



The Otter Project

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Field Supervisor
Attention: 5-Year Review
U.S. Fish and Wildlife Service
Ventura Fish and Wildlife Office
2493 Portola Road, Suite B
Ventura, CA 93003

May 25, 2009

Re: Comments on the 5 year status review for the southern sea otter

Dear Field Supervisor,

I am writing on behalf of The Otter Project to offer commentary in regards to the 5 year review of the listing of the southern sea otter, *enhydra lutris nereis*, as threatened under the Endangered Species Act (ESA). This is in response to Federal Register listing Vol. 74 No. 56, dated March 25, 2009. The stated purpose of this review is to ensure that species remain properly listed. We at The Otter Project believe that the southern sea otter is appropriately listed as threatened under the ESA, and should remain listed as such.

The Otter Project is a registered 501(c)(3) non-profit which exists to promote the rapid recovery of the California sea otter by facilitating research and communicating research results to policy makers and the general public. We are the only active non-governmental organization that is solely dedicated to the southern sea otter population. Our work is undertaken in the recognition that the health of the southern sea otter, as a keystone species, has significant ramifications for near shore ecosystems and the coastal ocean in which sea otters reside.

The southern sea otter (hereafter referred to as sea otters or otters) has been listed under the ESA since 1977. By the time the species was listed, it had begun to make a recovery from its historical low of less than 100 individuals. The otter was on the brink of extinction from its estimated historical population of an estimated 16,000 animals.

Since its listing under the ESA in 1977, the sea otter has been under the care of Fish and Wildlife Service (FWS). An original recovery plan for the southern sea otter was finalized in 1982. Since then, multiple revision processes occurred, but none produced official revisions until the Final Revised Recovery Plan for the southern sea otter, which was finalized in 2003. I shall base my comments throughout this letter

on the criteria and recommendations set forth by this final Recovery Plan (hereafter referred to as Recovery Plan). In addition to the Recovery Plan, FWS published an Environmental Impact Statement (EIS) for the Translocation of Southern Sea Otters in 1987 as part of the process to authorize an experimental translocation project. Following the limited success of this program, the Service prepared a Draft Supplemental EIS in 2005. The DSEIS was preceded by years of public commentary and discussion. Upon its release and subsequent public commentary, the Service promised to release a final decision on the translocation program. This decision is still pending.

When the Recovery Plan was published in 2003, the sea otter population contained 2,150 animals. (USFWS, 2003, p. viii) As for the present, the spring 2008 survey found 2,760 otters. The Recovery Plan states that the average population level over a 3-year period must exceed 3,090 animals in order to be considered for delisting. (USFWS, 2003, p. ix)

More than thirty years after being listed as an Endangered Species, the otter population in California has grown far slower than expected. The initial cause for listing under the ESA was the threat of an oil spill, which, it was believed, threatened to wipe out the entire, concentrated population of southern sea otters. The belief that this was the primary threat to sea otters persisted, and was the basis of management decisions, such as the decision to create an experimental population of translocated sea otters in Southern California in the 1980s.

While the risk of an oil spill continues to be a threat to sea otters, the Revised Recovery Plan expanded its determination of threats to include 1) habitat degradation (which includes oil spills as well as other environmental contaminants) and 2) human take. While oil spills remain an issue, a population decline of about 5% a year, beginning in 1995, forced managers to reassess the health of otter populations and the causes of their decline. The absolute reasons for the decline are unknown, but it has been well established that sea otter population growth has stalled due to elevated mortality. Researchers and scientists believe that the spread of infectious diseases, food resource limitation and incidental mortality are responsible. It is clear that today's management needs for sea otters goes far beyond oil spill risk.

Further exacerbating the issues that sea otters face is the problem of range limitation. Under current regulations, sea otter range is artificially limited in the South, thanks to stagnated policy regarding the translocation program that FWS has failed to reverse. In order to attain stakeholder cooperation in the program, the Service established a system of zonal management of translocated sea otters, in which the translocated population was limited to a "translocation zone" which was surrounded by a "management zone" in which sea otters were not permitted. Sea otters in the "management zone", or, the no-otter zone, would be captured and removed.

Although the translocation did not succeed, the Service has failed to end the policy prohibiting sea otters from the water south of Point Conception. The Draft Supplemental Environmental Impact Statement (DSEIS), which has not yet been adopted, states that allowing sea otters to expand naturally is a desirable goal for sea otter recovery. (USFWS, 2005, p. 9) Given the history of fits and starts that colors the program there is notable dissatisfaction on the part of the public—including stakeholders on each side of the issue—which is still waiting for the solution that was promised in 2005.

