

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE  
CALIFORNIA ENDANGERED SPECIES ACT  
INCIDENTAL TAKE PERMIT  
NO. 2081-2023-053-07**

**Humboldt Bay Harbor, Recreation and Conservation District  
Humboldt Bay Master Seawater Intakes Project**

**CEQA FINDINGS**

**INTRODUCTION:**

The California Department of Fish and Wildlife (CDFW) has prepared these findings to document its compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 *et seq.*). CDFW is a responsible agency under CEQA with respect to the Humboldt Bay Master Seawater Intakes Project (Project) because of its permitting authority under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*). (See generally Pub. Resources Code, §§ 21002.1, subd. (d), 21069; CEQA Guidelines, § 15381; see also Cal. Code Regs., tit. 14, § 783.3, subd. (a).)<sup>1</sup> CDFW makes these findings under CEQA as part of its discretionary decision to authorize Humboldt Bay Harbor, Recreation and Conservation District (Permittee) to incidentally take longfin smelt (*Spirinchus thaleichthys*) (hereafter, referred to as the Covered Species) during implementation of the Project. (See generally Fish & G. Code, § 2081, subd. (b); Cal. Code Regs., tit. 14, § 783.4.) The longfin smelt is designated as threatened species under CESA. (Cal. Code Regs., tit. 14, § 670.5, subd. (b)(2)(E))

CDFW is a responsible agency under CEQA with respect to the Project because of prior environmental review and approval of the Project by the lead agency, County of Humboldt, Planning and Building Department (County). (See generally Pub. Resources Code, § 21067; CEQA Guidelines, § 15367.) The County analyzed the environmental impacts associated with implementation of the Project in an Environmental Impact Report, Nordic Aquafarms California, LLC Land-based Aquaculture Project Environmental Impact Report (EIR) (SCH No. 2021040532), and approved the Project on July 1, 2022. In so doing, the County imposed various mitigation measures for impacts to the Covered Species as conditions of Project approval and concluded that Project-related impacts to the Covered Species could be substantially lessened with implementation of mitigation and avoidance measures, such that the impacts would be less than significant.

As approved by the County, the Project involves operation and maintenance of the two seawater intakes, removing two existing fish screens, installing two new fish screens on seawater pumps, and installing piping to transfer seawater to Humboldt Bay Harbor, Recreation and Conservation District (District) tenants. The Project site is within the range of the Covered Species and is known to support individuals of the species. Continued

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<sup>1</sup> The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

operation of the Project will result in the permanent loss of habitat for the Covered Species and take of the Covered Species as defined by Fish and Game Code is expected. (Fish & G. Code, § 86.) These impacts fall within CDFW's permitting jurisdiction under CESA. (*Id.*, §§ 2080, 2081, subd. (b).)

As a responsible agency, CDFW's CEQA obligations are more limited than those of the lead agency, in that CDFW is responsible for considering only the effects of those activities involved in the Project which it is required by law to carry out or approve. Thus, while CDFW must consider the environmental effects of the Project as set forth in the County's prior EIR, CDFW has responsibility to mitigate or avoid only the direct or indirect environmental effects of those parts of the Project which it decides to carry out, finance, or approve. (Pub. Resources Code, § 21002.1, subd. (d); CEQA Guidelines, §§ 15041, subd. (b), 15096, subds. (f)-(g).) Accordingly, because CDFW's exercise of discretion is limited to issuance of an Incidental Take Permit (ITP) for the Project, CDFW is responsible for considering only the environmental effects that fall within its permitting authority under CESA. (See generally *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4<sup>th</sup> 924, 935-941.) Indeed, with respect to all other effects associated with implementation of the Project, CDFW is bound by the legal presumption that the EIR fully complies with CEQA. (Pub. Resources Code, § 21167.3; *City of Redding v. Shasta County Local Agency Formation Commission* (1989) 209 Cal.App.3d 1169, 1178-1181; see also CEQA Guidelines, § 15096, subd. (e); Pub. Resources Code, § 21167.2; *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4<sup>th</sup> 1112, 1130.)

CDFW's more limited obligations as a responsible agency affect the scope of, but not the obligation to adopt, findings required by CEQA. Findings are required under CEQA by each public agency that approves a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment. (Pub. Resources Code, § 21081, subd. (a); CEQA Guidelines, § 15091, subd. (a); see also Pub. Resources Code, § 21068 (significant effect on the environment defined); CEQA Guidelines, § 15382.) Because the EIR certified by the County for the Project identifies potentially significant impacts on the Covered Species, CDFW adopts the findings set forth below to fulfill its obligations as a responsible agency under CEQA. (CEQA Guidelines, § 15096, subd. (h); *Resource Defense Fund. V. Local Agency Formation Comm. of Santa Cruz County* (1987) 191 Cal.App.3d 886, 896-898.) In addition, on February 6, 2025, CDFW, acting as a responsible agency, prepared an addendum to the County's EIR to analyze the potential effects of minor modifications to the Project's seawater intake design.

