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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

RESOURCES, COMMUNITY  
AND ECONOMIC DEVELOPMENT  
DIVISION

APRIL 17, 1984

B-198126

The Honorable John B. Breaux  
Chairman, Subcommittee on Fisheries  
and Wildlife Conservation and the  
Environment  
Committee on Merchant Marine and  
Fisheries  
House of Representatives

Dear Mr. Chairman:

Subject: Federal and State Efforts to Conserve  
and Protect the Southern Sea Otter  
Population (GAO/RCED-84-139)

In response to your June 2, 1983, request, we reviewed the status of federal and state efforts to conserve and protect the southern sea otter population located off the California coast. We briefed your office on the results of our work on December 8, 1983, and January 19, 1984. This letter summarizes the information presented during the briefings and other information we obtained more recently.

We discussed sea otter issues and efforts to protect the sea otter population with representatives of the Department of the Interior's Fish and Wildlife Service (FWS), Minerals Management Service, and Office of the Solicitor; the Marine Mammal Commission, an independent agency of the Executive Branch; and the California Department of Fish and Game. We also discussed these issues and efforts with representatives of Friends of the Sea Otter, a conservationist organization concerned with the sea otter's welfare; Save our Shellfish, a commercial and recreational fishing interest group; and the Western Oil and Gas Association. We reviewed correspondence, studies, and other documents provided by these organizations; pertinent legislation; and federal and state policies and procedures for coordinating and carrying out sea otter management activities. We also attended a Marine Mammal Commission meeting in which representatives from these organizations discussed sea otter management issues and activities. Our work was conducted between September 1983 and March 1984.

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BACKGROUND

Under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), the Secretary of the Interior has regulatory responsibility for the conservation, management, and protection of marine mammals which maintain a close proximity to land, such as the sea otter. The Secretary has delegated this responsibility to FWS. The act also established the Marine Mammal Commission to oversee federal and state regulatory and research activities in carrying out the act's provisions. The Commission conducts continuing reviews of marine mammal population conditions and makes recommendations to the Congress and federal agencies concerning the conservation and protection of marine mammals.

Sea otter management issues have been a controversial subject for many years in California. Problems associated with the federal/state management of the sea otter relate to conflicts between sea otter interest groups on the one hand, and shellfish interest groups and the oil and gas industry on the other. Sea otters eat abalone and other shellfish that are economically valuable and important to commercial and recreational fishermen. The California Department of Fish and Game and commercial and sport fishing interests favor restrictions on the otter's range or habitat. Conservationist groups support expansion of the sea otter's range and increasing the population. The oil and gas industry agrees with the need to protect the sea otter population, but is concerned that a current FWS proposal to establish one or more sea otter colonies outside the population's present range could hamper the industry's ongoing and future exploration and development activities.

The southern sea otter population inhabits a range of about 200 miles along the southern California coast. Because its small population of about 1,300 to 1,500 animals is concentrated in such a small area, the sea otters, according to FWS, are vulnerable to oil spills. In designating the southern sea otter as a "threatened" species under the Endangered Species Act in January 1977, FWS emphasized the potential threat to the otter population from a major oil spill from tanker traffic in the vicinity of the otter's range. According to FWS, the perceived risk has been broadened in recent years to include risks from fishery-induced mortality (such as fish net entanglement) and offshore oil exploration, development, and production. FWS is currently reviewing the status of the southern sea otter, in accordance with Endangered Species Act requirements which call for periodic reviews of the status of species listed as threatened or endangered, and expects to complete this work by May 1984.

The Commission recommended in 1980 that, to facilitate protection and recovery of the otter population while minimizing possible adverse effects on commercial and recreational fisheries, FWS develop a plan to establish one or more sea otter colonies in

an area or areas that would not likely be affected by an oil spill and to manage or contain the relocated (translocated) otters in their new environment (a concept referred to as "zonal management").

In our May 1981 report,<sup>1</sup> we discussed various management issues and regulatory actions relating to five marine mammal species, including the southern sea otter. We recommended that FWS work with the Commission, the California Department of Fish and Game, and others to resolve sea otter issues and to expedite the development of a suitable recovery plan.

FWS approved its southern sea otter recovery plan in February 1982. The plan summarized information on the sea otter and its habitat and outlined recommendations and goals, including translocation and zonal management measures, to promote the recovery of the population and remove it from the threatened status. The plan is currently being updated by FWS and revised to include new information and issues, such as the recent concern over sea otter mortality from entanglement in fishing nets.

