

and endangered species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

The applicant (West Colton Rail Terminal, LLC or WCRT) is seeking a permit for take of the Delhi Sands flower-loving fly during the life of the permit. This species is referred to as the "DSF" in the proposed HCP. The DSF is restricted to the Delhi Soils formations within western Riverside and San Bernardino counties in California.

The applicant proposes to construct an ethanol unloading facility on 2.1 acres of land located between the north end of Sycamore Street and South Date Avenue in the City of Rialto, San Bernardino County, California. Approximately 0.21 acre of the project site is considered occupied by the DSF, and we anticipate that all DSF within the 0.21 acre area would be lost during project construction. The purpose of the project is to eliminate truck traffic from local highways currently resulting from trucking the ethanol from the City of Carson to the Colton area gasoline blending terminals. The project will eliminate the over 60-mile truck trip for approximately 40 trucks per day and reduce truck travel to a few thousand yards per load.

The applicant proposes to mitigate impacts to the DSF associated with the covered activities by fully implementing the HCP. The purpose of the proposed HCP's conservation program is to promote biological conservation of the DSF. WCRT proposes to mitigate impacts to DSF by contributing to a habitat management endowment for a conservation parcel known as the "Owl Property", which is located northwest of the intersection of Riverside Avenue and Resource Drive in the City of Rialto. WCRT's contribution will fully fund an endowment for DSF habitat management in perpetuity.

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to minimize and mitigate impacts of the project on DSF. Three alternatives to the taking of the listed species under the Proposed Action are considered in the proposed HCP. Under the Original Design Alternative, additional DSF habitat would be impacted at the project site to more efficiently meet the operational goals of the project. Under the Alternate Location Alternative, no DSF habitat would be impacted, but other environmental impacts would be unavoidable. Under the No Action Alternative, no DSF habitat would be

impacted or conserved, and truck traffic would not be reduced.

The Service has made a preliminary determination that approval of the proposed HCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM8) and as a "low-effect" plan as defined by the Habitat Conservation Planning Handbook (November 1996). Determination of Low-effect Habitat Conservation Plans is based on the following three criteria: (1) Implementation of the proposed HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) Implementation of the proposed HCP would result in minor or negligible effects on other environmental values or resources; and (3) Impacts of the proposed HCP, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources which would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

Before including your address, phone number, e-mail 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.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the proposed HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will issue a permit to West Colton Rail Terminal, LLC for the incidental take of the Delhi Sands flower-loving fly from construction of an ethanol unloading facility in the City of Rialto, San Bernardino County, California.

Dated: October 14, 2008.

**Jim A. Bartel,**

*Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R8-ES-2008-0272; 81430-1112-0000-F2]

#### Proposed Otay Water District Low Effect Habitat Conservation Plan for the Quino Checkerspot Butterfly and Coastal California Gnatcatcher

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

**ACTION:** Notice of availability.

**SUMMARY:** We, the U. S. Fish and Wildlife Service (Service), have received an application from the Otay Water District (Applicant) for a 15-year incidental take permit for two covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for "take" of the federally endangered Quino checkerspot butterfly (*Euphydryas editha quino*) and the federally threatened coastal California gnatcatcher (*Poliophtila californica californica*) associated with the operation and maintenance of the existing recycled water pipeline (the Otay Force Main) and its access road. A conservation program to mitigate for the project activities would be implemented by the Applicant as described in the Otay Water District Low Effect Habitat Conservation Plan for the Quino Checkerspot Butterfly and Coastal California Gnatcatcher (HCP), which would be implemented by the Applicant.

We are requesting comments on the HCP and our preliminary determination that the proposed plan qualifies as a "low-effect" Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. The basis for this determination is discussed in the Environmental Action Statement (EAS) and Low Effect Screening Form (Screening Form), which is also available for public review.

**DATES:** Written comments should be received on or before November 19, 2008.

**ADDRESSES:** Comments should be addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011. Written comments may be sent by facsimile to (760) 431-5901.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen Goebel, Assistant Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**); telephone (760) 431-9440.

