

2.19 Threatened and Endangered Species

2.19.1 Regulatory Setting

The primary federal law protecting threatened and endangered species is the FESA: 16 USC Section 1531, et seq. See also 50 CFR Part 402. This act and later amendments provide for the conservation of endangered and threatened species and the ecosystems upon which they depend. Under Section 7 of this act, federal agencies, such as the FHWA (and the Department, as assigned), are required to consult with the USFWS and the NOAA Fisheries Service to ensure that they are not undertaking, funding, permitting, or authorizing actions likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat. Critical habitat is defined as geographic locations critical to the existence of a threatened or endangered species. The outcome of consultation under Section 7 may include a Biological Opinion with an Incidental Take statement or a Letter of Concurrence. Section 3 of FESA defines take as “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect or any attempt at such conduct.”

California has enacted a similar law at the state level, the CESA, California Fish and Game Code Section 2050, et seq. CESA emphasizes early consultation to avoid potential impacts to rare, endangered, and threatened species and to develop appropriate planning to offset project-caused losses of listed species populations and their essential habitats. The CDFW is the agency responsible for implementing CESA. Section 2080 of the California Fish and Game Code prohibits “take” of any species determined to be an endangered species or a threatened species. “Take” is defined in Section 86 of the California Fish and Game Code as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” CESA allows for take incidental to otherwise lawful development projects; for these actions an incidental take permit is issued by CDFW. For species listed under both FESA and CESA requiring a Biological Opinion under Section 7 of FESA, the CDFW may also authorize impacts to CESA species by issuing a Consistency Determination under Section 2080.1 of the California Fish and Game Code.

Another federal law, the Magnuson-Stevens Fishery Conservation and Management Act of 1976, was established to conserve and manage fishery resources found off the coast, as well as anadromous species and Continental Shelf fishery resources of the United States, by exercising (1) sovereign rights for the purposes of exploring, exploiting, conserving, and managing all fish within the exclusive economic zone established by Presidential Proclamation 5030, dated March 10, 1983, and (2) exclusive fishery management authority beyond the exclusive economic zone over such anadromous species, Continental Shelf fishery resources, and fishery resources in special areas.

2.19.2 Affected Environment

Information presented in this section was obtained from the NES (mi) (January 2019).

An updated USFWS official species list was obtained on June 4, 2019 and is provided in Section 4.2.6. The USFWS species list included 10 species that may occur within the proposed project Study Area as shown in Table 2.19-1. The proposed project Study Area contains suitable habitat within Santiago Creek for the least Bell's vireo and southwestern willow flycatcher, both of

which are federally and State listed as endangered species. However, no construction activities would occur within or adjacent to the creek. These species are NCCP/HCP Covered Species. Therefore, no protocol surveys are required.

A NOAA/NMFS species list was obtained for the project on September 5, 2019 (See Section). The list Identified no critical habitat and one species within the project area located within the Orange (Quad Number 33117-G7) and Tustin Quads (Quad Number 33117-F7). The Steelhead Trout (*Oncorhynchus mykiss*) was identified in the Orange and Tustin Quads. This species is considered Endangered under the Endangered Species Act. In 1947, a Steelhead fingerling was identified in Santiago Creek, a tributary to the Santa Ana River that runs along a channelized course that ultimately drains into the Santa Ana River in the City of Santa Ana. No construction activities would occur within or adjacent to Santiago Creek, and it is highly likely that Steelhead have been extirpated from the SAR and Santiago Creek. There are no records of Steelhead within the project since 1947.

No other listed species or critical habitat is present within the Study Area due to the high degree of surrounding urbanization. Based on these findings, the project has no effect on all the species listed in Table 2.19-1.

Table 2.19-1: Threatened and/or Endangered Species and Critical Habitat Potentially Occurring or Known to Occur in the Project Area and Effect Determinations