#### STATUS OF CURRENT EFFORTS TO PROTECT SEA OTTER POPULATION

In August 1983, the Commission and its scientific advisors met in San Francisco, California, to review current sea otter management issues and federal and state efforts to implement the FWS sea otter recovery plan. Representatives of FWS, the Minerals Management Service, the California Department of Fish and Game, and other concerned groups, including Friends of the Sea Otter, Save our Shellfish, and the Western Oil and Gas Association, participated in the discussions. On the basis of information presented at this meeting, the Commission recommended in September 1983 that FWS take prompt action to accomplish the objectives and goals of the recovery plan. The recommendations were specifically directed toward expediting an assessment of sea otter mortality due to fishing net entanglement, selecting a suitable translocation site and developing a translocation plan, improving the accuracy of sea otter population studies, and other concerns.

In his December 19, 1983, response to the recommendations, the Director, FWS said FWS agreed in principle with the points raised and would advise the Commission of specific strategies to address these concerns at a later date. The Commission's recommendations and status of actions taken are discussed in more detail below.

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<sup>1</sup>Congressional Guidance and Better Federal Coordination Would Improve Marine Mammal Management (CED-81-52, May 11, 1981).

### Sea otter mortality in fishing nets

An issue which has recently attracted widespread attention and concern is the mortality of marine mammals being caught in fishing nets. Although the number of sea otters found dead on Monterey Bay and other California beaches increased significantly in 1980 and 1981, the direct causes of most sea otter deaths could not be determined. The entanglement and drowning of sea otters in fishing nets were not recognized until the California Department of Fish and Game and others discovered it by observations of fishing net hauls in 1982.

California initiated a monitoring program by observing net hauls in Monterey Bay and expanded the coverage to Morro Bay at the southern end of the sea otter range in 1982. However, such efforts have been sporadic because of funding limitations. They have not provided sufficient data to determine how serious the problem is with respect to sea otter mortality and what if anything should be done about it. Although the State banned the use of certain types of fishing nets in areas of Monterey Bay and other nearshore areas north of the sea otter range for several months in 1982 and 1983, these actions were taken primarily to protect seabirds which also were being caught in fishing nets.

The Commission believes the entanglement and drowning of sea otters in fishing nets could be partly responsible for the apparent lack of growth of the sea otter population in recent years. The State and FWS sea otter population studies indicated that the population had been slowly increasing throughout the 1960's and early 1970's, but has not grown in the last several years. The Commission therefore recommended that FWS expedite its assessment of the impact of fishing net entanglement on sea otter mortality and, if necessary, initiate actions to reduce such occurrences. FWS agreed that such an assessment is critical and advised the Commission that it would work closely with the State in developing an appropriate plan to deal with this matter.

FWS' Assistant Regional Director for Federal Assistance advised us in March 1984 that FWS was working with the California Department of Fish and Game in compiling and analyzing sea otter mortality data. He said that the State plans to prepare a report by May 1984 which will discuss the impact of sea otter mortality from net entanglement and recommend mitigation measures. The State also plans to hold public hearings on the problem and, if necessary, develop legislation by September 1984 to restrict the use of certain types of fishing nets.

### Translocation efforts

In late 1981, FWS contracted for a study to identify, evaluate, and compare possible sites to establish one or more sea otter colonies outside the present sea otter range in California.

A draft report of this study was provided to FWS in December 1983 and distributed to interested parties for review and comment. FWS said the report is expected to be issued in April 1984.

The study included the entire Pacific coastal zone from the Canadian to the Mexican border, but narrowed the potential locations for a translocation of sea otters to four areas having suitable habitat along the coasts of northern Washington, southern Oregon, and northern California, and near San Nicholas Island south of the otter's current range. The draft report discussed the habitat suitability, environmental risks, fisheries' conflicts, and other factors considered at each of the four locations. It also summarized the advantages, disadvantages, and relevant considerations of each location to facilitate a comparison of the areas in selecting one or more translocation sites.

Before a translocation can be initiated, however, a number of legal, environmental, and economic determinations must be made. For example, the Department of the Interior recently addressed legal questions that the Commission and the California Department of Fish and Game had raised concerning the authority to (1) take sea otters from their present range to establish new, viable populations along the Pacific coast and (2) control the movements of both the parent stock and the new population after translocation. The State had advised FWS in March 1983 that it could support a translocation of sea otters to establish a new colony within State waters if the new colony could be legally and feasibly contained within a designated otter zone. The State also wanted to restrict the existing sea otter population to certain boundaries.

