



Friends of the Sea Otter

Founded in 1968 by Margaret Owings & James Mattison, Jr.
and dedicated to protect and defend a rare and threatened

March 1, 2000

John R. Twiss, Jr.
Executive Director
Marine Mammal Commission
4340 East-West Highway
Bethesda, Maryland 20814

Re: Discussion Draft Southern Sea Otter Action Plan

Dear Mr. Twiss:

Friends of the Sea Otter ("FSO") is pleased to submit these comments on the discussion draft "Action Plan to Promote Recovery of and Identify the Optimal Conservation Strategy for the California Sea Otter Population." ("Action Plan"). FSO greatly appreciates the opportunity to comment on the draft Plan.

Before commenting on the Action Plan, FSO extends its gratitude and appreciation for the efforts the Commission has made over many years to protect this species and promote its recovery. The southern sea otter is fortunate to be the beneficiary of the Commission's oversight, and FSO looks forward to continuing to work with you to achieve the recovery of this species and lasting protection for its habitat. Please express our thanks to the Commission, the Committee of Scientific Advisors, and Commission staff for their collective efforts.

FSO's comments are set forth in three parts. First, we provide our comments on the Commission's cover letter to U.S. Fish and Wildlife Service ("FWS") Director Clark. Second, we set forth our general comments on the Action Plan. Finally, we offer specific comments on the Plan. A copy of our comments also is being provided to FWS.

We understand that representatives of FWS intend to meet with Commission staff to discuss the Plan. We also assume that the Commission will eventually produce a final Action Plan, addressing comments on the discussion draft. In submitting these comments to the Commission and FWS, FSO hopes that our views will be taken into account by the two agencies as they discuss the Plan. We request that the final Action Plan be modified to address the points we have raised.

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As FSO's comments demonstrate, we agree with many aspects of the draft Plan. For the most part, it sets forth a desirable and well-conceived blueprint for addressing the needs of this species. However, there also are some aspects of the draft Action Plan with which we disagree. FSO requests that our comments on these points be carefully considered by the Commission and responded to through changes reflected in the final Plan.

Comments on Cover Letter

We agree with most of the hyphenated conclusions set forth in the cover letter, with the following exceptions:

1) We disagree that the reasons the "reserve sea otter colony" at San Nicolas Island ("SNI") has been unsuccessful have not been "identified." As discussed in FWS' draft evaluation of the southern sea otter translocation program, the likely reasons for the failure of the SNI population have, in fact, been identified. The reason is poor recruitment, attributed to mortality or emigration. The potential causes of the poor recruitment also have been identified: possible incidental take in the lobster and live fish fisheries; high rates of emigration; shooting; and natural predators. FWS, Draft Evaluation, at 17, 22-23. While it is fair to say that those reasons have not been confirmed, it is not necessary to do so to proceed with a failure determination. Unfortunately, the luxury to conduct the extensive research that would be necessary to confirm the most likely causes for the poor recruitment does not exist. Not only would it divert time and money from critically-needed research to identify and reverse the current decline in the mainland sea otter population, but the fervent calls of some parties to capture and remove sea otters from the management zone presents a very significant risk to this species and leaves no option other than to declare the translocation a failure so as to terminate zonal management. The legal criteria for making such a determination have been met. Further elaboration on the reasons for failure of the SNI population is not required to satisfy the regulations, even though it may be desirable from a biological perspective.

2) FSO also disagrees with the statement in the fifth hyphenated conclusion that "recolonization of more of the currently unoccupied historic sea otter range in California could impact shellfish fisheries that developed in the absence of otters, and could prevent or impede recovery of one or more depleted abalone stocks."

This statement is too broad. For this result to occur, a number of key assumptions all would have to come to pass. There is no basis upon which this statement can be made with such certainty.