Common Name	Scientific Name	Status	General Habitat Description	Habitat Present/Absent	Rationale	Effect Determination
Pacific pocket mouse	<i>Perognathus longimembris pacificus</i>	FE	Sandy, coastal soils, coastal sage scrub, coastal dune, river alluvium	A	No sandy coastal soils, dunes, or alluvium are present within the Study Area.	No Effect
California least tern	<i>Sterna antillarum browni</i>	FE/SE	Open beaches, bays, estuaries, lagoons	A	The Study Area does not contain open beach, bay, estuarine, or lagoon habitat.	No Effect
coastal California gnatcatcher	<i>Poliophtila californica californica</i>	FT	Coastal sage scrub, California sagebrush	A	The Study Area contains sparse, disturbed areas of California sagebrush, but does not provide habitat for this species.	No Effect
least Bell's vireo	<i>Vireo bellii pusillus</i>	FE/SE	Riparian forest	HP	Although marginal habitat exists in Santiago Creek, no construction activities would take place in or adjacent to the creek, and no impacts would occur to this species.	No Effect
light-footed clapper rail	<i>Rallus longirostris levipes</i>	FE/SE	Coastal salt marsh	A	No coastal salt marsh habitat occurs within the Study Area.	No Effect

Common Name	Scientific Name	Status	General Habitat Description	Habitat Present/ Absent	Rationale	Effect Determination
southwestern willow flycatcher	<i>Empidonax traillii extimus</i>	FE/SE	Riparian forest	HP	Although marginal habitat exists in Santiago Creek, no construction activities would take place in or adjacent to the creek, and no impacts would occur to this species.	No Effect
western snowy plover	<i>Charadrius alexandrinus nivosus</i>	FT	Open beaches, bays, estuaries, lagoons	A	The Study Area does not contain open beach, bay, estuarine, or lagoon habitat.	No Effect
Santa Ana sucker	<i>Catostomus santaanae</i>	FT	Santa Ana River	A	The project does not impact the Santa Ana River.	No Effect
big-leaved crownbeard	<i>Verbesina dissita</i>	FT/ST	Southern maritime chaparral near Laguna Beach	A	The Study Area does not contain southern maritime chaparral habitat and is located 14 miles away from Laguna Beach.	No Effect
Laguna Beach liveforever	<i>Dudleya stolonifera</i>	FT/ST	Sandstone surfaces near Laguna Beach	A	The Study Area does not contain sandstone habitat and is located 14 miles away from Laguna Beach.	No Effect
Steelhead trout	<i>Oncorhynchus mykiss</i>	FE	Santiago Creek	A	The project does not impact the Santiago Creek.	No effect

Notes: Absent [A] - no habitat present and no further work needed. Habitat Present [HP] -habitat is, or may be present. The species may be present. Present [P] - the species is present. Critical Habitat [CH] - project footprint is located within a designated critical habitat unit, but does not necessarily mean that appropriate habitat is present. Status: Federal Endangered (FE); Federal Threatened (FT); Federal Proposed (FP, FPE, FPT); Federal Candidate (FC), Federal Species of Concern (FSC); State Endangered (SE); State Threatened (ST); Fully Protected (FP); State Rare (SR); State Species of Special Concern (SSC); California Native Plant Society (CNPS)

2.19.3 Environmental Consequences

2.19.3.1 Temporary Impacts

Build Alternative

Although the proposed project Study Area encompasses Santiago Creek, which contains suitable riparian habitat for the least Bell's vireo and southwestern willow flycatcher, project improvements are approximately 1 mile south of Santiago Creek near the eastbound SR 22 to northbound SR 55 connector and approximately 3 miles north at the Katella Avenue/SR 55 southbound on-ramp. Therefore, no temporary direct or indirect impacts would occur to the least Bell's vireo or southwestern willow flycatcher individuals or their habitat. The construction activities are far enough away from Santiago Creek that they will not create additional noise that may disrupt nesting behavior. As a result, no Section 7 consultation is required, and a no effect determination is made for both species.

No Build Alternative

The No Build Alternative would not result in the construction or improvements within the project area and, therefore, would not result in temporary direct impacts on animal species.

2.19.3.2 Permanent Impacts

Build Alternative

Although the proposed project Study Area encompasses Santiago Creek, which contains suitable riparian habitat for the least Bell's vireo and southwestern willow flycatcher, project improvements are approximately 1 mile south of Santiago Creek near the eastbound SR 22 to northbound SR 55 connector and approximately 3 miles north at the Katella Avenue/SR 55 southbound on-ramp. Therefore, no permanent direct or indirect impacts would occur to the least Bell's vireo or southwestern willow flycatcher individuals or their habitat.

No Build Alternative

The No Build Alternative would not result in the construction or improvements within the project area and, therefore, would not result in permanent impacts on animal species. No indirect or secondary impacts on animal species would result from implementation of the No Build Alternative.

2.19.4 Avoidance, Minimization, and/or Mitigation Measures

No temporary or permanent impacts would occur to listed species. No mitigation measures are required.