

# Salton Sea Species Conservation Habitat Scoping Report

---

## SUMMARY OF SCOPING MEETING COMMENTS AND RESPONSES TO THE NOTICE OF INTENT AND NOTICE OF PREPARATION

The U.S. Army Corps of Engineers (Corps) and the California Department of Fish and Game (DFG), acting on behalf of the California Natural Resources Agency, have been charged with preparing a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Salton Sea Species Conservation Habitat (SCH) Project. The SCH Project would restore approximately 2,400 acres of habitat for piscivorous (fish-eating) birds that are dependent on the Salton Sea. In compliance with the National Environmental Policy Act (NEPA), the Corps issued a Notice of Intent (NOI) for the preparation of the EIS/EIR on June 23, 2010. In compliance with the California Environmental Policy Act (CEQA), the Natural Resources Agency issued a Notice of Preparation (NOP) for the EIS/EIR on June 21, 2010. The NOI and NOP were sent to over 1,300 responsible and involved agencies and interested organizations and individuals. To solicit additional comments on the scope and content of the EIS/EIR, the co-lead agencies held four public scoping meetings in the vicinity of the Salton Sea on July 7 and 8, 2010. The following table lists the logical details for each public meeting.

Community	Location/Address	Date	Time	Approximate Attendance
Palm Desert	University of California at Riverside, Room B200 75-080 Frank Sinatra Drive	July 07	1:00 P.M.	32
Thermal	Torrez Martinez, Tribal Administration Building 66-725 Martinez St.	June 07	6:30 PM	8
Calipatria	Calipatria Inn and Suites 700 North Sorenson Avenue Elks Lodge #1420, 161 South Plaza	June 08	1:00 P.M.	11
Brawley	Elks Lodge #1420, 161 South Plaza	June 08	6:30 PM	2

This report summarizes the written responses to the NOI and NOP and the major themes and/or comments from various scoping meetings. The four scoping meetings attracted over 50 people, some of whom provided oral comments on the scope and content of the EIS/EIR, including project design and impacts.

Twelve written responses to the NOI and NOP were received during the comment period which ended on June 24<sup>1</sup>. The written comments received are attached as an appendix to this report. Table 1 is a listing of those agencies and organizations that submitted written comments.

<b>Table 1</b>	<b>Agencies, organizations, and individuals that submitted written comments on the NOI and NOP</b>
<b>Federal Agencies (5)</b>	
U.S. Bureau of Reclamation (Reclamation)	
U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA), Region IX	
U.S. Geological Survey (USGS)	
U.S. Environmental Protection Agency (EPA)	
U.S. Navy	
<b>State of California Agencies (2)</b>	
Department of Toxic Substances Control (DTSC)	
State Lands Commission	
<b>Regional and Local Agencies (4)</b>	
Coachella Valley Mosquito and Vector Control District	
County of Imperial Public Health Department	
Imperial Irrigation District (IID)	
San Diego County Water Authority	
<b>Organizations (6)<sup>a</sup></b>	
Audubon California	
California Outdoor Heritage Alliance	
Defenders of Wildlife	
Desert Protective Council	
Pacific Institute	
Sierra Club California	
<b>Individuals (1)</b>	
Patrick Maloney (on behalf of agricultural landowners in the Imperial Valley)	

Note:

a. These organizations submitted a single, joint letter.

The major themes and/or issue areas expressed as part of written and oral comments on the NOI and NOP are summarized below under “Scope and Content of the EIS/EIR—Major Themes or Topics.” More specific comments on the scope and content of the NOI and NOP are categorized under “Scope and Content of the EIS/EIR—Specific Comments.” Finally, comments or

<sup>1</sup> The organizations listed in Table 1 submitted a single, joint letter.

statements not directly pertinent to the scope and content of the EIS/EIR are summarized under “Other Comments.”

## SCOPE AND CONTENT OF THE EIS/EIR—MAJOR THEMES OR TOPICS

Several of the written and oral comments on the NOI and NOP can be summarized or grouped into major themes or topics, including expanding the range of species that would be benefited by the SCH Project, addressing issues associated with selenium exposure, and the need to address the potential creation of breeding habitat for mosquitoes, which are disease vectors. Additionally, a number of commenters, including the EPA, Reclamation, SDCWA, and the non-governmental organizations listed above, expressed overall support for the SCH Project.

