

# Draft Land Protection Plan

---

*Proposed South San Diego Bay Unit,  
San Diego National Wildlife Refuge*

# Draft Land Protection Plan

---

*Proposed South San Diego Bay Unit,  
San Diego National Wildlife Refuge*

Prepared by

U.S. Fish & Wildlife Service  
911 N.E. 11th Avenue  
Portland, Oregon 97232-4181

January 1998

# TABLE OF CONTENTS

Introduction ..... 1

I. Project Description ..... 1

II. Threats to or Status of the Resource to Be Protected ..... 2

III. Objectives of Proposed Action ..... 3

IV. Protection Methods ..... 3

    A. Methods of Protection and Acquisition ..... 3

    B. Land Ownership ..... 4

V. Social and Cultural Impacts ..... 8

VI. Coordination and Consultation ..... 8

VII. Summary of Proposed Action ..... 8

## TABLES

Table 1. Tracts within the preferred alternative ..... 7

Table 2. Habitats sought for protection under the preferred alternative ..... 9

## MAP

Map 1. Tracts, South San Diego Bay ..... 5

# DRAFT LAND PROTECTION PLAN

## PROPOSED SOUTH SAN DIEGO BAY UNIT

San Diego National Wildlife Refuge  
San Diego County, California

### INTRODUCTION

This draft land protection plan outlines various habitat protection methods the Service would use for the proposed South San Diego Bay Unit (Unit) of the San Diego National Wildlife Refuge (Refuge). This plan presents the minimum interests in land needed to meet habitat and wildlife management goals for the proposed Unit.

Nothing in this land protection plan constitutes an offer to purchase private property, a taking of private property, or a usurpation of the authority of the State of California, San Diego County, or any other jurisdiction to regulate land use within the proposed Unit. This plan is intended to guide subsequent land protection activities subject to the availability of funds and other constraints.

### I. PROJECT DESCRIPTION

The Service proposes to establish an approved Refuge boundary, and provide National Wildlife Refuge System protection and management for 4,772 acres in South San Diego Bay by establishing a national wildlife refuge. The Service's proposed action is described under section 2.4.2 in the EA. The South Bay's estuarine habitats consist mainly of submerged lands edged by mudflats, eelgrass beds, salt marsh, beaches, dunes, and created land. At the southern end of the Bay, the proposed Unit would encompass Western Salt Works, which consists mainly of salt ponds with some fallow agricultural land traversed by the Otay River riparian corridor.

In order to protect and manage wildlife and habitat in the proposed Unit, the Service would pursue the following actions with willing participants:

- Negotiate to acquire fee title or some lesser property interest in the properties of the San Diego Unified Port District (Port), Western Salt Company, and the cities of San Diego and Imperial Beach. The Service would concentrate on enhancing habitat for wintering waterfowl, migrating shorebirds, nesting seabirds, and listed birds. A second desired use of these acquired areas would be to permit public access to the South Bay for wildlife-dependent, refuge-compatible recreational uses.

- Negotiate cooperative agreements or leases with the State to protect open water habitat for wintering waterfowl and nesting seabirds from recreational boat disturbances from November through March. These protections would require the approval of the U.S. Coast Guard, which would promulgate the rule necessary to set standards for navigation in the South Bay.
- Negotiate a cooperative agreement for overlay refuge status for Navy land at the Naval Radio Receiving Facility, in order to collaborate with the Navy to improve habitat values. This overlay would include the biology study area, enabling San Diego County and the Service to work together for habitat protection and enhancement.

The Service proposes to acquire land primarily under the authority of the Endangered Species Act of 1973, as amended, and the Migratory Bird Conservation Act (16 U.S.C. 715-715d, 715e, 715f-715r). The Service would seek funding from the congressionally administered Land and Water Conservation Fund (LWCF). The LWCF is maintained by surplus property sales, certain motorboat fuels taxes, entrance fees for certain Federal areas, and revenue generated by off-shore oil and gas leases. The Service may also seek funding from the Migratory Bird Conservation Fund, which is administered by the Migratory Bird Conservation Commission. This fund is maintained by congressional appropriations under the Wetland Loan Act (16 U.S.C. 715K-3 - 715k-5; 75 Stat. 813), as amended, and from Duck Stamp sales. The Service would manage this land under several authorities, including the National Wildlife Refuge System Administration Act of 1966 and the National Wildlife Refuge System Improvement Act of 1997.