It is understood that the decline of the abalone stocks and subsequent closure of abalone fisheries in southern California – which we would emphasize had nothing to do with sea otters – was probably caused by a combination of both human and natural factors, such as overharvesting, increases in coastal pollution, changes in water temperature, etc. This is not to deny that the return of sea otters to southern California could affect shellfish populations and their associated fisheries. It is rather to emphasize that efforts to recover sea otters should not be restricted by efforts to prevent sea otters from affecting their natural prey base. Instead, efforts should be focused on recovering sea otters, while at the same time finding ways to enhance shellfish populations and habitats and mitigate for potential impacts on shellfisheries. Although it could be many years before sea otters reoccupy the areas of abalone depletion – and many more before they were present in sufficient numbers or density to have significant impact – enhancement and mitigation measures (reduction of coastal pollution, development of shellfish refugia, research in abalone disease, etc.) should begin as soon as possible. Should otters take a long time before returning to their historic southern California range, then shellfish populations and fisheries can only benefit from increased habitat enhancement measures. Should otters return quickly, enhancement and mitigation measures will already have been identified and begun, thereby lessening the impact on shellfish fisheries.

Sea otter recolonization of the species' historic range is a desirable goal. It is one that is promoted, if not required, by the Endangered Species Act ("ESA") and the Marine Mammal Protection Act ("MMPA"). The fact that shellfish stocks reached levels of artificial abundance due to the absence of sea otters, which had been extirpated by the fur trade, should not be allowed to skew the analysis or support a management regime that restricts sea otter range expansion. Recolonization by sea otters will help return these areas to their natural, diverse ecological conditions, and lead to enhancement of kelp forests and their associated finfish and finfish fisheries. That is an end result that should be promoted.

In light of these conclusions, we request that the Commission revise its statement to reflect that, even if any such impact to shellfish fisheries were to occur, it very well could be mitigated by other measures and it would be offset by benefits to

finfisheries and kelp harvesting and the marine ecosystem. FSO supports considering ways to address such impacts to shellfish fisheries as might occur, but we are concerned about overstating the risk or suggesting that actions needed to achieve sea otter recovery should be limited or restricted based upon this factor.

3) FSO strongly disagrees with the Commission's reference in the seventh hyphenated conclusion in the cover letter to the need to assess possible alternatives to capture and relocation for regulating sea otter distribution and abundance. Simply put, such management actions are neither legally permissible nor biologically desirable. The southern sea otter is a seriously depleted, declining population that very well may merit listing as "endangered" under the ESA. "Regulating distribution and abundance" of this species in its current status is prohibited by ESA and MMPA. Even if the species were to be recovered under the ESA - a prospect nowhere in sight - there is no question that the southern sea otter would remain depleted under the MMPA for an extended period of time.¹ And then, should a non-depleted status be achieved, we question whether there would be any basis to undertake such "regulation."

Given the many priorities that exist to protect and recover this species and conserve its habitat, FSO believes it is inappropriate to assess ways to regulate sea otter abundance. Such an assessment is purely academic at this time. So too is the

¹ For example, Appendix D to the June 1996 draft revised Recovery Plan sets forth a report on carrying capacity for the southern sea otter. This paper concluded that carrying capacity in California would be between 13,500 and 30,000 otters. The MNPL level (the level at which an optimum sustainable population would be achieved) would be between 8,100 and 18,000 animals. That report, prepared in 1992, estimated that it would take 25 to 37 years at the then existing rate of population increase to achieve that level. Obviously, now that the population is in a sustained decline, there can be no projection for when this level would be attained. In addition, that estimate is based on the assumption that MNPL should be calculated with reference to the State of California boundary and not a range reflective of historic distribution that could encompass a larger area and hence result in a higher MNPL. For example, the 1977 listing notice suggests that this range limit should be set at Prince William Sound or perhaps the Strait of Juan de Fuca. 42 Fed. Reg. 2966. Obviously, such a boundary would create an even larger MNPL. Because no management action could be contemplated under the MMPA until this non-depleted level is attained, it is clear that considering ways to regulate sea otter distribution does not justify any consideration at this time.

need to develop a "long-term management strategy." The emphasis for the foreseeable future must be on sea otter recovery under the ESA and MMPA. These goals should be the focus of the Commission's Action Plan and the expenditure of the scarce funds and agency resources that are currently available.