### Range of Targeted Species

The SCH Project is encouraged to develop as much habitat as practical for species other than the targeted bird species that also use the Salton Sea. To maximize biological productivity of the SCH ponds, they should be designed to optimize invertebrate production to enhance the prey base for shorebirds and wading birds, in addition to optimizing production for fish-eating birds. Accordingly, the ponds should be managed to include a greater range of salinities than tolerable by fish, ranging from the roughly 2-3 gallons per liter (g/L) total dissolved solids (TDS) of the rivers to 140+ g/L TDS. This broad range of salinity would greatly increase the diversity of species residing in and visiting the SCH, improving the resilience of the system as a whole. Ponds managed for salinities around 130 g/L TDS could produce a large number of brine flies and brine shrimp, complementing the invertebrate good base found in the other ponds and in the Sea itself. Managing ponds at these higher salinities would also provide valuable monitoring data and experience for the future.

### Selenium Exposure

- The SCH plan calls for use of evapo-concentrated, high-salinity water from one pond to provide saline water for another series of salinity gradient ponds. There may be a selenium risk associated with this practice. The EIS/EIR should include an assessment of effects of using waters (including selenium and pesticides) that have been evapo-concentrated for mixing.
- SCH would create habitats that do not currently exist at the Salton Sea; the increased exposure risk related to selenium in this new habitat relative to existing Salton Sea habitat should be assessed.
- A robust ecological analysis of selenium remediation and avoidance technologies (including a definition of specific endpoints for measuring effects and target action levels) should be included.

### Mosquito/Vector Control

Concerns were raised that restoration efforts would provide breeding habitat for mosquitoes, leading to a possible increase of mosquito populations at the north and south ends of the Salton Sea. The mosquito, *Culex tarsalis* Coquille, is a known vector of the West Nile, Saint Louis encephalitis, and western equine encephalomyelitis viruses, which are active in the Coachella and Imperial valleys. According to the University of California Davis Center for Vector-borne Disease Research data, shoreline habitats along the Salton Sea are the focus of yearly virus amplifications, and the breeding habitat of *Culex tarsalis* covers a wide range of water quality

(from fresh up to 35 parts per thousand). Moreover, the Salton Sea provides a year-round habitat for breeding due to the climate.

Habitats usually do not support mosquitoes if they have running water, deeper water, and no sloped edges. After several years, many man-made wetlands become overgrown with vegetation, the water settles, and water quality changes; the type of emerging submerged and floating vegetation promotes mosquito breeding. There are considerable costs associated with mosquito control. Using specific types of fish to control mosquitoes is challenging because the birds will feed on the fish. Desert pupfish feed on mosquito larvae more aggressively than mosquitofish. The Coachella Valley Mosquito and Vector Control District has facilities where they could be raised, but this would require a permit from DFG.

The following concerns need to be evaluated:

- Who will be responsible for monitoring and treating mosquito populations? What thresholds will be established?
- What jurisdictions will be encountered and what permitting will be needed to control any vector problems that may result? Will the DFG and/or the Corps have the ultimate authority regarding vector operations in relation to endangered species?
- Is there funding for mosquito control with respect to maintaining and monitoring the facility?
- Will a mosquito abatement plant be developed for the project?
- Will the project have a dedicated vector biologist and supporting staff?
- Will a designated party serve as the contact point with the authority to act in the event of unforeseen circumstances during and after construction?

It is suggested that local health and vector control agencies should be further consulted regarding best management practices to address mosquito vectors.

## SCOPE AND CONTENT OF THE EIS/EIR—SPECIFIC COMMENTS

The following comments were provided by individual commenters. They focus primarily on the project design, adaptive management and monitoring program, siting criteria, the appropriate baseline condition to use, and project impacts and mitigation measures.