## II. THREATS TO OR STATUS OF THE RESOURCE TO BE PROTECTED

More than 90 percent of San Diego Bay's original estuarine habitats have been lost to development. Remaining habitats are now found almost exclusively in the South Bay. These habitats are important to over 600,000 migrating, nesting, and wintering waterfowl, shorebirds, and seabirds. Six resident animal species and one plant species are protected under the Endangered Species Act.

Most habitats in the study area are protected to varying degrees by Federal environmental safeguards, combined with the land-use planning processes of California and local governments. Encroaching development and population pressures, however, continue to degrade wildlife values of wetland, riparian, and floodplain habitats. In addition, the existing safeguards are designed to prevent destruction, but not to proactively enhance values, or undo past damage.

### III. OBJECTIVES OF PROPOSED ACTION

The Service has three objectives in creating the South San Diego Bay Unit:

- 1) To provide the Service with authority to acquire or otherwise protect wildlife habitat under the National Wildlife Refuge System. Protection would follow acquisition (from willing participants) or negotiated agreements (see EA section 2.3.1).
- 2) To provide the Service with the opportunity to manage, enhance, restore, and protect Refuge areas for the benefit of federally listed and other trust species. Specific management activities involving more than minor change will not be addressed by this document (see section 2.3.2).
- 3) To provide opportunity for the Service to develop compatible wildlife-dependent recreational activities in partnership with local communities (see sections 1.11.1 and 2.3.2).

### IV. PROTECTION METHODS

Because so little of the original estuary remains in San Diego Bay, the methods and areas of potential land acquisition identified below are not prioritized. The Service would seek every opportunity to protect any portion of the proposed Unit.

#### A. Methods of Protection and Acquisition

##### **Willing Seller Policy**

It is the policy of the Service to acquire areas only from willing participants under general authorities such as the Migratory Bird Conservation Act, the Endangered Species Act, the Fish and Wildlife Act of 1956, and the Emergency Wetland Resources Act. Landowners within the project boundary who do not wish to sell their property or any other interest in their property are under no obligation to negotiate with or sell to the Service. In all acquisitions, the Service is required by law to offer 100 percent of fair market value, as determined by an approved appraisal that meets professional standards and Federal requirements.

The Service, like other Federal agencies, has been given the power of eminent domain. Eminent domain allows the use of condemnation to acquire lands and other interest in lands, such as easements, for the public good. The Service very rarely uses this power. The Service normally acquires land from willing participants and is not often compelled to buy specific habitats within a rigid time frame. Most of the few Service condemnations that do occur are “friendly;” that is, they are done with the consent of the landowner to determine the legal landowner if there are multiple claims to the title, or settle a difference of opinion on appraised value.

In very rare cases, the Service has condemned private land when directed by Congress, as a last resort when all other negotiation attempts have failed to prevent land use that could cause irreparable damage to the resources for which the unit (refuge, etc.) was established, or to consolidate Federal ownership to effectively manage or develop the unit.

Under condemnation, as in all purchases of land or real property interests, the Service is required by law to offer 100 percent of fair market value, as determined by an approved appraisal that meets professional standards and Federal requirements.

**1. Leases and Cooperative Agreements.** A landowner can lease certain development and management rights to the Service for reimbursement as specified by mutual agreement. The Service can enter into leases through purchase, donation, exchange, or transfer. The landowner pays any applicable property taxes.

The Service can also enter into cooperative agreements with landowners to improve wildlife habitat management. Cooperative agreements may specify shared responsibilities, or a transfer of funds from the Service to another entity or vice-versa for management purposes. Leases and cooperative agreements could be applied to land under any type of ownership in the study area.

