



MARINE MAMMAL COMMISSION

10 August 2011

Ren Lohofener
Regional Director
Pacific Southwest Region
2800 Cottage Way, Suite W-2606
Sacramento, CA 95825

Dear Mr. Lohofener:

Thank you for providing the Marine Mammal Commission with an opportunity to review and comment on the Fish and Wildlife Service's Draft Evaluation of the Southern Sea Otter Translocation Program. The Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the draft evaluation and provides the following recommendation and rationale.

RECOMMENDATION

The Marine Mammal Commission recommends that, as part of a proposed rulemaking to terminate the sea otter translocation, the Fish and Wildlife Service include proposed amendments to section 17.84(d)(8)(vi) to eliminate the requirement that sea otters at San Nicolas Island be returned to the parent population and complete that part of the rulemaking prior to making a final failure determination.

RATIONALE

The Commission offers the following comments and rationale for its recommendation.

Measures of success

The translocation program was developed as part of a larger zonal management program for sea otters. The intent of the translocation program was to establish a second population of sea otters to avoid decimation of the entire population in the event of a major oil spill along the mainland California coast. Importantly, the translocated population was intended to be a source of otters for restocking the mainland population if such an event occurred.

The Service established various measures against which the program's success would be judged. The translocated population would be considered "stabilized" when the number of sea otters at San Nicolas Island equaled or exceeded the number of otters released at the site, or 70 otters, whichever is less. The translocated population would be considered "established" when a minimum of 150 healthy male and females sea otters resided within the translocation zone, little or no emigration occurred, and annual recruitment to the population reached 20 sea otters for at least three of the latest five years. Ultimate success of the translocation would have been achieved when the population within the translocation zone reached carrying capacity.

The translocation program simply cannot be considered a success against these measures.

Failure criteria

The Service also established five explicit failure criteria set forth in the original regulations at 50 C.F.R. § 17.84(d)(8). The Commission agrees with the Service's draft evaluation that Criteria 1, 4, and 5 have not been met. The Commission also believes that the Service should be able to make a determination as to whether Criterion 3 has been met, despite the Service's view to the contrary. A key element of Criterion 3 is that "...the translocated otters are not showing signs of successful reproduction (i.e., no pupping is observed)..." As reflected in Table 1 of the Draft Evaluation, at least 151 pups have been born at San Nicolas Island since the initial release of sea otters in 1987. More than a third of these births have been observed in the past five years. Given the life expectancy of sea otters, the Service believes that most, if not all, of the otters currently residing at San Nicolas Island were born there. Based on this information, Criterion 3 has not been met. This should be reflected in the Service's evaluation.

Criterion 2

That leaves Criterion 2, which forms the basis for the Service's draft failure determination. Criterion 2 is met "[i]f within three years from the initial transplant, fewer than 25 otters remain in the translocation zone, and the reasons for emigration or mortality cannot be identified and/or remedied." The Commission concurs with the Service that this criterion has been met. First, only 17 otters remained in the translocation zone after three years. Second, the Service's data strongly support the conclusion that the problem was an unexpectedly high rate of emigration of transplanted otters from San Nicolas Island back to the mainland. Third, the Service attempted, albeit unsuccessfully, to address that problem through a number of changes to the translocation program.

In the course of its translocation program, the Service moved 140 otters to San Nicolas Island. Given that only 17 remained at the end of three years, the problem(s) had to be either mortality, emigration, or both. Mortality could result from a number of sources, the most likely being disease, predation, starvation, shooting, and fisheries interactions. The Commission is aware of no information that indicates that disease was an important factor, although in the marine environment marine mammal carcasses often disappear quickly and the occurrence of disease can be very difficult to assess. Predation may have been a factor, but the primary predator would have been sharks, and there, too, it would be very difficult to characterize the frequency or significance of shark attacks, or take actions to prevent them. The Commission's understanding is that starvation was not a significant problem. Indeed, the translocation was directed to San Nicolas Island, in part, because it appears to have excellent habitat to support sea otters. Furthermore, the observations by Tinker et al. (2008) regarding foraging effort clearly support the notion that food was not limiting for these otters. Apparently, one otter was known to have been shot, but such illegal actions can be difficult to evaluate and prevent because the perpetrators tend to conceal their actions.

Fishery interactions are the only other potentially significant source of mortality. If fishery interactions were a problem, then fishermen would have been the first to detect them and they were

required to report interactions under the Marine Mammal Protection Act. To our knowledge, no such interactions were reported. The lack of reports does not rule out the possibility of such interactions, as self-reporting has long been known to be of questionable reliability. Nevertheless, the Service could reasonably have expected some level of reporting. To put this issue in perspective, the Service should expand its evaluation report to include a description of the fisheries operating in or near the coastal waters of San Nicolas during and immediately after the translocation phase, the kinds of gear used, the specific actions taken to protect otters from those fisheries (e.g., education, outreach, gear requirements), and the available means for reporting if an otter was killed. In particular, the Service should confirm whether any fishermen reported taking otters in this area.

