

EXHIBIT 3

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9 *Attorneys for Proposed Intervenor-Defendants*
CALIFORNIA SEA URCHIN COMMISSION,
10 PETER HALMAY, HARRY LIQUORNIK,
CALIFORNIA ABALONE ASSOCIATION, AND
11 SONOMA COUNTY ABALONE NETWORK

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 THE OTTER PROJECT; ENVIRONMENTAL)
16 DEFENSE CENTER,)
17 Plaintiffs,)
18 vs.)
19 KEN SALAZAR, *et al.*,)
20 Defendants.)

Case No: 5:09-cv-04610-JW
DECLARATION OF PETER HALMAY
[Filed Concurrently With:
1. Notice of Motion and Motion of California
Sea Urchin Commission, *et al.*, For Leave to
Intervene Under FRCP 24;
2. Memorandum in Support Thereof;
3. Declaration of California Abalone
Association
4. Declaration of Harry Liquornik
5. Declaration of California Sea Urchin
Commission;
6. Declaration of Sonoma County Abalone
Network;
7. [Proposed] Order
8. [Proposed] Answer in Intervention]
Hearing Date: March 8, 2010
Time: 9:00 a.m.
Courtroom: 8, 4th Floor

1 6. I was appointed by the U.S. Fish and Wildlife Service (“FWS”) to serve on the Southern
2 Sea Otter Recovery Implementation Team in 2005 and served until 2007. As a member of the Southern
3 Sea Otter Recovery Implementation Team, I participated in every meeting from 2005-2007. The Team
4 sought to identify sea otter recovery actions that could be implemented, to prioritize the actions that
5 should be pursued and to assess the impacts of sea otter recovery initiatives on shellfish resources. The
6 focus was always on what could be done within the existing range of sea otters and not to expansion of
7 their range. The team was disbanded by the FWS in 2007.

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9 7. I was elected and served as Vice Chairman California Sea Urchin Commission from
10 2004-2005. The California Sea Urchin Commission was created by California statute as a marketing
11 commission under the California Department of Food and Agriculture. As Vice Chairman, I worked to
12 develop a sustainable fishery monitoring program that would inform resource managers regarding
13 management of the sea urchin fishery. I also devoted substantial effort to the issue of the San Nicolas
14 Island sea otter translocation program and to the sea otter management zone in order to develop a
15 program to recover sea otters and to also maintain the sea urchin fisheries. In 2005, I helped formulate
16 written comments by the California Sea Urchin Commission to the FWS regarding the Supplemental
17 Draft Environmental Impact Statement on the translocation and management of southern sea otters.
18 These comments provided a comprehensive analysis of the deficiencies of the document with regard to
19 its not using the most current data available.
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21 8. In 2008, the Chairman of the California Sea Urchin Commission appointed me to the
22 California Sea Urchin Commission Sea Otter Committee. I continue to serve as the chairman of the Sea
23 Otter Committee. My role is to develop a plan for sea otter recovery that balances the three objectives
24 of well-managed and abundant fisheries, healthy marine ecosystems, and recovery of the southern sea
25 otter population. As the Chairman of the Sea Otter Subcommittee, I have helped the Commission
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1 formulate the following specific goals: to maintain well-managed and abundant fisheries and healthy
2 marine ecosystems, and to recover the southern sea otter population.

3 9. I was elected and served as Vice-President of San Diego Fishermen's Association from
4 1977-1984. The San Diego Fishermen's Association was established as a membership association
5 representing commercial fishermen association. During my tenure, I sought to outlaw the use of
6 quicklime to kill sea urchins in the ocean environment. This practice was used by kelp harvesters and
7 the California Department of Fish and Game to restore balance in the kelp bed ecosystem because sea
8 urchins overgraze the kelp forests and cause sea urchin barrens. This practice was rendered unnecessary
9 with the establishment of a sea urchin fishery in 1970 since the fishery accomplished the purpose of
10 ensuring balance in the ecosystem.

12 10. I was elected and served as President of the Urchin Producers Marketing Association San
13 Diego from 1992-1994. This Association was established pursuant to the California Marketing Act. In
14 my role as President, I instituted programs to develop a fishery for purple sea urchins and sought to
15 develop a balanced approach to the sea otter/shellfisheries issue. This included maintaining the no-sea
16 otter management zone that was established as part of the San Nicolas Island Sea Otter Translocation
17 Program provided for in Public Law 99-625.