In a December 19, 1983, memorandum, Interior's Office of the Solicitor provided FWS with a legal opinion which stated that translocation efforts could be authorized under both the Marine Mammal Protection Act and the Endangered Species Act if certain requirements and conditions were met. The memorandum discussed these requirements and conditions and the processes involved. It concluded that

"state and federal authorities would be empowered to control the movements, or outward migration, of those sea otters that were translocated to the site of the experimental population, but only if (1) such takings are necessary and advisable to fulfill the scientific objectives for the research permit and (2) the rationale behind the limited taking authority is clearly and specifically delineated in both the MMPA [Marine Mammal Protection Act] scientific research permit and the ESA [Endangered Species Act] experimental population regulations and permit."

However, the legal opinion on the second point raised by the State questioned

"whether the state and federal wildlife agencies possess sufficient authority to restrict the natural growth and movement of the original parent population (current range) of sea otters in conjunction with a translocation program."

The Commission recommended that FWS prepare a proposed translocation plan that can be subjected to legal, environmental, and economic evaluation and assessment. The Commission also recommended that the plan contain essential elements, such as descriptions of the proposed translocation site or sites; the number, ages, and sexes of otters to be translocated; the methods and equipment that will be used to capture, hold, transport, and release captured otters; and the types of assessment and monitoring programs that will be conducted to determine whether or to what extent the otters are moving, reproducing, and surviving as expected.

We discussed the status of the translocation plan with FWS' Assistant Regional Director for Federal Assistance in March 1984. He said FWS expected to have a translocation plan developed in draft form by May 1984 which will set forth a general outline of the elements necessary to conduct a successful translocation but will not specify the site to be selected. He added that an economic analysis of each potential site must also be done and the results incorporated in an overall environmental impact statement. He said the site that FWS considers most suitable will be specified in the environmental impact statement which should be available for public review and comment by March 1985. The final selection will not be made until after public comments are received and considered.

Other efforts underway  
to protect sea otters

In conducting periodic surveys to estimate the population of sea otters, FWS and the State have used different procedures. According to the Commission, neither procedure provides an accurate estimate of the number of otters. There are mixed views as to which method provides the most accurate count and is best to detect and monitor population trends. The Commission therefore recommended that FWS consult with the State and other experts to identify factors requiring consideration in improving population surveys and develop a plan for evaluating alternative population survey methodologies.

FWS met with the State, the Commission, and others in January 1984 and discussed various population counting techniques and problems and plans for conducting and coordinating the next census in May 1984. FWS officials told us that FWS and the State plan to

conduct their surveys essentially as they have in the past but will also simultaneously count the sea otters in designated locations to compare the results of the two procedures. In addition, FWS is planning to conduct experimental work, with assistance from the State, to better estimate the proportion of otters that are observed by shore counters.

FWS officials also told us that the State has initiated a study to test the feasibility of using certain techniques for capturing and containing sea otters. FWS expects the State to provide a report on the results of this study in September 1984.

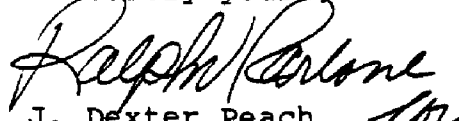
In view of the complexity of the issues involved in protecting the sea otter population, the Commission recommended in September 1983 that FWS appoint a full-time qualified person to coordinate sea otter activities and insure that the tasks required to implement the FWS recovery plan and the Commission's recommendations are accomplished promptly and effectively. The Commission offered to transfer \$40,000 to FWS to help support the first year's work of a qualified person who would provide the management direction needed. FWS agreed that such a person was needed and advised us in March 1984 that it was screening candidates to fill the position and expected to select a coordinator by May 1984.

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At your request, we did not obtain agency comments. However, the matters presented in this report were discussed with FWS, Commission, and California Department of Fish and Game officials concerned with sea otter issues and their views are incorporated, where appropriate. Except as noted above, our work was performed in accordance with generally accepted government auditing standards.

As arranged with your office, we are sending copies of this report to interested parties and will make copies available to others upon request.

Sincerely yours,

  
J. Dexter Peach  
Director