SEC. ___. SOUTHERN SEA OTTER MILITARY READINESS AREAS.

(a) ESTABLISHMENT OF THE SOUTHERN SEA OTTER MILITARY READINESS AREAS.—Chapter 631 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 7235. Establishment of the Southern Sea Otter Military Readiness Areas

"(a) ESTABLISHMENT.—The Secretary of the Navy shall establish areas, to be known as 'Southern Sea Otter Military Readiness Areas', for national defense purposes. Such areas shall include each of the following:

"(1) The area that includes Naval Base Ventura County, San Nicolas Island, and Begg Rock and the adjacent and surrounding waters within the following coordinates:

"N. Latitude/W. Longitude

"33°27.8´/119°34.3´

"33°20.5´/119°15.5´

"33°13.5´/119°11.8´

"33°06.5´/119°15.3´

"33°02.8´/119°26.8´

"33°08.8´/119°46.3´

"33°17.2´/119°56.9´

"33°30.9´/119°54.2´.

"(2) The area that includes Naval Base Coronado, San Clemente Island and the adjacent and surrounding waters running parallel to shore to 3 nautical miles from the high tide line designated by part 165 of title 33, Code of Federal Regulations, on May 20, 2010, as the San Clemente Island 3NM Safety Zone.

"(b) ACTIVITIES WITHIN THE SOUTHERN SEA OTTER MILITARY READINESS AREAS.—

"(1) INCIDENTAL TAKINGS UNDER ENDANGERED SPECIES ACT OF 1973.—Sections 4 and 9 of the Endangered Species Act of 1973 (16 U.S.C. 1533, 1538) shall not apply with respect to the incidental taking of any southern sea otter in the Southern Sea Otter Military Readiness Areas in the course of conducting a military readiness activity.

"(2) INCIDENTAL TAKINGS UNDER MARINE MAMMAL PROTECTION ACT OF 1972.—Sections 101 and 102 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1371, 1372) shall not apply with respect to the incidental taking of any southern sea otter in the Southern Sea Otter Military Readiness Areas in the course of conducting a military readiness activity.

"(3) TREATMENT AS SPECIES PROPOSED TO BE LISTED.—For purposes of conducting a military readiness activity, any southern sea otter while within the Southern Sea Otter Military Readiness Areas shall be treated for the purposes of section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) as a member of a species that is proposed to be listed as an endangered species or a threatened species under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533).

"(c) REMOVAL.—Nothing in this section or any other Federal law shall be construed to require that any southern sea otter located within the Southern Sea Otter Military Readiness Areas be removed from the Areas.

"(d) REVISION OR TERMINATION OF EXCEPTIONS.—The Secretary of the Interior may revise or terminate the application of subsection (b) if the Secretary of the Interior, in consultation with the Secretary of the Navy, determines that military activities occurring in the

Southern Sea Otter Military Readiness Areas are impeding the southern sea otter conservation or the return of southern sea otters to optimum sustainable population levels.

"(e) MONITORING.—

"(1) IN GENERAL.— The Secretary of the Navy shall conduct monitoring and research within the Southern Sea Otter Military Readiness Areas to determine the effects of military readiness activities on the growth or decline of the southern sea otter population and on the near-shore ecosystem. Monitoring and research parameters and methods shall be determined in consultation with the Service.

"(2) REPORTS.—Not later than 24 months after the date of the enactment of this section and every three years thereafter, the Secretary of the Navy shall report to Congress and the public on monitoring undertaken pursuant to paragraph (1).

"(g) DEFINITIONS.—In this section:

"(1) SOUTHERN SEA OTTER.—The term 'southern sea otter' means any member of the subspecies Enhydra lutris nereis.

"(2) TAKE.—The term 'take'—

"(A) when used in reference to activities subject to regulation by the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), shall have the meaning given such term in that Act; and

"(B) when used in reference to activities subject to regulation by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) shall have the meaning given such term in that Act.