The Commission places the emphasis where it properly belongs in the first sentence of the first full paragraph on page two - promoting recovery of the southern sea otter. Recommendations in the Action Plan consistent with this goal are strongly endorsed by FSO. We also support the Commission's goal of achieving consistency between the Action Plan and FWS' Recovery Plan, which has now been released in revised draft form. FSO would be pleased to assist that effort of collaboration in any way possible.

General Comments on Action Plan

FSO strongly supports many of the concepts and proposals in the draft Action Plan. The Commission has done an excellent job reviewing the information presented at its annual meeting in Seaside and obtained from other sources. The resulting Plan is impressive in its scope, detail, and analysis.

The comments which follow focus on FSO's areas of concern with the Plan. Because we are in agreement with many aspects of the Plan, our comments do not address every Commission conclusion or recommendation. The comments which follow only go to those aspects of the Plan for which we have concerns. Our general comments are set forth below on an issue-specific basis.

Priority Actions. FSO hopes that the Commission and FWS will agree on the priorities among the recommendations in the Action Plan and the recently released draft Recovery Plan. There are many important recommendations in both. Unfortunately, available funds and the time-sensitive needs of this species will require priorities to be set. In this regard, FSO requests that top priority be given to those research undertakings and the actions necessary to identify and review the causes of the decline. We would include the Commission's recommendations 2, 3, 4, 5, 9 and 11 on this priority list.

In addition, there are at least two priority actions left out of the Commission's Plan. These are both critical and should not only be added, but designated as high priority.

First, the Commission should acknowledge the critical importance of eliminating the Point Conception zonal management boundary. The Action Plan implicitly recognizes the need to eliminate this boundary, noting that capture and removal of sea otters in this zone would be detrimental to the population. A specific recommendation should be included to address this point. If the Commission does not believe this boundary should be terminated, it should affirmatively explain upon what basis that zone can be retained without also giving rise to action the plan recognizes as undesirable - the capture and removal of sea otters from the zone.

Second, the Commission's recommendation 8 addresses how oil spill risk may have been reduced. However, consideration also should be given to the manner in which such risk may have increased. The Commission seems to assume that measures to reduce oil spill risk from vessel traffic have been successfully implemented. In fact, they have not, even though there is agreement on some of the actions that should be taken. Further, the recent decision of the Department of the Interior to extend the term of 36 inactive and about-to-expire oil and gas leases off the coast of San Luis Obispo and Santa Barbara Counties merits significant attention, as these leases are immediately offshore the southern portion of the sea otter range. Thus, this recommendation needs to be broadened to encompass all aspects of the oil spill risk issue and to recommend the identification, development, and implementation of measures necessary to reduce this risk, including section 7 consultation between the FWS and Minerals Management Service on the offshore oil leases. See Attachment 1.

Funding. The Plan contains many excellent recommendations for actions for which funding is a priority. Recently, increased concern has been expressed by members of Congress and environmental organizations over the lack of adequate funding in the Administration's budget requests. In particular, we note that, despite the critical nature of research needs for this species, no funds are earmarked in the FY2001 budget for this purpose. FSO requests that the Commission seek to influence Administration decisionmaking on this point to ensure that funds from available sources - FY2000, FY2001, and beyond - are devoted to this research.

Research Needs. In April, 1999, FSO, the Monterey Bay Aquarium, and FWS sponsored a workshop on scientific research needs for the southern sea otter. As a result of that workshop, research priorities were identified. The Commission's Action Plan should account for those research priorities. Research needs identified at the workshop that are not accounted for in the Action Plan include: demographic and foraging studies; impact on sea otters of human recreational activities; and captive population research and management. FSO recommends that these issues be accommodated within the Action Plan.

Fishing/Conservation Group Discussions. On October 18, 1999, members of the fishing and conservation communities met informally to explore areas of common interest and identify actions that may assist efforts to recover southern sea otters while at the same time working to ensure the sustainability of commercial shellfish fisheries. Another meeting will occur on March 4, 2000. The draft action plan recommended at the October 18 meeting contains actions relevant to items numbered 2, 3, 4, 5, 6, and 9 of the Commission's draft Action Plan, as well as important additional topics such as stock assessments of sea otter prey items (including investigation of black abalone (withering) disease) and evaluation of kelp harvesting practices and impacts. We recommend incorporating these recommendations into the Commission's Action Plan. See Attachment 2.

