State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Marine Region
1933 Cliff Drive, Suite 9
Santa Barbara, CA 93109
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

June 30, 2021

Mr. Chris Cannon
Environmental Management Director
City of Los Angeles Harbor Department
425 S. Palos Verdes Street
San Pedro, California 90731
ceqacomments@portla.org

Berth 163-164 [NuStar-Valero] Marine Oil Terminal Wharf Improvements (Project)
Draft Initial Study/Mitigated Negative Declaration (IS/MND)
SCH # 2021050263

Dear Mr. Cannon:

The California Department of Fish and Wildlife (Department) received a Notice from the City of Los Angeles Harbor Department (City) for the Marine Oil Terminal Wharf Improvement Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

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 biological impact and mitigation comments regarding those aspects of the Project that the Department, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

DEPERTMENT ROLE

The Department 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, Section711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines Section 15386, subd. (a).) The Department, 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.)

[1] 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.

Similarly for purposes of CEQA, the Department 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. The Department is also responsible for marine biodiversity protection under the Marine Life Protection Act in coastal marine waters of California, and ensuring fisheries are sustainably managed under the Marine Life Management Act. Pursuant to our jurisdiction, the Department has the following comments and recommendations regarding the Project.

PROJECT DESCRIPTION SUMMARY

Proponent: Co-applicants: NuStar Energy L.P. (NuStar Berth 163), Valero Energy Corporation (Valero Berth 164)

Objective: The objective of the Project is to comply with the State of California's Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) at the marine oil terminal currently at Berth 163 (NuStar). Construction activities would include demolition of the existing timber wharf structures at Berth 163 and 162 and construction of a new loading/unloading platform at Berth 163. Additional construction includes piping to the Valero terminal, fire pump platform, an access/pipeline trestle, mooring and breasting dolphins, catwalks, a hose tower, and an onshore valve vault. Primary Project activities include:

- Demolition of wooden Berth 162, 163 and 164 and replacement with a new concrete wharf at Berth 163, which will have a new configuration. The proposed Project would result in a decrease in over-water structures of approximately 12,010 square feet (0.27 acres) from current baseline conditions.
- Pulling or cutting chemically treated timber piles for landfill disposal.
- Once old timber piles are removed, steel piles will be installed with a vibratory hammer when feasible, and an impact hammer if necessary.
- If necessary, approximately 2000 cubic yards of potentially contaminated sediments may be dredged.
- A re-issue of a new 30-year land lease is proposed for the oil terminal operation.

Location: Berth 162, 163 and 164 Marine Oil Terminal, 841 La Paloma Avenue on Mormon Island, City of Wilmington, within the Port of Los Angeles (Port), Los Angeles County, California.

Marine Biological Significance

The Los Angeles Harbor (harbor) waters support many resident and migratory fish and special status wildlife such as seabirds, marine mammals, and sea turtles. Important marine plants and algae habitats such as eelgrass (*Zostera marina*) support those fish and wildlife species and are common throughout shallow areas of the harbor. Harbor waters support commercially and recreationally important fish and invertebrate species such as California halibut (*Paralichthys californicus*), California spiny lobster (*Panulirus interruptus*), and the important forage fish Northern anchovy (*Engraulis mordax*).

COMMENTS AND RECOMMENDATIONS

The Department offers comments and recommendations below to assist the city in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife (biological) resources.

I. CESA Listed and Special Status Listed Species

The Department agrees special status species listed in the Draft IS/MND Table 4.4-1 are or may be present in the harbor and may occur in the Project area. The Department has regulatory authority over projects that could result in the "take" of any species listed under the California Endangered Species Act (CESA) as threatened or endangered, or designated as a candidate for listing, pursuant to Fish and Game Code Section 2081. The Department also has jurisdiction over state fully protected (FP) species pursuant to Fish and Game Code Sections 3511and take is prohibited for a FP species. Impacts to listed or protected species should be avoided to the extent feasible or fully minimized if unavoidable. An Incidental Take Permit (ITP) may be recommended pursuant to Fish and Game Code section 2081, subdivisions (b) and (c), and California Code of Regulations, Title 14, section 783.0 et seq. for a CESA listed endangered, threatened or candidate species should take be anticipated. CESA-listed and/or FP species that occur or have the potential to occur in the Project area or local harbor vicinity include:

- California least tern, (Least tern) (*Sterna antillarum browni*), State and Federally Endangered, State FP
- California brown pelican, (Brown pelicans), (*Pelecanus occidentalis californicus*), State FP

Comment: Least terns may nest on the Least tern nesting colony at Pier 400. The least tern is migratory and forages on small bait fish in inner and outer harbor habitats during the breeding and nesting season between April 1st and September 15th. Least tern and Brown pelican foraging locations are not site specific because foraging is based on where the targeted bait fish are located on any given day. Project area waters that include eelgrass, shallow water, and sandy shores may provide suitable seabird forage and roosting habitat. The eelgrass and forage fish that supports Least terns, Brown pelicans, and other fish and wildlife, may be adversely and/or temporarily impacted over three years by Project dredging, pile driving/pulling, and anchoring.

