reaches 3,090. The current population is over 2,800. In 2005, 272 otters stranded on California’s shores. For the five years before that, an average of 195 stranded each year. If the strandings and associated mortality ended for just two years, sea otters would likely reach their recovery goal. Water pollution is the likely cause of these strandings and mortalities. Rather than discussing alternatives to address this problem, the DSEIS ignores the issue, again in violation of the ESA. Many of the sources of water pollution adversely affecting sea otters require Federal permits which are subject to the ESA’s standard to “insure” no harm to ESA protected species.

- The DSEIS concludes that the translocated SNI population has failed because the SNI population is not at the originally planned level. However, the originally planned level assumed FWS would move twice as many sea otters to SNI. FWS admits the SNI population is where it should be given the number of otters actually moved; there is nothing currently threatening the health and well-being of the SNI population; the SNI population is reproducing at 10% annually, double the reproduction rate in the parent population and exactly in the middle of the 5-15% reproduction rate FWS hoped for; and the SNI population is now comprised exclusively of the offspring of the originally translocated otters, thus confirming a healthy reproducing population. The translocated population has not failed.
- The DSEIS states that one reason for establishing the SNI population was to place a population outside of the reach of a catastrophic oil spill. The DSEIS declares translocation a failure because FWS has now decided that SNI could be affected by a catastrophic oil spill. FWS' solution is to allow range expansion. However, the DSEIS admits a catastrophic oil spill would cover an area "greatly exceeding" both the present and proposed range of sea otters. If translocation is a failure because it cannot protect against a major oil spill, then the DSEIS' preferred alternative of range expansion is also a failure.
- When P.L. 99-625 authorized the translocation program, it recognized that SNI was a prime fishing area. In exchange for impacting this fishing area, P.L. 99-625 established a program to separate sea otters from other fishing areas. The DSEIS ignores this Congressional mandate to balance and manage sea otter/fishery conflicts. Many California fisheries will be devastated by sea otter range expansion because otters eat the fishery resources on which fishermen depend. When 100 sea otters moved into a new area in 1999, the 600,000-700,000 pound annual sea urchin harvest became a 15,000-20,000 pound harvest in just one year. FWS' no action range expansion alternative will cost California's seafood industry millions of dollars and cause the loss of hundreds, if not thousands, of jobs. The DSEIS ignores this conflict management problem, ignoring both the purpose and the intent of P.L. 99-625.
- The DSEIS ignores P.L. 99-625 in other ways. Regulations implementing that statute state that if translocation is declared a failure, then all sea otters must be removed from SNI. The DSEIS declares translocation a failure but then states the SNI population will not be removed. Curiously, FWS' desire to leave the SNI population in place is proof positive that the translocation worked.
- Rather than persist with its fatally flawed DSEIS, FWS should start over using current, not outdated, data. Using the current data, FWS should examine all causes of sea otter mortality and should conduct a comprehensive and balanced review of the alternatives available to address these problems. FWS must also comply with all aspects of the ESA.