### Project Design

- The proposed location of the initial ponds should be clarified.
- The EIS/EIR should include a discussion of fish species proposed to be the principal project focus (natives, invasives, a combination of both?) This is critical when considering a variety of issues including potential depths of ponds.
- The EIS/EIR should include a discussion of what habitat attributes will be built into SCH to provide for desert pupfish.
- The draft plans call for SCH to create deep holes from borrow pits. Steep-sided pits should be avoided since they may promote stratification and anoxia of the deep water. (Construction equipment tends to make steep sides when excavating.) USGS has observed that traps placed in the deeper holes captured no fish. When placed in the exact same area, but at the surface, the trap came back loaded. Unless adequate mixing of the deep water can be ensured, the holes may not sustain habitat.

- A review and citation of literature justifying proposed depths of ponds in SCH should be conducted.
- Design of the SCH Project should include a variety of substrates to increase invertebrate productivity.
- Standards to which berms will be built will need to be clarified.
- The EIS/EIR should assess the potential use of geothermal energy resources to selectively supplement heating of ponds for temperature-sensitive fish.
- The project should evaluate the potential to harvest shallow groundwater for use in the cells.
- The rationale for use of freshwater for SCH (if proposed to be used) to replace saline water habitat at the Salton Sea should be included.
- Specific information such as number of acres of each specific salinity regime that would be created and size of anticipated freshwater area should be included (freshwater being the river water quality).
- The 2008 Flood Insurance Rate Maps (FIRM) for the project area should be reviewed. All buildings within a riverine floodplain (i.e., Flood Zones A, AO, AH, AE, and A1 through A30 as delineated on the FIRM) must be elevated so that the lowest floor is at or above the Base Flood Elevation level in accordance with the effective FIRM.
- If the area of construction is located within a Regulatory Floodway as delineated on the FIRM, any development must not increase base flood elevation levels. The term “development” means any man-made change to improved or unimproved real estate, including but not limited to, buildings, other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, and storage of equipment and materials. A hydrologic and hydraulic analysis must be performed prior to the start of development and must demonstrate that the development would not cause any rise in base flood levels. No rise is permitted within regulatory floodways.
- The project, including its water conveyance systems, should be designed to minimize impacts on the water delivery and drainage infrastructure in place around the rivers, drains, and other agricultural facilities. Any increase in water surface elevations of the drains or rivers would affect field irrigation infrastructure and drainage. Impounded areas such as the SCH ponds may raise water table elevations in the surrounding areas and affect the tile drainage systems in the farm fields.
- The SCH Project alternatives should not conflict with the goals and objectives of the QSA and pursuant to Fish and Game Code section 2932(b) should be consistent with the Salton Sea Restoration study requirements found in Fish and Game Code section 2081.7.
- Any construction or operation on IID property or within its existing and proposed rights of way or easements will require an encroachment permit. No foundations or buildings will be allowed within the right of way.

## Water Supplies

- The EIS/EIR should acknowledge that water in the Alamo, New, and Whitewater rivers is not fresh water, but rather composed primarily of agricultural drainage.
- The EIS/EIR should acknowledge that water from the Colorado River is not available for direct delivery to the SCH Project. The lack of available Colorado River supplies is

documented on page 2-8 of the October 2006 Draft Salton Sea Ecosystem Restoration Programmatic EIR.

- Landowners in the Imperial Valley are entitled to continued water service by virtue of the easements predating governmental intrusion into the waters of the Colorado River. The discussion of water rights in the NOI/NOP and scoping documents fail to reflect such unique rights.
- Any discussion of the cause of the Sea's historic size – a potential factor in assessing fiscal liability – is also absent from the notices and analysis documents thus far.
- The fundamental facts about what the documents refer to as “water rights” (e.g., Section 1.1.2 of the document describing the screening process) are wrong; i.e., much of the water use in the Imperial Valley is not under the jurisdiction of the State Water Resources Control Board since such rights are of the pre-1941 variety (*Arizona v. California* (2006) 547 US 150, 175 (recognizing 2.6 million acre-feet of present perfected rights as of 1901). Any review of “water rights” involved would necessarily include the public statements of water diversion filed by those who use Colorado River water in Imperial County.

