



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Ecological Services  
Carlsbad Fish and Wildlife Office  
2177 Salk Avenue, Suite 250  
Carlsbad, California 92008



In Reply Refer To:  
FWS-OR-09B0158-12TA0393

OCT 09 2014

Michael Mohler  
Newport Banning Ranch, LLC  
1300 Quail Street, Suite 100  
Newport Beach, California 92660

Tom McClosky  
West Newport Oil Company  
1080 West 17th Street  
Costa Mesa, California 92627

Subject: Oil Field Operations and Maintenance, Newport Banning Ranch, City of Newport Beach, California

Dear Mr. Mohler and Mr. McClosky:

By letter received March 11, 2013, you requested that the U.S. Fish and Wildlife Service (Service) review proposed activities related to ongoing oil field operations and maintenance within 385 acres of the Newport Banning Ranch property in the City of Newport Beach, Orange County, California (Enclosed), relative to compliance of those activities with the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) (ESA). Federally listed species known to occur within the property include the threatened coastal California gnatcatcher (*Polioptila californica californica*, gnatcatcher), endangered San Diego fairy shrimp (*Branchinecta sandiegonensis*, SDFS), and endangered least Bell's vireo (*Vireo bellii pusillus*, vireo).

Section 9 of the ESA and associated regulations prohibit the take<sup>1</sup> of endangered and threatened species without special exemption. The Migratory Bird Treaty Act prohibits killing or injuring adults and destroying active nests. Our review of oilfield operations and maintenance activities on the site indicate that, over time, there appears to have been a reduction in habitat for the gnatcatcher and a reduction in the number of gnatcatcher territories. A total of 20 territories were documented in 1993 when the gnatcatcher was listed whereas only 10 territories were observed in 2013, and 8 territories were observed in 2014. We estimate gnatcatcher breeding habitat

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<sup>1</sup> Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm is further defined by the Fish and Wildlife Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering.

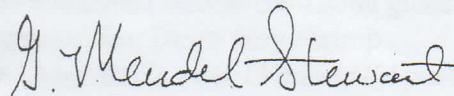
(coastal sage scrub) has declined by 7.31 acres, from 59.41 acres in 1992 to 52.10 acres in 2012<sup>2</sup>. Regular disturbance to vegetation from mowing has also increased the extent of invasive and ornamental vegetation and decreased available foraging habitat for the gnatcatcher.

Accordingly, we are concerned that the past activities on the site may have resulted in take of gnatcatcher through habitat modification. We would like to resolve these past compliance issues with you. In addition, we would like to discuss the components of the maintenance plan that was prepared, by West Newport Oil Company (WNOC) and Newport Banning Ranch LLC (NBRLLC) in coordination with the Service, to describe ongoing activities and to accomplish the following objectives:

- Restore and maintain vegetation so that the habitat quality for the gnatcatcher is equivalent to or greater than it was in 1993, when the gnatcatcher was federally listed as threatened;
- Maintain habitat quality for the vireo and SDFS; and
- Incorporate measures to avoid impacts to gnatcatcher, vireo, and SDFS.

In summary, we appreciate the efforts of WNOC and NBRLLC to coordinate with our agency to ensure regulatory compliance with the ESA and Migratory Bird Treaty Act. At this time, we recommend that mowing be restricted to those areas with active oil operations or that are necessary to maintain health and human safety. Please contact Assistant Field Supervisor Karen Goebel by telephone or email (760-431-9440, extension 296; Karen\_Goebel@fws.gov) to arrange a meeting to discuss these issues further.

Sincerely,



G. Mendel Stewart  
Field Supervisor

cc:

Resident Agent-in-Charge, USFWS Office of Law Enforcement, Torrance

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<sup>2</sup> Dudek Associates documented a total of 52.10 acres of scrub (minimum of 30 percent shrub cover) in 2012 and determined there was 58.62 acres of scrub (minimum 25 percent shrub cover) in 1992 based on vegetation mapping completed by LSA. The Carlsbad Fish and Wildlife Office GIS staff reviewed the information and determined that a portion of the 1992 map was not included in Dudek's analysis; therefore, 59.41 acres of scrub was mapped in 1992. Scrub vegetation was reduced by approximately 7.31 acres between 1992 and 2012.