The other way to lose otters was emigration. The evidence strongly supports the notion that emigration was the primary factor in the early years of the translocation program. Of the 140 otters translocated, 13 remained at the site on a permanent basis. Of the remaining 127, 3 were known to have died, 54 were known to have emigrated back to the parent population (36) or the management zone (18), and the fate of the other 70 is unknown. Thus, the fate of half of the translocated otters was known and, of those that were lost to the population, 95 percent emigrated back to the mainland. In addition, it would be highly unlikely that every otter emigrating from San Nicolas Island to the mainland both survived the movement and was then observed and reported along the mainland. Thus, the 54 documented movements from San Nicolas Island to the mainland are undoubtedly a minimum estimate of the true number of otters that emigrated. These numbers provide strong support for the idea that emigration was a far more important cause of the failure than outright mortality, at least during the initial phase of the translocation.

Determining why otters emigrated and then devising a remedy to address that reason is another matter. Indeed, determining “why” is probably not feasible and finding a remedy is more likely to be a matter of trial and error. In fact, the Service revised its translocation methods in a number of ways with the intent of increasing the number of otters that remained at the island. Those efforts included selecting younger otters for translocation, transporting them more quickly and in smaller groups, releasing them directly to their new environment rather than holding them in pens, and releasing them in the vicinity of sea otters already residing at the island. Such efforts demonstrate a practical, albeit unsuccessful, effort to remedy the problem of emigration. Based on the adjustments attempted, it is reasonable to conclude that emigration could not be remedied at that time.

The reasons for the slow growth of the population after the initial translocation phase are not clear. The annual high count hit a low at 12 otters in the 6th year after initial release and then remained under 25 animals until the 14th year, when the high count was 27. Emigration probably became less of a problem as the composition of the population shifted toward otters born at the site. Absent information on the age and sex of each individual in the population, it is difficult to assess whether and to what extent reproduction might have been a contributing factor.

The problem may well have been poor pup or juvenile survival, as the number of pups sighted during the high counts was generally well below the minimum number of pups born. Here, again, the source(s) of mortality are uncertain. The Commission knows of no available information that can be used to assess the significance of disease, predation, starvation, or shooting. The

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Commission also knows of no information on fishery-related takes and, as noted above, fishermen were required to report such takes. At this point, nothing can be done to determine why the population grew as slowly as it did or to address the underlying causes.

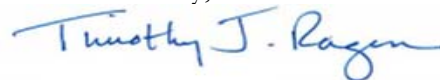
Proposed rulemaking

The Commission concurs with the Service's overall conclusion that "the southern sea otter translocation program has failed to fulfill its primary purpose as a recovery action..." Section 17.84(d)(8)(vi) of the applicable regulations states that, if the translocation is declared a failure, "all otters remaining within the translocation zone will be captured and all healthy otters will be placed back in the range of the parent population." However, the Commission has come to believe that the recovery and management goals for the species would be best served by leaving the San Nicolas Island population intact and onsite. The Commission flagged this problem in its 2003 letter and suggested that the Service amend the regulations to allow it to leave the translocated otters and their progeny at San Nicolas if the program is terminated. The population may never achieve the numbers predicted at the outset of the translocation program and, at present, does not provide the envisioned source for restoring the mainland population should that population be decimated by some severe risk factor (e.g., oil spill). That being said, the population could continue to grow to the point where it would cushion the effects of such a catastrophic event.

For that reason, the Commission supports the Service's plan to retain the existing otter population at San Nicolas Island and give it an opportunity to become fully established. The Southern Sea Otter Recovery Team advised the same and Service's biological opinion also recognized that capture and removal would pose an unnecessary risk to the San Nicolas Island otters and the population as a whole. However, the applicable regulations do not contain such an option. Therefore, to address this concern, the Marine Mammal Commission recommends that, as part of a proposed rulemaking to terminate the sea otter translocation, the Fish and Wildlife Service include proposed amendments to section 17.84(d)(8)(vi) to eliminate the requirement that sea otters at San Nicolas Island be returned to the parent population and complete that part of the rulemaking prior to making a final failure determination. It is our understanding that the Service intends to repeal section 17.84(d) in its entirety in the contemplated rulemaking. If this is the case, it may be necessary for the Service to include different effective dates for different provisions, so that paragraph (8)(vi) is amended prior to repeal of subsection (d) as a whole. Only in that way can the Service ensure that it will not be required to remove otters from San Nicolas Island as a consequence of making a failure determination.

Please let me know if you have any questions concerning these comments or would like to discuss any of these points further with the Commission.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director

Enclosure
Cc with enclosure: Michael J. Bean