### Adaptive Management and Monitoring

- This "proof-of-concept" project relies on adaptive management to make improvements. Detailed information on monitoring plans should be included.
- Science from the literature and recently completed and ongoing studies should be used in establishing the goals, objectives, and triggers included in the adaptive management plan. Adaptive management is not the same as trial and error.
- The SCH Project may benefit by drawing on science published and available from the USGS/Reclamation shallow habitat project as part of the proof of concept.

### Siting Criteria

- To the extent practical, habitat should be located in a manner that maximizes mitigation of dust emissions from the playa.
- The project should be compatible with the mitigation planned for the Quantification Settlement Agreement water transfer and other projects.
- The project should be designed to accommodate other land uses such as alternative energy development, agricultural use, and recreational use.
- The extent to which the SCH Project would conflict with or preclude other existing, planned or proposed habitat construction or air quality management projects at and around the Salton Sea should be a factor in determining the location of the shallow habitat pond complexes. Siting the proposed ponds in locations where other parties would otherwise construct habitat would be a waste of limited resources and dramatically reduce the net habitat value of the proposed project. The SCH Project should be sited at locations whether no other habitat or air quality projects are currently planned or proposed.

### Baseline Conditions

- The "current" level of the Salton Sea changes daily, and as of July 22, 2010, is ranging about 0.10 foot above and below -231.20 ft.

- A key factor the Corps should use to determine whether to issue a permit for the SCH Project is the benefit of the project relative to no project. Current conditions are not an appropriate baseline for determining the condition of the Salton Sea in the future, nor are they appropriate for determining the relative benefits of the SCH Project.
- The EIS/EIR should include a detailed, comprehensive list and description of every planned and proposed habitat and air quality project at and around the Salton Sea. These constitute a reasonable baseline against which the SCH Project should be measured.
- The EIS/EIR should include a clear demonstration of compliance with the Clean Water Act section 404(b)(1) guidelines. The existing condition of wetlands and waterways should be described in detail. The effects analysis and assessment of existing conditions should use the California Rapid Assessment Methodology (CRAM) or another applicable assessment method.

### Project Impacts and Mitigation Measures

- The EIS/EIR should address all of the issues listed in the NOI and NOP, with particular attention to potential effects on existing Quantification Settlement Agreement agreements, land use policies and plans, water use/quality, biological resources, and air quality.

#### Agricultural Resources

- The project should be planned and implemented to avoid impacts on area farmers and productive agricultural land.

#### Biological Resources

- Potential environmental consequences of establishing a sedimentation basin should be addressed (for example, components of SCH may develop into habitat capable of supporting Yuma clapper rails [YCR]). An evaluation of selenium exposure risk to YCR should be included.
- Impacts of diversions from the rivers on threatened and endangered species (in the rivers at the diversion points) should be assessed.
- The EIS/EIR should evaluate desert pupfish interactions with non-natives that are being encouraged as a forage base. The role of invasive species, termed "novel species" in the SCH summary documents, should be evaluated to understand interactions of anticipated invasive or exotic species in SCH.
- Potential impacts of invasive species should be analyzed.
- The EIS/EIR should describe proposed mitigation for aquatic, wetland, and habitat impacts, and demonstrate compliance with the Corps' IEPA Wetlands Compensatory Mitigation Rule issued in April 2008 (40 CFR Part 230, page 195941).
- The EIS/EIR should evaluate the direct habitat benefits of the SCH Project.
- The EIS/EIR should evaluate water quality effects on current bird diseases such as botulism.

#### Air Quality

- The EIS/EIR should evaluate the direct and indirect air quality benefits generated by flooding exposed Salton Sea playa and interrupting wind fetch.

- EPA has a strong interest in ensuring restoration practices are consistent with air quality emission mandates.

#### Greenhouse Gas Emissions/Climate Change

- Regarding the effects of SCH development on greenhouse gases uptake and emissions relative to existing area of the Salton Sea – it is suggested that an assessment of uptake, including positive or negative rate, be included.
- The climate change section should analyze what may occur during the life of the project and any projected impacts from global warming on the Salton Sea and the SCH areas.