19 11. I was elected and served as President of the Sea Urchin Harvesters Association California
20 from 1994-2005. This Association is a non-profit California corporation representing California's sea
21 urchin divers. During my tenure as President, I addressed resource management issues including
22 developing plans to balance sea otter recovery and fisheries management issues.

24 12. I was elected and served as Secretary of the San Diego Watermen's Association from
25 2004-2009. There are approximately 180 sea urchin divers including members of this Association who
26 will be directly affected by any sea otter range expansion into their fishing areas since the distance these
27 fishermen can travel from their home port is restricted by the limited range of their small vessels. The
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1 areas they fish are about 100 miles from Point Conception. The Association is a non-profit California
2 corporation representing fishermen in San Diego. During my tenure, I worked on matters related to the
3 scientific management of the sea urchin fishery and direct marketing strategies for fishermen. In 2006, I
4 received a grant on behalf of the San Diego Watermen's Association from the Ocean Protection Council
5 to develop innovative strategies for the sustainable management of small sedentary species such as sea
6 urchins.

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8 13. I have been involved in all aspects of the development and management of the sea urchin
9 fishery since 1978 and have attended California Fish and Game Commission hearings every year for the
10 past 37 years. On approximately six occasions, I testified regarding sea otter/fishery interactions. I also
11 made recommendations that led to the establishment of a California Fish and Game Commission policy
12 on sea otter and shellfisheries interactions.

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14 14. I represented the diver sector of the sea urchin Industry at the Fisheries Forum from 1995
15 to 2005. The Fisheries Forum is an annual hearing by the California State Assembly Joint Committee
16 on Fisheries and Aquaculture to allow fishery representatives to present issues related to their fishery.

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18 15. I have presented scientific papers at California and World Oceans Symposia in 1993 and
19 1997. The paper presented in 1997 titled "The Role of Divers' Associations in the Development and
20 Stewardship of the California Sea Urchin Fishery" dealt with the effectiveness of fishermen in setting
21 and meeting their goals through fishing associations. These goals included long range, sustainable
22 programs such as the maintenance of the sea otter management zone.

23
24 16. In 1993, I helped convened a Sea Urchin Summit chaired by the Executive Director of
25 the Pacific States Marine Fisheries Commission and attended by environmental groups, fishermen, and
26 the FWS. At the Summit, it was agreed that the preparation of the Southern Sea Otter Recovery Plan
27 should be more transparent and that the Recovery Team would be expanded to include technical
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1 consultants. The technical consultants would be fishermen, representative of the oil companies, and
2 representatives from environmental organizations.

3 17. On behalf of Sea Urchin Harvesters Association California, I provided testimony at the
4 1999 Annual meeting of the U.S. Marine Mammal Commission. My testimony, dealt with improving
5 the chances of recovering and delisting sea otters by reducing the health threats to the population caused
6 by pollution. In addition, I discussed the Association's initiative to develop a consensus solution with
7 the environmental community to the issue of sea otter/shellfisheries conflict.

8
9 18. At the Marine Mammal Commission's October 1999 meeting the Commission invited
10 representatives of the state and federal agencies and private organizations with related interests and
11 responsibilities to attend and present their views on sea otter related matters. Representatives of several
12 fishery and environmental groups used the meeting as a forum to identify common goals and to initiate
13 discussions on ways the groups might work cooperatively to meet those goals. Those discussions
14 continued after the Commission meeting. I helped to organize and participated in all these meetings,
15 commonly referred to as the Common Ground meetings. Despite some setbacks, we made progress
16 toward addressing the main threat to sea otter population – disease and pollution. At the last meeting in
17 June 2005, on behalf of the fishing representatives, I presented a conceptual alternative that sought to
18 recover sea otters and to protect fisheries. All in attendance agreed we should determine if there was an
19 alternative to the sea otter translocation program and the no otter management zone that all could agree
20 to. Unfortunately, these discussions were never continued.