**SUPPLEMENTARY INFORMATION:****Availability of Documents**

Individuals wishing copies of the proposed HCP and Screening Form, which includes the EAS, should immediately contact the Service by telephone at (760) 431-9440 or by letter to the Carlsbad Fish and Wildlife Office. Copies of the proposed HCP and Screening Form also are available for public inspection during regular business hours at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

**Background**

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and its implementing Federal regulations prohibit the take of animal species listed as endangered or threatened. Take is defined under the Act as follows, to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a) of the Act, the Service may issue permits to authorize incidental take of listed species. "Incidental take" is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species, respectively, are found in the Code of Federal Regulations at 50 CFR 17.22 and 50 CFR 17.32.

The Applicant is seeking a permit for take of the Quino checkerspot butterfly and coastal California gnatcatcher during the life of the permit. These species are referred to as the "Quino" and "gnatcatcher," respectively, in the proposed HCP.

The Applicant proposes to grade an existing access road located above the Otay Force Main (force main) pipeline and conduct other activities such as replacing valves along the pipeline, resurfacing damaged sections of the access road, clearing vegetation around work areas, and conducting routine inspections and maintenance of the valves and access road. Work areas and the access road are located within a 30-foot easement on the San Diego National Wildlife Refuge. This easement was dedicated prior to the area being incorporated as a national wildlife refuge. All covered activities identified in the low-effect HCP will occur within this easement and new impacts associated with covered activities will not appreciably exceed those currently taking place within the easement. Work areas will be maintained free of vegetation for the life of the permit, thus all initial vegetation clearing activities

will be considered permanent impacts. Valve replacement and access road resurfacing will be conducted within the first year of HCP implementation. Activities in subsequent years will entail inspection of the force main, maintenance of work areas, and replacing defective or damaged valves. Up to 1.28 acres of gnatcatcher and/or Quino habitat may be lost through implementation of the HCP over 15 years.

The Applicant proposes to mitigate the effects to Quino and gnatcatcher by fully implementing the HCP. The HCP emphasizes protection of habitat through impact avoidance and use of operational protocols, designed to avoid or minimize impacts to Quino and gnatcatcher. The Applicant will supplement these operational protocols, or avoidance and minimization measures, with habitat conservation and management in the San Miguel Habitat Management Area (HMA). To mitigate for permanent impacts, the Applicant will permanently conserve and manage high-quality Quino and gnatcatcher habitat by expending available credits from the San Miguel HMA.

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed HCP, which includes measures to mitigate impacts of the proposed activities on Quino and gnatcatcher. Five alternatives to the proposed action are considered in the HCP. Under the No Action Alternative, no permit would be issued and the Applicant would avoid take of Quino and gnatcatcher; however, avoidance of impacts would not be possible for some of the Applicant's activities, which would preclude some critical activities from being completed or require the Applicant to seek individual take authorizations. The other four alternatives address only implementing a single construction component of the proposed activities, eliminating an activity, or deferring the project until a larger, multi-agency multiple species habitat conservation plan could be developed. Most of these alternatives would provide a piecemeal approach to operating and maintaining the force main and would require additional consultation under the ESA. The proposed HCP provides more comprehensive coverage of necessary activities and conservation of Quino and gnatcatcher than either of the other alternatives. In addition, the proposed HCP would be more efficient and timely and would provide the Applicant with long-term predictability concerning the nature of its operations for which incidental takings are permitted,

avoiding potential facility-compromising delays.

The Service has made a preliminary determination that approval of the proposed HCP qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1) and as a "low-effect" plan as defined by the Habitat Conservation Planning Handbook (November 1996). Determination of Low-effect Habitat Conservation Plans is based on the following three criteria: (1) Implementation of the proposed HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) Implementation of the proposed HCP would result in minor or negligible effects on other environmental values or resources; and (3) Impacts of the proposed HCP, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

**Public Review**

Written comments from interested parties are welcome to ensure that the issues of public concern related to the proposed action are identified. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the office listed in the **ADDRESSES** section of this notice. All comments and materials received, including names and addresses, will become part of the administrative record and may be released to the public.

Our practice is to make comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional,

documentable circumstances, this information will be released. We will always make submissions from organization or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the proposed HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will issue a permit to the Applicant for the incidental take of the Quino checkerspot butterfly and coastal California gnatcatcher associated with the operation and maintenance of the Otay Force Main within the San Diego National Wildlife Refuge located in San Diego County, California.

Dated: October 14, 2008.

