



DEPARTMENT OF FISH AND WILDLIFE
Marine Region
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June 2, 2023

Mr. Scott Vurbef
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**NASSCO Floating Dry Dock Replacement and Waterfront Improvement Project
Draft Environmental Impact Report
SCH# 2022040595**

Dear Mr. Vurbef:

The California Department of Fish and Wildlife (Department) received a Draft Environmental Impact Report (DEIR) from the San Diego Unified Port District (District) for the NASSCO Floating Dry Dock Replacement and Waterfront 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.

DEPARTMENT 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, Section 711.7, 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). Similarly for purposes of CEQA, the Department is charged by law to provide, as available, biological expertise during public agency environmental review efforts,

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.

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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: General Dynamics-NASSCO

Objective: The primary objective of the proposed Project is to improve the safety and efficiency of NASSCO's shipbuilding operations. The Project includes replacement of the existing 142,680 square foot floating dry dock with a new 141,349 square foot floating dry dock and construction of supporting infrastructure, including a new 80-foot catwalk and gangway system, a new Repair Complex Wharf, installation of a sheet-piled bulkhead (i.e., retaining wall) to reinforce the shoreline adjacent to the new wharf, replacement of mooring dolphins and associated fender systems, and repair or replacement of damaged structural piles for various piers, berths, and wharfs throughout the NASSCO leasehold. The concrete piles would be installed with a crane-supported diesel impact hammer or vibratory hammer. Concrete mooring dolphin platforms would either be cast-in-place or partially pre-cast. Up to 957 structural piles supporting the various wharves and piers will be repaired or replaced over a 10-year period. Overall, the floating dry dock replacement and associated infrastructure modifications would result in a net increase in 4,170 square feet of permanent overwater coverage and 300 square feet of temporary overwater coverage. In addition, the Project would result in a net increase of 201 piles, resulting in a net decrease in pile area of 73 square feet and a net increase of in-water fill volume of 629 cubic yards. The total San Diego Bay fill area is estimated to increase by 13,131 square feet.

Location: 2798 East Harbor Drive, San Diego Bay, California

Timeframe: Construction of most project components (i.e., floating dry dock replacement and modification, Repair Complex Wharf improvements, and quay wall revetment repairs) is anticipated to occur between 2024 to 2026. As-needed quay wall repairs may extend to 2028 and structural pile repair and replacement may extend to 2035.

Marine Biological Significance

The San Diego Bay (Bay) waters support many resident and migratory fish, invertebrates, and special status wildlife such as seabirds, marine mammals, and sea turtles. Important marine plants such as eelgrass (*Zostera marina*) support those fish and wildlife species and are common throughout shallow subtidal areas and along shorelines of the Bay. Eelgrass is important as fish nursery habitat throughout the Bay and supports juvenile and adult fish, some of which are state and federally managed as commercial and recreational fish species. State commercial and recreationally important marine fish and invertebrate species include, but are not limited to, California halibut (*Paralichthys californicus*), California spiny lobster (*Panulirus interruptus*), and important forage fish such as Northern anchovy (*Engraulis mordax*).

COMMENTS AND RECOMMENDATIONS

The Department offers the comments and recommendations below to assist the District in

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adequately identifying and/or mitigating the Project's significant, or potentially significant, direct, and indirect impacts on fish and wildlife resources.

I. Project Level Impacts and Other Considerations

Pile Driving and Pulling Impacts and Sound Criteria:

Comments: Underwater noise associated with pile driving and pulling activities may cause temporary or permanent impacts to fish and invertebrates, such as temporary movement out of the Project area, barotrauma injury, or mortality. The Department relies on guidance from the Fisheries Hydroacoustic Working Group to set safe sound pressure level (SPL) criteria for pile driving and pulling activities (Fisheries Hydroacoustic Working Group 2008). The SPL dual criteria include a peak level of 206 dB and a cumulative sound exposure (SEL) level of 187 dB for fish 2 grams and heavier or a cumulative SEL of 183 dB for fish less than 2 grams. Additionally, if hydraulic jetting or an impact hammer is used for pile driving or if spudding operations occur, this may impact water quality, releasing contaminants from sediments into the water and/or creating turbidity that could harm fish and shade or smother the Bay's eelgrass beds.