"(3) INCIDENTAL TAKING.—The term 'incidental taking' means any take of a southern sea otter that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

"(4) MILITARY READINESS ACTIVITY.—The term 'military readiness activity' has the meaning given that term in section 315(f) of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (16 U.S.C. 703 note) and includes all training and operations of the armed forces that relate to combat and the adequate and realistic testing of military equipment, vehicles, weapons, and sensors for proper operation and suitability for combat use.

"(5) OPTIMUM SUSTAINABLE POPULATION.—The term 'optimum sustainable population' means, with respect to any population stock, the number of animals that will result in the maximum productivity of the population or the species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"7235. Establishment of the Southern Sea Otter Military Readiness Areas."

(c) CONFORMING AMENDMENT.—Section 1 of Public Law 99-625 (16 U.S.C. 1536 note) is repealed.

Section-by-Section Analysis

This legislative proposal would allow the U.S. Fish & Wildlife Service (USFWS) and the Department of the Navy to provide for the conservation needs of the Southern Sea Otter while continuing the protections for military readiness activities at important offshore islands in the Southern California Bight that were provided by Public Law (P.L.) 99-625 while the translocation program was in effect.

In the 1980's, threats to the Southern Sea Otter included its small population size, its greatly reduced range, and the potential risk of oil spills. In response, the USFWS developed a plan to establish an independent colony of otters sufficiently removed from the parent population to serve as a safeguard for the population as a whole in the event of a natural or manmade catastrophe. Following an Environmental Impact Statement that identified San Nicolas Island as a potential host site for a separate population, Navy supported P.L. 99-625, which authorized the plan along with protection for military activities throughout the management zone and San Nicholas Island, as well as protection for defense-related agency activities under the Endangered Species Act (ESA), but no similar exemption under the Marine Mammal Protection Act (MMPA) at San Nicolas Island. Similarly, Navy supported the USFWS governing regulations, which effectively protected military uses at San Nicolas and were published on August 11, 1987 (52 FR 29754). Between August 1987 and March 1990 the USFWS and the California Department of Fish & Game administered the plan, with cooperation from and in reliance on support from the U.S. Navy, and established an experimental colony of Southern Sea Otters in a translocation zone around San Nicolas Island. The island is a military installation attached to Naval Base Ventura County and a major asset for Navy Test, Evaluation, Training and Experimentation operations. Once the plan was implemented, provisions of P.L. 99-625 became operative and provided for protection of defense-related agency activities from the consultation requirements of the ESA, with respect to southern sea otters, within the translocation zone and both the ESA and MMPA within a management zone throughout the Southern California Bight. The management zone encompassed the U.S. Navy's Point Mugu Sea Range (that includes San Nicolas Island), the U.S. Navy's Southern California Offshore Range (that includes San Clemente Island), and coastal military installations.

Implementation of the plan resulted in the presence of a healthy but small population of Southern Sea Otters at the translocation site, but due to the high initial rate of emigration of translocated sea otters and unforeseen problems with capturing and relocating sea otters, failed to meet the original objectives of the USFWS. Following the Exxon Valdez oil spill, the USFWS also determined that Southern Sea Otters at San Nicolas Island would not be isolated from the effects of a single large oil spill as originally envisioned. Moreover, large numbers of sea otters were moving southward down the California coast into the management zone, and experience with plan implementation indicated that further removal of otters from the management zone could result in substantial adverse effects on the parent population. Consequently the USFWS ultimately terminated the program with the release of a Final Rule and Record of Decision on 19 December 2012.

The termination of the translocation program and its associated translocation and management zones renders the specific provisions of P.L. 99-625 inoperative. As such, the USFWS has stated that exemptions for defense-related agency activities found in P.L. 99-625 no longer apply. Whereas USFWS believes that programmatic consultations afford a feasible means of minimizing the regulatory burden on Navy associated with ESA compliance for sea otters, Navy believes that the loss of the protective provisions for military activities in P.L. 99-625 poses national security concerns.