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22 19. In 2002, I provided written comments on behalf of Sea Urchin Harvesters Association
23 California and Sea Urchin Processors Association California to FWS regarding the revised recovery
24 Plan for the Southern Sea Otter. These communications expressed concern about using outdated and,
25 therefore, inaccurate biological information as a basis for policy recommendations. The information
26 provided by the FWS on which I submitted comments is now dated by another five years, thus making
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1 decisions regarding the effects of allowing sea otters to expand their range south of Point Conception
2 even more problematic. The comments also provided the framework for an alternative that balanced sea
3 otter recovery with sustainable shellfisheries

4 20. I attended the Annual Southern Sea Otter Research meetings in 2005, 2006, and 2007.
5 The purpose of these meetings was to allow scientists working on sea otters to share their latest research
6 and findings. A large percentage of the research concerned the effect of pollutants on sea otter survival.
7 The effects of such pollution are considered by the scientific community as the most important hurdle to
8 the recovery of sea otters.
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10 21. I have fished commercially in California full time from 1976 to the present. During 25 of
11 these years, I fished sea urchins 100% of the time. During the other nine years, I fished sea urchins 70%
12 of the time and also fished for abalones, hydrocoral, and lobsters, or collected data on sea urchin
13 populations. I have fished an average of 130 days per year with another 90 days spent traveling to the
14 fishing grounds or repairing and maintaining my fishing equipment. The other days were devoted to
15 ocean resource issues, attendance at meetings and hearings, and serving on committees as discussed in
16 the preceding paragraphs. I have supported my family by diving for sea urchins for the last 33 years.
17 Last year my gross income from sea urchin diving was approximately \$45,000.
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19 22. I have harvested sea urchins along the California mainland coast from San Diego to Point
20 Conception and from Bodega Bay to Point Arena. These two areas are South and North of the sea otter
21 range respectively. No sea urchin harvest takes place in the sea otter range. The entire coast from San
22 Diego to Point Conception is within the no otter management zone. I have harvested sea urchins at the
23 Islands of San Clemente, Santa Catalina, Santa Barbara, San Nicolas, Santa Cruz, Santa Rosa, and San
24 Miguel. All of these Islands, with the exception of San Nicolas Island, are in the no otter management
25 zone. San Nicolas Island is in the sea otter translocation zone. I have landed sea urchins in the Ports of
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1 San Diego, Mission Bay, San Pedro, Channel Islands, Santa Barbara, and Bodega Bay. All these ports
2 with the exception of Bodega Bay are in the management zone.

3 23. In 1986, I purchased the 35-foot fiberglass fishing vessel Erin B. I have been diving for
4 sea urchins from the Erin B every year since that time. My dive operation consists of a two-man crew, a
5 diver, and a deck hand /boat operator. My deckhand has been with me for 26 years. He is highly skilled
6 at tending a diver and also operating a small fishing vessel. Should the sea urchin fishery be eliminated,
7 he would likely be able to get only the most menial jobs at minimum wage. There were 177 divers who
8 harvested sea urchins in the management zone in 1997, with approximately 80 deckhands. All these
9 jobs would be at risk if the sea otters migrated into the management zone.
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11 24. I have made over 18,000 dives in my 39 years of diving commercially in California. I
12 harvested primarily abalones in the first six years and primarily sea urchins in the following 33 years. If
13 I am forced out of fishing by sea otter range expansion, not only will I lose my source of income but my
14 experience in ocean resource management will be lost if I could no longer make first hand observations
15 of patterns in the ocean environment.
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17 25. Management of the sea urchin fishery in California has focused on the establishment of a
18 minimum size for harvested animals to ensure proper reproduction and population size as well as to
19 provide a year round supply of quality product to the market.
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21 26. Sea otters predate on sea urchins far below the minimum size of three and one quarter
22 inches in test diameter, the diameter that is the minimum harvestable size for fishermen. These smaller
23 sea urchins account for approximately 70% of the current sea urchin population. Sound resource
24 management dictates that they should be left unharvested to prevent stock collapse.