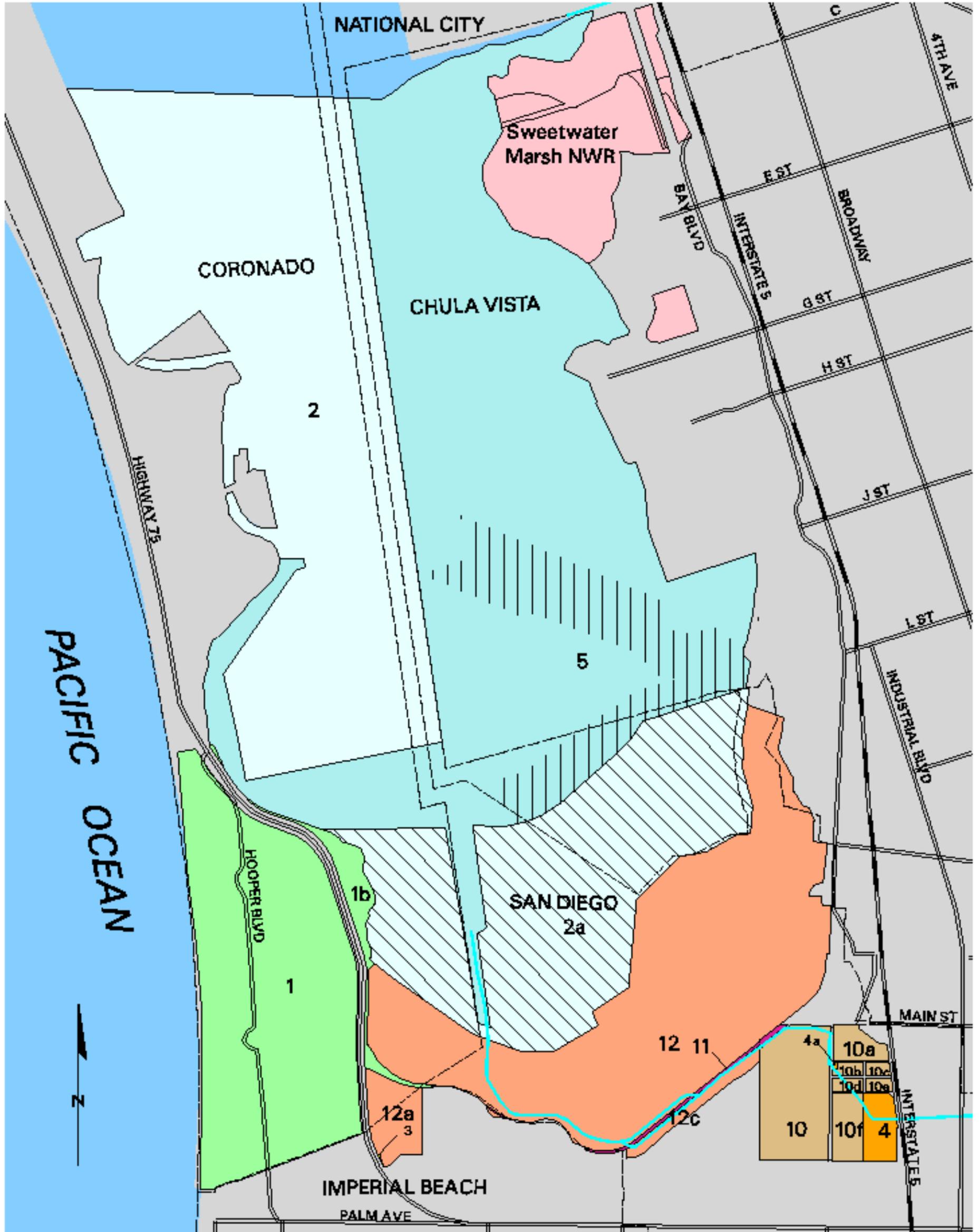
**2. Conservation Easements.** Easements are a type of refuge acquisition where the landowner permanently transfers some, but not all, property rights to the Service as specified by mutual agreement. Under a conservation easement, a landowner could agree not to engage in activities damaging to wildlife habitat resources, and the Service could manage the land for wildlife. The Service can acquire easements through purchase, donation, exchange, or transfer, depending on the terms of the easement. The property owner pays any applicable property taxes. The Service could negotiate conservation easements on land under any type of ownership.

**3. Fee Title Acquisition.** The Service acquires land by outright purchase (fee title) when 1) the land's fish and wildlife resources require permanent protection that is not otherwise available, 2) the land is needed for development associated with public use, 3) a pending land use could otherwise harm wildlife habitats, or 4) purchase is the most practical and economical way to assemble small tracts into a manageable unit. Fee title acquisition transfers any property rights owned by the landowner, including mineral and water rights, to the Federal government. A fee title interest may be acquired by purchase, donation, exchange, or transfer. The Service could acquire in fee any lands. Navy and State lands would be acquired only through exchanges, and in the case of Navy land, transfer through the Federal land disposal process.