The USFWS has publicly stated that current military readiness activities at San Nicolas Island pose no threat to the conservation and recovery of Southern Sea Otters. In relation to

Navy activities, the USFWS Supplemental Environmental Impact Statement states, "[t]o date, we have no evidence that defense-related activities have had any adverse effects on sea otters at San Nicolas Island or in the management zone," which included San Clemente Island (where sea otters do not currently occur) as well as other areas of Naval activity throughout the Southern California Bight. Navy's Sikes Act Integrated Natural Resources Management Plans (INRMPs) for military installations in California also address special management needs of threatened and endangered species and provide conservation benefits to near shore marine environments through watershed and land-based management actions. It is clear that Navy has been an exemplary custodian of the translocated otters; however, with the return to full ESA applicability, mitigation requirements could ultimately limit types and quantity of military readiness activities in these critically important testing and training areas.

This legislation will continue the protections afforded by the military activity provisions originally enacted in P.L. 99-625, but on a generally smaller scale (the MMPA exemption with respect to sea otters around San Nicolas Island was not included in P.L. 99-625 and thus increases protections for military readiness activities there). The management zone originally prescribed by P.L. 99-625 encompassed the entirety of the Southern California Bight. This legislation identifies two comparatively small marine areas adjacent to important land-based military test and training areas where the military activity provisions will apply. This legislation includes both monitoring and reporting requirements for the Department of the Navy not enacted as part of P.L. 99-625, and a termination provision.

Budgetary Implications: This proposal is not expected to result in changes to the existing budget, as military installations already develop and incorporate actions that protect and conserve the Southern Sea Otter currently at San Nicolas Island. No Operation & Maintenance, Navy funds are budgeted separately to protect and conserve the Southern Sea Otter population at San Nicolas Island. The monitoring of the otter population is carried out by the U.S. Geological Survey agency. This proposal is not expected to generate fiscal savings but will help eliminate the potential for possibly expensive constraints on military readiness activities.

RESOURCE REQUIREMENTS ($MILLIONS)									
	FY 2014	**FY 2015**	**FY 2016**	**FY 2017**	**FY 2018**	**Appropriation To**	**Budget Activity**	**Dash-1 Line Item**	**Program Element**
	0	0	0	0	0				

Changes to Existing Law: Section 1 of Public Law 99-625 (16 U.S.C. 1536 note) would be repealed:

~~**SECTION 1. TRANSLOCATION OF CALIFORNIA SEA OTTERS.**~~

~~(a) DEFINITIONS.—For purposes of this section-~~

~~(1) The term 'Act' means the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).~~

~~(2) The term 'agency action' has the meaning given that term in section 7(a)(2) of the Act [16 U.S.C. 1536(a)(2)].~~

~~(3) The term 'experimental population' means the population of sea otters provided for under a plan developed under subsection (b).~~

~~(4) The phrase 'parent population' means the population of sea otters existing in California on the date on which proposed regulations setting forth a proposed plan under subsection (b) are issued.~~

~~(5) The phrase 'prospective action' refers to any prospective agency action that—~~

~~(A) may affect either the experimental population or the parent population; and~~

~~(B) has evolved to the point where meaningful consultation under section 7(a)(2) or (3) of the Act [16 U.S.C. 1536(a)(2), (3)] can take place.~~

~~(6) The term 'Secretary' means the Secretary of the Interior.~~

~~(7) The term 'Service' means the United States Fish and Wildlife Service.~~

~~(b) PLAN SPECIFICATIONS.—The Secretary may develop and implement, in accordance with this section, a plan for the relocation and management of a population of California sea otters from the existing range of the parent population to another location. The plan, which must be developed by regulation and administered by the Service in cooperation with the appropriate State agency, shall include the following:~~

~~(1) The number, age, and sex of sea otters proposed to be relocated.~~

~~(2) The manner in which the sea otters will be captured, translocated, released, monitored, and protected.~~

~~(3) The specification of a zone (hereinafter referred to as the 'translocation zone') to which the experimental population will be relocated. The zone must have appropriate characteristics for furthering the conservation of the species.~~

~~(4) The specification of a zone (hereinafter referred to as the 'management zone') that—~~