Inappropriate Discussion of Management of Sea Otter Population. The Action Plan discusses the need to develop a long-term management plan for the species. This appears to be a short-hand reference for limiting sea otter range expansion through methods that would involve take of sea otters, action's that FSO opposes. In this discussion, the Commission refers to the 1987 MOU, which called for, *inter alia*, evaluating "techniques for limiting the growth and range expansion" of the species. Action Plan, at 16. Methods mentioned include "reduction of fecundity," (*i.e.*, birth control) and "selective culling." The MOU, as cited in the Action Plan, also called for initiating a process to develop a "limitation on the northern expansion of the mainland California sea otter population." *Id.* Following the discussion of these points from the MOU, the Commission recommends that FWS consult with the California Department of Fish and Game to "develop a long term strategy" to maintain the species within its OSP.

As noted in our discussion of the cover letter, FSO sees little benefit to discussing long-term management actions at this time. The MOU is based on

currently out-dated and now inaccurate information and assumptions. It also was designed to carry out a zonal management program that has not worked and is considered inconsistent with sea otter recovery. ESA and MMPA recovery needs are the clear priority for the foreseeable future. So many variables and uncertainties are involved in recovery of this species that it would not be productive, administratively efficient, or cost-effective to try to address speculative management considerations which would come into play after the species attains OSP.

In addition, FSO is opposed to such management actions. To the extent any consideration is given to the topic of "regulating" sea otters, FSO notes its adamant opposition to the actions discussed above (birth control, culling, limits on northern expansion). There is no precedent for such action for any marine mammal population subject to protection under the MMPA, let alone one that is in a status as precarious as the sea otter. Indeed, practices such as "culling" were part of the impetus for enactment of this law and its moratorium on take and importation. These actions are not legally permissible. They are biologically unsound. They are morally unacceptable. And they are unrealistic based on political, ethical, and public opinion considerations. If there is one thing that was learned from the translocation and associated containment program, it was the difficulty, if not impossibility, of trying to restrict the movement of sea otters in the open ocean. It is time to move away from these concepts and focus on new ideas on how to achieve recovery and a conservation program that addresses shellfish conflicts in more progressive and realistic ways. The Commission's Action Plan would do a great service to the sea otter conservation effort by moving away from past positions that have not succeeded or are now unacceptable and looking instead for new solutions and approaches.

We recognize that these actions are mentioned in the Plan because they are discussed in the MOU and were considered many years ago in the 1984 workshop. We also recognize that the Commission has not expressed support for such actions. We trust the Commission shares our strong concern with these outdated and unacceptable species management concepts. To the extent the Commission sees any need to even mention these points in the Action Plan, it should recommend at this time that they be dropped from future considerations.

Shellfish. The Action Plan raises issues regarding the interaction between sea otters, shellfish and shellfish fisheries. In particular, the Commission recommends that information be evaluated regarding the "current status and management of

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fisheries and fishery resources" in areas currently occupied, or likely to be occupied, by sea otters. Action Plan, at 11. FSO believes that this analysis is appropriate to undertake, but we emphasize the need to consider fully the many significant economic and non-economic benefits that result from sea otters recolonizing former habitat (e.g., biodiversity enrichment, potential enhancement of fish stocks, kelp forest enhancement, ecotourism). FSO also supports Commission recommendation 9, regarding the development of "artificial refugia" for shellfish. Because this program presents the potential for allowing shellfish fisheries to coexist with sea otters without action to restrict sea otter range expansion, it presents a potentially very useful conservation measure.