Recommendations: The Department appreciates Mitigation Measure Bio-3, "Implement Noise Reducing Measures During Pile Installation Activities to Avoid Impacts on Marine Mammals, Green Sea Turtles, and Fish", and recommends that the Final EIR include the following additional mitigation measures to minimize underwater noise disturbance to sensitive aquatic species:

- A vibratory hammer, or an alternative technology that produces the least amount of noise, should be used to the maximum extent feasible during pile installation. Direct pull and vibratory methods should also be used during timber pile extractions.
- A wood, or similar material, cushion block should be used between the pile and hammer during all pile driving using an impact hammer.
- Underwater sound level monitoring should be conducted during pile driving and pulling and spudding operations. If SPLs and SELs exceed agreed upon levels as per the Interim Criteria for Injury to Fish, additional steps should be taken to reduce the underwater noise to acceptable levels. In addition to requiring a qualified biologist to monitor any special-status and/or sensitive marine species prior to and during pile driving activities as described in Mitigation Measure Bio-3, a sound attenuation and monitoring plan should be submitted to the resource agencies for review and approval prior to initiating pile driving activities.

The Department appreciates that Mitigation Measure WQ-2, "Implement Water Quality Best Management Practices During Construction", includes a requirement to use a silt curtain to control turbidity during high turbidity generating activities, such as impact hammer pile driving or internal jetting. The Department recommends that high turbidity generating activities be conducted when there are no strong outgoing tides since this could exacerbate turbid conditions and negatively impact marine life.

Eelgrass Habitat:

Comments: Native eelgrass beds (*Zostera marina*) are an important part of the Bay ecosystem and are recognized by state and federal statutes as both highly valuable and sensitive habitats. Eelgrass provides primary production and nutrients to the ecosystem

along with spawning, foraging, and nursery habitat for fish and other species. Pursuant to the federal Magnuson-Stevens Fishery Conservation and Management Act, eelgrass is designated as Essential Fish Habitat for various federally managed fish species within the Pacific Coast Groundfish and Pacific Coast Salmon Fisheries Management Plans (FMP). Eelgrass is also considered a habitat area of particular concern for various species within the Pacific Coast Groundfish FMP. Eelgrass habitats are further protected under state and federal “no-net-loss” policies for wetland habitats. Additionally, the importance of eelgrass protection and restoration, as well as the ecological benefits of eelgrass, is identified in the California Public Resources Code (PRC Section 35630).

The Department is concerned with potentially significant direct and indirect effects to eelgrass. Impacts to eelgrass could occur from turbidity, sedimentation, falling debris, and overwater shading from the proposed new structures. Eelgrass mapped in 2021 estimates approximately 478 square meters of eelgrass habitat within the Project area. Pile repair and quay wall repairs occur near eelgrass habitat.

Recommendations: The Department recommends that impacts to eelgrass should be avoided and minimized as much as possible. If impacts to eelgrass and potential eelgrass habitat are confirmed from preliminary eelgrass surveys, the area of the proposed Project should be reduced or otherwise re-configured to avoid impacts to eelgrass. The Department appreciates the following mitigation measures in the DEIR that minimize impacts to eelgrass:

- Mitigation Measure Bio-4, “Implement Construction Measures to Eliminate Water Quality Impairment Impacts on California Least Tern, Other Sensitive Fish Foraging Avian Species, and Eelgrass”.
- Mitigation Measure Bio-6, “Implement Eelgrass Mitigation and Monitoring in Compliance with the California Eelgrass Mitigation Policy”.
- Mitigation Measure WQ-2, “Implement Water Quality Best Management Practices During Construction”.

However, the Final EIR should also include an eelgrass mitigation measure that mooring and anchoring of all vessels should be outside of eelgrass habitat. The Department recommends adding the following language to Mitigation Measure Bio-4 in the Final EIR:

- Mooring and anchoring of all vessels during in-water construction should occur outside of eelgrass habitat to protect sensitive habitat and minimize turbidity and shading impacts.

The Department recommends that the pre- and post-construction eelgrass surveys mentioned in Mitigation Measure Bio-6 of the DEIR should be used to map eelgrass habitat within the Project area. The Department appreciates that Mitigation Measure Bio-6 includes the development of an eelgrass monitoring and mitigation plan (Plan), as defined in the California Eelgrass Mitigation Policy (CEMP; NMFS 2014) to ensure no net loss of eelgrass habitat. This Plan should include mitigation for any impacts to eelgrass and should be developed in consultation with the Department and other permitting and resources agencies. If compensatory mitigation is required for eelgrass impacts, mitigation ratios should be determined in accordance with the CEMP, and as recommended by the Department and other resource and permitting agencies. The Plan

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should identify the Department as an agency to receive and review the draft and final eelgrass mitigation and monitoring reports, surveys, and plans. The Department recommends post-construction eelgrass monitoring surveys be conducted after the initial construction is complete and over the 10-year pile installation period.