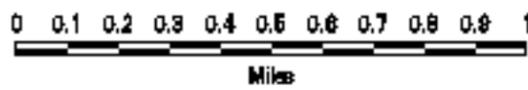
## B. Land Ownership (see map 1)

**1. Federal lands.** The Naval Radio Receiving Facility belongs to the Federal Government and is administered by the U.S. Navy. The Service is limited to pursuing a cooperative agreement with the Navy, exchanging land, or accepting a transfer (in the unlikely event that the site would be exceded under the Base Realignment and Closure Act). Federal lands managed under such cooperative agreements can be considered part of the National Wildlife Refuge System (NWRS)

Map 1. TRACTS, SOUTH SAN DIEGO BAY



- |                       |                   |                           |                                |
|-----------------------|-------------------|---------------------------|--------------------------------|
| STATE OF CALIFORNIA   | WESTERN SALT CO   | SAN DIEGO+ARIZONA EASTERN | San Diego Gas & Electric Lease |
| UNIFIED PORT DISTRICT | EGGER+GHIO CO INC |                           | Western Salt Co Lease          |
| UNITED STATES NAVY    | CITY OF SAN DIEGO |                           |                                |



(see EA section 1.11) and are referred to as an overlay refuge. The Memorandum of Understanding between the Department of the Navy and the Service (see EA section 1.10.2) does not make these lands part of the NWRs. Under a cooperative management agreement, the Service would conduct mutually-agreed-upon wildlife management activities such as inventory and protection of identified sensitive areas.

**2. State lands.** The Service could negotiate exchanges, leases, or cooperative agreements on State-administered lands. If the Service obtains an interest in land such as a lease, that interest would become part of the NWRs for the duration of the lease. Land managed under a cooperative agreement may or may not be part of the NWRs, depending upon the terms of the agreement. These lands would be managed for wildlife protection, primarily to decrease disturbance of waterfowl by boating from November through March.

**3. Port lands.** The Service could negotiate with the Port under any of the acquisition methods for lands under Port jurisdiction. If the Service acquires some property rights (lease or conservation easement), or all property rights (fee title), for wildlife conservation, those lands could become part of San Diego National Wildlife Refuge. These lands would be managed for wildlife protection, primarily to protect nesting areas for listed species. Service acquisition options on Port lands that are also state-trust tidelands are the same as for State Lands.

**4. Private and local government lands.** The greatest number of acquisition options exist on private lands and lands belonging to the cities of San Diego and Imperial Beach. Private lands and lands owned by local governments identified within the preferred alternative consist of the salt works area and land adjacent to the southeast corner of the salt works (known as the MKEG/Fenton parcel).

The Service would seek conservation easements, cooperative agreements, leases, or fee title ownership of all or part of the Western Salt Company salt works, the MKEG/Fenton property and the 100-foot buffer along the Otay River. The greater the interest the Service acquires in land, the greater the opportunities to enhance habitat. Fee title ownership would allow restoration of habitat and would allow more opportunity for Refuge-compatible public uses.

Table 1 identifies the parcels that the Service would seek to acquire, listing owners, tract number, acreage, and the desired method of acquisition. The tract numbers on table 1 correspond to the tract numbers on map 1, with the exception of several tiny parcels that are too small to map.

**Table 1. Tracts in the Preferred Alternative**

<b>Tract</b>	<b>Owner</b>	<b>Acquisition</b>	<b>Acreage</b>
1	United States of America	MOU	481.45
1a	United States of America	MOU	0.56
1b	United States of America	MOU	33.88
2	State of California	Lease	1225.17
2a	State of California	Lease	616.29
3	City of Imperial Beach	Fee	0.14
4	City of San Diego	Fee	20.05
4a	City of San Diego	Fee	0.26
5	Port District	Fee	1627.67
10	Egger and Ghio Co, Inc.	Fee	80.06
10a	Egger and Ghio Co, Inc.	Fee	14.15
10b	Egger and Ghio Co, Inc.	Fee	3.17
10c	Egger and Ghio Co, Inc.	Fee	2.89
10d	Egger and Ghio Co, Inc.	Fee	3.46
10e	Egger and Ghio Co, Inc.	Fee	3.10
10f	Egger and Ghio Co, Inc.	Fee	18.17
11	San Diego and Arizona Eastern	None	6.27
11a	San Diego and Arizona Eastern	None	0.21
12	Western Salt Co.	Fee	631.91
12a	Western Salt Co.	Fee	36.82
12b	Western Salt Co.	Fee	0.51
12c	Western Salt Co.	Fee	17.41