**Jim A. Bartel,**

*Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R9-EA-2008-N0241; 97600-9424-0000-7e]

#### *TakeMeFishing.org* Web Site Advertising Guidelines

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

**ACTION:** Notice of availability of proposed guidelines; request for comments.

**SUMMARY:** The Recreational Boating & Fishing Foundation (RBFF) seeks to sell advertising on its *TakeMeFishing.org* Web site to help generate revenue from non-Federal funds to expand its outreach program. RBFF has drafted advertising guidelines to determine who can advertise and how the advertising sales will be operated; we invite the general public and other Federal agencies to take this opportunity to comment on these guidelines.

**DATES:** Your comments must be received or postmarked on or before November 4, 2008.

**ADDRESSES:** Send your comments on the proposed Web site advertising guidelines to RBFF Project Officer at 4401 N. Fairfax Drive, MS-3103 AEA, Arlington, VA 22203 (U.S. mail or hand delivery) or *Mary\_Burke@FWS.gov* (e-mail).

#### FOR FURTHER INFORMATION CONTACT:

RBFF Project Officer

*Mary\_Burke@fws.gov* (e-mail) or (703) 358-2435.

#### SUPPLEMENTARY INFORMATION:

Recreational boating and fishing participation rates have declined over the past 5 years. Recreational boating and fishing related activities contribute to conserving aquatic resources through excise taxes collected from sales of fishing equipment and motorboat fuel that fund the Federal Aid in Sport Fish Restoration Program. This program, coupled with fishing license sales, makes up more than 80 percent of the funding for conservation and protection of aquatic resources in the United States. To address the declining participation of recreational boating and fishing, Congress passed the Sportfishing and Boating Safety Act of 1998, which called for Federal appropriations to be used for the National Outreach and Communication Program. The Sport Fishing and Boating Partnership Council developed the "Strategic Plan for the National Outreach and Communication Program," and the Secretary of the Interior approved the Strategic Plan in February 1999.

RBFF is a nonprofit organization created to carry out the National Outreach and Communication Program, whose mission is to increase participation in recreational angling and boating and, through those experiences, increase the public's awareness of and appreciation for the need for conserving and protecting America's aquatic natural resources. RBFF is funded through the Sport Fish Restoration and Boating Trust Fund. This fund is composed of Federal taxes collected on the sale of motorboat fuel and of excise taxes paid by manufacturers of fishing tackle. The U.S. Fish and Wildlife Service (Service) administers RBFF's funding via a cooperative agreement between the Service and RBFF, in the form of a Memorandum of Understanding signed by the Service, the Sport Fishing and Boating Partnership Council, the Association of Fish and Wildlife Agencies, and RBFF.

The plan, which RBFF was created to implement, specifically calls for the implementing organization not to be operated as a "grants-in-aid" organization. The plan also calls for RBFF to "create an industry 'hard dollar' fund mechanism to promote, extend and expand the outreach program." In response, RBFF seeks to sell advertising on its *TakeMeFishing.org* Web site to generate revenue from non-Federal funds to

expand its outreach program. RBFF has drafted advertising guidelines to determine who can advertise and how the advertising sales will be operated.

#### Request for Comments

The U.S. Fish and Wildlife Service is seeking public comment on the draft RBFF advertising guidelines. Comments submitted in response to this notice are a matter of public record. Before including your address, phone number, e-mail 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 may request that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

#### TakeMeFishing.org Proposed Advertising Guidelines

The Recreational Boating & Fishing Foundation (RBFF) strives to make *TakeMeFishing.org* a valuable resource for its audiences, therefore the user experience is the core of the Web site. This experience is continually reinforced by its distinct look and feel, functionality, personality, and utility. Thus everything that exists within *TakeMeFishing.org* should conform and contribute to the overall user experience, including the advertising.

#### Advertising Philosophy

RBFF is committed to protecting our user experience by keeping the site clean, uncluttered, and free from intrusive advertising. We strive to ensure the use of appropriate and tailored messages on our Web site that are based on specific boating and fishing interests and affiliated with the brands, organizations, and businesses that our users value.

RBFF provides the following guidelines to help you communicate more effectively with your desired audience. Please note that all advertising placed within *TakeMeFishing.org* must adhere to these guidelines, and RBFF reserves the right to reject any advertising that we deem contrary to our advertising philosophy or these guidelines. These guidelines are also subject to change at any time.

These guidelines are not intended as legal advice, but are a general statement of RBFF's advertising standards. RBFF encourages each advertiser and its agency to consult with legal counsel before seeking to place any display advertising on *TakeMeFishing.org*. Adherence to these guidelines (a) does