FSO does not believe, however, that efforts to recover the southern sea otter under the ESA and MMPA should be tempered by consideration of impacts to shellfish and shellfish fisheries caused by sea otters. Neither law provides that "efforts to protect and promote recovery of the southern sea otter also should take into account possible impacts on recovery of depleted abalone and other fishery resources, as the Action Plan calls for." The recovery requirements of the ESA focus only on the species subject to the review. The impacts the Commission is concerned about can be considered under NEPA or ESA section 7 consultation, should any shellfish stocks be subject to the ESA, for implementing actions to be taken to promote sea otter recovery. But there is no legal basis or policy justification to expand the recovery plan for the southern sea otter into something broader, such that it limits or restricts the actions necessary to recover sea otters by considerations to recover abalone. The Recovery Plan can make note of this issue, but it is inappropriate to include abalone recovery initiatives in a sea otter recovery plan.

SNI Translocation. FSO agrees with the Commission on several key issues regarding the SNI translocation. We agree that the translocation has not been successful, that capture and removal of sea otters from the management zone would present significant biological risks to the animals and the species, and that it is questionable whether containment can be undertaken through the required nonlethal means. It is the combination of these factors that compels the result of declaring the translocation a failure and eliminating the management zone.

We appreciate the Commission's interest in learning more about the reasons the SNI experiment has not succeeded. In an ideal situation, FSO would like to see that question answered as well. However, it is clearly unacceptable to perpetuate the

current zonal management program to allow for such analysis if the price to be paid is the capture and removal of otters from the management zone. If the Commission has a proposed approach under which sea otters could be left at SNI and the management zone discontinued while the desired analysis is conducted, the details should be provided in the final Action Plan. We are concerned about Commission recommendations that lack a legal framework for implementation.

The Commission addresses the SNI translocation failure determination issue in its first recommended action of the Action Plan. This recommendation calls upon FWS to evaluate possible causes of the failure of the SNI colony to grow. In this discussion, the Commission focuses exclusively on Criterion 2 for determining translocation failure. The Commission also recommends that additional analysis be undertaken pursuant to the standard in Criterion 2 that a failure will be declared if fewer than 25 otters remain after three years "and the reasons for emigration or mortality cannot be identified and/or remedied." The Commission notes that such a review should not delay the overall failure determination procedure (the review should be conducted "as part of the process for determining whether or not the translocation should be declared a failure").

FWS has three comments on this recommendation. First, the Commission needs to recognize that the SNI translocation also has failed under Criterion 3. The basis for this finding is discussed in FWS's comments on FWS's Draft Evaluation. See Attachment 3. Criterion 3 does not require a finding on the reasons for, or remedies to, the failure of the SNI population. Thus, to declare the translocation a failure under Criterion 3, it is not necessary to undertake the review discussed in this recommendation.

Second, FWS has already adequately addressed the requirements of Criterion 2. The Draft Evaluation includes a more than adequate discussion of this issue. The conclusions set forth therein are based upon years of experience, observation, and information gathering, and the considered opinion of FWS' and other experts. Even if more can be done, further review is not necessary to support a failure determination under Criterion 2. The Commission fails to identify what "relevant information" might exist that could be "secured" and "reviewed" within the narrow time frame available to conduct "the process for determining whether the translocation should be declared a failure." Unless the Commission is aware of such

data that do exist and have not been considered by FWS, this recommendation does not seem to have much more to accomplish.

The lack of a compelling need to undertake extensive investigation of the reason for the SNI failure is reinforced by the fact that translocation has never been successful under Criterion 2. Beginning with the first year Criterion 2 applied (1990), there have been ten consecutive years of failure. SNI could have been declared a failure in 1990, or in any year since then. While it was possible to avoid the need for a formal determination of failure during that period with the hope that the SNI population would begin to grow, the insistence of certain shellfishery groups for containment, combined with the population decline, has forced a situation where a failure determination is necessary under the current regulatory regime.

Third, we also believe that the Commission has misconstrued Criterion 2. The Commission appears to take the position that additional analysis of the reasons for failure is necessary and that possible solutions also must be evaluated. That would be the case if Criterion 2 stated that the reasons for emigration or mortality cannot be identified and remedied. The correct test, however, uses the term "and/or," which means either or both of the two actions can be undertaken. There is no requirement that both be undertaken. Local Division 589, Amalgamated Transit Union, AFL-CIO v. Massachusetts, 511 F. Supp. 312, 318 (D. Ma. 1981); Black's Law Dictionary 86 (6th ed. 1990).