Under existing policy, sea otters in the management zone are given lesser protections—otters in the zone are given the same level of protection as a species being considered for listing under the ESA. Incidental take is permissible. Some managers contend that because the Service no longer relocates errant otters, the continued existence of the no-otter zone causes no harm to otters. The Otter Project respectfully disagrees with this interpretation, however, and believes that the perception that sea otters south of Point Conception are “illegal” leads to heightened risk of harassment and death at the hands of anti-otter “activists”.

While this is difficult to quantify due to the heightened political divide between those who support otter range expansion and those who don’t, anecdotal evidence points to otters getting run over or chased down by boats, and even shot. It is clear that certain groups of resource users in the Santa Barbara area, where otters are being spotted with increasing frequency, view the sea otter as an illegal pest that needs to be managed; in the absence of official management, individuals feel authorized to take matters into their own hands. Therefore the failure to reverse the management zone has deleterious consequences on sea otter range expansion and health in an important part of their historic range.

Overall, the southern sea otter is far from meeting the criteria for delisting set forth by FWS. The preface to the final Recovery Plan states the following five factors that must be considered prior to delisting the southern sea otter: (USFWS, 2003, p. vi)

- 1) The present or threatened destruction, modification, or curtailment of habitat
- 2) Overutilization for commercial, recreational, scientific or educational purposes
- 3) Disease or predation
- 4) Inadequacy of existing regulatory mechanisms
- 5) Other natural or man-made factors affecting the population’s continued existing

First of all, present or threatened destruction, modification or curtailment of habitat continues to be a threat of unknown magnitude. Due to the aqueous nature of sea otter habitat, we shall consider threats to water quality as affecting habitat. Principal threats to sea otter habitat include the risk of an oil spill, chemical contamination, contamination from pathogens and parasites, and related water quality issues.

In regards to an oil spill, much has been done to minimize the risk of one occurring along the California coast line, in sea otter range. In spite of limitations on new drilling, and stable political opposition to offshore energy exploration, oil spills occur commonly. Data from the California of Fish and Game’s Office for Spill Prevention and Response shows that between 1992 and 2006 there was an average of 851 oil spills a year reported in the marine environment. (CADFG--OSPR) These range from minor spills to spills of greater magnitude, and illustrate that risk of oil contamination remains real and pressing.

There are many sources of oil in the marine environment; oil flows into the ocean from urban runoff, is released in natural seeps, or small spills from the various industrial and recreational activities that take place in coastal waters. The risk of large spills in current sea otter range comes primarily from large

vessel traffic. Although efforts have been made to regulate the movement of tankers and ocean vessels off the CA coast, incidents such as the 2007 Cosco Busan spill in the San Francisco Bay illustrate the need for continued protection against the threat of oil spills. Because the spill was far enough out of the sea otter range, it did not, to our knowledge, affect any sea otters, however high volumes of vessel traffic move throughout the sea otter range on a daily basis. While the recent successful rehabilitation of a single oiled sea otter by the wildlife veterinarians at the Dept of Fish and Game is heartening, statistically oiled otters have a very low recovery rate, leading us to believe that prevention of oil spills continues to be an important component of sea otter recovery.

In addition to oil spills, water quality in the coastal ocean is increasingly being identified as a problem to marine life. Sea otters, creatures under a high level of scientific scrutiny, are found to have high levels of chemical contamination as well as exposure to pathogens and parasites. Water quality encompasses a range of complex issues, including urban and agricultural development and non-point source pollution prevention; however it is a core issue that is affecting sea otter habitat.

The second delisting criterion addresses overutilization for commercial, recreational, scientific or educational purposes. Sea otters are largely protected from intentional take for commercial, recreational, scientific or educational purposes; however incidental take as a result of commercial fishing operations remains a problem, especially in areas where sea otters are seen as illegal. I shall address this issue in more detail presently.

Third, disease and predation pose possibly the most serious threats to sea otter populations. Infectious diseases have been identified in upwards of 40% of necropsied otters, and about 10% of documented otter mortalities are a result of shark bites (DFG presentation, March 2009). Immune depressed otters are less able to function and could therefore be more susceptible to a number of threats. Water in the coastal ocean faces contamination from on land sources, where high volumes of chemicals, pesticides and pathogens are coming from urban and agricultural runoff, as well as point source pollution from industrial and recreational activity in ocean waters. Recent research that shows high concentrations of legacy chemicals in sea otter tissues, high levels of pathogen infection, and an increased range of diseases infecting southern sea otters suggests that until we adequately address the many and potentially synergistic affects of pollution and water quality on otters, they will remain at risk.

Fourth, the delisting criterion addresses inadequacy of existing regulatory mechanisms. Protection of southern sea otters since 1911 (when they were included under the International Fur Seal Treaty) and subsequent protection under the ESA is no doubt responsible for the recovery of sea otters from the brink of extinction. It makes sense to ensure that the entire population of southern sea otters receives full protection. As previously noted, southern sea otters south of Point Conception are not given full protection under the ESA. This puts those otters that are likely to push the expansion of the range at greater risk. Wildlife managers have long noted the desirability of range expansion for the southern sea otter. Ensuring that policy reflects these stated goals is a necessary step towards providing sea otters with full protection.