~~(A) surrounds the translocation zone; and~~

~~(B) does not include the existing range of the parent population or adjacent range where expansion is necessary for the recovery of the species.~~

~~The purpose of the management zone is to (i) facilitate the management of sea otters and the containment of the experimental population within the translocation zone, and (ii) to prevent, to the maximum extent feasible, conflict with other fishery resources within the management zone by the experimental population. Any sea otter found within the management zone shall be treated as a member of the experimental population. The Service shall use all feasible non-lethal means and measures to capture any sea otter found within the management zone and return it to either the translocation zone or to the range of the parent population.~~

~~(5) Measures, including an adequate funding mechanism, to isolate and contain the experimental population.~~

~~(6) A description of the relationship of the implementation of the plan to the status of the species under the Act and to determinations of the Secretary under section 7 of the Act [16 U.S.C. 1536].~~

~~(c) STATUS OF MEMBERS OF THE EXPERIMENTAL POPULATION.—(1) Any member of the experimental population shall be treated while within the translocation zone as a threatened species for purposes of the Act, except that—~~

~~(A) section 7 of the Act [16 U.S.C. 1536] shall only apply to agency actions that—~~

~~(i) are undertaken within the translocation zone,~~

~~(ii) are not defense-related agency actions, and~~

~~(iii) are initiated after the date of the enactment of this section [Nov. 7, 1986]; and~~

~~(B) with respect to defense-related actions within the translocation zone, members of the experimental population shall be treated as members of a species that is proposed to be listed under section 4 of the Act [16 U.S.C. 1533].~~

~~For purposes of this paragraph, the term 'defense-related agency action' means an agency action proposed to be carried out directly by a military department.~~

~~(2) For purposes of section 7 of the Act [16 U.S.C. 1536], any member of the experimental population shall be treated while within the management zone as a member of a species that is proposed to be listed under section 4 of the Act [16 U.S.C. 1533]. Section 9 of the Act [16 U.S.C. 1538] applies to members of the experimental population; except that any incidental taking of such a member during the course of an otherwise lawful activity within the management zone, may not be treated as a violation of the Act or the Marine Mammal Protection Act of 1972 [16 U.S.C. 1361 et seq.].~~

~~(d) IMPLEMENTATION OF PLAN.-The Secretary shall implement the plan developed under subsection (b)—~~

~~(1) after the Secretary provides an opinion under section 7(b) of the Act [16 U.S.C. 1536(b)] regarding each prospective action for which consultation was initiated by a Federal agency or requested by a prospective permit or license applicant before April 1, 1986; or~~

~~(2) if no consultation under section 7(a)(2) or (3) regarding any prospective action is initiated or requested by April 1, 1986, at any time after that date.~~

~~(e) CONSULTATION AND EFFECT OF OPINION.—A Federal agency shall promptly consult with the Secretary, under section 7(a)(3) of the Act [16 U.S.C. 1536(a)(3)], at the request of, and in cooperation with, any permit or license applicant regarding any prospective action. The time limitations applicable to consultations under section 7(a)(2) of the Act apply to consultations under the preceding sentence. In applying section 7(b)(3)(B) with respect to an opinion on a prospective action that is provided after consultation under section 7(a)(3), that opinion shall be treated as the opinion issued after consultation under section 7(a)(2) unless the Secretary finds, after notice and opportunity for comment in accordance with section 553 of title 5, United States Code, that a significant change has been made with respect to the action or that a significant change has occurred regarding the information used during the initial consultation. The interested party may petition the Secretary to make a finding under the preceding sentence. The Secretary may implement any reasonable and prudent alternatives specified in any opinion referred to in this subsection through appropriate agreements with any such Federal agency, prospective permit or license applicant, or other interested party.~~

~~(f) CONSTRUCTION.—For purposes of implementing the plan, no act by the Service, an authorized State agency, or an authorized agent of the Service or such an agency with respect to a sea otter that is necessary to effect the relocation or management of any sea otter under the plan may be treated as a violation of any provision of the Act or the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.).~~~~"~~