

accurate descriptions of vegetation, water features, and soil types; (4) current land use practices and existing development; and (5) a detailed account of conservation activities to be undertaken on the portion of the property to be enrolled. After signing a Cooperative Agreement, landowners will receive a certificate of inclusion to document landowners' participation in the Safe Harbor Agreement and convey incidental take authorization from the Applicant to certificate recipients. The Applicant will be responsible for annual monitoring and reporting related to implementation of the Safe Harbor Agreement and Cooperative Agreements and fulfillment of their provisions.

We have worked with the Applicant to design conservation activities expected to have a net conservation benefit to the Houston toad within the nine Texas counties to be covered under this proposed Agreement. These conservation activities include: (1) Brush management to create desired understory conditions and facilitate restoration of native ground cover; (2) forest enhancement/restoration to create favorable canopy conditions; (3) prescribed burning to restore, create, and maintain desired understory and ground cover conditions; (4) enhancement of existing breeding ponds to provide habitat for breeding adults and emerging toadlets; (5) control of red imported fire ants to maximize successful toadlet survival; (6) creation of new breeding ponds; and (7) headstarting and/or reintroduction of captively bred Houston toads (see section 5 "Conservation Activities" in the draft Agreement).

These conservation activities are expected to: (1) Enhance Houston toad foraging and hibernating habitat; (2) create and enhance Houston toad breeding and toadlet emergence habitat; (3) facilitate Houston toad dispersal through the creation and enhancement of habitat linkages throughout the species' range; (4) increase Houston toad population numbers through headstarting and reintroduction; and (5) facilitate viable, self-sustaining Houston toad subpopulations.

The incidental take of toads may occur from: (1) Habitat management actions conducted in accordance with the conservation activities in the Agreement, (2) ongoing land use activities that may have an increased chance of taking a toad if toad numbers increase, as expected, and (3) cessation of the conservation activities, return to baseline activities; if enrolled landowners exercise their authorization to do so under the permit.

The impacts of permit issuance and implementation on the human environment are analyzed within the draft Environmental Assessment, in compliance with the National Environmental Policy Act of 1969.

Section 9 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) prohibits "taking" of threatened or endangered species. However, the Service, under limited circumstances, may issue permits to take threatened and endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities.

#### Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### Authorities

We provide this notice pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), its implementing regulations (50 CFR 17.22), and the National Environmental Policy Act (42 CFR 4371 *et seq.*).

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: October 13, 2011.

**Joy E. Nicholopoulos,**

*Acting Regional Director, Southwest Region, Fish and Wildlife Service.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS-R8-R-2011-N199; 1261-0000-81680-W5]**

#### Otay River Estuary Restoration Project, South San Diego Bay Unit of the San Diego Bay National Wildlife Refuge, California; Environmental Impact Statement

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent; request for public comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), intend to prepare an environmental impact statement (EIS) for the proposed Otay River Estuary Restoration Project. The

proposed project involves the restoration of 66.4 acres of estuarine (subtidal and intertidal) wetland habitat within the western terminus of the Otay River, part of the San Diego Bay National Wildlife Refuge. This notice advises the public that we intend to gather information necessary to prepare an EIS, pursuant to the National Environmental Policy Act (NEPA). We encourage the public and other agencies to participate in the NEPA scoping process by sending written suggestions and information on the issues and concerns that should be addressed in the draft EIS, including the range of alternatives, appropriate mitigation measures, and the nature and extent of potential environmental impacts.

**DATES:** To ensure that we have adequate time to evaluate and incorporate suggestions and other input, we must receive your comments on or before January 6, 2012.

**ADDRESSES:** Send your comments or requests for more information by any one of the following methods.

*Email:* [Otay\\_NOI@fws.gov](mailto:Otay_NOI@fws.gov). Please include "Otay Estuary NOI" in the subject line of the message.

*Fax:* Attn: Brian Collins, (619) 476-9149.

*U.S. Mail:* Brian Collins, U.S. Fish and Wildlife Service, San Diego National Wildlife Refuge Complex, P.O. Box 2358, Chula Vista, CA 91912.

**FOR FURTHER INFORMATION CONTACT:** Brian Collins, Refuge Manager (619) 575-2704, extension 302, or Andy Yuen, Project Leader (619) 476-9150, extension 100).

#### SUPPLEMENTARY INFORMATION:

#### Background

In 2006, we completed a Comprehensive Conservation Plan (CCP) and EIS/Record of Decision (ROD) to guide the management of the San Diego Bay National Wildlife Refuge over a 15-year period (71 FR 64552, November 2, 2006). The wildlife and habitat management goal of the selected management alternative in the CCP for the South San Diego Bay Unit is to "protect, manage, enhance, and restore \* \* \* coastal wetlands \* \* \* to benefit the native fish, wildlife, and plant species supported within the South San Diego Bay Unit." One of the strategies identified to meet this goal is to restore native habitats in the Otay River floodplain. The proposed restoration project represents step-down restoration planning for the western portion of the Otay River floodplain. The site-specific EIS for this project will tier from the programmatic EIS and ROD prepared for the CCP.