Recommendations: The Department recommends the Final IS/MND include the following to reduce the risk of adverse impacts to CESA listed and special status species:

- Add the following additional mitigation measure to the Final IS/MND: *"To avoid foraging impacts to Least terns during their nesting and breeding season, conduct dredging and pile driving/pulling outside of least tern breeding and nesting season (typically between April 1st and September 15th)."*

- Add the following additional protection measures to the Final IS/MND: *"…to further avoid and minimize impacts to fully protected and federal or state endangered species, add Least terns and Brown pelicans to the safety zone monitoring and avoidance plan."* Safety zones for each of those species should be specified.

II. Project Level Impacts and Other Considerations

Pile Driving Impacts and Sound Criteria

Comment: The Department is concerned about the potential barotrauma impacts to fish and invertebrates which could occur from the Project due to the use of impact hammers. The Department relies on guidance from the Fisheries Hydroacoustic Working Group for setting sound pressure level safety criteria for fish resources. Additionally, the Department is a signatory to the interim criteria developed by the Fisheries Hydroacoustic Working Group (Interim Criteria 2008). The agreed upon criteria consists of sound pressure levels (SPL) of 206 dB peak and 187 dB accumulated sound exposure level (SEL) for all listed fish within a project area. Impacts to marine organisms from underwater sound are influenced by the SELs, SPLs, sound frequency, and depth and distance from the sound output source.

The Draft IS/MND states that underwater sound pressure waves could result in fish temporarily avoiding the construction area, and cause mortality of some fish in the Coastal Pelagic Fish Management Plan (FMP). Additionally, the Draft IS/MND states that the proposed Project underwater noise from pile driving construction would likely exceed criteria for Level A and B marine mammal harassment.

The Draft IS/MND did not clearly identify the new wharf area and configuration in the harbor waters, nor did it identify the total number of piles that will be pulled/cut verses the number that will be installed.

Recommendations: The Department recommends the Final IS/MND include the following to reduce the risk of adverse impacts from pile driving activities:

- Add additional mitigation measures to further avoid and minimize impacts to marine fish from pile pulling and driving activities. Develop a plan such as a Marine Fish Species Impact Avoidance and Minimization Plan (Plan) for pile construction impacts. The Plan should include, but not limited to, the following fish protection measures:
  - Feasible underwater noise dampening mitigation measures should be used for pile construction and demolition such as a noise dampening block, air bubble curtains and/or coffer dam methodologies as applicable for steel and concrete piles in addition to the Draft IS/MND proposed soft starts, safety zones, and silt curtains. All pile types should be driven and pulled out with a vibratory hammer to the maximum extent feasible.
- If an impact hammer is required for pile driving, then underwater sound monitoring is recommended. Additional contingency protection measures and

methods should be utilized if the City determines an impact hammer is necessary, and if the hydroacoustic sound levels generated exceed the Interim Criteria for Injury to Fish (peak sound exposure level (SEL) of 206 decibels (dB) and accumulated SEL of 187 dB SEL threshold for fish over 2 grams and 183 dB for fish under 2 grams), (Interim Criteria 2008).If a pile cannot be fully removed and cutting is necessary, the Department recommends that the pile be cut off at least two feet below the mudline. Any pile stub that is left at the mudline would potentially remain in eelgrass habitat, prevent eelgrass expansion within the footprint of each cut pile, and potentially continue to leach contaminants into the environment.

- Add diagrams and details in the Final IS/MND to specifically identify the new wharf area and configuration including a diagram of the existing wharf area and configuration. Additionally, identify in the project elements, the total number of piles that will be pulled/cut verses the number that will be installed.
- The Department recommends the Final IS/MND identify the number of piles to be removed/cut and installed. Additionally, the configuration of the piles and new wharf area in the harbor needs clarified in the Final IS/MND.

Native Eelgrass Impacts

Comment: Eelgrass is important as fish nursery habitat throughout the harbor and supports forage fish and other FMP species. Eelgrass habitat has been identified as a special aquatic site and given protections by the Clean Water Act. The Magnuson–Stevens Fishery Conservation and Management Act (MSA) identifies it as a Habitat Area of Special Concern, and the California Fish and Game Code protects wetland plant species such as eelgrass by the “no net loss” wetland policy. Guidance for adverse eelgrass impacts and mitigation is provided by the California Eelgrass Mitigation Policy (CEMP), (NOAA 2014).

As stated in the Draft IS/MND, eelgrass was observed in approximately one-half acre of Slip 1 during the 2018 biological survey. This includes small eelgrass patches along the shoreline of Berths 163-164 that may be vulnerable to Project impacts. Additionally, the Draft IS/MND indicates that there will be an increase in open surface water habitat, decreasing area of shaded water by removal of overwater structures. However, a summary analysis and calculations of the net habitat area gains and losses was not included in the Draft IS/MND. Specifically, a summary table was not provided showing the anticipated areal losses and gains of soft bottom, eelgrass habitat, shaded surface water and shaded eelgrass habitat (vegetated and unvegetated).