Because the "and/or" term is used, FWS can satisfy this aspect of Criterion 2 by determining that the SNI mortality and emigration cannot be remedied. FWS does not have to also "identify" the reasons for the mortality or emigration. As a matter of law, there is no requirement for FWS to do what the Commission suggests by assessing "information concerning the post-release movements and observations of the translocated sea otters," etc. In its Draft Evaluation, FWS considers the remedies to the possible causes of emigration and mortality and has determined that they will not work. Presumably, additional consideration of this point will be conducted in conjunction with the final determination. Nothing more is required to satisfy Criterion 2.

For all these reasons, FSO does not believe that a failure determination should be delayed pending further analysis of the causes for SNI mortality and emigration. We do take the position, however, that alternatives should be considered that would

allow the SNI population to remain, the management zone to be eliminated, and containment discontinued. If those goals can be achieved, then it would be not only justifiable, but highly desirable, to undertake investigations into the causes of the SNI failure. FSO requests that the Commission consider including in the Action Plan a recommendation that FWS pursue, in cooperation with stakeholders, legislative and administrative solutions that would make this possible. Such a solution also could include measures that do not impede sea otter recovery to address concerns of shellfishery groups.

SPECIFIC COMMENTS

This section sets forth specific comments on the draft Action Plan. Comments are provided by reference to the corresponding page and paragraph in the Plan.

Page 1, paragraph 1, sentence 1: The reasons for listing of the southern sea otter in 1977 are more extensive than those stated in this sentence. In addition to oil spill risks, other threats posed by human activities were noted. These threats included: reduced range; pollution; competition with humans; and lack of genetic diversity.

Page 1, paragraph 2: This paragraph suggests that the Commission's December 1980 recommendation on zonal management was primarily to reduce conflicts with fisheries, and secondarily to protect the population against oil spills. It is FSO's understanding that the primary goal of the zonal management recommendation was to protect against the oil spill risk. It is instructive to compare the first sentence of this paragraph in the Action Plan with the corresponding sentence from the Commission's December 1980 zonal management letter. The original recommendation letter states: "[w]e are concerned that the progress which has been realized to date in addressing the many facets of the California sea otter problem has been less encouraging than we had expected. The resolution of the problem will require decisions and actions to secure the population from threats associated with oil spills and other human activities and to restore it to the optimum sustainable population, while at least minimizing conflict between sea otters and fisheries." (Emphasis added). To the extent the draft Action Plan seeks to reconstruct the history of the manner in which sea otter issues have been addressed, it would be preferable to use this quote, rather than the existing statement that the purpose of the zonal management was to "minimize possible

conflicts with fisheries, while securing the population against the risk of oil spills." The draft Action Plan appears to reverse the priority from the Commission's original letter.

Page 1, paragraph 3, sentence 1: This sentence states that the zonal management concept was incorporated by FWS into the 1982 recovery plan. FSO does not read the recovery plan this way. The 1982 recovery plan included recommendations for establishing additional colonies of sea otters to protect against oil spill risk. However, at no point does that plan make reference to the creation of so-called "otter-free" zones.

Page 1, paragraph 2: This discussion sets forth a rather detailed report on a 1984 workshop on "methods for regulating the distribution and movements of sea otters." A number of the recommendations from that report are included, as well as several of the report's findings.

FSO questions the value of providing such a detailed discussion of this workshop. The clear focus of sea otter conservation measures at this time is to reverse the decline and achieve recovery. There is no foreseeable prospect for regulation of sea otter distribution and movements. In addition, recommendations included in the report, such as birth control and culling, are unacceptable. We believe that including this lengthy discussion in the Action Plan suggests that efforts to contain, capture, and remove sea otters are somehow priority areas for consideration in the current conservation program when, in fact, there is no prospect for such action.² Deflecting time or money needed for recovery efforts into further consideration of these techniques cannot be justified.