A Scientific Collecting Permit (SCP) from the Department will be required prior to harvest and transplanting activities for eelgrass mitigation (California Code of Regulations, Title 14 Section 650, Fish and Game Code Section 1002). The SCP may include permit conditions such as donor eelgrass surveys, submittal of an eelgrass harvest and transplant plan, limits on number of turions collected, methods for collection and transplanting, notification of activities, and reporting requirements. If eelgrass harvesting and transplanting is proposed, healthy eelgrass donor sites should be identified during preliminary eelgrass impact surveys or during separate pre-harvest eelgrass donor site surveys. Please visit the Department's SCP webpage for more information:

<https://wildlife.ca.gov/Licensing/Scientific-Collecting>.

The DEIR notes in Impact Bio-7, "Loss of Marine Habitat from Increased Fill in San Diego Bay", that fill impacts would partially occur in unvegetated shallow and moderately deep subtidal habitat areas. Contaminated or high silt and organic content sediments should not be placed in the marine environment that are not compatible with existing native sediment. High silt content sediments may cause marine soft substrates to be compacted and unsuitable for sustained growth of eelgrass, intertidal and subtidal benthic and epibenthic invertebrates. Compatible sediments are required for healthy marine invertebrate habitat needed for forage of the higher trophic levels such as fish and shorebirds. The Department recommends using compatible sediments when placing fill material in the Bay.

Open Water Bird Foraging Habitat and California Least Tern:

Comments: The Draft MND has identified open Bay water habitat coverage as a significant sensitive seabird foraging habitat impact if not mitigated. The DEIR stated that due to the proximity of the facility relative to known nesting colonies, there is moderate potential for California least terns (*Sterna antillarum browni*; State and Federally listed endangered, State Fully Protected) to utilize areas of open Bay water within the Project site for fish foraging. The Department has analyzed the seabird foraging habitat impact assessment and is concerned the net increase of 4,170 square feet of Bay water coverage will significantly impact the least tern and other seabirds by permanently reducing Bay foraging habitat. Additionally, the Department is concerned with significant impacts to least tern during the entire Project timeline if the construction period cannot avoid the least tern nesting season (April 1 - September 15). Impacts associated with construction noise and water quality (turbidity, sedimentation, etc.), could result in reduced least tern foraging and nesting success and may result in least terns flushing the Project area.

Recommendations:

- The expected increase in overwater coverage and loss of 4,170 square feet of open Bay water habitat area used as foraging habitat by least terns and other sensitive seabird species should be reduced to a zero net increase or minimized to the maximum extent possible.

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- Any unavoidable open Bay water habitat losses should be compensated for, and mitigation plans should be developed in consultation with the Department and other resource and permitting agencies. The Department recommends the like-kind mitigation options A and D described in Mitigation Measure BIO-5, "Implement Overwater Coverage Mitigation in Coordination with the Appropriate Resource Agencies and the District to Compensate for Loss of Open Water Habitat". However, the area of open Bay water habitat chosen to compensate for the Bay surface water area covered should be comparable. The Bay water habitat mitigation area should be similar in habitat value as the area of expected loss and should also be in the near vicinity of a least tern nesting site utilized by least terns for foraging.
- Pile and sheet pile driving construction should avoid the least tern nesting season between April 1 and September 30. This will significantly reduce least tern foraging and nesting impacts in the Project vicinity during the initial proposed Project construction and over the 10-year period of pile repairs.

Invasive Species Impacts:

Comment: Disturbance of bottom sediments from pile construction and vessel/barge anchoring may redistribute non-native species that compete with native species. The invasive alga *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. *Caulerpa prolifera* is also an invasive alga species recently found in Newport Bay, which is a potential threat to native eelgrass beds and other algae.

Recommendation: The DEIR mentions conducting a pre-construction survey for only one species in the genus *Caulerpa*, *Caulerpa taxifolia*. The Department recommends conducting a pre-construction survey for all species of *Caulerpa* (*Caulerpa* spp.) to identify potential existence of invasive *Caulerpa* spp. as described in the Caulerpa Control Protocol <https://media.fisheries.noaa.gov/2021-12/caulerpa-control-protocol-v5.pdf> (October 2021). Any sightings of *Caulerpa* spp. should be reported within 24 hours to the Department (Caulerpa@wildlife.ca.gov), and to NMFS at 562-980-4037 (nmfs.wcr.caulerpa@noaa.gov).

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). Information on submitting data to the CNDDDB can be found at: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

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

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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 NOP of a DEIR for the NASSCO Floating Dry Dock Replacement and Waterfront Improvement Project. If you have any questions or comments, please contact Leslie Hart, Environmental Scientist at Leslie.Hart@wildlife.ca.gov.

Sincerely,

DocuSigned by:


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Becky Ota for

Craig Shuman, D. Env

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References

NMFS. 2014. California Eelgrass Mitigation Policy, National Marine Fisheries Service,
https://archive.fisheries.noaa.gov/wcr/publications/habitat/california_eelgrass_mitigation/Final%20CEMP%20October%202014/cemp_oct_2014_final.pdf.

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