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GAVIN NEWSOM, Governor  
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Governor's Office of Planning & Research

Apr 19 2022

## STATE CLEARINGHOUSE

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### **SUBJECT: WATERFRONT Plan Project, DRAFT ENVIRONMENTAL IMPACT REPORT (SCH# 2020099002)**

Dear Ms. George:

The California Department of Fish and Wildlife (CDFW) received a Notice of Availability for a Draft Environmental Impact Report (DEIR) for the Waterfront Plan Project (Project) from the San Francisco Planning Department pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup> CDFW previously submitted comments in response to the Notice of Preparation on September 24, 2020.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

### **CDFW ROLE**

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the state. (Fish & G. Code, Section 711.7, subd. (a) & 1802; Pub. Resources Code, Section 21070; CEQA Guidelines Section 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, Section 1802.) Similarly for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources. CDFW is also responsible for marine biodiversity protection under the Marine Life Protection Act in coastal marine waters of

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<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

California, and ensuring fisheries are sustainably managed under the Marine Life Management Act.

CDFW is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & Game Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in take as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required. Pursuant to our jurisdiction, the CDFW has the following comments and recommendations regarding the Project.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Port of San Francisco

**Objective:** The objective of the Project is to update and amend the 1997 Waterfront Land Use Plan, which sets long-term goals and policies to guide the use, management, and improvement of 7.5 miles of properties under the Port's jurisdiction, from Fisherman's Wharf to India Basin. The Project has nine objectives that may include both terrestrial and in-water work. Project activities may include pile driving, site preparation, clearing, grubbing, excavation, grading, demolition, new construction, interior construction, renovation of existing piers, and laydown area management work.

**Location:** The Project area is generally bounded to the north by Hyde Street Pier and Jefferson Street in Fisherman's Wharf and includes piers and upland properties adjacent to The Embarcadero including Oracle Park; piers and waterfront properties adjacent to Terry A. Francois Boulevard in Mission Bay; and properties generally east of Illinois Street south of Mission Bay to Cargo Way in India Basin.

## **MARINE BIOLOGICAL SIGNIFICANCE**

The San Francisco Bay-Delta is the second largest estuary in the United States and supports numerous aquatic habitats and biological communities. It encompasses 479 square miles, including shallow mudflats. This ecologically significant ecosystem supports both state and federally threatened and endangered species and sustains important commercial and recreational fisheries.

## **REGULATORY REQUIREMENTS**

*California Endangered Species Act:* Please be advised that a CESA permit will be recommended if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the project. Issuance of a CESA permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the

Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA Permit. CEQA requires a Mandatory Finding of Significance if a project is likely to substantially impact threatened or endangered species (CEQA section 21001(c), 21083, & CEQA Guidelines section 15380, 15064, 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Commission section 2080.

### **STATE AND FEDERALLY LISTED AND COMMERCIAL/RECREATIONALLY IMPORTANT SPECIES**

Protected species under the State and Federal Endangered Species Acts that could potentially be present near Program activities include:

- Chinook salmon (*Oncorhynchus tshawytscha*), state and federally threatened (Spring-run), state and federally endangered (Winter-run)
- Steelhead (*Oncorhynchus mykiss*), federally-threatened (Central California Coast and Central Valley ESUs)
- Green sturgeon (*Acipenser medirostris*), federally-threatened (southern DPS)
- Longfin smelt (*Spirinchus thaleichthys*), state-threatened
- Brown pelican (*Pelecanus occidentalis californicus*), state fully protected
- American peregrine falcon (*Falco peregrinus anatum*), state fully protected
- California Ridgway's rail (*Rallus obsoletus obsoletus*), state fully protected

Several species with important commercial and recreational fisheries value that could potentially be impacted by Project activities include:

- Dungeness crab (*Cancer magister*),
- Pacific herring (*Clupea pallasii*),
- Rockfish (*Sebastes* spp.),
- California halibut (*Paralichthys californicus*)
- Surfperches (*Embiotocidae*).

### **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist the San Francisco Planning Department in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife resources. Editorial comments or other suggestions may also be included to improve the document.