The Department agrees with the Draft IS/MND that increased turbidity, sedimentation, and physical disturbance (e.g., pile driving/pulling, dredging, barge anchoring) during construction of the proposed Project over three years would likely have significant adverse effects to nearby eelgrass if not mitigated. Additionally, there may also be indirect eelgrass habitat impacts such as shading from the proposed new wharf configuration as well as sedimentation from sediment disturbing construction.

Recommendations: The Department recommends the Final IS/MND include the following measures to reduce the risk of adverse impacts to eelgrass:

- A pre-construction Eelgrass Mitigation and Monitoring plan should be developed to include a comprehensive analysis of all impacts to eelgrass and other marine habitats based on pre-construction marine biological surveys. A marine habitat gain/loss analysis for the proposed Project wharf and pile demolition and construction should be included in the plan. Anchors, dredging and pile construction should avoid eelgrass bed damage, shading, and sedimentation to the maximum extent feasible. The plan should include eelgrass habitat impact avoidance and minimization plans that include vessel/barge anchoring outside of eelgrass habitat when feasible. The plan should discuss details of how adverse eelgrass habitat impacts may be compensated, (e.g., In-kind compensation following CEMP guidance for mitigation ratios, and a result of no net eelgrass habitat losses). The plan should identify the Department as one of the agencies to receive and review draft and final eelgrass and marine habitat mitigation and monitoring plans.
- This Project will likely have direct and indirect eelgrass habitat impacts. In accordance with the CEMP, two annual eelgrass impact monitoring surveys should be conducted to identify any Project related direct or indirect impacts including shading, turbidity, vessel anchoring, and sedimentation.
- If transplanting of eelgrass is required for mitigation, a Scientific Collecting Permit (SCP) from the Department will be required prior to harvest and transplanting activities. The SCP may include conditions such as donor bed surveys, limits on number and density of turions collected, methods for collection and transplanting, notification of activities, and reporting requirements. Please visit the Department's SCP webpage for more information: https://wildlife.ca.gov/Licensing/Scientific-Collecting.

Invasive Species

Comment: Disturbance of the bottom sediments from dredging and pile construction may redistribute non-native species that compete with native species. This could cause widespread adverse effects to eelgrass and the marine ecology. The invasive algae *Caulerpa taxifolia* is listed as a federal noxious weed under the U.S. Plant Protection Act and while deemed eradicated in 2006 is monitored for potential future emergence. Another invasive algae species found recently in Newport Bay is *Caulerpa prolifera*, which is also a potential threat to growth and expansion of native eelgrass beds and other native alga.

Recommendations: The Department recommends the Final IS/MND include the following measures to reduce the risk of *Caulerpa spp.* spreading in southern California:

- Include a mitigation measure detailing a pre-construction *Caulerpa spp*. survey to identify potential existence of invasive *Caulerpa spp.* as described in the Caulerpa Control Protocol https://media.fisheries.noaa.gov/dam-migration/caulerpa_control_protocol_4_updatedpoc.pdf.

- Any *Caulerpa spp*. found, including *Caulerpa prolifera,* should be reported to the Department and other applicable agencies within 24 hours. If *Caulerpa spp.* are found, do not disturb the species until a plan of eradication is developed by the Caulerpa Action Team.
-

III. 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 (CNDDB). Information on submitting data to the CNDDB can be found at: https://wildlife.ca.gov/Data/CNDDB/Submitting-Data.

IV. 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 Department. Payment of the fee is required 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
The Department appreciates the opportunity to comment on the Draft IS/MND. If you have any questions or comments, please contact Loni Adams, Environmental Scientist, at 858-204-1051 or loni.adams@wildlife.ca.gov.

Sincerely

DocuSigned by:
343995CB95354BC...

Craig Shuman, D. Env
Marine Regional Manager

ec: Becky Ota, Environmental Program Manager
Department of Fish and Wildlife
Becky.Ota@wildlife.ca.gov

Eric Wilkins, Senior Environmental Scientist Supervisor
Department of Fish and Wildlife
Eric.Wilkins@wildlife.ca.gov

Loni Adams, Environmental Scientist
Department of Fish and Wildlife
Loni.Adams@wildlife.ca.gov

Vanessa Navarro, Project Manager
Los Angeles District, U.S. Army Corps of Engineers
Vanessa.Navarro@usace.army.mil

Fernie Sy, Senior Coastal Analyst
California Coastal Commission
Fernie.Sy@coastal.ca.gov

Celine Gallon, Senior Environmental Scientist Supervisor
Los Angeles Regional Water Quality Control Board
Celine.Gallon@waterboards.ca.gov

Habitat Conservation Program Branch CEQA Program Coordinator
California Department of Fish and Wildlife
cegacommentletters@wildlife.ca.gov

Office of Planning and Research, State Clearinghouse
state.clearinghouse@opr.ca.gov

References

NOAA (National Oceanic and Atmospheric Administration) Fisheries, West Coast Region. 2014. California Eelgrass Mitigation Policy and Implementing Guidelines.

Fisheries Hydroacoustic Working Group. 2008. Interim Criteria for Injury of Fish Exposed to Pile Driving Operations: Memorandum. Washington: Federal Highway Administration.