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DEPARTMENT OF FISH AND WILDLIFE
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Governor's Office of Planning & Research

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STATE CLEARING HOUSE

Christina Toms
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Christina.Toms@waterboards.ca.gov

Dear Ms. Toms:

San Francisco Bay Strategic Shallow-Water Placement Pilot Project (Project)
Initial Study/Draft Mitigated Negative Declaration (ISMND)
SCH# 2022100155

The California Department of Fish and Wildlife (Department) received a ISMND from the San Francisco Bay Regional Water Quality Control Board (Waterboard) for the Project pursuant 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 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.

CDFW 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, Section 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, 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.

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.

PROJECT DESCRIPTION SUMMARY

Proponent: United States Army Corps of Engineers

Objective: The proposed Project would place sediment dredged from a federal in-bay navigation channel in shallow waters on the periphery of the Bay to examine the ability of tides and currents to move the placed material to existing mudflats and marshes as a way to enhance sea-level-rise resilience.

Location: The placement of dredged material will occur within San Francisco Bay in an area just south of the San Mateo Bridge between the cities of Foster City and Hayward (San Mateo and Alameda Counties).

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.

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 Project activities include:

- Chinook salmon (*Oncorhynchus tshawytscha*), state and federally threatened (Spring-run), state and federally endangered (Winter-run)
- Longfin smelt (*Spirinchus thaleichthys*), state-threatened
- Steelhead (*Oncorhynchus mykiss*), federally-threatened (Central California Coast and Central Valley ESUs)
- Green sturgeon (*Acipenser medirostris*), federally-threatened (southern DPS)
- White sturgeon (*A. transmontanus*); state species of special concern
- Brown pelican (*Pelecanus occidentalis californicus*), 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*)
- Surfperches (*Embiotocidae*)
- California halibut (*Paralichthys californicus*)
- Eelgrass (*Zostera marina*)

COMMENTS AND RECOMMENDATIONS

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

I. Marine Project Level Impacts and Other Considerations

Longfin Smelt

Comment: As described within the ISMND, Longfin smelt is a state listed species and potential impacts are being evaluated under CEQA only. Within the CEQA determination on page 87, it describes the implementation of mitigation measure BIO-1 would ensure impacts to Longfin smelt would be less than significant. Mitigation measure BIO-1 only describes including provisions of the federal wildlife agencies. Under CEQA, the Department is the trustee agency for the fish and wildlife resources in California and would be responsible for including provisions and measures to be protective of state listed species.

Recommendation: The Department recommends that mitigation measure BIO-1 be amended to include that the Project include provisions of the Department through informal consultations with USACE.

White Sturgeon

Comment: White sturgeon are a state species of special concern (SSC). Although the SSC designation does not have a formal legal status, species are designated to bring additional attention to conservation, research, and recovery of species that have previously been subject to population declines or are generally rare. SSCs should be considered during the environmental review process. CEQA (California Public Resources Code §§ 21000-21177) requires State agencies, local governments, and special districts to evaluate and disclose impacts from "projects" in the State. Section 15380 of the CEQA Guidelines indicates that species of special concern should be included in an analysis of project impacts if they can be shown to meet the criteria of sensitivity outlined therein.

Sections 15063 and 15065 of the CEQA Guidelines, which address how an impact is identified as significant, are particularly relevant to SSCs. Project-level impacts to listed (rare, threatened, or endangered species) species are generally considered significant thus requiring lead agencies to prepare an Environmental Impact Report to fully analyze and evaluate the impacts. In assigning "impact significance" to populations of non-listed species, analysts usually consider factors such as

population-level effects, proportion of the taxon's range affected by a project, regional effects, and impacts to habitat features.

Recommendation: The Department recommends that the final MND include analysis of potential impacts to White sturgeon from Project activities.

Recommendation: The Department recommends the final MND add White sturgeon to Table 4-7: Special Status Species, Critical Habitats, and Essential Fish Habitat (EFH) potentially occurring in and adjacent to the proposed action on page 67.

Eelgrass

Comment: As described in the ISMND, there is potential for a significant impact to any eelgrass that may be present. The placement of material would bury existing eelgrass or create conditions that make growth or survival difficult. As the trustee agency for state wildlife resources, including habitats that are important to state managed commercial and recreational fisheries, the Department needs to be involved in reviewing and approving any mitigation and monitoring plan proposed for the Project. Although Mitigation Measure BIO-2 is generally consistent with the Departments recommendations, nowhere in the measure explicitly states that coordination with the Department will occur.

Recommendation: The Department recommends that Mitigation Measure BIO-2, section c be amended to include that the proposed monitoring and mitigation plan will be provided to both state and federal wildlife agencies for review prior to approval and implementation. Additionally, if eelgrass mitigation is determined to be necessary, a Scientific Collection Permit from the Department will be required.

Project Schedule

Comment: The ISMND does not have a specific schedule in which Project activities would occur. To provide more specific recommendations for avoidance and/or minimization of potential impacts, an anticipated schedule of when the activities may occur would be beneficial.

Recommendation: The Department recommends the final ISMND include a schedule of when Project activities may occur including anticipated year and time 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. 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 the Department. 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

The Department appreciates the opportunity to comment on the ISMND to assist the Waterboard 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.

Sincerely,



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