25 27. Sea otter predation would have its greatest negative impact on small scale community
26 based fisheries that are the vanguard of local food production and that have a low carbon footprint. The
27 goal of lowering the carbon footprint of this Nation's fisheries is enhanced by harvesting in small boats
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1 near the harbor, processing the product locally, and selling it locally. Our present focus in the sea urchin
2 industry is on developing direct marketing of sea urchins to local markets. If local stocks are
3 diminished, it will open the door to imports from Chile and Japan, each with thousands of fish miles for
4 each sea urchin, a fact that significantly increases the carbon footprint for fisheries.

5 28. A sea otter will eat about 25-30% of its body weight daily. In the case of sea urchins, a
6 favored prey of sea otters, the only nutritional part of the sea urchin is the gonad which comprises an
7 average 7% of the total weight of the sea urchin. This means that if a 50 pound sea otter ate only sea
8 urchins, it could eat more than 150 sea urchins a day, or about 65,000 pounds of whole sea urchins a
9 year. Published observations of sea otter consumption when in areas of high sea urchin density show
10 that urchins are more than 60% of the sea otter diet. Bodkin, James L., George G. Esslinger and Daniel
11 H. Monson (2004), Foraging Depths of Sea Otters and Implications to Coastal Marine Communities,
12 Marine Mammal Science, 20 at 305-321; Breen, Paul A., Trudy A. Carson, J. Bristil Foster and E. Anne
13 Stewart (1982), Changes in Subtidal Community Structure Associated with British Columbia Sea Otter
14 Transplants, Marine Ecology – Progress Series 7 at 13-20; Laidre, Kristin L. and Ronald J. Jameson
15 (2006), Foraging Patterns and Prey Selection in an Increasing and Expanding Sea Otter Population,
16 Journal of Mammalogy 87(4), at 799-807; and Miller, D.J. (1974), The Sea Otter, *Enhydra lutirs*, Its
17 Life History Taxonomic Status, and Some Ecological Relationships, Mar. Res. Leaflet 7, California
18 Dept. Fish and Game, Sacramento.

19 29. A colony of 200 sea otters, consuming over 10 million pounds of sea urchins per year
20 would cause the collapse of the sea urchin fishery within a few years because we are presently
21 harvesting at, or slightly below, sustainable levels. Sea otter predation would take the sea urchin
22 population below sustainable levels.

23 30. Approximately 60% of the Southern California red sea urchin harvests, or 6.5 million
24 pounds, occur at San Miguel and Santa Rosa Islands. These Islands are in the no otter management zone
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1 closest to the existing sea otter range. There are more than 100 sea otters presently at or near Point
2 Conception, a distance of less than 30 miles from these Islands which currently are the very heart of the
3 sea urchin fishery. Sea otters can readily travel this distance. In the early 1990s, over 15 sea otters were
4 observed at San Miguel Island. These sea otters were captured and moved to the mainland coast as part
5 of the management program. In the past few years, there has been an increase of more than 150 in the
6 sea otter population at the south end of their current range near Point Conception. This is the area
7 adjacent to the management zone. Since 1998, more than 100 sea otters have regularly migrated in and
8 out of the management zone along the coast, and it is only a matter of time until large numbers of sea
9 otters migrate to San Miguel Island, located down wind within a day's swim from Point Conception.
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11 Sea otter range expansion occurs in a pattern in which males make the first forays, ultimately followed
12 by females and pups, thus colonizing the area. Since the late 1990s, we have been observing the first
13 stage of this colonization, the movement in and out of the management zone of male sea otters.