Funding for the proposed restoration is being provided by the Poseidon Resources Carlsbad Desalination Project, in order to implement their Marine Life Mitigation Plan (MLMP), which is required to fulfill part of their mitigation requirement for the desalination project. On November 15, 2007, the California Coastal Commission approved a Coastal Development Permit (CDP No. E-06-013) for the Poseidon desalination facility in Carlsbad, San Diego County. As part of that approval, the Commission required Poseidon to implement a Marine Life Mitigation Plan (MLMP).

In early 2010, Poseidon submitted an initial proposal to the California Coastal Commission identifying possible mitigation sites. The submittal compared about a dozen potential sites in the Southern California Bight and concluded that the Otay River floodplain portion of the San Diego Bay NWR was most suited to provide the type and amount of mitigation the MLMP required. California Coastal Commission staff and members of its Scientific Advisory Panel reviewed Poseidon's analysis and concurred that the Otay River floodplain site was most likely to meet the MLMP requirements and objectives. Final site selection required approval by both the California Coastal Commission and the San Diego Regional Water Quality Control Board (Control Board).

On February 9, 2011, the California Coastal Commission unanimously approved the Otay River floodplain site, and the site was approved by the Control Board on March 9, 2011. The MLMP requirements and objectives are consistent with the goals and objectives set forth in our CCP for the Otay River floodplain.

Prior to implementation of the restoration project, the California Coastal Commission must approve a Coastal Development Permit (CDP) for the proposed restoration. In accordance with the California Environmental Quality Act, the CDP process is exempt from the requirement of preparing an environmental impact report. The Commission's staff report and findings related to the CDP application for the project will be the environmental analysis document prepared under the Commission's certified regulatory program. The Commission will allow sufficient opportunity during the CDP process for public review and comment.

#### Proposed Project

We propose to convert approximately 67 acres of disturbed uplands within the western portion of the Otay River floodplain to functional estuarine

habitats, including subtidal wetlands and intertidal salt marsh and mudflat habitat. Upland buffers to be provided around portions of the restored wetlands would be planted with native upland and wetland/upland transitional vegetation. The major goals of the project are to protect, manage, enhance, and restore open water coastal wetlands and native upland to benefit native fish, wildlife, and plant species supported within the South San Diego Bay Unit of the San Diego Bay NWR and to provide habitat for migratory shorebirds and other salt marsh-dependent species.

The project site, which is located within the City of San Diego to the west of Interstate 5 between Main Street to the north and Palm Avenue to the south, is included entirely within an area managed by the Service as a National Wildlife Refuge. The eastern portion of the site is owned by the Service in fee title, while the western portion is leased to the Service by the State Lands Commission.

In order to restore estuarine habitat in the Otay River floodplain, we have initially estimated that approximately 75 acres would need to be graded to provide both the wetland and upland components of the proposed restoration. To achieve elevations appropriate for supporting the desired estuarine habitat types, excavation of 3 to 11 feet of soil over an area of approximately 65 acres would be required, generating an estimated 750,000 to 1 million cubic yards of material, some of which will be used on site, while the remainder will be transported off site to an approved disposal site. The proposed wetlands would be tidally connected to San Diego Bay via the existing Otay River channel. Additional grading to deepen and potentially widen the Otay River channel from the western edge of the project site out to the mouth of the river may also be needed, pending hydraulic modeling.

#### Public Comment

We are furnishing this notice in accordance with section 1501.7 of the NEPA implementing regulations, to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. The Service is currently developing a range of restoration alternatives to be analyzed in the draft EIS, and we invite written comments from interested parties to ensure identification of the full range of alternatives, issues, and concerns. Information gathered through this scoping process will assist us in developing a range of alternatives. A detailed description of the proposed action and alternatives will be included

in the EIS. The EIS will also address the direct, indirect, and cumulative impacts of the alternatives on environmental resources and identify appropriate mitigation measures for adverse environmental effects.

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

In addition to providing written comments, the public is encouraged to attend a public scoping meeting to provide us with suggestions and information on the scope of issues and alternatives to consider when drafting the EIS. A public scoping meeting will be held in San Diego County, California, in the fall of 2011. We will mail a separate announcement to the public with the exact date, time, and location of the public scoping meeting. Requests to be contacted about the scoping meeting should be directed to Brian Collins (see **ADDRESSES**). We will accept both oral and written comments at the scoping meeting.

#### NEPA Compliance

We will conduct environmental review in accordance with the requirements of NEPA, as amended (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR parts 1500-1508), other applicable regulations, and our procedures for compliance with those regulations. We anticipate that a draft EIS will be available for public review in the spring of 2012.

**Alexandra Pitts,**

*Regional Director, Pacific Southwest Region.*

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#### DEPARTMENT OF THE INTERIOR

#### Bureau of Land Management

[LLMT926000-L19100000-BJ0000-LRCME1G04814]

#### Notice of Filing of Plats of Survey; South Dakota

**AGENCY:** Bureau of Land Management, Interior.