## **FINDINGS:**

CDFW has considered the EIR certified by the County as the lead agency for the Project.

CDFW finds that the mitigation measures imposed as conditions of Project approval by the County, along with the mitigation measures and Conditions of Approval set forth in CDFW's ITP for the Project, will ensure that all Project-related impacts on the Covered Species are mitigated to below a level of significance under CEQA.

CDFW finds that issuance of the ITP will not result in any previously undisclosed potentially significant effects on the environment or a substantial increase in the severity of any potentially significant environmental effects previously disclosed by the lead agency. Furthermore, to the extent the potential for such effects exists, CDFW finds adherence to and implementation of the conditions of Project approval adopted by the lead agency, as well as adherence to and implementation of the Conditions of Approval imposed by CDFW through the issuance of the ITP, will avoid or reduce such potential effects to below a level of significance.

The following measures and other measures set forth in CDFW's ITP for the Project will avoid to the extent feasible and mitigate impacts to below a level of significance all Project-related impacts on the Covered Species:

- A. The Permittee shall submit to CDFW in writing the name, qualifications, business address, and contact information of the Designated Biologist(s) and Biological Monitor(s) using the Biologist Resume Form or another format containing the same information at least 30 days before starting Covered Activities. The Permittee shall ensure that the Designated Biologist(s) and Biological Monitor(s) are knowledgeable and experienced in the biology, natural history, collecting and handling of the Covered Species. The Designated Biologist(s) and Biological Monitor(s) shall be responsible for monitoring Covered Activities to help minimize and fully mitigate or avoid the incidental take of individual Covered Species and to minimize disturbance of Covered Species' habitat. The Permittee shall obtain CDFW approval of the Designated Biologist(s) and Biological Monitor(s) in writing before starting Covered Activities and shall also obtain approval in advance, in writing, if the Designated Biologist(s) or Biological Monitor(s) must be changed.
- B. The Permittee shall conduct an education program for all persons employed or otherwise working in the Project Area before performing any work. The program shall consist of a presentation from the Designated Biologist that includes a discussion of the biology and general behavior of the Covered Species, information about the distribution and habitat needs of the Covered Species, sensitivity of the Covered Species to human activities, its status pursuant to CESA including legal protection, recovery efforts, penalties for violations and Project-specific protective measures described in this ITP. The Permittee shall prepare and distribute wallet-sized cards or a fact sheet handout containing this information for workers to carry in the Project Area. The Permittee shall provide interpretation for non-English speaking workers, and the same instruction shall be provided to any new workers before they are authorized to perform work in the Project Area. Upon completion of the program, employees shall sign a form stating they attended the program and understand all protection measures. This training shall be repeated at least once annually for long-term and/or permanent employees that will be conducting work in the Project Area.

- C. The Permittee shall acquire and permanently preserve 0.93 acres of Covered Species' habitat approved by CDFW and provide for the maintenance and management of the habitat in perpetuity for Phase 1 of the Project.
- D. The Designated Representative or Designated Biologist shall compile the observation and inspection records identified into a Quarterly Compliance Report and submit it to CDFW along with a copy of the Mitigation and Monitoring Report Program table with notes showing the current implementation status of each mitigation measure. Quarterly Compliance Reports shall be submitted to the CDFW offices listed in the Notices section of this ITP and via e-mail to CDFW's Regional Representative and Headquarters CESA Program.
- E. The Permittee shall not conduct intake of water without an operational fish screen attached to the intake pipe at Redwood Marine Terminal II Dock and Red Tank Dock.
- F. The Permittee shall conduct all planned, non-emergency, in-water maintenance or repair work associated with the fish screen or fish screen support structures from July 1 through October 15.
- G. No later than 45 days after completion of all mitigation measures, the Permittee shall provide CDFW with a Final Mitigation Report.

CDFW finds that the Mitigation Monitoring and Reporting Program in Attachment 1 of CDFW's ITP for the Project will ensure compliance with mitigation measures by requiring the Permittee to monitor and report progress in implementing those measures for review by CDFW staff.

*The Mitigation Monitoring and Reporting Program is adopted.*

*The Project is approved.*

DATE: February 6, 2025

By:



Craig Shuman, D. Env., Regional Manager  
MARINE REGION  
DEPARTMENT OF FISH AND WILDLIFE