#### Hazards and Hazardous Materials

- The EIS/EIR should evaluate the potential for the SCH Project to attract and increase local bird populations and thus cause an increase in the potential for bird strikes by aircraft from the Naval Air Facility El Centro training ranges. Both project-specific and cumulative impacts should be evaluated.
- Regarding selenium and public access and recreational activities relative to public health threshold levels – would the SCH Project cause a public health risk to humans consuming fishes or birds from the SCH site? The EIS/EIR should evaluate public access and recreation.
- The EIS/EIR should evaluate whether conditions within the project area may pose a threat to human health or the environment, using the EPA’s National Priorities List, Resource Conservation and Recovery Information System, and Comprehensive Environmental Response Compensation and Liability Information System; Envirostor (accessible through DTSC’s website), Solid Waste Information System provided by the California Integrated Waste Management Board (currently the Department of Resources Recycling and Recovery); GeoTracker (maintained by the Regional Water Quality Control Boards); lists of hazardous substances cleanup sites and leaking underground storage tanks maintained by local counties and cities; and the Corps’ list of Formerly Used Defense Sites.
- The EIS/EIR should identify the mechanism to initiate any required investigation and/or remediation for any site within the proposed Project area that may be contaminated, and the government agency to provide appropriate regulatory oversight. If necessary, DTSC would require an oversight agreement to review such documents.
- Any environment investigations, sampling, and/or remediation should be conducted under a work plan approved and overseen by a regulatory agency that has jurisdiction to oversee hazardous substance cleanup. The findings of any investigations, including any Phase I or II Environmental Site Assessment investigations should be summarized in the document. All sampling results in which hazardous substances were found above regulatory standards should be clearly summarized in a table. All closure, certification, or remediation approval reports by regulatory agencies should be included in the EIS/EIR.
- If buildings, other structures, asphalts or concrete-paved surface areas are being planned to be demolished, an investigation should be conducted for the presence of hazardous materials (chemicals, mercury, asbestos-containing materials), and proper precautions should be taken as needed. Contaminants should be remediated in compliance with California environmental regulations and policies.
- Sampling may be required if construction requires soil excavation or filling. Contaminated soils must be properly disposed of, not relocated onsite. Land Disposal Restrictions may be applicable. Imported soil, if any, should be sampled for contamination.

- Human health and the environment of sensitive receptors should be protected during construction/demolition. If necessary, a health risk assessment overseen and approved by the appropriate government agency should be conducted by a qualified health risk assessor to determine if there have been or will be any releases of hazardous materials that may pose a risk to human health or the environment.
- At sites used for agricultural, livestock, or related activities, onsite soils and groundwater might contain pesticides, agricultural chemical, organic waste, or other related residue. Proper investigation, and remedial actions, if necessary, should be conducted prior to construction.
- If hazardous wastes would be generated by SCH operations, they must be managed in accordance with the California Hazardous Waste Control Law (California Health and Safety Code, Division 20, Chapter 6.5) and the Hazardous Waste Control Regulations (California Code of Regulations, Title 22, Division 4.5). Additionally, the facility should obtain an EPA Identification Number. Certain hazardous waste treatment processes or hazardous materials, handling, storage, or uses may require authorization from the local Certified Unified Program Agency.

#### Hydrology/Water Quality

- Water quality effects to evaluate include nutrient loading, oxygen depletion, temperature fluctuations, pesticide, selenium, and DDT residues; discharges of agricultural chemicals; effects on total management demand loads (TMDLs), water quality standards, and Coachella and Torres Martinez Tribal water quality goals; effects on current bird diseases such as botulism; and the impact of a sudden release of high salinity water into less saline water if a berm fails. EPA has a strong interest in ensuring restoration practices are consistent with TMDL requirements and water quality standards.
- The EIS/EIR should evaluate the potential to restore seeps, creeks, springs, and the river deltas of the Salton Sea.
- The EIS/EIR should evaluate changes in the surface water elevation of the Salton Sea.