## V. SOCIAL AND CULTURAL IMPACTS

The current quality of life for communities and individuals around the South San Diego Bay would be expected to be the same or better as a result of the presence of the Refuge. The Refuge would eventually provide some wildlife-dependent public uses, thus increasing local and regional opportunities for wildlife-oriented recreational activities. The Refuge is projected to increase tourism by about 88,000 visitors annually (Niehaus 1994). These visitors are expected to increase the amount of sales receipts, sales tax, and lodging tax coming into the surrounding cities of National City, Imperial Beach, Chula Vista, San Diego, and Coronado.

The presence of the Refuge is not expected to change most activities and public use patterns in South Bay. The exception is recreational boating activities. The Service would seek to protect important waterfowl wintering areas from recreational boating disturbance between November and March. Specific proposals for protective closures would be developed during the management plan process, which would start after formal establishment of the Refuge. This plan would be developed with input from the public and any other interested party.

The Service could acquire undeveloped land in Pond 20 and the MKEG/Fenton parcel that may have development potential. The Service cannot determine the amount of development that would be foregone should the Service acquire the parcels, however, because the City of San Diego has not established the amount and type of development that may be permitted.

## VI. COORDINATION AND CONSULTATION

The Service worked with a variety of interested parties to identify issues and concerns associated with the proposed Refuge. These interested parties included members of the public, interested private groups, elected officials, and State, Federal, Tribal, and local government agencies. The Service's public involvement activities included hosting public scoping meetings, developing and mailing planning updates, requesting information, undertaking formal consultations, and responding to inquiries. The Service provided information about the proposal to the media and other interested or affected parties throughout the public scoping period.

The Service held public meetings during October 17-19, 1995, in three locations in San Diego County. These meetings were publicized in the planning updates and news releases to area newspapers, radio, and television.

## VII. SUMMARY OF PROPOSED ACTION

The U.S. Fish & Wildlife Service proposes to protect and enhance about 4,750 acres of native estuarine habitat remaining in South San Diego Bay and environs. The Service would negotiate to acquire in fee title all lands but those administered by the Navy, but some protection would be achieved through cooperative agreements, memoranda of understanding, and leases. All habitat types are considered very high priority. Much of the wildlife in the study area, especially

waterfowl and seabirds, depend upon a variety of South Bay habitat types for different life needs. Table 2 identifies the types of habitat and ownership the Service proposes to acquire.

**Table 2. Acreage of habitats, by ownership, proposed for protection, South San Diego Bay Unit.**

<b>Habitat</b>	<b>Ownership</b>				<b>Total</b>
	<b>Navy</b>	<b>State</b>	<b>Port</b>	<b>Private/Local Gov't*</b>	
<b>Submerged land</b>	8	766	912	35	<b>1,721</b>
<b>Eelgrass</b>	1	297	366	27	<b>691</b>
<b>Mud flat/intertidal</b>	0	9	309	174	<b>492</b>
<b>Salt marsh**</b>	14	0	33	10	<b>57</b>
<b>Salt Pond</b>	13	0	2	1,023	<b>1,038</b>
<b>Beaches, dunes, and created land</b>	488	0	62	39	<b>589</b>
<b>Riparian</b>	0	0	0	8	<b>8</b>
<b>Fallow Agricultural land</b>	0	0	0	146	<b>146</b>
<b>Total</b>	<b>524</b>	<b>1,072</b>	<b>1,684</b>	<b>1,462</b>	<b>4,742 (round to 4,750)</b>

\* Includes San Diego Metropolitan Transportation Development Board's railroad holdings.

\*\* Does not include acreage along dikes in salt ponds.