14 31. A 60% reduction in the total California harvest would cause the California sea urchin
15 industry to lose the export market of Japan and China because we would not have a steady supply of
16 adequate quantities for export. This would be a loss of export revenue on the order of \$5.7 million
17 annually.
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19 32. A 60% reduction in the total California sea urchin harvest would cause the majority of
20 the ten sea urchin processors in Southern California to close their doors since they rely on the processing
21 of sea urchins for the bulk of their business. The nine sea urchin processors in Southern California
22 employ approximately 60 semi-skilled and unskilled workers at each plant. These employees would
23 lose their employment and their families would suffer as many will slip below the poverty line. These
24 semi skilled workers would have difficulty finding employment especially during periods such as the
25 current downturn in the business climate.
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1 33. Should sea otters reduce the urchin population to unsustainable levels at San Miguel and
2 Santa Rosa Islands, fishery managers would need to close that fishing area. The California sea urchin
3 fishery is regulated as a restricted access fishery with only 300 fishing permits. This limit is called a
4 capacity goal and is established by State resource managers to maintain an orderly fishery. As the
5 fishing grounds are diminished by the removal of sea urchins by sea otters, the capacity goal would
6 likely be reduced. Some divers who presently have permits would see their permits revoked by the
7 State. The capacity goal would eventually be set at zero, when the sea otter range covers all of
8 California. The reason is that shellfish harvests with unlimited sea otter predation are not sustainable.
9 There is ample empirical data that shows the collapse of shellfisheries upon expansion of the range of
10 sea otters including the collapse of the abalone fishery around Morro Bay, the collapse of the sea urchin
11 fishery around Port San Luis, the reduction in harvest of red sea urchins by 90% in the area from Point
12 Conception to Santa Barbara within two years of their migration when sea otters migrated into the
13 management zone in 1998. Long term surveys near Port San Luis revealed that sea urchin densities
14 dropped to 1% of pre-otter densities after only 27 months of sea otter occupation. Benech, Suzanne V.
15 (1978), Observations of the Sea Otter *Enhydra Lutris* Population between Coon and Rattlesnake Creeks
16 January-December, 1978, Unpublished Report, Ecomar Inc. #VII-3-78. From a personal point of view
17 the sea otter predation that will ensue if the otter management zone is abolished means it is only a matter
18 of time until my permit is revoked.
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21 34. The loss of San Miguel and Santa Rosa Islands as sea urchin fishing grounds could
22 trigger an alternative management action by the State resource agency, a reduction in fishing days by
23 60%. Such an action would so reduce the revenue that could be earned from sea urchin fishing as to
24 effectively end the fishery because no one could earn a sustainable living from fishing.
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26 35. I fish about 130 days a year and I am barely making it after expenses. My fixed expenses
27 would stay the same even if the number of days allowed for fishing were cut. In fact, a reduction of
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1 30% in fishing days, let alone 60%, would mean that the fishery would no longer be profitable and I
2 would have to leave the fishery.

3 36. If I am forced to leave the sea urchin fishery, I could not enter another fishery to make up
4 lost income. Approximately 90% of California fisheries have restricted access policies so I could not
5 participate in another fishery without incurring prohibitive costs for permits and specialized fishing
6 equipment. The combination of specialized gear and the cost of the permit would be well over \$150,000
7 for most fisheries. This is far above my resources.

8
9 37. If I am forced out of the sea urchin fishery because of sea otter range expansion, I will
10 lose my only source of income which means I probably will not be able to keep the property where I
11 have lived for 22 years and where I raised three children. I have two daughters and a son in college. If I
12 am forced out of the sea urchin fishery, I will not be able to support the cost of their education and they
13 would likely have to drop out of college. In other words, should Plaintiffs win this suit, I will likely be
14 forced out of the fishing business, lose my boat and possibly my house, and I will have no opportunity
15 for meaningful employment.

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17 38. For the past 30-plus years, I have spent thousands of hours in helping to develop the sea
18 urchin fishery into an orderly, well managed, sustainable fishery. This allows me to hand down to the
19 next generation the same opportunities this fishery has given me. If Plaintiffs prevail in this suit, the
20 next generation will not know a world with shellfisheries. My life's work will be rendered meaningless.

21 39. If the sea otter management zone remains in place then, with proper fishery management,
22 there will always be shellfish in this area. Since sea urchins and abalones, as well as many other
23 invertebrates, have a complex life cycle, their larva would be exported outside the management zone.
24 This would provide a faint hope for recovering the food supply provided strict management of sea otters
25 takes place.
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1 40. If Plaintiffs prevail, at the end of the day, sea otters will have expanded their range
2 throughout California and they will reach carrying capacity and start dying in large numbers, but
3 California shellfish fisheries will have been destroyed.

4 I hereby declare and certify, under penalty of perjury under the laws of the United States of
5 America, that the foregoing is true and correct. It is based on my personal knowledge and, if I were
6 called to testify in this court proceeding, my testimony would be the same as that contained in this
7 Affidavit.
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11 Dated: December 15, 2009


Peter Halmay