#### Cumulative Impacts

- The Corps should consider the role of a sustainably restored Salton Sea as a vital part of a thriving, healthy Lower Colorado River watershed. The Lower Colorado River Basin, including the Salton Sea and Colorado River Delta, should be considered in its entirety, especially in regards to preserving at-risk migratory birds, because actions taken in one part of the Lower Colorado River Basin could have significant cumulative impacts on other parts of the Basin. It is questionable whether the entire watershed would remain ecologically viable without a comprehensive approach to its restoration. It is recommended that the EIS/EIR describe the proposed project's impacts and benefits within the regional context of the Lower Colorado River Basin and other restoration efforts such as the Lower Colorado River Multi-species Conservation Program and past and current Salton Sea restoration efforts.
- Several other projects would contribute to a cumulative impact associated with bird air strikes. IID is constructing several thousand acres of managed marsh near the Salton Sea, which is intended to attract and provide habitat for avian species affected by decreased Salton Sea levels resulting from agricultural/urban water transfers. Also, a planned development, the Desert Springs Resort, is proposed for construction on the west side of Imperial Valley less than 4 miles from the perimeter of Naval Air Facility El Centro and directly adjacent to their parachute drop range. This project would include over 100 acres of lakes and associated landscaping (golf course), which the Navy believes would attract large numbers of birds.

## Other Issues

- If the Draft EIS/EIR does not contain a preferred alternative, it should describe the eventual selection criteria and processes for selection of the preferred alternative in the Final EIS/EIR.
- The SCH Project should reflect the extensive research already conducted on biotic and abiotic elements of the Salton Sea ecosystem.
- Other issues that should be addressed in the EIS/EIR include funding, project management, and engineering questions such as seismic stability of the constructed berms.
- "Special studies" are cited on p.5 and p. 7 of the Public Notice. Some additional information on the goals, objectives, scope, and anticipated contributions of special studies should be included.

## OTHER COMMENTS

- Water rights and access to water (paper and wet water) should be addressed and secured prior to construction.
- Additional Stakeholder group meetings should be held to discuss the project as the design progresses.
- IID should be notified once specific sites are located.
- Reclamation requests Cooperating Agency status.
- DTSC can provide cleanup oversight through an Environmental Oversight Agreement for government agencies that are not responsible parties, or a Voluntary Cleanup Agreement for private parties.
- A detailed map or site plan showing exactly where the SCH Project improvements would occur should be provided to the State Lands Commission to enable them to determine the State's interest in these locations.
- Upon completion of any development that changes existing Special Flood Hazard Areas, the National Flood Insurance Program directs all participating communities to submit the appropriate hydrologic and hydraulic data to FEMA for a FIRM revision.
- It is recommended that the wetland assessment data be entered into California's Wetland portal.
- The recovery of the Salton Sea as a whole needs to be funded.
- The focus appears to be wholly piecemeal and likely will not garner support from the public. It is essential that an integrated approach be taken that guarantees a rapid solution and involves the parties directed affected.
- The need for an environmental review may not be necessary or advised under the law. Based on the principles announced in the *Nacimiento Regional Water Management Advisory Committee v. Monterey County Water Resources Agency* (1993) 15 Cal.App.4<sup>th</sup> 200 and Reclamation's recommendations for IID's improvement of its management of diversions from the Colorado River (presented in a Decision resulting from a Part 417 process initiated by Reclamation against IID), the Imperial Valley landowners have no obligation to maintain the Salton Sink as a sea, and no EIR or environmental mitigation is required if the landowners choose to reduce the flow of water into the Salton Sea.

- The notice and scoping documents all lack a critical event since the prior review: the water transfer that is at the heart of all Sea discussion was decreed invalid after a lengthy trial in 2009. Thus, the implicit assumptions about water flow, the availability of money under legislation associated with the transfer, the responsibilities of specific parties (e.g., the Metropolitan Water District of Southern California) for liability all remain unresolved. Given the scope of the trial court's decision, the results on appeal – affirming or reversing – may fundamentally alter the status of the Sea, especially what parties may be liable for any cost of remediation thereof.

## Appendix

### Written Comments Received in Response to the NOI and NOP

Written comments are available on the California Department of Water Resources' website at:  
<http://www.saltosea.water.ca.gov>.