² In this regard, we note that the draft Action Plan does not include any discussion of the 1982 recovery plan, other than the incorrect reference to its asserted incorporation of zonal management. The translocation to San Nicolas Island is given consideration in only three sentences. There is no discussion of the important symposium on sea otter research held in Monterey in April 1999. Although we do not think it is necessary to include a detailed discussion of these other milestones in the sea otter conservation recovery effort, we do find it curious that nearly one page would be devoted to the 1984 workshop on regulating sea otter movements, when no discussion is given to other important workshops and plans, many of which are far more relevant to current conservation initiatives.

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Page 3, paragraph 4, sentence 3: The draft asserts that a possibility for the population decline is a shift "in distribution so that newly occupied areas are not being surveyed or considered appropriately in developing the population estimate." This possibility has been rejected by Dr. Jim Estes, Brian Hatfield, and others. See, e.g., Transcript of 10/19/99 Seaside Meeting, at 87.

Page 5, paragraph 1, sentence 2: Included for the Commission's use is a copy of our August 4, 1998 letter summarizing concerns with the sea otter conservation program. Attachment 4. We recommend that this letter be attached to any subsequent versions of the Action Plan.

Page 5, paragraph 3, last sentence: This sentence sets forth what appears to be a recommendation from the Commission that the recovery program for the sea otter also should consider impacts on the recovery of depleted abalone and other fishery resources. As addressed elsewhere in this letter, FSO disagrees with this recommendation, and believes rather that such considerations should be made in the context of specific actions to be taken pursuant to the sea otter recovery plan, under NEPA compliance or ESA section 7 consultation (for any species subject to ESA protection) for implementing actions. We note here, however, that this recommendation seems to be out of place in the background section of the discussion draft. If this point is to be included in the Action Plan, it should be identified as a recommendation only. There are no other statements in the background section of the Plan that constitute a recommendation.

Page 8, paragraphs 1 and 2: FSO believes the only justifiable course of action with respect to gill and trammel net fisheries in waters less than 30 fathoms deep anywhere within the sea otter range is to take necessary actions immediately to close such areas. Thus, the nets need to be removed from the shallow waters between Point Sal and Point Arguello without further delay. Additional monitoring in waters between 30 and 40 fathoms deep throughout the entire sea otter range should be implemented to determine if further closures are necessary in the deeper waters. By letter of February 18, 2000, FSO wrote to the State of California requesting support for State legislation that would achieve this result. A copy of that letter has been sent to the Commission. We believe that such action by the State should be identified as the priority action with respect to gillnet fishery incidental take. State legislation has now been introduced to address this issue. The Action Plan should recommend that the federal government support this legislation. See Attachment 5.

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Page 9, paragraph 1. Crab pots also should be included in these experiments.

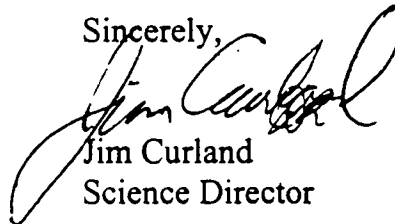
Page 11, paragraphs 1 and 2. The discussion here should include mention of sea urchin barrens throughout the Channel Islands, which continue to impede the regrowth of kelp forests and their associated finfish and invertebrate populations. Analysis of economic impacts resulting from the return of sea otters to this area should include recreation, tourism, kelp harvesting, and scientific research opportunities.

Page 12, paragraph 1. The Channel Islands National Marine Sanctuary should be included as a cooperating agency on this project.

Page 17, carryover paragraph, second sentence: As noted above, relevant experts have ruled out the possibility that the population decline could be "an artifact of the methods being used to estimate population size." This sentence should be deleted.

We hope that these comments on the discussion draft Action Plan are useful to the Commission and FWS. We would be pleased to have follow-up discussions with you regarding these comments, if that would be helpful. There are many excellent ideas in the Action Plan, and FSO hopes that it can be successfully implemented, consistent with the comments set forth in this letter. Thank you again for the opportunity to review the discussion draft and for all of the Commission's efforts on behalf of the southern sea otter.

Sincerely,



Jim Curland
Science Director

cc: The Honorable Donald J. Barry
The Honorable Jamie Rappaport Clark
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Ms. Elizabeth H. Stevens