## I. Marine Project Level Impacts and Other Considerations

### Pacific herring:

**Comment:** Portions of the Project have been identified as being sensitive habitat for Pacific herring. CDFW has identified the area from Oracle Park/Mission Bay south to Islais Creek as being important spawning habitat for herring. In certain years the herring spawns in this area can account for a significant percentage of the yearly herring spawning biomass. Given the potential for a significant herring spawn in any given year, CDFW has been very cautious with in-water work occurring during the winter months and may not consider requests for work to occur in this area during the spawning season from approximately December 1 to March 15.

The types of activities that are described in the DEIR are the types of activities that could be a source of significant impacts to Pacific herring. CDFW understands that the DEIR describes in water work will occur during the approved work windows. However, some of the potential projects described within the DEIR could have year-round impacts such as water pumping, dry dock operations, and increased shoreline usage from public access improvements.

### Recommendations

- CDFW recommends that all future activities considered under the Project consider potential impacts to Pacific herring during construction and also from the continued operation and/or use of individual projects.
- CDFW recommends that all future activities covered under the Project consider the construction timeline in areas from Mission Bay south to Islais Creek to assure that no work may occur in the winter months given the concern with the potentially significant impacts to spawning herring.

### Back-Up Cruise Terminal and Shore Power:

**Comment:** Pier 50 is within the portion of the San Francisco waterfront that CDFW has identified as being sensitive habitat for Pacific herring and has state listed species, specifically the longfin smelt and chinook salmon, present during portions of the year. The Project anticipates Pier 50 requiring in-bay pile work and construction to be able to accommodate cruise ships. Activities described for preparing Pier 50, such as in-bay pile work and construction, could have significant impacts on the species mentioned above depending on the types of equipment, materials, and time of year in which in water work occurs. Additionally, there is no discussion on whether dredging would be necessary at Pier 50 to accommodate a deep draft vessel such as a cruise ship.

### Recommendations

- CDFW recommends that the Port of San Francisco consult with CDFW early in the planning phase to determine whether there is potential for incidental take of state listed species may occur and to design portions of the project to

avoid and or minimize take of state listed and impacts to state managed species.

- If potential impacts to state listed species are identified, CDFW recommends the Port of San Francisco consult with CDFW on obtaining incidental take coverage via a 2081(b) Incidental Take Permit.

### **Oyster Restoration and Habitat Creation**

**Comment:** It is the Department's understanding that the Project is proposing potential environmental enhancements designed to act as an artificial reef or habitat. The Department has authority for artificial reefs under a variety of roles including Statutory/Legislative Authority, Trustee and Responsible Agency Status under CEQA and the Marine Life Management Act, and an advisory role to other agencies. Fish and Game Code Section 6420-6425 established the California Artificial Reef Program (CARP) through legislation in 1985. The program was created to investigate the potential to enhance declining species through the placement of artificial reefs and is currently unfunded with no identified source of funding. However, the CARP does not consider reef placement for mitigation, dampening effects of sea level rise, improve diving opportunities, or restoration. In order to provide adequate consultation and advice to the principal permitting agencies on reef design, development, and purpose, the Department seeks to develop a comprehensive statewide scientifically based plan for overseeing the placement of artificial reefs in state waters. Without a scientifically based statewide artificial reef plan for California, the Department does not recommend any new artificial reef or artificial habitat at this time, regardless of intent.

The Department is also concerned that artificial reefs and habitat creation could attract invasive species. Any proposed artificial enhancement that will act to attract fish or invertebrates should be accompanied by a detailed monitoring plan during the planning phase, which should also be reviewed and approved by CDFW.

### **Recommendations**

- CDFW recommends that the Final EIR include discussion on developing an invasive species monitoring plan for habitat enhancements or creation that includes monitoring measures, adaptive management measures, and protocols if invasive species are identified for all future construction covered under the Project. The discussion should also state that CDFW will be provided any invasive species monitoring plan for review prior to adoption.