Lastly, other natural or man-made factors affecting the population's continued existence include restrictions on habitat expansion, food limitation, and the continued risk of incidental take as a result of fishing gear entrapment. Sea otters die from a wide range of causes; a substantial portion (close to 10%) has died from emaciation, pointing to food limitation as a bigger issue than previously thought. Furthermore, anecdotal evidence points to otters dying from entrapment in fishing gear and traps, but without quantitative evidence, it is difficult to determine the magnitude of this threat.

In short, the southern sea otter does not meet any of the delisting criteria. Rather, the population continues to hover at a relatively static level. The Otter Project's recent analysis of the spring 2008 survey results showed an 8.8-percent decline from the record 2007 spring survey. The spring survey counted 2760 otters.

The Otter Project uses four measures to determine the health of the sea otter population. Of those four, three showed a decline in the population, and one showed an improvement. The measures used are:

- Spring survey numbers
- Dead strandings as a percentage of spring count
- Mortality by age-class
- Pup to independent ratio

Of these indicators, the spring survey numbers were down, the dead strandings showed improvement, the mortality by age-class was in decline, and the pup to independent ratio indicated decline. Given the variability of individual counts, it is difficult to immediately spot population trends; however The Otter Project's interpretation is that the sea otter population is less healthy than in recent years, and may be headed into another decline.

Given the importance of understanding otter population dynamics, The Otter Project is willing to support—through volunteer management and financial contributions—any effort to increase the reliability of the survey or statistical analysis.

Although the 5 year status review does not necessarily solicit recommendations for improvement to management efforts, The Otter Project believes that the Service is not acting at full capacity to protect and restore the California sea otter population. Range expansion is being stymied by the Service's inaction in reversing the translocation program's zonal management policies, water quality in the coastal ocean is worsening daily, and many in the research community refuse to make much needed, pragmatic policy advice on the basis of insufficient information.

The Otter Project has every respect for research, and those who conduct it, in the name of science based management; however the nature of research is that it perpetually illuminates what we don't know. More research is necessary—it always will be. But failing to make concrete recommendations on the basis that we don't know enough is a fallacy. The Otter Project encourages the Service, in considering the status of the southern sea otter, to focus on active adaptive management based on best available information. We believe that the best available information is telling us to do the following:

- 1) Allow the sea otter to expand its range; release the final SEIS for the Translocation of Southern Sea Otters and implement the preferred alternative to end the zonal management of southern sea otters while letting the San Nicolas colony remain on the island. This may involve making some difficult decisions and force the Service to work with other resource managers to mitigate the effects of sea otter expansion, but failing to address the problem is not going to make it go away. By making a final decision on the translocation program, FWS can regain credibility with the public, and help to facilitate the range expansion of otters, rather than passively preventing it.
- 2) Work with other resource managers to stop polluted sewage and runoff from reaching the ocean. The Service has the ESA—a powerful piece of legislation—at hand to encourage better, cleaner practices for the disposal of sewage, cleanup of chemicals, and the prevention of substances that are harmful to endangered species from entering the ocean.
- 3) Address the issue of food limitations and habitat damage by encouraging good management of marine protected areas throughout the otter range and the state. This tool could potentially eliminate fishery conflicts, reduce boat disturbances in sensitive areas and enhance the forage base available to otters and other ecosystem constituents.
- 4) Take more aggressive action to reduce the possibility of a catastrophic oil spill from offshore development or a tanker collision.

In conclusion, we at The Otter Project believe that much still must be done in order to see the full and sustainable recovery of the southern sea otter. Southern sea otters are appropriately listed as threatened under the ESA. While gains have been made, the population stagnation shows that we are still not doing enough. Sea otters play a vital role in their ecosystems—they increase primary productivity and biodiversity enormously. Coastal ecosystems are three times more diverse with sea otters than without and more diverse ecosystems—in addition to all the obvious benefits—are more resilient in the face of environmental change.

For a more complete analysis of our interpretation of the otter population, I am including a copy of our 2008 year-end sea otter status report.

Thank you for the opportunity to comment. If you have any questions, please feel free to contact us. The Otter Project looks forward to working with the Service and other stakeholders in our ongoing effort to promote sea otter recovery and the benefits that it will bring to the inhabitants of California—human or not.

Sincerely,



Allison Ford
Executive Director
The Otter Project

Works Cited

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USFWS. (2003). *Final Revised Recovery Plan for the Southern Sea Otter (*enhydra lutris nereis*)*. Portland Oregon: US Fish and Wildlife Service, Region 1.