### **Fish and Marine Mammal Protection during Pile Driving: Mitigation Measure M-BI-3**

**Comment:** Mitigation Measure M-BI-3 only describes the approvals and work windows put in place with the federal resource agencies. CDFW may need to exercise its regulatory authority for various portions of the Project. Under this role, CDFW would also be an approving agency for the various types of plans and

protective measures for the species we would be permitting under Fish and Game Code Section 2081.

CDFW, as a coordinating agency to the San Francisco Bay Long Term Management Strategy (LTMS), was also involved with the development of the regionally specific LTMS work windows for species which received protection under these in-water work windows. CDFW is directly responsible for the management and protection of several species that received work windows under LTMS such as, Pacific herring and Dungeness crab.

### **Recommendations**

- CDFW recommends that Mitigation Measure M-BI-3 specifically include language on coordination with CDFW for potential sound impacts to fish and the associated work windows for species that CDFW is responsible for managing and protecting.
- CDFW recommends that the inclusion of a bubble curtain be added as a best management practice for impact pile driving. In addition to the use of cushion block, a bubble curtain could provide a significant increase in sound attenuation under certain conditions.

## **II. Editorial Comments and/or Suggestions**

### **Table 4.F-2 Potential Effects to Fish at Varying Noise Levels**

**Comment:** The second row for fish < 2 grams should be 183 decibels (dB) accumulated sound exposure level (SEL), not 186 dB. Additionally, the table is confusing as the 206 peak sound level is utilized for fish > 2 grams and < 2 grams. The way it is currently presented it seems that that the peak sound level is only for fish > 2 grams.

### **Recommendation**

- CDFW recommends that table 4.F-2 make two edits 1) change the sound level in the second row from 186 dB to 183 dB for fish < 2 grams and 2) a fourth row should be added specifically for the peak sound level of 206 dB indicating that it is used for all fish regardless of size.

**Impact BI-7: The Waterfront Plan could interfere substantially with the movement of a native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors or impede the use of native wildlife nursery sites.**

**Comment:** Impact BI-7 has several misleading statements. Pacific herring spawning within San Francisco Bay is not consistent or predictable from year to year. The lack of spawning along the waterfront in recent years does not suggest spawning in this location has become less frequent, only that no or smaller spawns had occurred in those years. As mentioned in Comment #1, CDFW has identified a portion of the San Francisco waterfront from Mission Bay to Islais Creek as being particularly

important in spawning seasons over the last decade with very large spawning events occurring there.

Additionally, longfin smelt are likely present year-round along the San Francisco waterfront. Given the proximity of San Francisco to the ocean, salinity likely does not play as large of a role to affect presence and is more likely the cause of seasonal migrations for spawning. CDFW agrees there are likely less longfin present in the winter as the fish are migrating to spawning habitat both north and south of San Francisco, but adult fish remain during this time and have been observed in research trawls in the deeper channels adjacent to San Francisco in the winter.

### Recommendations

- CDFW recommends that the second paragraph under Marine Biological Resources on p. 4.F-50 be changed as follows (amended language in **bold italics**; deleted language in ~~strikethrough~~):
  - “Pacific herring are known to breed on in-water structures and utilize this habitat along the San Francisco waterfront. A lack of observed spawning in recent years suggests that ~~spawning along the waterfront has become less frequent~~ **spawning activity varies from year to year**. Of all the special-status fish species, longfin smelt have the greatest potential to occur within the waterfront adjacent to the Plan area. However, because longfin smelt distribution within the San Francisco Bay-Delta is driven by fluctuations in salinity **and migration to spawning habitats outside of the study area**, they are unlikely to occur in large numbers near the study area ~~outside of late summer~~ **at certain times of the year.**”

### ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/SubmittingData#44524420-pdf-field-survey-form>.

The completed form can be mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov). The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

### FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be

operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

## CONCLUSION

CDFW appreciates the opportunity to comment on the Waterfront Plan Project DEIR to assist the San Francisco Planning Department in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Arn Aarreberg, Environmental Scientist at (707) 791-4195 or [Arn.Aarreberg@wildlife.ca.gov](mailto:Arn.Aarreberg@wildlife.ca.gov).

Sincerely,



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